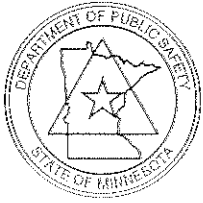


MINNESOTA DEPARTMENT OF PUBLIC SAFETY

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Office of Justice Programs

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August 21, 2013

Legislative Reference Library

645 State Office Building

100 Constitution Avenue

St. Paul, Minnesota 55155

Re: In The Matter Of The Proposed Rules
Of The Department Of Public Safety Relating To
Crime Victims Reparations;
Governor' s Tracking #RD4178

Dear Librarian:

The Minnesota Department of Public Safety intends to adopt rules relating to crime victims reparations. We plan to publish a Dual Notice Of Intent To Adopt Rules in the August 26, 2013 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at 651-201-7304.

Sincerely,

A handwritten signature in cursive script that reads "Marie Bibus".

Marie Bibus
Reparations Director

ENC: Statement of Need and Reasonableness

Alcohol
and Gambling
Enforcement

Bureau of Criminal
Apprehension

Driver
and Vehicle
Services

Emergency
Communication
Networks

Homeland
Security and
Emergency
Management

Minnesota
State Patrol

Office of
Communications

Office of
Justice Programs

Office of
Pipeline Safety

Office of
Traffic Safety

State Fire
Marshal



Minnesota Department of Public Safety

Office of Justice Programs Division

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing the Crime Victims Reparations Board, *Minnesota Rules*, parts 3050.3200 and 3050.3500.

I. INTRODUCTION

The Minnesota Crime Victims Reparations Board provides compensation to victims of crime who have suffered physical or emotional injury. Victims and their immediate family members may receive reimbursement for expenses directly related to the crime such as medical or dental care, psychological counseling, loss of income, child care or household services, funeral expenses or loss of support for a victim's spouse and children. Claimants must meet the board's eligibility requirements which include filing a claim within three years, reporting the crime to the police, and cooperating fully with law enforcement. The board is composed of five members who meet once a month to draft new policies and procedures, review claims, and approve or deny awards.

The board is governed by a set of statutes and rules which specify the board's eligibility requirements. The proposed amendments will supplement the existing rules in *Minnesota Rules* chapter 3050. The proposed amendments were developed by the board and are based on the experiences of the board in implementing *Minnesota Statutes*, sections 611A.51 to 611A.67. The amendments are consistent with those statutes. Most of the proposed amendments were suggested by victims of crime, or advocates who work with victims of crime.

The board needs the proposed amendments to assist the family members of crime victims in a more equitable manner. The amendments improve the rules for determining eligibility and will allow the board to provide more compensation to secondary victims for their losses. The amendments expand coverage for lost wages and counseling for secondary victims, such as the spouse, grandparents, siblings and children of the victim. This is necessary to adequately restore all of the losses incurred by those family members as a result of a crime.

II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact: Marie Bibus at the Minnesota Crime Victims Reparations Board, 445 Minnesota Street, #2300, St. Paul, MN 55101, phone: 651-201-7300, fax: 651-296-5787, email: Marie.Bibus@state.mn.us. TTY users may call the department at 651-205-4827.

III. STATUTORY AUTHORITY

The Department's statutory authority to adopt the rules is set forth in *Minnesota Statutes* section 611A.56, subdivision 1, paragraph (b), which provides that the board shall

“adopt rules to implement and administer sections 611A.51 to 611A.68, including rules governing the method of practice and procedure before the board, prescribing the manner in which applications for reparations shall be made, and providing for discovery proceedings.”

Under this statute, the Department has the necessary statutory authority to adopt the proposed rules.

The time limit on authority to adopt rules contained in *Minnesota Statutes* section 14.125 does not apply here because the statutory authority to adopt the rules was granted prior to January 1, 1996. Section 14.125 only applies to new rules adopted under new rulemaking authority.

IV. REQUIRED ANALYSIS

1. **Persons Who Probably Will Be Affected By the Proposed Rules**

A. Classes of Persons Affected

Those persons most affected by these rules will be victims of crime who seek financial assistance from the board and providers of services who receive payments from the board on behalf of victims.

B. Persons Affected Who Will Bear the Costs of the Proposed Rules

There are no administrative costs as a result of implementing the proposed rules.

C. Persons Affected Who Will Benefit From the Proposed Rules

Most crime victims and their immediate family members will benefit by the expanded eligibility and coverage contained in the proposed rules.

The board will benefit from the clarifications to the existing rules because the program will be able to assure that services are provided to meet the needs of crime victims.

2. **Costs to Agencies and Anticipated Effect on State Revenues**

A. Probable Costs to the Department of Public Safety to Implement and Enforce

The costs associated with expanding the board's coverage are minimal, and can be absorbed by the crime victim reparations board. The board is funded by a federal grant, restitution collections, inmate wages, as well as a state general fund appropriation. The board currently has a surplus due to its special revenue collections. The proposed rules also will allow the board to control any cost increases if available funds decrease in the future.

B. Probable Cost to Other Agencies to Implement and Enforce

There is no anticipated cost for other state agencies.

C. Anticipated effect on State Revenues

There will be a very minimal impact on state revenues since the proposed amendments provide a small change from existing coverage, and allow the board to adjust the cap on reimbursement for an injured victim's care depending on the funds available. Also, the board anticipates that only a small number of claimants would be eligible for the increased coverage since it applies to immediate family members of deceased or severely injured victims.

3. **Less Costly or Less Intrusive Methods**

These rules have been drafted to provide as little cost and as little intrusiveness as possible. The board, at its monthly meeting, discussed broader coverage expansions.

However, because the board's available funds vary from year to year, the board chose the less costly option of limiting lost wages to six weeks, and allowing the board to determine the maximum amount annually to pay family members for providing care to an injured victim.

4. Alternative Methods

In its discussion of the proposed rule regarding care for injured victims, the board considered raising the maximum to \$5000. However, the board voted instead to change the language to allow the board flexibility to set the maximum annually. This will allow the board to adjust the amount of the maximum based on available funds.

5. Probable costs of compliance

There will be no costs of compliance to victims or service providers.

5. Probable costs of not adopting the proposed rules

There are no probable costs of not adopting the proposed rules. If the proposed rules are not adopted, the maximum amount allowed for claimants who are caring for an injured victim would remain at \$2,000 and the board will not be able to increase or decrease the maximum amount.

7. Differences between the Proposed Rules and Existing Federal Regulations

There are no differences between the proposed rules and existing federal regulations on crime victims compensation.

V. COMMISSIONER OF FINANCE REVIEW OF CHARGES

Minnesota Statutes, section 16A.1285, does not apply because the rules do not set or adjust fees or charges.

VI. PERFORMANCE-BASED RULES

Minnesota Statutes, section 14.002, requires state agencies to emphasize “superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.” Under Minnesota Statutes, section 14.131, an agency must describe how it considered and implemented this new policy of performance-based regulatory systems.

The board carefully considered its proposed rules and avoided any overly prescriptive or inflexible language that would increase costs or decrease effectiveness. The board reviewed its performance objectives prior to drafting the new rules. In its discussions, the board aimed for flexibility, and cost-effectiveness. The proposed rules enhance the board’s performance goal of providing reparations benefits in a timely, consistent and compassionate manner to crime victims and their families to ease their financial burden.

VII. NOTICE AND ADDITIONAL NOTICE

The department has distributed a copy of the dual notice, as well as a copy of the rules, to all persons on the Office of Justice Programs, Crime Victim Reparations Board distribution list and to all persons on the DPS rulemaking list.

Pursuant to Minnesota Statutes, section 14.116, the chairs of the legislative policy and budget committees with jurisdiction over this subject matter have been given copies of the dual notice, the statement of need and reasonableness, and the proposed rules. There are no legislators who are still in office who were main authors or supporting authors of H.F. 452 and S.F. 1089 enacting *Minnesota Statutes* section 611A.56, subdivision 1, paragraph (b) in 1974.

Additionally, Minnesota Statutes, sections 14.131 and 14.23, require that this statement contain a description of the department's efforts to notify persons or groups who are, or may be, affected by changes to these rules.

The dual notice and a copy of the rules was distributed by regular mail to the DPS rulemaking list. In addition, the Office of Justice Programs Division, Crime Victims Reparations Board, maintains a current electronic distribution list of over 400 interested organizations, groups and persons. The list includes all of the victim services agencies and groups funded by the state, as well as other victim services programs listed in the division's directory of crime victim service programs in Minnesota. The agencies and groups include sexual assault programs, domestic violence intervention projects, battered women's shelters, victim/witness assistance programs, county attorney offices, statewide coalitions, as well as several organizations targeting underserved populations. These programs comprise a discretionary distribution list to which the department has e-mailed a copy of the request for comments, and a copy of the Dual Notice to adopt with a copy of the rules. In addition, copies of the statement of need and reasonableness were made available to programs upon request.

Finally, the Dual Notice and proposed rules are available via the Office of Justice Program's homepage found on the Department of Public Safety's website. The internet address for the website is: ojp.dps.mn.gov.

VIII. LIST OF WITNESSES

If these rules go to a public hearing, the department anticipates having the following witnesses testify in support of the need for and the reasonableness of the rules:

Marie Bibus, Executive Director, Minnesota Crime Victims Reparations Board, 445 Minnesota Street, Suite #2300, St. Paul, MN 55101

Robert Goodell, Chair, Minnesota Crime Victims Reparations Board, 445 Minnesota Street, Suite #2300, St. Paul, MN 55101

Joseph Newton, General Counsel, Commissioner's Office, Department of Public Safety, 445 Minnesota Street, Suite 1000, St. Paul, Minnesota 55101

Danielle Kitto, Claims Manager, Minnesota Crime Victims Reparations Board, 445 Minnesota Street, Suite 2300, St. Paul, MN 55101

VIII. RULE-BY-RULE ANALYSIS

Minnesota Rule, part 3050.3200 subpart 7. LOSS OF INCOME Family members of deceased.

This rule governs the payment of lost wages by the board. Currently, under subpart 7, while a parent or spouse is allowed up to 52 weeks of lost wages, the deceased victim's children, grandparents or siblings may only receive up to one week of lost wages. When a death occurs as a result of a crime, the victim's adult children or siblings often miss more than one week of work. They may be helping with funeral arrangements and other matters after the death. They may also suffer from severe grief due to the loss of a close family member, and may be unable to work at all for several weeks. Since the board's mission is to minimize the financial impact of violent crime on victims and their families, the board felt that these secondary victims should also be compensated to a greater extent for their lost income. In many cases, one week of lost wages has not been sufficient, especially where there was a particularly close relationship of the

secondary victim to the victim, or where the nature of the crime was particularly heinous. For example, in some homicides, due to the complexity of the crime, there have been complications in the investigation, and family members have experienced additional stress and trauma while waiting for the investigation to be completed and/or the body to be found. Due to the need to miss work during this time, the immediate family members often incur more than one week of lost income.

The proposed amendment expands reparations coverage for lost wages to include up to six weeks of lost income for children, grandparents, or siblings of homicide victims. This is necessary to meet the special needs of family members of crime victims. The amendment retains the provision which states that no extension beyond that is allowed unless there are extraordinary circumstances where the limit imposes undue hardship on the secondary victim. The amount of lost wages would be calculated in the same manner as for other victims.

The amendment is reasonable because it more adequately addresses the needs of secondary victims, and more fully accounts for the challenging circumstances described above which family members endure in such tragedies. The amendment allows the board to assist those persons who are very likely to have lost wages for longer than a week related to the crime. Furthermore, the amendment is reasonable because it still sets a maximum length of time for lost wages for children, grandparents, or siblings of the victim, but the length of time is more realistic than the current limitation of one week.

Minnesota Rule part 3050.3500 FAMILY MEMBERS OF INJURED VICTIMS.

This rule governs the counseling and other expenses which may be claimed by family members of injured victims. The current rule sets a limit of 20 counseling sessions for a

spouse, parent, child, grandparent or sibling of an injured victim. There is no mechanism in the rules to provide an exception even in the most compelling of circumstances. There are certain cases where a victim sustains a very serious injury which results in a lengthy period of hospitalization or placement in a long term care facility. The secondary victim, such as a spouse, parent or a sibling, may suffer from vicarious trauma due to the tragedy. They are often under extreme stress as a result of needing to make arrangements for the victim's care. Especially in situations where the family member has a close personal relationship to the victim, or is solely responsible for the care of the victim, the secondary victim may sustain emotional harm that simply necessitates more than 20 counseling sessions. The board needs additional flexibility in order to meet its objective of providing reparations benefits in a compassionate manner.

The amendment is needed to allow the board to award payment for mental health counseling up to the maximum amount allowed under M. R. 3050.3800. Under M.R. 3050.3800, the board sets a maximum benefit for outpatient counseling for victims. The current cap for fiscal year 2013 is \$7500. The rule is necessary to allow the immediate family members of an injured victim to receive up to \$7500 for counseling, rather than just 20 sessions.

The amendment is reasonable because there are occasionally those cases where the family of an injured victim may experience severe emotional trauma, anxiety or depression, and long-term treatment is necessary to their recovery. It is reasonable for the board to be able to provide adequate assistance in those situations.

It is also a reasonable amendment because it makes this rule consistent with M. R. 3050.3400 which defines secondary victims in the case of injury to include a spouse, parent,

child, grandparent or sibling. It is also more equitable to provide the same level of coverage for the immediate family of the victim in all cases, regardless of whether the victim is deceased, or severely injured.

The second part of the amendment changes the benefits for providing care to an injured victim. The board has received several requests from family members, such as the spouse of an injured victim, seeking additional payment for expenses incurred as a result of taking care of the injured victim. Currently, the rules only allow reimbursement for up to \$2,000 of lost wages, transportation and lodging. This \$2,000 cap must be divided among all family members who provided care for the victim. In many cases involving victims who are severely injured, the board's experience has been that \$2,000 is not adequate compensation for the family members to care for the injured victim during a lengthy recovery period. An amendment to the rule is needed to allow the board to set the maximum amount annually. The board needs to be able to increase the coverage if funding is available.

The amendment is reasonable because it will allow the board to provide more coverage for family members who may be providing care to an injured victim. It enhances the reparations program by giving the board the flexibility to provide adequate reimbursement for a family member's losses incurred as a result of a crime in which the victim is severely injured.

X. CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

8/14/2013

Date

Marie Bibus

Marie Bibus

Executive Director, Crime Victims Reparations Board