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COMMITTEES:  
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HOUSE OF REPRESENTATIVES AND REGULATORY  
COMMONWEALTH OF PENNSYLVANIA REVIEW COMMISSION  
HARRISBURG

October 13, 2004

Pennsylvania Commission on Crime and Delinquency  
Office of Victim Services  
P.O. Box 1167  
Harrisburg, PA 17108-1167  
ATTN: Lynn Shiner

Re: Proposed Regulation  
Pennsylvania Commission on Crime and Delinquency  
Office of Victim Services  
Document No.: 35-29

Dear Ms. Shiner:

The following comments and recommendations are submitted by the House Judiciary Committee following our review of the above-referenced proposed regulations. These comments and recommendations are submitted for review and consideration. The Committee reserves its right to make further comments and recommendations and to take any other action provided by law.

**Section 411.2. (relating to definitions).**

The Committee suggests that the statutory definition of "cleaning" be included in the regulations and that language be included in the regulatory definition to clarify for claimants the types of "stains" for which compensation will be made to cover the cost of their "cleaning". The Committee believes that the intent of the General Assembly in enacting the statutory authorization to pay claims to cover the cost of crime scene cleaning was to ensure that payment may be made to cover the cost associated with the clean-up of blood and stains *caused by other bodily fluids* as a direct result of the crime or other dirt and debris caused by the processing a the crime scene. Stains deliberately caused by acts of vandalism and other intentional acts are property damage which is expressly excluded from the definition of "out of pocket loss" contained in the act.

**Section 411.2. (relating to definitions).**

The definition of "loss of earnings" should be deleted or clearly indicate that the definition is in addition to the statutory definition. The Committee believes that the

intent of the General Assembly in defining "loss of earnings" was to clarify that in addition to its normal meaning, "loss of earnings" as used in the act, is intended to also include the loss of the cash equivalent of one month's worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the victim's income and the victim is deprived of money as a direct result of a crime.

**Section 411.2. (relating to definitions).**

The definition of "stolen benefit cash" is extremely similar to the statutory definition of "loss of earnings" and may result in unintended interpretations and confusion. Additionally, the definition contained in the proposed regulations utilizes the term "cash equivalent" which is defined in the proposed regulations and then nearly restates the definition of "cash equivalent." The result is that the definitions of these terms are somewhat confusing and the Committee suggests that they be reviewed for clarity and intent and amended accordingly.

**Section 411.2. (relating to definitions).**

The Committee also notes that Section 11.702 (b) of the Crime Victim Act provides time limitations for filing a claim with the Board. This section is intended to provide sufficient latitude to an individual eligible to file a claim to ensure victims are adequately compensated and at the same time to provide the Board with a timeframe to assist the Board in determining potential claims that may be outstanding in order to aid the Board in planning. This section contains language permitting an individual who is eligible to file a claim under the act to file a claim not later than two years after the occurrence of the crime upon which the claim is based. The Committee suggests that a definition of "the occurrence of the crime" be included in the regulations so that the time period for filing does not begin to run until the crime is *actually* discovered. The Committee believes that such a definition would be consistent with the intent of the act, i.e., the restoration of crime victims to their pre-crime status, and such a definition would treat all eligible claimants in a uniform manner. See Section 702 (b) as it pertains to the discovery and identification of the body of a murder victim. Also see HB 2396 which was recently amended in the Senate and is likely to be scheduled for a concurrence vote in the House in the near future.

**Section 411.11 (e) (1) (relating to filing procedures).**

This paragraph contains a listing of "proper authorities" to which the direct victim or intervenor must have reported the occurrence of the crime in order to satisfy the statutory requirement that the crime be reported. The intent of the General Assembly in requiring that the occurrence of the crime be reported to "proper authorities" is to prevent the

filing, processing and payment of fraudulent claims. Consistent with this intent, while a report to "proper authorities" should be a report that can be verified through the proper authority and should be report that, if false, would subject a person making this false report with some adverse consequence. By way of example, it is the opinion of the Committee that an employee who reports a workplace theft to his or her employer or his or her employer's security department would satisfy the statutory reporting requirement in that such a report can be verified through the employer's records and a false report is likely to affect the employee's employment status. This having been said, while the listing of "proper authorities" contained in paragraph (1) is written as a "may" provision, the list nevertheless appears to be exclusive. The Committee is concerned that the list contained in paragraph (1) may deter a direct victim or intervenor with a legitimate claim from filing an application for compensation. The Committee suggests that this paragraph be amended to clearly indicate that this list is not exclusive and that OVS retains the authority to determine on a case-by-case basis, whether a direct victim or intervenor reported the occurrence of the crime to a "proper authority."

**Section 411.11 (i) (2) (iv) and (i) (6) (iv) (relating to filing procedures).**

These subparagraphs contain a requirement that if the direct victim or intervenor is covered by an insurance plan that the claimant provide written justification to OVS for not utilizing the prescribed coverage. This requirement is consistent with the intent of the General Assembly that the fund be the payor of last resort. However, these subparagraphs each contain three specific justifications. The Committee's concern with these examples is twofold. First, if any one of these three examples is cited as a justification for not utilizing a prescribed insurance plan or medical assistance, it is unclear whether this justification will suffice in every instance where an insurance plan or medical assistance is not utilized. While in some circumstances, travel considerations may justify a decision not to utilize an insurance plan or medical assistance, the Committee can foresee that in other circumstances, they may not. This subparagraph should make the need for review on a case-by case basis by OVS clear. Second, the Committee is concerned that despite the "such as" language, a claimant, direct victim or intervenor may construe these three examples to be the only appropriate justifications. Such a construction may prevent a claimant from filing a claim because the direct victim or intervenor may have, for personal privacy reasons, decided not to use their insurance to keep the matter from their spouse or their employer; or decided that they are not comfortable seeking treatment or a referral from their primary care physician as required by their insurance plan. The Committee feels that the regulations should clearly indicate that the OVS retains the authority to decide on a case-by-case basis whether a direct victim or intervenor had a legitimate justification for not utilizing their insurance plan or medical assistance.

**Section 411.11 (i) (7) (relating to filing procedures).**

The Committee suggests that this subsection contain language similar to that contained in Section 411.11 (i) (2) (iv) and (i) (6) (iv) requiring that written justification be provided if the property sustaining damage as a result of the crime is covered by a homeowner or renter's insurance policy covering such damage, but the property owner did not utilize the prescribed coverage. The inclusion of such a provision would be consistent with the intent of the General Assembly that the fund be the payor of last resort.

**Section 411.12 (a) (relating to review).**

The Committee is of the opinion that the intent of the statutory provision upon which this subsection is based (Section 704 (b)(1) of the Crime Victim Act) is to ensure that the OVS conducts an examination of each claim and any supporting documentation to prevent fraud. The proposed regulation and statute both state in relevant part that the OVS investigation shall include "an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based." The Committee is of the opinion that it is not the legislative intent of the statutory provision to require that an investigation into every claim require that each of the referenced items be examined, but rather that OVS examine such records and reports as necessary in order to ensure that a claim is legitimate. It is the opinion of the Committee, for example, that a claim based upon the abuse of a child that, according to official records of a county child protective services agency was reported to police should not be denied because the police department who received the complaint has not provided OVS with a copy of the police record or report further confirming the complaint. The Committee suggests that this section clarify this point.

**Section 411.14 (c) (relating to determinations).**

This subsection provides for permissive notification of a claim determination to all appropriate individuals, including the State Treasurer, court personnel, victim advocate or the claimant's attorney of record. The Committee suggests that the district attorney having jurisdiction where the crime occurred be added to the list of persons to whom notification of a paid claim is made. Title 18 Section 1106 (c) (4) imposes a duty upon the district attorney to make a recommendation to the sentencing court as to the amount of restitution to be ordered. The Committee believes that providing notice of a claim determination, when it is made, will assist the district attorney in meeting this statutorily imposed duty.

**Section 411.16 (a) (relating to reductions, offsets and limitations).**

This subsection requires that any award made shall be reduced by the amount of any payments received *or to be received* from or on behalf of the individual who committed

the crime. The Committee suggests that the regulations clearly provide authority to the OVS to pay a claim to a claimant in full, irrespective of any restitution which has been or may be ordered, as Title 18 Section 1106 provides that the sentencing court shall order restitution in full, even when restitution has been paid by the Board. The Committee believes that the victim should be returned to their pre-crime status, to the extent permitted, as soon as possible. The Board is authorized to receive restitution from the offender, in lieu of the victim, when a claim has been paid and the offender subsequently pays restitution to the court. See Title 18 Section 1302 (relating to restitution). The Board is also entitled to subrogation pursuant to Section 1301 of the Crime Victim Act. Any decision by OVS to reduce, offset or limit an award to a claimant should only be made after first considering the ability of the Board to exercise its right to subrogation and restitution.

**Section 411.18 (c) (relating to awards).**

See comment to Section 411.16 (a) above. The Committee believes that reduction of an award should not be made based upon an award or potential award of restitution as the Board is entitled to subrogation pursuant Section 1301 of the Crime Victim Act. Any decision by OVS to reduce, offset or limit an award to a claimant should only be made after first considering the ability of the Board to exercise its right to subrogation and restitution.

**Section 411.32 (h) (relating to hearing).**

This subsection requires that a claimant must provide "a list of witnesses and documentary exhibits to be presented." The Committee suggests that this section be amended to clarify whether the submission of a list of documentary exhibits will satisfy the requirement imposed, or if the actual documentary exhibits must be provided. This section also requires that the claimant must provide a list of witnesses and documentary exhibits to OVS counsel and the hearing examiner. The Committee suggests that this duplication of effort not be required. The Committee questions whether the claimant will be able to ascertain who OVS counsel is and who the hearing examiner is and how to provide this information. The Committee feels that OVS, not the claimant, should be required to provide this information to OVS counsel and to the hearing examiner as necessary and appropriate.

**Section 411.32 (k) (relating to hearing).**

This subsection states that the attorney representing OVS may issue subpoenas for attendance of witnesses or for production of documentary evidence. Section 411.32 (l) states that the hearing officer may issue subpoenas for attendance of witnesses or for the production of documentary evidence, upon a showing of relevance and materiality. If it is the intent that subsection (l) is the mechanism by which a claimant may obtain

subpoenas for the attendance of witnesses or for the production of documentary evidence, the Committee suggests that this subsection indicate this intent and, if this is the case, that further instruction be provided as to the procedure for requesting and obtaining these subpoenas.

**Section 411.41 (g) (relating to travel expenses).**

The Committee is unaware of any express statutory authorization to permit claims for reimbursement of travel expenses associated with travel to obtain medical care or counseling and, in the case of an injury that results in death, for travel in connection with making the funeral arrangements and transport of the body. The Committee does believe that reimbursement for such expenses would be appropriate as compensation for "out-of-pocket loss" as defined in the act.

"Out-of-pocket loss." The term includes the following losses which shall be reimbursed at a rate set by the Office of Victims' Services:

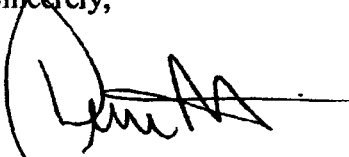
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(6) other reasonable expenses which are deemed necessary as a direct result of the criminal incident.

However, subsection (g) as written does not include a requirement that expenses paid for travel be "reasonable expenses" which are "deemed necessary" by the OVS. The Committee suggests that this subsection be redrafted to include a requirement that travel expenses be reasonable and necessary.

Thank you in advance for your time and consideration.

Sincerely,



DENNIS M. O'BRIEN  
Republican Chairman  
House Judiciary Committee



KEVIN BLAUM  
Democratic Chairman  
House Judiciary Committee

DMO'B:MSS:js

cc: Robert E. Nyce, Executive Director, IRRC  
Carl J. Anderson, Executive Director, PCCD  
Carol L. Lavery, Director, Office of Victims' Services, PCCD  
Suzanne Hueston, Chief Counsel, PCCD

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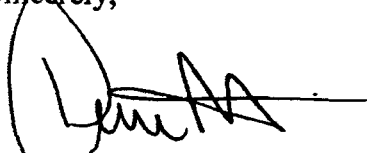
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Sincerely,



DENNIS M. O'BRIEN  
Republican Chairman  
House Judiciary Committee



KEVIN BLAUM  
Democratic Chairman  
House Judiciary Committee

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cc: Robert E. Nyce, Executive Director, IRRC  
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Carol L. Lavery, Director, Office of Victims' Services, PCCD  
Suzanne Hueston, Chief Counsel, PCCD