



Crime Victim Services

Victim Compensation Program

**Program Administration
Desk Manual
2018**

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I. INTRODUCTION

A. Victim Compensation Program Summary

In 1986, the Arizona State Legislature established the Crime Victim Compensation and Assistance Fund. The Arizona Criminal Justice Commission is directed by statute to administer the fund and create program rules to guide the awarding of state and federal compensation funds to victims of crime. To administer the compensation program, the Commission is required every year to designate one operational unit for each county in the State of Arizona. Operational Units receive an annual allocation of compensation funding to administer the compensation program at the county level. Operational units also order and collect restitution and subrogation funds for the compensation program. These funds are deposited at the county level and used to support victim compensation program activity for that county.

Victims of criminally injurious conduct submit victim compensation claims to the operational unit for the county in which the crime occurred. Compensation coordinators or victim advocates at the county level investigate each compensation claim, and then present the claim to the county's crime victim compensation board for review. Each board is comprised of appointed volunteers. The board approves or denies each compensation claim in accordance with the Crime Victim Compensation Program Rules – Arizona Administrative Code A.A.C. § R10-4-101 through A.A.C. § R10-4-111.

B. Purpose of Desk Manual

This desk manual is intended to serve as the primary written resource for information on state and county level administration of the Crime Victim Compensation Program for the State of Arizona. The materials included detail the intent of program rules, describe program structure, and provide guidance on program administration.

C. Disclaimer

THE DESK MANUAL IS NOT A LEGAL DOCUMENT. The crime victim compensation program is subject to the rules established in A.A.C. § R10-4-101 through A.A.C. § R10-4-111. These rules are open to legal interpretation, and legal interpretations differ. While the desk manual incorporates advice from attorneys, received in response to specific questions, it should not be upheld as the final word on how to interpret or apply the rules. The desk manual is intended to be a valuable resource and starting point for anyone involved with the compensation program.

II. COMPENSATION PROGRAM ADMINISTRATION

A. Arizona Criminal Justice Commission

The mission of the Arizona Criminal Justice Commission (ACJC) is to continuously address, improve, sustain and enhance public safety in the State of Arizona through the coordination, cohesiveness, and effectiveness of the Criminal Justice System.

ACJC is a statutorily authorized entity mandated to carry out various coordinating, monitoring, and reporting functions regarding the administration and management of criminal justice programs in Arizona. In accordance with statutory guidelines, the Commission is comprised of 19 members who represent different elements of the criminal justice system in Arizona. Five of the 19 Commission members are state criminal justice agency heads, while the other 14 are appointed by the governor to serve two-year terms.

ACJC was created in 1982 to serve as a resource and service organization for Arizona's criminal justice agencies on a variety of issues ranging from drugs, gangs, and victim compensation and assistance, to criminal record improvement initiatives and statistical analysis. The ACJC works on behalf of the criminal justice agencies in Arizona to facilitate information and data exchange among state-wide agencies by establishing and maintaining criminal justice information archives, monitoring new and continuing legislation relating to criminal justice issues, gathering criminal justice information, and researching existing criminal justice programs.

1. Compensation Program Oversight

ACJC is responsible for statewide administration and oversight of the crime victim compensation program, including the following activities:

a) Programmatic Reviews

A programmatic review of a county level compensation program usually occurs every other year unless the operational unit has been identified as high risk or has requested more frequent reviews. A programmatic review consists of an in depth review of the county program's administrative processes and procedures, followed by a compensation claim file review, and a review of the program's compensation board meeting minutes and agendas. During a programmatic review there are certain questions that ACJC program review staff must answer including:

- Are all payments made allowable under program rules?
- Is the program in compliance with open meeting laws?
- Are the claim files well organized and do they contain all of the necessary support documentation?
- Is the program negotiating benefit costs or utilizing a payment rate schedule?
- Is the program pursuing restitution orders on eligible benefit payments?

- Are the program's investigation and processing procedures adequately meeting the needs of victims, board members, and the program as a whole?

The purpose of a programmatic site visit is to ensure compliance with program rules and open meeting laws. However, it is also an opportunity for ACJC program staff to identify and share best practices, and should be viewed as a learning opportunity.

b) Financial Audits

A financial review of the program may occur annually and will consist of an analysis and evaluation of the program's accounting system and interactions with County Finance to ensure that it provides full accountability for revenues, expenditures, assets, and liabilities. Commission financial compliance staff will check to make certain that there is proper segregation of duties.

A review of expenditures will be performed and evaluated to ensure they were made only for allowable program expenses and during the proper time period. There will also be an examination of prepared financial reports to ensure they contain accurate and reliable financial information and are presented in accordance with the terms of the signed grant agreement.

The following financial reports, as well as all original documents must be made available for review for the time period requested:

- Detailed revenue, expenditure, and encumbrance reports;
- General ledger;
- Agency reconciliation reports;
- Payroll – list of employees paid by the program, including timesheets;
- Check register, bank statements, and cancelled checks, if any.

2. Expenditure Reimbursements

ACJC distributes allocated state and federal compensation benefit and administrative funds through a monthly reimbursement of county compensation benefit and administrative expenditures. (See Program Finance – Expenditure Reimbursement)

3. Program Activity Reports

Each operational unit is required to submit program claim and financial activity data to ACJC on a quarterly basis (R10-4-104.B.2.e). Program activity data is submitted to the ACJC Victim Compensation Data Warehouse. (See Victim Compensation Data Warehouse) ACJC uses data from the Data Warehouse to determine the effectiveness of program administration and benefits, complete the quarterly federal VOCA compensation program activity report, and to certify annual program expenditures for the federal VOCA compensation grant award.

4. Funding Allocation

ACJC is responsible for annually allocating state and federal compensation funds to operational units for the upcoming state fiscal year. Every year the allocation amount is a combination of both state and federal compensation funds. Approximately half way through the fiscal year ACJC analyzes operational unit reimbursement requests for the first six months and may recommend a reallocation of available funds. (See Program Finance, Reallocation)

a) Allocation Process

Annually the Commission undertakes the following three step process to approve a funding allocation to compensation program operational units for the fiscal year starting July first:

Designation of Operational Units: Program rules require the Commission to annually designate one operational unit for each county to receive an allocation from the Crime Victim Compensation and Assistance Fund or available federal VOCA compensation funds, and to administer the Crime Victim Compensation Program for that county during the upcoming fiscal year. (See Operational Units – Designation)

Approve Compensation Program Budget: The total program budget for the upcoming fiscal year includes both state compensation funds and federal VOCA compensation funds. The total program budget is based on state revenue projections for the compensation program, the legislative appropriation for the upcoming fiscal year, and available federal funds.

Approve Allocations to Operational Units: The Commission approves the allocation of state and federal crime victim compensation funds to operational units for the upcoming fiscal year in accordance with the compensation allocation formula.

b) Compensation Allocation Formula

The allocation formula is approved by the Commission annually as needed and sets the dollar amounts proposed for allocation to each operational unit for the 15 counties. The allocation formula includes the following funding variables:

- \$50,000 of the state funds retained in emergency reserve (R10-4-102.D);
- Five percent of most recent federal VOCA award allocated to ACJC for administrative costs;
- Fixed administrative allocation of state funds to each OU (R10-4-102.I);
- A base allotment of \$25,000 to each OU (R10-4-102.C);
- A 60% reimbursement to OUs spending other local funds on compensation benefits during the previous fiscal year (R10-4-102.H);

- The remaining balance distributed as follows:
 - 50% based on prior years' program benefit expenditure average (R10-4-102.C);
 - 30% based on average share of crime (R10-4-102.C);
 - 20% based on population (R10-4-102.C).

The resulting funding amount for each operational unit includes allocations for compensation benefit payments and program administrative costs.

5. Rule Making

ACJC administers the rule making process for the victim compensation program. The Administrative Procedure Act requires that at least once every five years, each agency shall review all of its rules to determine whether any rule should be amended or repealed. Program rules may be revised in accordance with the five-year review or on an as needed basis.

The rule making process is time consuming and labor intensive. Rulemaking will only be undertaken if the identified changes are critically necessary, and cannot wait until the next five-year review. (See Arizona Administrative Code)

6. Federal VOCA Award Grantee

Every year, ACJC applies for and receives a federal Victims of Crime Act (VOCA) compensation grant award from the Office for Victims of Crime (OVC). This is a federal formula grant program. Each year ACJC certifies all eligible program expenditures for the most recently completed federal fiscal year. VOCA compensation award amounts are a 60% reimbursement of the certified expenditure amount. ACJC is also responsible for all financial, activity, and closeout reports associated with the federal VOCA compensation award.

The VOCA compensation award funds compensation benefit payments to victims of crime. The allocation formula approved by the Commission allows the ACJC to retain 5% of the federal VOCA award for administrative costs associated with administering the program. A portion of the remaining federal VOCA benefit funds are included in the total program allocation made to operational units each fiscal year. (See Program Finance – Funding Sources – Federal)

7. State-level Claim Review

ACJC is responsible for administering the state-level claim review process. The Crime Victim Services Program Manager at ACJC also serves as a member of the state-level claim review panel. (See Board Administration – State-level Claim Review)

B. Operational Units

1. Designation

a) Eligibility

Compensation program rules define an operational unit as a public or private agency authorized by the Commission to receive, evaluate, and present a claim to the compensation board (R10-4-101.23).

b) Process

To be designated as an operational unit for a county, a public or private agency shall submit to the Commission a written request for designation (R10-4-104.A). Designation of operational units usually occurs at the Commission meeting held in March, and designation will be for the upcoming state fiscal year starting July 1.

If more than one agency requests designation as an operational unit for a county for the upcoming fiscal year the Commission shall designate the agency that it determines is better able to evaluate claims and manage the expenditure of public funds. The Commission shall give preference to a public agency if both a public and private agency request designation (R10-4-104.C).

c) Requirements (R10-4-104.B)

Supplanting

Operational units cannot use state or federal compensation funds to supplant local funds otherwise available to compensate a victim or claimant. Meaning state or federal compensation funds may not be used to replace local funds that would, in the absence of state or federal funding, be available for compensation benefit payments. Instead, state and federal compensation funds must be used to supplement or increase the total amount of funding used for the compensation program.

In other words, an operational unit may not use state or federal compensation funds to defray any costs that the operational unit is already obligated to pay. For example, victim compensation transportation cost benefits to allow a victim to attend court may not be used to cover the expense incurred by a County Attorney's Office to facilitate the appearance of a victim as a witness during trial.

Residency

Operational units shall not make a distinction between a resident and a non-resident in evaluating a claim.

Crime Jurisdiction

Operational units shall not make a distinction in evaluating a claim relating to a federal crime that occurs in Arizona and one relating to a state crime.

Forward Claims to Board

Operational units agree to provide application forms to claimants, investigate and substantiate each claim, and forward to the board all claims related to crimes occurring in the operational unit's jurisdiction. This includes claims from county residents who are victimized in another state, U.S. territory, or foreign country that does not have an accessible compensation program of its own.

Currently all states and U.S. territories have compensation programs, but there have been several instances where Arizona residents have been victims of crime while traveling abroad. These victims are eligible to submit an application to the operational unit administering the compensation program for the county where the victim resides.

Report to ACJC

Operational units are responsible for notifying ACJC of any change in the agency's program procedures before the change takes effect and if the change is material, receive written approval from ACJC before instituting the change. Operational units should submit a written summary of procedural changes at least 30 days in advance of implementing the proposed change.

Operational units must submit financial and program activity reports to the Commission, in a format required by the Commission, and at a frequency established annually by the Commission (See Victim Compensation Data Warehouse)

Civil Rights Requirements

Through the grant agreement, operational units agree to comply with all federal civil rights laws. These federal laws prohibit discrimination on the basis of race, color, national origin, religion, sex, or disability in funded programs or activities, not only in employment but also in the delivery of services or benefits. A federal law also prohibits recipients from discriminating on the basis of age in the delivery of services or benefits.

All recipients of federal financial assistance, regardless of the particular funding source, the amount of the grant award, or the number of employees in the workforce, are subject to prohibitions against unlawful discrimination. Accordingly, the Office for Civil Rights (OCR) investigates recipients that are the subject of discrimination complaints from both individuals and groups. In addition, based on regulatory criteria, the OCR selects a number of recipients each year for compliance reviews, audits that require recipients to submit data showing that they are providing services equitably to all segments of their service population and that their employment practices meet equal opportunity standards.

In the event that a Federal or State Court, the Office for Victims of Crime, or ACJC makes a finding of discrimination after a due process hearing against an operational unit, the operational unit will forward a copy of the findings to the Office for Civil Rights, Office of Justice Programs and ACJC.

Operational units must certify through the grant agreement that Limited English Proficiency persons have meaningful access to the victim compensation program. National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Street Act, the operational unit is

required to take reasonable steps to ensure that LEP persons have meaningful access to programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary.

2. Administrative Allocation

The use of allocated victim compensation program administrative funding is limited to costs incurred in administering the Crime Victim Compensation Program in each county (R10-4-102.1). Administrative expenses are limited to a set amount allocated annually by the Commission. Eligible costs may include the following:

- Percentage of salary for personnel involved in the administration of the Crime Victim Compensation Program as it correlates to the percentage of time spent in the function of administering Crime Victim Compensation claims and completing Crime Victim Compensation reports.
- Percentage of costs for overhead including office space and utilities that is directly connected to the administration of the Crime Victim Compensation Program.
- The percentage of cost for automated data processing equipment that is directly related to percentage of use the equipment is utilized for the administration of the Crime Victim Compensation Program. If the equipment is not dedicated entirely to the compensation program then only a prorated amount can be charged to the compensation program as an administrative cost.
- The percentage of office supplies and postage that are directly associated with the administration of the Crime Victim Compensation Program.

Travel expenses connected to the Crime Victim Compensation Program are limited to:

- Reimbursement of mileage, authorized per diem and lodging for in-state travel for Crime Victim Compensation Board members to attend Compensation Board meetings and Crime Victim Compensation Program training. Reimbursement will be in accordance with each county's travel regulations.
- Reimbursement to staff for mileage, authorized per diem and lodging for in-state travel for Crime Victim Compensation Program training and administration of Crime Victim Compensation claims. Reimbursement will be in accordance with each county's travel regulations.
- Reimbursement of travel costs, authorized per diem and lodging for out-of-state travel for two people, either operational unit program staff or board members, to attend one Crime Victim Compensation National Conference for crime victim compensation training per year; or, reimbursement of travel costs, authorized per diem and lodging for out-of-state travel for one person, either operational unit program staff or a board member, to attend two Crime Victim Compensation National Conferences for crime victim compensation training per year. Reimbursement will be in accordance with each county's travel regulations.

C. Victim Compensation Data Warehouse

The ACJC Victim Compensation Data Warehouse is a web based reporting tool used to collect operational unit victim compensation program activity data. The system was developed by Karpel Solutions using federal grant funds from OVC. The victim compensation program grant agreement requires that operational units report program activity data quarterly. Operational units can update claim activity data in the data warehouse anytime during the reporting period, so long as activity data for the quarter is finalized by the 25th of the month following the end of the quarter.

1. Data Entry

The Victim Compensation Data Warehouse accepts data in three different ways. Each operational unit has the ability to select the data entry method that works best for the county program.

Data Warehouse Website Forms

Operational unit registered users can log into the data warehouse and enter program activity data directly into the system using the claim, request, and payment forms. The information entered can be updated as work on the claim progresses, or at whatever frequency is most appropriate for the operational unit.

PbK System Sync

Karpel Solutions also develops the prosecution case management system Prosecutor by Karpel. This system includes a crime victim compensation program module for claim management. Data from this module will automatically be uploaded to the data warehouse nightly.

Excel File Upload

For operational units utilizing some other system to track victim compensation program activity, the data warehouse will accept a specially formatted excel file that includes all of the required activity data for the quarter. This excel file is exported from the operational unit system and uploaded to the data warehouse through the website. The website validates the data and if no errors are found transfers the data to the warehouse database.

2. Data Reports

The data warehouse was developed to increase the ease and accuracy of compiling program activity data for federal reporting purposes. However, reports reflecting county level activity data are also available to operational units under the "Reports" menu within the system. County program staff may submit requests for any additional report types to ACJC staff who will work with Karpel to add the requested report to the menu.

To find out more about accessing the system contact ACJC program staff. The Victim Compensation Data Warehouse website is available at:

<https://acjc.hostedbykarpel.com/>

D. Governing Statutes

Statutes establishing, authorizing, and funding the victim compensation program include the following:

A.R.S. § 41.2407	Establishes the Victim Compensation and Assistance Fund; ACJC shall administer the fund; Allows ACJC to establish rules for program administration; Establishes program's subrogation rights; Establishes accepted payment from the program is payment in full; Stays collection activities.
A.R.S. § 12.116.01	Establishes the 47% surcharge on all criminal and civil offenses that is deposited into the criminal justice enhancement fund (CJEF).
A.R.S. § 41-2401	Establishes the criminal justice enhancement fund; States the victim compensation and assistance fund shall receive 4.6% of the CJEF fund annually.
A.R.S. § 44-313, 22-116.C	Deposits all unclaimed victim restitution into the victim compensation and assistance fund.
A.R.S. § 13-4405, 8-386	Requires law enforcement to notify victims of the availability of victim compensation.
A.R.S. § 13-804	Allows inclusion of the compensation program on restitution orders.
A.R.S. § 11-538	Establishes the county attorney victim compensation fund.
A.R.S. § 13-4311N.3.c	Deposits 10% of settlements into the victim compensation and assistance fund from certain cases successfully prosecuted by the Attorney General's Office.
42 U.S.C. § 10601	Establishes the Federal VOCA Crime Victims Fund

E. Arizona Administrative Code

Through statute, the legislature establishes broad policy and general standards for the operation of a program. The legislature may prefer to delegate responsibility to an agency to establish program rules detailing how a program should run. The legislature grants authority to an agency to define these details in accordance with the established broad statutory guidelines. An agency can make rules only if the legislature or a court gives the agency the power to do so.

The rules established by an agency are included in Arizona Administrative Code and are subject to the Arizona Administrative Procedure Act. The Secretary of State's Office oversees and catalogues all State administrative rules and code. The Arizona crime victim compensation program rules reside in sections R10-4-101 through R10-4-111 of the Arizona Administrative Code.

Interpretation

Primary responsibility for interpreting administrative code or program rules falls to the agency establishing those rules. As such, ACJC is the primary source for compensation program rule interpretation. However, ACJC program staff often seek out the legal advice of the agency's representative at the Attorney General's Office when interpreting a compensation program rule. Feedback from county compensation personnel and board members is also given substantial weight when considering how to interpret a program rule.

In most cases, ACJC will support an interpretation of a rule that favors the victim or claimant. Meaning when two possible conflicting interpretations of a rule exist and both are legitimate interpretations under program rule, ACJC would prefer compensation board members opt for the interpretation that benefits the victim or claimant.

Operational unit staff and board members should approach the rules from the mindset of inclusion and not exclusion of victims. When a victim applies to the program with an expense, every effort should be made to find how the rules can allow the expense under the program, rather than searching the rules for reasons to exclude the expenditure from the program. Realizing that even under the inclusion approach, there will be some victims and expenditures that just do not qualify for victim compensation benefits.

Rule Changes

(See ACJC – Rule Making)

F. Program Finance

1. Funding Sources

Currently, the Crime Victim Compensation Program receives its funding through four state sources and one federal source. Counties can also receive funding through program-related restitution, subrogation, and donations.

a) State Funds

Program funding from all State sources is deposited into the crime victim compensation and assistance fund. Program funding is appropriated each year by the state legislature and allocated to each county based upon the allocation formula approved annually by the Commission.

Each operational unit is authorized to spend a fixed amount of its state allocation on administrative expenses (see Operational Units - Administrative Allocation). The use of administrative funds is limited to covering costs incurred in administering the Crime Victim Compensation Program for each county.

b) Federal Funds

The Arizona compensation program also receives a share of federal Victims of Crime Act (VOCA) compensation funds. The amount of federal money Arizona receives from VOCA

is a 60 percent reimbursement for payments made to victims for eligible expenses from state funds, restitution, subrogation, and program donations during a prior federal fiscal year. (See Arizona Criminal Justice Commission – Federal VOCA Award Grantee)

c) Restitution

Recovering the amounts paid to victims by working aggressively to seek restitution owed to the compensation program by offenders has proven worthwhile for a number of compensation programs nationwide. Several programs have found that focusing on this effort can generate substantial income.

County operational units should be aware that judges are required to order restitution directly to compensation programs that have made payments to victims (A.R.S. § 13-804). Programs may want to set up trainings or conversations with judges, prosecutors, and correctional officials to explain the importance of restitution recovery to the program, and to ensure that any statutory changes favoring restitution are known to all parties in the criminal justice system.

Operational units have taken a number of steps to maximize their recoverable income. Some of those steps include the following:

- Establish procedures to identify and track all offenders who face prosecution for the violence done against applicants to the compensation program.
- Make a request to the prosecutor that restitution be ordered in full for any payments made by the compensation program.
- Follow up to see that restitution has been ordered in the amounts requested. If it hasn't, make a second request to the prosecutor to reopen the case and add the compensation program to the restitution order.
- Send notices to collection officials providing information on cases where restitution should come directly to the program.
- If restitution has been ordered to be paid directly to the program, send notices to individual offenders requesting payment. Follow up with phone calls to the offender to continue seeking full payment.
- Initiate wage garnishment or other asset-forfeiture proceedings against offenders. While a rare course of action, mostly because of the time and expense needed to file appropriate paperwork with courts and employers, it has been used with some success.

d) Subrogation

In addition to restitution collection, many programs make every effort to ensure that victims repay the compensation program if the victim receives additional payment through a collateral source for expenses already covered by the program. The key difference between subrogation and restitution is that the compensation program is seeking

repayment from parties other than the offender, who have a financial responsibility to cover the costs of the victim. By virtue of signing the subrogation agreement on the application form the victim has authorized the program to stand in his or her place and seek repayment of any expenses covered by the compensation program on behalf of the victim or claimant.

Programs must inform victims that by signing the subrogation agreement and submitting the application form, they are under a legal obligation to repay the program if any sums are recovered by the victim that correlate to expenses already covered by the program. If an attorney is assisting the victim on the application, some programs will send a special communication to the attorney notifying him or her directly of the subrogation rights of the compensation program.

Some programs make an effort to periodically check court records to see if victims have filed civil suits. If the program finds that the victim has taken this action, notice of the compensation program's subrogation rights should be sent to the lawyers representing the victim.

Programs must clarify when the victim is expected to pay back the program. Is repayment expected whenever the victim obtains any recovery from a third party? Or, if the compensation program has not covered the victim's total losses and expenses, can the victim keep proceeds from civil suits that cover those other uncompensated losses? If the latter is the program's policy, then the program can expect to recover payments only when the victim's recovery plus the compensation received from the state program exceed the victim's total loss. Programs must only consider actual or out-of-pocket losses in making this calculation.

Negotiating Subrogation

There is no program rule prohibiting accepting less under the subrogation agreement than what the program awarded. However, ACJC's policy regarding the right of subrogation established in A.R.S. § 41-2407 (D), is to enforce the signed subrogation agreement. It would be appropriate for the operational unit to consider a reduction in the amount eligible under the subrogation agreement if the victim's economic loss for compensable expenditures under program rules was greater than the awarded amount and any monies recovered from a third party.

In this instance, recovering monies paid by a third party to the victim would not relieve the victim of the economic loss for the kinds of expenditures the program covers and most likely further harm the victim. These transactions are looked at closely during financial and programmatic reviews, and require good supporting documentation to justify the need to reduce or waive recovery under the subrogation agreement.

It is important to consider why the subrogation agreement exists. Reducing recoverable funds under subrogation rights will reduce the money available to other crime victims. Not every victim who applies for compensation benefits will have the ability to recover their economic loss from a third party. These victims are often those most in need of assistance through the compensation program, and these victims must drive fiscal decisions regarding the use of program funds.

2. Accounts

Each of the following should be set up as needed as a separate program account or cost center with the operational unit's finance department. Not all operational units will receive funding into all of these accounts, and some will have additional accounts set up in order to meet the individual program's needs.

	Fund Source	Allowable Expenses	Deadlines	Earns Interest	Federal Certification
ACJC (State Funds)	Victim Compensation and Assistance Fund	All program benefit categories; program admin	Account balance \$0 by end of state fiscal year	Yes	Yes*
VOCA (Federal Funds)	OVC Victim Compensation Formula Grant	Program benefit categories only; exclude door replacement*	Account balance \$0 by end of state fiscal year	No	No
Restitution	Offenders	Program benefit categories only	None; revolving fund	Yes	Yes*
Subrogation	Claimant or Third-party	Program benefit categories only	None; revolving fund	Yes	Yes*
Donations	Various	Donor intent	None; revolving fund	Yes	Yes, program benefit expenses only*
CA VC Fund⁺	County restitution interest	Program benefit categories only	None; revolving fund	Yes	Yes*
Other / Interest	Various	Unrestricted	None; revolving fund	Yes	Yes, program benefit expenses only*

⁺The County Attorney Victim Compensation Fund: The source of this fund is 75 percent of the interest monies earned on restitution held in trust by the clerk of the court and deposited into the county attorney victim compensation fund on the 15th of each month. The Board of Supervisors may establish this fund and the sole source of the fund is the interest monies transferred by the clerk of the court. If the Board of Supervisors establishes this fund, the balance of the fund and the projected revenue for the next fiscal year must be reported to the board annually. (See A.R.S. § 11-538)

*Federal VOCA Compensation guidelines do not currently include the cost to replace a door as an eligible program expense. Because of this, the cost to replace a door as an eligible crime scene cleanup expense must not be included in the federal certification amount or paid for using federal VOCA compensation grant funds.

3. Spending Interest

This section provides guidance concerning the authorized use of interest earned on monies received for the victim compensation program, and stresses the importance of maximizing revenue sources.

Generally, it is beneficial to deposit program funds into interest-bearing accounts, with the exception of Federal VOCA funds, and to periodically transfer interest earned to a separate account. When spent from the proper account, interest earned on all monies, except Federal VOCA funds, may be used for any program expenditure. This includes expenditures that fall outside of Compensation Program rules (R10-4-101 through R10-4-111) and Arizona Criminal Justice Commission (ACJC) administrative expenditure guidelines.

Any interest earned on VOCA monies must be returned to the federal government through ACJC. For this reason, programs should avoid placing VOCA funds in an interest-bearing account. This saves ACJC and operational units the administrative expense of sending interest earned on federal funds back to the federal government.

In order to expend interest monies earned from expense restricted accounts (See Program Finances – Accounts) on expenses not included under program rule, interest monies must be transferred into another account such as “Other Funds” or “Interest Revenue.”

Examples of expenditures that fall outside of program rules would be replacing property seized as evidence or sending an additional person to the compensation national training conference. It is important to transfer these funds into another account prior to the expenditure because interest earned that remains in expense restricted accounts and expended out of those accounts, fall under Compensation Program rules and must be spent only on allowable expenditures.

It does not matter when interest earned is transferred during the fiscal year. Operational unit finance departments have flexibility in managing the flow of funds and can minimize the number of transactions that occur. Once an additional revenue stream is established, it is the decision of compensation program administrators to determine the best use of those funds.

4. Spending Order

As a general rule, ACJC or state money should be spent by the program first before any other account sources are used. By spending the state money first, the state program as a whole will get the maximum reimbursement of federal funding the following fiscal year. This is particularly true for programs that do not spend their entire allocation of state funding.

5. Expenditure of Restitution / Subrogation

Balances available to operational units in county established restitution or subrogation accounts can only be used to pay for compensation program benefit expenses. ACJC policy recommends that operational units treat restitution and subrogation as a program reserve fund. Only paying benefit expenses out of these funds when other fund sources are inadequate or when required to do so by ACJC.

ACJC will periodically require an operational unit to spend down available restitution or subrogation fund balances to ensure all operational units maintain an equitable reserve in these funds. Additionally, the availability of reallocated state or federal funding to an operational unit during a fiscal year depends on reserve amounts in restitution and subrogation being below the established reserve amount.

6. Expenditure Reimbursement

State and federal crime victim compensation program funding is distributed to operational units as a monthly reimbursement of compensation program expenditures. This section provides guidance on the reimbursement process.

It is important to keep in mind that ACJC will only reimburse expenditures submitted to county finance and awaiting reimbursement. The county program must submit a completed monthly financial report in the ACJC grant management system (GMS) certifying compensation program expenditures are ready to be reimbursed.

ACJC processes all reimbursement requests once a month. Monthly financial reports must be submitted to the GMS by the 25th of the month in order to be included in that month's reimbursement process. Reimbursement payments will be direct deposited to either the ACJC or VOCA compensation account of the operational unit via the State of Arizona Automated Clearing House (ACH). All operational units must be registered to receive direct deposit payments via ACH. Because of the federal minimum cash on hand requirement, ACJC processes all reimbursement request within 10 days.

Operational units have two options when spending compensation funds and awaiting reimbursement. Each approach has its own pros and cons.

Negative Account Balance (Recommended)

County programs submit compensation expenditures to finance against the ACJC or VOCA account. The demand sends that account balance into the negative until the county receives reimbursement from ACJC. Reimbursement received from ACJC returns the negative account balance to zero.

Pros:

- Simplest reimbursement approach; involving only one account
- Little risk of violating the federal minimum cash on hand requirement because accounts should never have a positive balance

Cons:

- In some counties, finance will penalize (fine or charge interest) for accounts with negative balances
- Depending on the timing of the reimbursement request it is possible that two months of expenditures could be charged against the account before reimbursement arrives

Transfer Expenditures

Operational units submit compensation expenditures to finance against an account other than ACJC or VOCA, such as Restitution, Subrogation, etc. The reimbursement received from ACJC creates a positive balance in the ACJC account or VOCA account. The program transfers the compensation expenditures from the original account (Restitution, Subrogation, etc.) into ACJC or VOCA. The transfer of expenditures returns the positive account balance in the ACJC or VOCA account to zero.

For this approach it is critical that expenditures are transferred into the ACJC or VOCA account. Funds deposited into these accounts to reimburse compensation expenditures should never be transferred out to another account.

Pros:

- Programs avoid finance penalties by never having a negative account balance
- While operational units must submit financial reports in the GMS monthly, programs can request actual reimbursement of expenses as needed during the fiscal year

Cons:

- Advanced reimbursement approach; involving several accounts
- Increased risk of violating the federal minimum cash on hand requirement because the county VOCA account will maintain a positive balance until the transfer of expenditures is complete

Upfront Fund Distributions

When approving the reimbursement process for the victim compensation program the Commission stipulated that ACJC compensation program staff may approve upfront compensation fund distributions to operational units on a case by case basis. A good example of when an upfront distribution may be appropriate is to cover operational unit administrative costs. Programs must submit a written request to ACJC staff, and receive written approval, for upfront payment of compensation funds. Upfront payments will only be provided in situations where no other alternative exists.

7. Reverting Funds

The expenditure reimbursement process should prevent significant amounts of state or federal money from being returned to ACJC at the end of the state fiscal year. However, there are circumstances under which these accounts could reflect a positive balance after the last reimbursement request for the fiscal year has been processed. If state ACJC funds or federal VOCA funds remain unspent at the end of the state fiscal year on June 30, these funds must be reverted to ACJC for reallocation the next fiscal year.

Programs that have unspent state or federal funds at the end of the fiscal year must submit a reversion report in the GMS. Programs should not return funds to ACJC until the reversion

report has been submitted. Programs must return funds to ACJC within 30 days after submitting the report in the GMS.

It is vitally important that compensation program staff follow up with finance to verify account balances throughout the fiscal year. This will allow operational units enough time to deal with unspent funds in the ACJC or VOCA accounts. The worst time to try and deal with positive account balances is after the fiscal year has ended or during a financial review.

8. Reallocation

The purpose of reallocating program funds is to minimize the negative impact of unspent compensation funds at the end of the fiscal year. Mid-year fund reallocation makes additional funds available to operational units with greater need, which have the ability to fully expend these monies before they would expire at the end of the fiscal year.

a) Timeframe

Reallocation is performed on an as needed basis. ACJC program staff monitors statewide expenditures on a monthly basis and can quickly identify and emerging need for additional funding. The first reallocation process of the fiscal year usually takes place in January. Additional reallocations can occur as needed throughout the remainder of the fiscal year.

b) Eligibility Requirements

An operational unit must meet the following eligibility requirements to receive additional funds through the reallocation process:

- Submit a written request to ACJC for additional victim compensation funds. The request must include an estimated amount of additional compensation funds needed for the remainder of the fiscal year.
- Operational unit must have spent more than the required percentage of the unit's original allocation by the specified date. The percentage and date vary depending on when the reallocation is taking place and on the availability of additional funds.
- The operational unit's available restitution and subrogation balances are less than the unit's three year annual expenditure average. Available balances and the three year annual expenditure average are calculated using reported financial data submitted to the GMS.

If an operational unit has an amount greater than the identified annual expenditure average in the unit's restitution and subrogation accounts, the operational unit would be required to spend down the overage amount before being eligible for reallocated funds. (See Expenditure of Restitution / Subrogation)

9. Working with Finance Department

It is critically important that the compensation program staff for the operational unit have a close working relationship with the finance department. The program requires the support of

county finance when setting up accounts, providing accurate balances, processing payments, and completing transfers. County finance should report financial activity to the program regularly and financial reports submitted to ACJC should be reconciled with county finance on a quarterly basis.

It is important to remember that any financial records kept by the program, including the financial reports, are not the official record of program financial activity. These records are similar to account activity tracked in a personal checkbook. The official record is kept by the finance department. The finance department is the bank.

When ACJC financial compliance staff review the compensation program the information provided by finance is the official record of program financial activity. If there is a discrepancy between the financial reports submitted to ACJC and what county finance is showing, ACJC staff will fall back on county finance records. This often results in incorrect account balances and ultimately, funds being reverted back to ACJC.

G. Training

1. Operational Unit Program Coordinators

The administration of the victim compensation program requires many diverse skills and abilities. ACJC program staff is committed to providing adequate training and support to help make county level administration of the program a success. This section includes a variety of training and information resources to meet the needs of program staff at the operational unit level.

a) ACJC Program Staff

ACJC program staff are always available to help with questions or issues related to any aspect of compensation program administration. Please do not hesitate to call or email with any questions or concerns.

b) Quarterly Coordinator Meetings

Once a quarter, ACJC program staff facilitates a meeting for operational unit victim compensation program staff. These three hour meetings are an opportunity for ACJC program staff to share updated information and issues being faced by compensation programs across the state and across the country. Guest speakers provide additional training on issues faced by compensation program operational units. The quarterly meetings are also an opportunity for those coordinators who attend, either in person or telephonically, to discuss as a group any issues or problems they may be experiencing in their own programs. Quarterly coordinator meetings are held every year in January, April, July, and October.

c) Other Program Coordinators

There are a number of compensation program coordinators across the state with a significant amount of experience administering this program. If there are questions about rule interpretation, program eligibility, or program funding, these are best addressed by

ACJC program staff. However, if a coordinator has questions about processing claims, working with board members, or negotiating with providers, another coordinator can be a great resource. The quarterly coordinator meetings are a great opportunity to meet these individuals, or ACJC program staff would be happy to provide a referral for direct contact.

d) Online

ACJC has various online training courses available for compensation program coordinators to complete. Many of these courses are the same as those required for compensation board members. While not required for coordinators these trainings are still a valuable resource. Compensation online training materials are accessible through the following link:

<http://www.azcjc.gov/ACJC.Web/victim/cbttraining.aspx>

e) NACVCB Conferences

(See Training, National Association of Crime Victim Compensation Boards)

2. Board Members

a) Required Training

(See Board Administration, Board Members, Training)

b) NACVCB Conferences

(See Training, National Association of Crime Victim Compensation Boards)

3. Community

The strategy most compensation programs pursue is to provide training to groups and individuals that routinely come in contact with victims and can inform them about victim compensation. Trainings may be offered at conferences either sponsored by the compensation program itself, or put on by one or more of the targeted groups. Individual training sessions for specific victim assistance programs, police departments, hospitals, citizen groups, and other entities are also an option.

The most important local service provider groups for which training should be provided are the following:

- Prosecutor-based victim-witness programs
- Police-based victim-witness programs
- Domestic violence service providers
- Rape crisis programs

- Family advocacy centers
- Programs serving the elderly
- Local victim service coalitions and networks
- Other “grassroots” victim organizations
- Police officers or criminal investigators at the local, state, federal, and tribal levels
- Prosecutors, including U.S. attorneys and military and tribal prosecutors

Among the other groups and individuals that could be considered for training are the following:

- Judges and court officials, including those in the federal, military and tribal systems
- Correctional officials, including probation and parole officers
- Funeral directors
- Hospital and medical personnel
- Mental health professionals
- Child advocacy agencies and governmental family service officials
- Community organizations, especially in high-crime or underserved areas
- Schools and colleges, focusing on disciplines like social work, law, and criminal justice
- Clergy
- Lawyers, through bar associations, law firms, and law schools
- Collateral source groups, like insurance companies and federal benefit administrators
- Large-scale employers, who might include information in employee manuals
- Key legislators and their staff

While every program should tailor its training materials to address the needs of specific audiences, a generalized training outline may be useful as a template. When it comes to victim compensation training the adage that “less is more” should be kept in mind. The goal should not be to make every professional in the field an expert in the nuances of the program and its operation, but rather to emphasize the importance in informing victims about compensation opportunities, and helping people apply for benefits. A simple fact sheet may be all that is necessary to provide basic information about the compensation program.

Outreach

An outreach strategy is crucial to inform as many victims as possible about their opportunities to seek financial assistance through victim compensation. For a victim, this lack of knowledge can be tragic, resulting in unnecessary financial hardship, or an inability to obtain needed care. Programs have a clear obligation to “get the word out” about their programs to as many victims and survivors as they can.

Because compensation programs rarely encounter victims directly as an initial contact, outreach to victims must occur almost entirely through intermediaries – police, victim-witness personnel in prosecutors’ offices, victim assistance programs such as domestic violence shelters and rape crisis programs, hospitals, counseling centers, and therapists, to name some of the most important. Outreach efforts fail without the help of these first responders and initial contact points.

Programs must focus their outreach efforts on individuals or groups who can help victims apply. While public service announcements, posters, and brochures have their place in a multi-faceted outreach strategy, getting information about the program to the people who work directly with victims produces the best results.

It is difficult for many programs to allocate sufficient time and resources to the task of outreach. Most programs must fit outreach initiatives around claims processing work. The very smallest programs often must choose between processing claims and doing outreach, because the same person is responsible for both.

With these limitations in mind it is important for programs to be realistic about available time and resources in planning and evaluating their outreach strategies. Compensation program staff must keep in mind that the more effective that program outreach is, the more work will be generated for the program, as measured by more applications to process and pay. This may cause some difficulty if the program does not have the staff to process an increased volume of claims, or lacks the money to pay more applicants. This is not to suggest that programs should curtail or abandon outreach activities; but programs must work to ensure that they can meet the greater demands on staff and funding that effective outreach generates.

Effective outreach, training and information sometimes can result in better quality and more complete applications that take less time and effort to process. If those who help victims are trained to make sure applications are accurate and completed, that appropriate documentation is attached, and that victims and advocates are prepared to respond readily to further requests for information, outreach may result in less work rather than more. Some programs have found that training and outreach can reduce the number of applications that are clearly ineligible, resulting in reduced work for staff.

4. National Association of Crime Victim Compensation Boards

a) Conferences

The National Association of Crime Victim Compensation Boards (NACVCB) promotes an exchange of information and ideas through a nationwide network of victim compensation

programs. The association advances better methods for serving crime victims through various training and technical assistance activities, helping its members establish sound administrative practices, achieve fiscal stability, and engage in effective outreach, communication and advocacy.

In the fall of each year the NACVCB holds a national training conference with workshops presented on program-related subject areas such as contributory conduct, program outreach and advancing technology. Workshops at the national training conference are also available for board members and program administrators.

The western regional training conference is also presented by the NACVCB once a year, usually in the spring. This smaller-scale conference provides a better opportunity for more involved discussion of issues between programs that share similar regional concerns.

Attendance at these conferences provides program staff and board members with valuable program information and innovative strategies. These conferences are an essential opportunity for all administrators, managers, staff and Board members to obtain critical up-to-date information on VOCA funding and ways to improve compensation program management.

These training conferences can be paid for out of the program's ACJC administrative allocation. (See Program Administration, Operational Units, Administrative Allocation)

b) Web Site

The NACVCB web site (<http://www.nacvcb.org/>) is an outstanding resource for national compensation program information. County programs may access the "Members Only" section of the site by using the following login information:

Username – Arizona; Password – larry.

III. COMPENSATION CLAIM PROCESSING

In Arizona victim compensation claims are processed by an operational unit designated for each county by the Commission. Compared to most other states and territories, Arizona is unusual in this operational model. The great majority of other programs across the country process claims at the state level from a central office within a state agency.

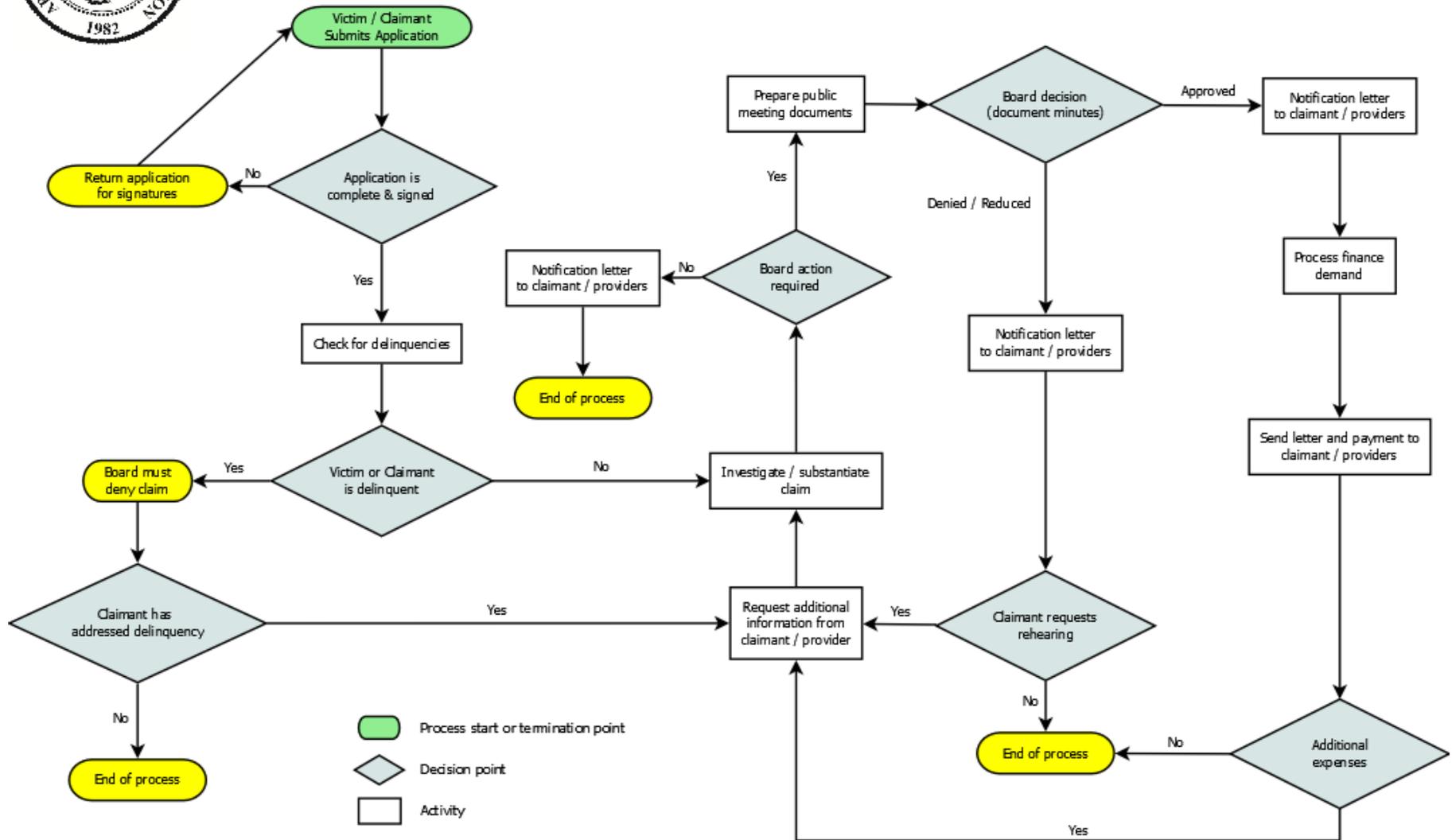
This section details all aspects of claim processing by operational units for the victim compensation program.

The following page includes a flowchart of the victim compensation claim process.

A. Claim Process Flowchart



Victim Compensation Claim Process



B. Intake of a Claim

Arizona Revised Statute § 13-4405 requires that victims of crime are informed of the compensation program by the law enforcement agency responding to the crime. Information about the program is also included in the victim's rights brochure given to the victim by law enforcement. Additionally, many people are referred to the program by a victim advocate, hospital personnel, or social service provider.

When initially speaking with the victim or claimant, the compensation coordinator should fully explain the claim process so that unreasonable expectations do not occur. Time spent in explaining the program during intake will reduce the likelihood of misunderstandings, which can lead to problems later. Some of the topics to explain during intake include the following:

- Stress to the victim or claimant that **ASSISTANCE IS NOT GUARANTEED EVEN IF THE CLAIM MEETS ALL ELIGIBILITY REQUIREMENTS**. The board holds the final decision in all cases. Decisions are based on program rules and availability of funding;
- Describe the claim investigation and board decision making processes;
- Explain the time frame for claim processing;
- Advise the victim that if they have available collateral sources that will cover requested expenses they must use those sources first.

C. Applicant Types

1. Victim

"Victim" means any person who suffers physical injury, medical condition, mental distress, or death as a direct result of criminally injurious conduct. R10-4-101(31).

Program rules also include under the definition of "victim" any person who was injured or killed acting in good faith to prevent a crime or apprehend a person suspected of engaging in a crime.

There will be only one victim per compensation claim. However, a victim under one claim can also be included on a separate claim as a derivative victim or claimant.

2. Derivative Victim

"Derivative Victim" includes the following, R10-4-101(10):

- The spouse, child, parent, stepparent, stepchild, sibling, grandparent, grandchild, or guardian of a victim *who died* as a result of criminally injurious conduct;
- A child born to a victim after the victim's death;

- A person living in the household of a victim who died as a result of criminally injurious conduct, in a relationship determined by the board to be substantially similar to a relationship listed above;
- A member of the victim's family who witnessed the criminally injurious conduct or who discovered the scene of the criminally injurious conduct;
- A natural person who is not related to the victim but who witnessed the criminally injurious conduct or discovered the scene of the criminally injurious conduct; or
- A natural person whose mental health counseling and care or presence during the victim's mental health counseling and care is recommended for the successful treatment of the victim.

3. Claimant

Program rules define a "claimant" as any person who files a claim. This is the broadest group of compensable individuals including anyone who has suffered an eligible loss as a result of the crime. R10-4-101(3). Any person experiencing an economic loss as a result of the victimization that does not meet the definition of a victim or a derivative victim is identified as a claimant.

D. Application

1. Available Formats

Printed application forms are available through ACJC. If an operational unit needs additional copies of the form please contact ACJC compensation program staff to make that request. A printable version of the compensation application is available in Microsoft Word format on the ACJC website: <http://www.azcjc.gov/>. Because of the expense of printing the paper application forms, ACJC staff requests that the Microsoft Word or PDF version of the form be used whenever possible.

2. Requirements

a) Signatures

All signature sections of the application must be signed and dated before the operational unit can begin to process the compensation claim. The sixty day deadline for a board decision on a claim does not begin until the operational unit has all signature sections of the application completed. If this date is different than the day the incomplete application was received and date stamped by the program, the signature completion date should be noted in the claim file.

b) Completeness

ACJC requires only a minimal amount of information need be provided on the application before processing the claim can begin. Applicants should provide at least the following:

- Completed victim information
- Completed claimant information (if different than victim)
- Completed crime information
- Signed and dated signature pages

This is the bare minimum programs need to begin processing a claim. However, all of the information included in the application will need to be provided to the program at some point before the board makes a decision. Because of this operational units have discretion to decide to what degree the application must be completed when submitted to the program. The sixty day deadline for a board decision begins when the program has a complete and actionable application including the minimum amount of information listed above and whatever additional information is necessary to present to the board for a decision on applicant and benefit request eligibility.

If a program requires additional information after the application form is submitted, programs should not alter the original application. When claimants provide additional information on the submitted form the claimant must acknowledge each change by initialing and dating each of the changes on the original application. If there is missing information on the application that is required to adequately investigate and substantiate a claim, the program may also contact the victim and either write the missing information in the notes of the claim file or copy the page of the application and write the missing information in the applicable section of the photocopy.

E. One Crime, Many Claims

In most cases all expenditures related to an incident of criminally injurious conduct involving a single victim should be included under one victim compensation claim. This includes all expenditures by claimants who are not the victim and expenditures associated with derivative victims. However, there are numerous instances where it is advantageous to the compensation program and/or the claimant to file multiple claims related to an incident of criminally injurious conduct:

Multiple Victims or Mass Casualty Incidents

For an incident of criminally injurious conduct involving multiple victims, each of those victims is eligible to submit a separate victim compensation claim.

Example: A single gunman approaches and fires upon a crowd gathered for a public event. The gunman kills ten individuals before being subdued by two crowd members. Law enforcement arrives and takes the gunman into custody.

In this scenario those eligible as the subject of separate compensation claims include:

- Ten individuals killed;
- Two crowd members who subdued the gunman;

- Any member of the crowd who suffered a physical injury, medical condition, or mental distress as a result of the criminally injurious conduct.

Witnesses

Individuals who witness or discover the scene of criminally injurious conduct are eligible to receive compensation benefits. The following is an example of when these individuals should file a separate claim.

Example: A young man is hiking in the wilderness. The young man rounds a corner of the trail and discovers the dead body of a woman who has been shot. The hiker notifies law enforcement. Law enforcement identifies the woman and notifies her family. The young man experiences mental distress as a result of the incident.

In this example the deceased woman's family may have funeral expenses, counseling costs for derivative victims, and loss of support to include on a compensation claim. Those costs could max out the single claim total of \$25,000. Because of this the operational unit should have the hiker submit his own claim. This way the hiker's counseling needs are met while not impacting the ability of the surviving family members to have their expenses covered.

Family Conflicts

Example: A child is killed as a result of a DUI car crash. The child's parents are divorced. The mother of the deceased child wants to prioritize recovery of funeral costs and medical costs through the compensation program, while the father wants to focus the available compensation benefits on counseling costs, including transportation costs, for the deceased child's two surviving siblings.

Rather than taking a first come first served approach, in this instance it would be appropriate to have the mother submit a claim for funeral and medical costs. The father can submit a separate claim for each of the surviving siblings as derivative victims.

Maximizing Available Benefits

Example: A woman lives with her elderly father. One night they are the victims of a home invasion where the father is killed and the woman is sexually assaulted.

Because both the woman and her father were victims in this instance the woman should file two claims. She should file her own claim as the victim of the sexual assault, and another with her father as the victim of homicide. She can also include herself as a derivative victim on her father's claim. As a derivative victim she has limited eligibility, but she could receive an additional \$5,000 in counseling if she reached the counseling benefit maximum under her own claim.

In all of the examples listed above only victims or derivative victims were broken out under their own claim. Once a single claim is split into multiple claims tied to the same incident of criminally injurious conduct only expenditures tied to the subject of the claim (victim or derivative victim) should be included under the claim. For example if a derivative victim paid for funeral expenses, but also needed counseling, the funeral expenses are associated with the victim and should be included on the victim's claim. While the counseling expenses are associated with the derivative

victim, and should be included on the derivative victim's claim. The derivative victim's claim should not include funeral expenses because this is not an eligible expense for derivative victims. Conversely the victim's claim should no longer include the counseling expenses for the derivative victim.

The decision whether to file one claim or multiple claims related to an incident of criminally injurious conduct lies with operational unit program staff. If there are any questions regarding when to break a single claim into multiple claims please contact ACJC compensation program staff for guidance.

Domestic Violence / Abuse / Stalking

There are limited instances where more than one incident of criminally injurious conduct should be associated with a single claim. This is most common with crimes that involve an ongoing pattern of victimization related to domestic violence, abuse, or stalking. Victims in these situations may experience multiple, varied types of victimization spread over an extended period of time. In these instances ACJC staff recommends including all related expenditures under one victim compensation claim as long as the pattern of criminally injurious conduct involves the same victim and the same offender. This approach eases the burden on both the victim and the program.

F. Eligibility

1. Criminally Injurious Conduct

a) Requirements

In order for a claimant, victim, or derivative victim to be eligible to receive compensation he or she must have suffered a compensable loss because of criminally injurious conduct (R10-4-101.9). For the purposes of this program criminally injurious conduct must include *all* of the following:

- Constitutes a crime as defined by the laws of this state whether or not the perpetrator of the act is apprehended, charged, or convicted;
- Poses a substantial threat of physical injury, mental distress, or death; and
- Is punishable by fine, imprisonment, or death, or would be punishable but the person engaging in the conduct lacked capacity to commit the crime under applicable laws.

b) Departmental Reports

Compensation program rules do not require that a departmental report (police report) be on file before a claim can be processed or paid. The only requirement included in program rule is that the facts of a claim, including facts related to the victimization itself, be adequately investigated and substantiated before submitting the claim to the board for a decision (R10-4-104.B.2.h). In most cases a departmental report is the best resource for meeting this requirement.

All departmental reports should be obtained from a law enforcement agency. Departmental reports may also be available from the prosecutor. To insure that reports come to the program unaltered, departmental reports should not be provided by a victim or a private party. It is critical that the program has access to the entire police report, all supplemental reports, and traffic reports if applicable.

In addition to a traffic accident report, a departmental report will almost always be completed when there is serious injury, broken bones, or a fatality resulting from a vehicular collision.

When attempting to obtain a Departmental Report from the FBI, the Operational Unit must follow the policies as written in the *Memorandum of Agreement Between Federal Bureau of Investigation and National Association of Crime Victim Compensation Boards*.

Alternatives

In some instances, such as an ongoing homicide investigation, when processing an emergency award, or for victimizations under investigation by the FBI a departmental report may not be released to the program by the time a decision must be made. In these cases any documented written or verbal verification from law enforcement of the facts related to the claim will be adequate until the departmental report becomes available. Important facts related to the claim include the following:

- Whether or not a crime compensable under program rule has been committed;
- Whether there was any contributory conduct on the part of the victim;
- Was the crime reported within 72 hours;
- Whether the victim is cooperating with law enforcement.

All of this information must be carefully documented in the claim file and must include the written verification provided by law enforcement or a detailed transcript of the conversation with the law enforcement officer directly involved.

2. Deadlines

According to program rules the following deadlines must be met when processing a claim:

a) For Victims, Derivative Victims, and Claimants

Timeframe	Action
Within 72 hours of discovery	Report criminally injurious conduct to appropriate law enforcement authority
Within 2 years of discovery	Submit a compensation claim to the operational unit

Within 30 days of being served notice of board reduction or denial at a hearing	Submit a written request to the operational unit for a rehearing by the board
Within 30 days of being served notice of board upholding a reduction or denial at a rehearing	Submit a written request to ACJC for a State-level claim review

b) For Operational Units

Timeframe	Action
At least every 60 days	The Operational Unit shall hold a victim compensation board meeting
Within 60 days of receiving a complete and actionable claim	The board shall make a decision on the compensation claim
Within 10 days prior to hearing or rehearing	The operational unit shall provide notice to a claimant of a hearing or rehearing of a related claim
Within 10 business days following hearing or rehearing	The operational unit shall provide written notice of the board's decision related to a hearing or rehearing

c) For ACJC

Timeframe	Action
Within 30 days of having received a written request	The State Claim Review Panel shall complete the state-level claim review
Within 10 business days	The State Claim Review Panel shall provide written notice of the Panel's decision to the claimant and the operational unit

3. State Ordered Delinquencies

a) Verification

Programs must verify that all applicants to the program are not delinquent in paying any state ordered fines, monetary penalty, or restitution. If the operational unit identifies a delinquency on a state ordered fine, monetary penalty, or restitution the victim, derivative victim, or claimant is automatically ineligible for victim compensation benefits.

The first step in the delinquency verification process is to check the applicant's response to the related question on the application itself. If the applicant checked yes to then they are ineligible to receive compensation benefits. If the applicant checked no, the program must still verify that this information is correct.

Programs can find out if a victim, derivative victim, or claimant is delinquent in paying any state fines, monetary penalties, or restitution by sending the Victim's name and date of birth to VCadmin@azcjc.gov. ACJC will perform a search in an Administrative Office of the Courts database. If the results do not include an entry matching the claimant's information, then the claimant is likely not delinquent.

If the search returns a matching entry and the related court records indicate the claimant was ordered to pay a fine, monetary penalty, or restitution, then ACJC will follow-up with the court where the case was heard to verify that the claimant is not delinquent.

The county program will receive a report from ACJC with the results of the search and details on any outstanding fines or fees which may exist.

Programs also have the option of completing their own searches using any systems they may have access to, or by using the Public Access to Court Information website at <https://apps.supremecourt.az.gov/publicaccess/>. The program will need to follow-up with the court where the case was heard for any records indicating the claimant was delinquent in paying any ordered fine, monetary penalty, or restitution.

b) Exemptions

If a victim died as a result of criminally injurious conduct, the delinquency requirement under program rule is waived for the deceased victim. Expenses incurred by the deceased victim and eligible claimants may be covered. This exemption is intended to allow the survivors of a deceased victim who was delinquent, access to victim compensation benefits. However, in most other cases derivative victims and claimants associated with the same victimization must be checked for delinquency.

Additionally, if the board determines that a compensation award does not solely benefit a claimant who is delinquent, the delinquency requirement under program rule may be waived for:

- A claimant who is the parent or legal guardian of a minor victim of criminally injurious conduct, or
- A compensation award for funeral expenses under R10-4-108(C)(3).

4. Federally Ordered Delinquencies

The federal statute establishing the VOCA fund states the following:

"A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine, other monetary penalty, or restitution imposed for the offense.

[APPLICATION OF AMENDMENT- Section 1403(b)(8) of the Victims of Crime Act of 1984, as added by paragraph (1) of this section, shall not be applied to deny victims compensation to

any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victim compensation programs that are sufficient to ensure that victim compensation is not denied to any person except as authorized by law.]”

Meaning that operational units may disregard this requirement until a federal system is established to determine whether an applicant is delinquent in paying a federal fine, monetary penalty, or restitution.

5. Active Warrants

If at any point during the investigation and substantiation of a victim compensation claim a victim, derivative victim, or claimant is identified as being wanted in Arizona on an active warrant, that individual is automatically ineligible for victim compensation program benefits. Any approved payments must cease immediately.

6. Contributory Conduct

Understanding and fair application of the contributory conduct language in program rule challenges board members and compensation programs across the state. The purposes of this section are to review the details of the contributory conduct language and to share advice received on how to apply the rule fairly and consistently.

a) The Rule

Following is the contributory conduct language as it currently stands in program rule. This is a good opportunity to look at the rule from a very basic level while trying to promote a better general understanding of the rule for everyone regardless of your experience or role. The contributory conduct rule reads as follows:

(R10-4-108.F.3.a-c) The Board shall deny or reduce a compensation award to a claimant if the Board determines that the incident of criminally injurious conduct that is the subject of the claim was due in substantial part to the victim's:

- a. Negligence,
- b. Intentional unlawful conduct that was the proximate cause of the incident of criminally injurious conduct, or
- c. Conduct intended to provoke or aggravate that was the proximate cause of the incident of criminally injurious conduct.

Correct application of the contributory conduct language must also include consideration of the following rule as well:

(R10-4-108.G) The Board shall deny or reduce a compensation award under subsection (F)(3) in proportion to the degree to which the Board determines the victim is responsible for the incident of criminally injurious conduct that is the subject of the claim.

b) Due in Substantial Part

In order for a compensation board to reduce or deny an award due to contributory conduct the board must determine that the victim's wrongful act (negligence, unlawful conduct, or conduct intended to provoke or aggravate) was a substantial cause of the criminally injurious conduct. The fact that a victim committed a wrongful act is not enough to find contributory conduct and deny or reduce a claim. The wrongful act, or misconduct, must cause the victimization in some substantial way. Both misconduct and substantial direct causation must be found before a board can deny or reduce a claim.

c) Negligence

When considering negligence boards often use the layperson, dictionary definition: "failure to provide a reasonable level of care." However, negligence is a legal term of art used in tort litigation and it is this legal definition that must be used.

In order for a board to find a victim negligent four elements must be present: the victim must have a duty to perform, the victim must have failed to perform that duty, causation, and actual damages. If any of the four elements are missing, negligence cannot be a consideration. Putting the elements together: the victim is negligent if he has a duty recognized by law requiring him to conform to certain standards of conduct for protection of others against unreasonable risk; the victim fails to conform to the standards required; to some degree, there is a connection between the victim's conduct and the resulting injury; and there are actual damages.

d) Intentional Unlawful Conduct

When determining contributory conduct under the intentional unlawful conduct provision the board must keep in mind two important criteria. First, the unlawful conduct must be the proximate cause of the victimization; meaning that the unlawful conduct must be sufficiently related to the victimization in time and place to be held the cause of the victimization. In other words if the intentional unlawful conduct on the part of the victim had not occurred the victimization would not have occurred.

Second, the board must determine that the unlawful conduct was intentional. Arizona statute (ARS § 13-105.10.a) defines "intentional" or "intentionally" as meaning that a person's objective is to cause that result or to engage in that conduct. If the board cannot determine the victim's intent behind their illegal act, or if the illegal act was clearly unintentional, then they cannot reduce or deny a claim for intentional unlawful conduct under the contributory conduct rule. To do so would not meet the standard set in the language of the rule.

e) Conduct Intended to Provoke or Aggravate

The distinction between provoking and aggravating is fairly simple. To provoke is to incite or bring something about intentionally. To aggravate is to make something worse. A simple example of provocation is the victim who says offensive things to a man holding a knife. The victim aggravates the situation when he takes the knife and hands the man a gun instead.

Board members have enormous latitude under this provision of the contributory conduct rule. As the rule currently reads, any behavior that the board determines may have intentionally provoked or aggravated the criminally injurious conduct could be grounds for reduction or denial of the claim. However, as with intentional unlawful conduct the board must still establish that the provoking or aggravating conduct was intentional and that the conduct was the proximate cause of the victimization. If the board cannot determine the victim's intent behind their actions, or the actions did not directly cause the victimization, then the board cannot reduce or deny the claim.

While decisions based on this provision may appear easily justifiable, an overly liberal application may lead to inconsistent decisions by the board. Careful application of the contributory conduct decision making process described below is critical to ensure consistent application of the rule under this provision.

f) CONTRIBUTORY CONDUCT IN PRACTICE

Proper application of the contributory conduct rule involves a two-step approach: identifying contributory behavior and determining causation, and deciding to what degree the behavior contributed to the victimization. *Boards must satisfy the requirements of both steps in order to reduce or deny a claim for contributory conduct.* The fact that the victim committed a wrongful or illegal act is not enough to deny or reduce the claim for contributory conduct. The wrongful or illegal act must be intentional and directly cause the victimization in some substantial way.

Behavior

First, the board must consider the behavior of the victim and whether it falls appropriately under any of the three contributory behavior categories: negligence, intentional unlawful conduct, or conduct intended to provoke or aggravate the criminally injurious conduct. The board must also decide whether the wrongful act was intentional. While there are three behavior criteria only one needs to apply to the actions of the victim to meet this requirement and move on to causation.

Causation

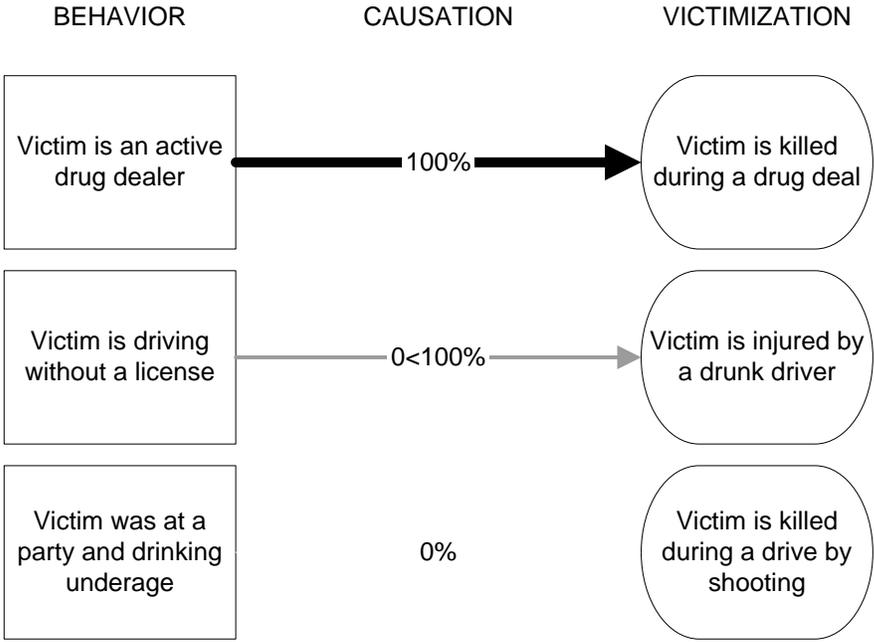
Next, the board must determine to what degree the victim's behavior may have caused the victimization. Boards can only reduce or deny a claim if the board determines the victim's wrongful act was a substantial cause of the criminally injurious conduct. If the board determines the wrongful act was a substantial cause then the board must consider the following:

(R10-4-108.G) The Board shall deny or reduce a compensation award under subsection (F)(3) in proportion to the degree to which the Board determines the

victim is responsible for the incident of criminally injurious conduct that is the subject of the claim.

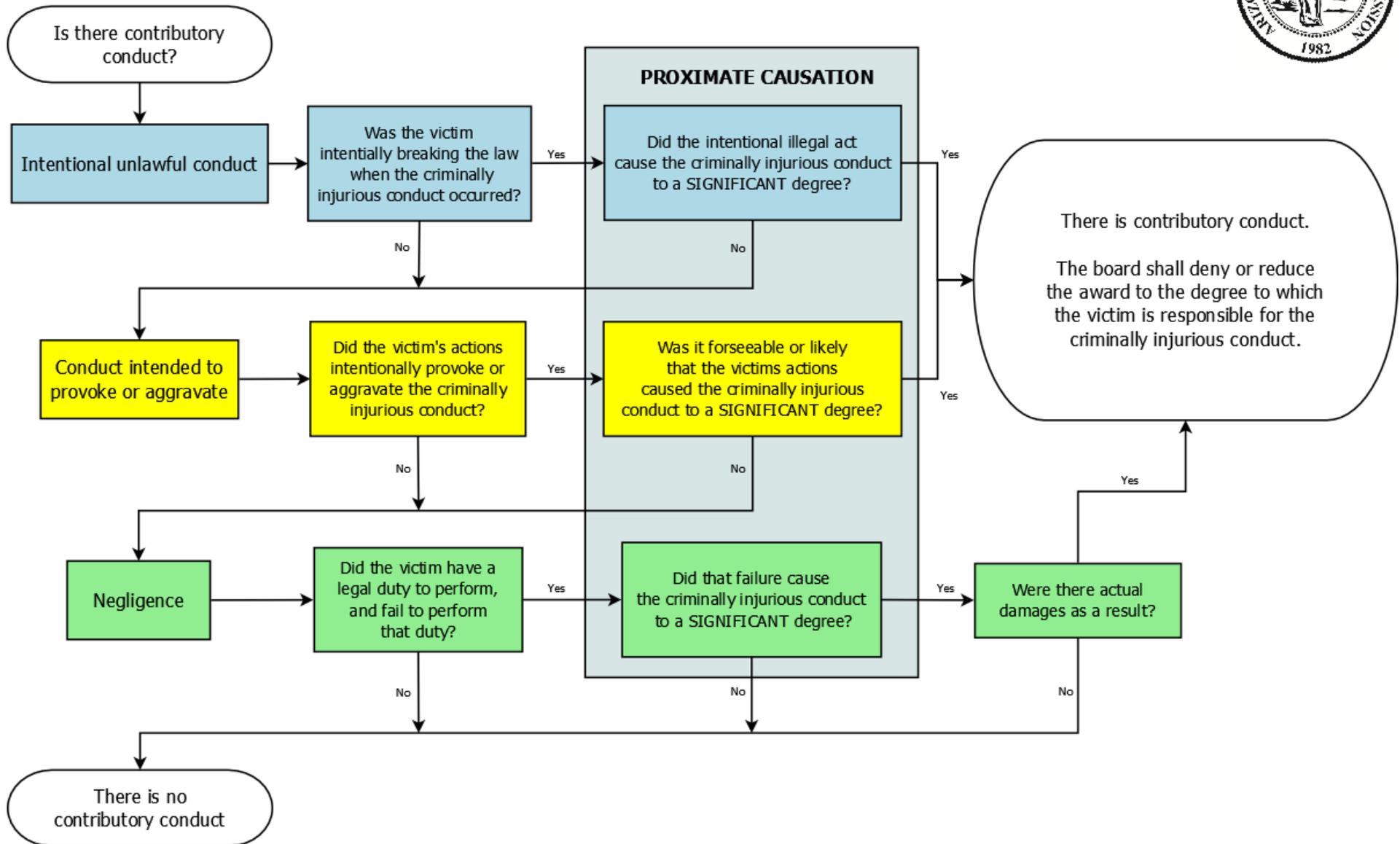
This means that any finding of contributory conduct on the part of the victim must be assigned a degree of responsibility. This degree of victim responsibility is best represented as a percentage reduction in the requested compensation award. A denial would state the victim's actions were 100% responsible for the victimization; a reduction would represent any percentage less than 100%; and no contributory conduct would mean the victim was 0% responsible for the victimization. The degree of responsibility should be communicated to the victim or claimant in the reduction or denial letter.

An analogy demonstrating the degree of responsibility is the dark line diagram included below. The degree of victim responsibility, or causation, is a line that must connect the victim's behavior to the criminally injurious conduct; the darker the line the greater the degree of responsibility. If the line is not a substantial connection (dark line) between the behavior and the victimization, the board cannot reduce or deny the claim.





Contributory Conduct Decision Workflow



7. Cooperation

To be eligible to receive compensation benefits a victim or claimant must cooperate with law enforcement and provide accurate information to the program (R10-4-108.H.1). The board must deny a claim if the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate was not because of a compelling medical, mental health, or safety risk. The board shall use the following criteria as standards for failure to cooperate with law enforcement:

- The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct or failed to appear as a witness, for the prosecution;
- The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct escaped prosecution or the prosecution of the suspect was negatively affected;
- A law enforcement authority indicates that the victim or claimant was reluctant to give information pertaining to the criminally injurious conduct, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities.
- If the board determines that the victim or claimant knowingly made a false or misleading statement on the claim or in writing on supporting documents submitted to the board or program, they must deny the claim.

Within the preceding guidelines, determining “full cooperation” is at the discretion of the board.

8. Collateral Sources

In most cases the Victim Compensation Program is the payer of last resort. This means that all other collateral sources of economic recovery must be exhausted before any compensation benefit can be paid. Program rules state the following:

(R10-4-101.4) Collateral source means a source of compensation for economic loss that a claimant received or is accessible to and obtainable by the claimant or that is payable to or on behalf of the victim.

The purpose of the collateral source rule is to prevent claimants from receiving funds from more than one source to cover the same loss sustained due to the criminally injurious conduct. If the claimant has other sources available to cover the loss then he or she must look to those other sources first. If those other sources only partially cover the loss or are unavailable to the claimant, then the compensation program, as the payer of last resort, can make up the difference or step in to fully compensate the claimant.

a) Available and Accessible

Availability and accessibility is critical when considering a collateral source. For the purposes of the compensation program, a collateral source is only available to the extent a claimant

can immediately access that source to cover his or her losses. For example, if a claimant is eligible to have mental health expenses covered by AHCCCS, but is not yet enrolled, the compensation program can cover the costs of counseling until the claimant is enrolled and able to receive AHCCCS benefits. Another example to consider is when the claimant, victim, or derivative victim has insurance, but the provider they are using is not contracted to accept that insurance, the compensation program can cover the costs for the victim's care with that provider because the collateral source is unavailable in this case.

Any collateral source should be approached in the same way. Because someone has a law suit related to the criminally injurious conduct pending does not mean that collateral source is available to meet their immediate needs. In fact there is a chance the claimant will never receive a payment from that collateral source. If he or she does receive payment, the compensation program can recoup expenditures through the subrogation agreement signed by the victim, derivative victim, or claimant.

Also important in this instance is whether or not the collateral source fully covered the loss the victim, derivative victim, or claimant sustained as a result of the criminally injurious conduct. If he or she accessed all available collateral sources and was still left with eligible losses related to the crime, then the compensation program should cover the remaining expenses. When considering a decision to approve or deny a claim due to the availability of a collateral source the following factors should be considered:

- What collateral source was immediately available to the claimant to cover losses associated with the criminally injurious conduct?
- Did those collateral sources that were available fully compensate the claimant for his or her losses directly associated to the criminally injurious conduct?

If the Board determines the answer to these questions is none or no, then the board should approve payment of the remaining expenses.

Program rules identify the following as collateral sources:

b) Perpetrator

At sentencing the offender may be ordered to pay restitution to the victim to cover any expenses the victim incurred as a result of the crime. The availability of this collateral source is questionable. Because an offender is ordered to repay the victim does not mean those repayments will be available to meet the victim's immediate needs. In most cases this collateral source may not be accessible or available to the victim as required in program rules.

c) US Government Program

The federal VOCA guidelines identify the compensation program is the payer of last resort with regard to federal or federally financed programs. When a victim is eligible to receive benefits from a federal program such as Veterans' benefits, Medicare, and Social Security Disability or federally financed state or local program, such as Medicaid, the state compensation program shall not use VOCA funds to pay costs that another federal or

federally financed program covers. The federal or federally financed program must make payments without regard to benefits awarded to a crime victim by a state crime victim compensation program.

To facilitate victim access to other funding resources, OVC recommends that VOCA compensation administrators coordinate their activities and provide appropriate referrals to other programs that provide financial assistance and services to crime victims, whether funded by federal, state or local governments. Examples of such programs include worker's compensation, vocational rehabilitation, and VOCA victim assistance subgrantee programs. Outreach to other programs to coordinate available benefits can result in mutual understanding of eligibility requirements, application processing, timelines, and other program specific requirements. As payer of last resort, it is in the compensation program's discretion to make exception for victim needs that are not adequately met by collateral sources. Additionally, this provision does not mandate that states require victims to apply for or use other federally funded programs prior to accessing the crime victim compensation program.

There is one exception to the policy outlined above. In 2013, OVC issued a directive saying that state crime victim compensation programs are primary payers to Indian Health Services (IHS). This makes IHS the payer of last resort for victims who may be eligible for benefits under both programs. Since the directive was issued this has not resulted in any substantial increase in requests from victims who may also be covered by IHS. If a victim approaches a compensation program with an expense that has not been covered by IHS and IHS benefits are available to the victim, the operational unit should process that expense without requiring use of IHS as a collateral source.

d) Social Security Survivor Benefits

The loss of the family wage earner as a result of a crime can be devastating, both emotionally and financially. Social Security helps by providing income for the families of workers who die. In fact, 98 of every 100 children could get benefits if a working parent dies. And Social Security pays more benefits to children than any other federal program.

This section gives an overview of Social Security survivors benefits paid to the spouse and children of a worker who dies. This section is not intended to answer all the questions that arise regarding this subject. For more information about Social Security's survivors program, visit <https://www.ssa.gov/survivors/> or call **1-800-772-1213**.

Many people think of Social Security only as a retirement program. But some of the Social Security taxes individuals pay go toward providing survivors insurance for workers and their families. In fact, the value of the survivors insurance available under Social Security is probably more than the value of some individual life insurance policies.

Eligible Family Members

When a victim dies as a result of a crime, certain members of his or her family may be eligible for survivor benefits:

- A widow or widower

- Unmarried children
- Dependent parents

Benefits for Surviving Divorced Spouses

If the deceased victim has been divorced, his or her former wife or husband can get survivor benefits if eligibility requirements are met.

Benefit Amounts

How much surviving family members can get from Social Security depends on the victim's average lifetime earnings. That means the more the victim has earned, the more their benefits will be.

One-time death payment

There is a one-time payment that can be made if the victim has worked long enough. This payment can be made only to the surviving spouse or child if they meet certain requirements.

Applying for benefits

If surviving family members are not currently getting Social Security benefits they should apply for survivor benefits promptly because, in some cases, benefits will be paid from the time of application and not from the time the worker died.

Family members may apply by telephone or at any Social Security office. Certain information is required, but do not delay applying. Social security staff will help survivors get what documentation is needed.

If surviving family members are already getting Social Security benefits

If a surviving wife or husband is already getting benefits based on their spouse's work, when the death is reported to Social Security, payments will change to survivor's benefits. If a surviving husband or wife is getting benefits based on their own work, they should call Social Security to check to see if more money is available as a widow or widower. If so, he or she will receive a combination of benefits that equals the higher amount. The surviving spouse will need to complete an application and provide a death certificate to switch to survivors benefits.

How much will surviving family members receive?

The benefit amount is based on the earnings of the person who died. The more the worker paid into Social Security, the greater the payable benefits will be.

Maximum Family Benefits

There is a limit to the benefits that can be paid to surviving family members each month. The limit varies, but is generally between 150 and 180 percent of the deceased's benefit amount.

Pensions from work not covered by Social Security

If employees get a pension from work where they paid Social Security taxes, that pension will not affect Social Security benefits. However, if employees get a pension from work that was not covered by Social Security—for example, the federal civil service, some state or local government employment or work in a foreign country—the available Social Security benefit may be reduced.

What if surviving family members work?

If surviving family members work while getting Social Security survivors benefits and are younger than full retirement age, their benefits may be reduced if their earnings exceed certain limits.

There is no earnings limit beginning with the month an individual reaches full retirement age.

Also, an employee's earnings will reduce only that employee's benefits, not the benefits of other family members.

What if surviving family members remarry?

Generally, surviving family cannot get widow's or widower's benefits if he or she remarries before age 60. But remarriage after age 60 (or age 50 if you are disabled) will not prevent that individual from getting benefit payments based on their former spouse's work. And at age 62 or older, survivors may get benefits based on their new spouse's work, if those benefits would be higher.

Social Security and Health Insurance

People who receive Social Security disability benefits do not usually qualify for state AHCCCS because they exceed the income requirements. However, they may qualify for county AHCCCS, if available, and should be referred. After two years of receiving this benefit, they will qualify for Medicare, but they must apply. Social Security short-term illness clients are automatically eligible for state AHCCCS.

e) Medicare

Medicare is a national social insurance program, administered by the U.S. federal government that guarantees access to health insurance for Americans ages 65 and older and younger people with disabilities as well as people with end stage renal disease. Medicare offers all enrollees a defined benefit. Hospital care is covered under Part A and outpatient medical services are covered under Part B. To cover the Part A and Part B benefits, Medicare offers a choice between an open-network single payor health care plan (traditional Medicare) and a network plan (Medicare Advantage, or Medicare Part C),

where the federal government pays for private health coverage. A majority of Medicare enrollees have traditional Medicare over a Medicare Advantage plan. Medicare Part D covers outpatient prescription drugs exclusively through private plans, either standalone prescription drug plans or through Medicare Advantage plans that offer prescription drugs.

Eligibility

In general, all persons 65 years of age or older who have been legal residents of the United States for at least 5 years are eligible for Medicare. People with disabilities under 65 may also be eligible if they receive Social Security Disability Insurance (SSDI) benefits. Specific medical conditions may also help people become eligible to enroll in Medicare.

For those people who qualify for Medicare coverage, Medicare Part A premiums are entirely waived if the following circumstances apply:

- They are 65 years or older and U.S. citizens or have been permanent legal residents for 5 continuous years, and they or their spouse has paid Medicare taxes for at least 10 years; or
- They are under 65, disabled, and have been receiving either Social Security SSDI benefits or Railroad Retirement Board disability benefits; they must receive one of these benefits for at least 24 months from date of entitlement (first disability payment) before becoming eligible to enroll in Medicare; or
- They get continuing dialysis for end stage renal disease or need a kidney transplant; or
- They are eligible for Social Security Disability Insurance and have amyotrophic lateral sclerosis (known as ALS or Lou Gehrig's disease).

Those who are 65 and older must pay a monthly premium to remain enrolled in Medicare Part A if they or their spouse have not paid Medicare taxes over the course of 10 years while working.

People with disabilities who receive SSDI are eligible for Medicare while they continue to receive SSDI payments; they lose eligibility for Medicare based on disability if they stop receiving SSDI. The 24 month exclusion means that people who become disabled must wait 2 years before receiving government medical insurance, unless they have one of the listed diseases .

Some beneficiaries are dual-eligible. This means they qualify for both Medicare and Medicaid. In some states for those making below a certain income, Medicaid will pay the beneficiaries' Part B premium for them (most beneficiaries have worked long enough and have no Part A premium), as well as some of their out of pocket medical and hospital expenses.

f) AHCCCS

Arizona Health Care Cost Containment System (AHCCCS) Health Insurance was established by the State of Arizona to provide health care for Arizona residents.

There are three health insurance programs available under the AHCCCS Administration:

- Arizona's Medicaid
- KidsCare
- Medicare Savings Program

Anyone can apply for AHCCCS Health Insurance.

See <https://www.azahcccs.gov/Members/GetCovered/apply.html> for information on AHCCCS programs and how to apply.

g) State-required Disability Insurance

Disability insurance pays wage replacement benefits to employees who are not working due to non-job-related accidents or illnesses. (Workers' compensation covers job-related injuries.) Disability insurance also provides coverage for employees who may not be eligible for workers' compensation, or it may supplement workers' compensation.

A few states have laws that require employers to provide disability insurance, but Arizona is not among them. Arizona employers may provide such insurance, but they are not required to do so.

Compensation programs will need to follow up with a claimant's employer to verify the availability of short or long term disability insurance.

h) Worker's Compensation

In Arizona employers are required to have workers' compensation insurance coverage for their employees. Workers' compensation is a "no fault" system in which injured workers receive medical and compensation benefits no matter who causes the job-related accident. If an illness or injury is job-related, the injured worker (also known as a claimant or applicant) receives medical benefits and may receive temporary compensation, if eligibility requirements are met. In some cases, a claimant may also receive permanent compensation benefits and "job retraining."

As a condition of accepting worker's compensation, lawsuits against the employer, except under very limited circumstances, are not permitted. Therefore, if a victim is suing his or her employer, worker's compensation is not available as a collateral source.

i) Employer Wage Continuation Program

A wage continuation plan is an agreement whereby the employer agrees to continue the employee's salary after a qualifying event such as retirement, death or, disability. In a wage continuation plan, the employer funds the plan as an additional benefit.

j) Insurance Proceeds

Insurance proceeds payable upon a victim's injury or death must be taken into consideration as a collateral source only if the insurance policy payout was intended to cover a specific compensable cost. For example health insurance is clearly a collateral source for medical expenses. However, a life insurance policy could not be considered a collateral source unless the policy clearly identified that a portion of the proceeds were intended to cover an eligible compensation program benefit category, such as funeral expenses or loss of support.

Like all other collateral sources insurance proceeds must be accessible to and obtainable by the claimant. Processing an insurance claim can take time. During the period of time the payout from insurance is not obtainable by the victim, the compensation program can cover any expenses submitted by the claimant. This approach should only be undertaken if the claimant is experiencing a serious hardship as a result of the delayed payout. If providers are willing to wait until the insurance payout is available then there is no reason for the compensation program to step in and cover those expenses. Any compensation awards that are later covered by a collateral source are subject to the subrogation agreement and should be repaid to the compensation program.

k) Prepaid Contract

There may be instances where claimants have a prepaid contract for services from a provider. A prepaid funeral contract is the best example of this type of collateral source.

l) Donations

Like insurance proceeds, donations must only be considered as a collateral source only if the donation was made to cover a specific compensable cost. A car wash held to raise funds to cover funeral expenses must be considered a collateral source for funeral costs. If the donations exceed the actual cost of the funeral the compensation program cannot consider the balance of the donations as a collateral source for other compensable costs.

If compensation program staff has the opportunity to counsel the claimant or family members prior to any fundraising events, it is helpful to communicate that donations should be made "to help the family with expenses" related to the victimization. This general designation allows the family the most flexibility to utilize donations to meet their most urgent needs while still being eligible for all the compensation program may have to offer.

9. Good Cause Exceptions

(See Board Administration, Board Actions, Good Cause Exceptions)

10. Total and Permanent Disability

Total and permanent disability means a physical or mental condition that the board finds is a direct result of criminally injurious conduct and:

- Produces a significant and sustained reduction in the victim's former mental or physical abilities dramatically altering the victim's ability to interact with others and carry on normal functions of life;
- Lessens the victim's ability to work to a material degree; or
- Causes a physical or neurophysical impairment from which no fundamental or marked improvement in the victim's crime-related condition can reasonably be expected.

A medical or mental health provider must certify in writing that it is his or her professional opinion that the victim meets the criteria listed above. If the board agrees and determines a victim is totally and permanently disabled as a result of the crime the board has the option of authorizing a lump sum payment to the victim up to the claim maximum. The intent of this designation is to prevent prolonged effort on the part of the victim and compensation program staff for a compensation claim that will eventually reach the claim maximum.

11. Arizona Residents Victimized Abroad

Under current program rules, an Arizona resident who is the victim of a crime in a country that does not have an accessible victim compensation program can apply to the Arizona victim compensation program and is eligible to receive payment for qualifying expenses. Several resources exist to verify whether or not a particular country has a victim compensation program. A good place to start is with the US State Department and either the Bureau of Consular Affairs or Overseas Citizens Services. Contact information for the US State Department can be found on the department's web site.

12. Citizenship

All victims or claimants are eligible to apply for and receive benefits from the victim compensation program. The program is not required to verify citizenship status before providing benefits. The Office for Victims of Crime (OVC) has provided clarification regarding the applicability of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to Victims of Crime Act (VOCA) victim compensation programs.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provides that an alien who is not a "qualified alien" (as defined in section 431 (b) thereof) is not eligible for any "Federal public benefit." Federal public benefit, in turn, is defined in section 401(c)(1) to mean:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, post secondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family

eligibility unit by an agency of the United States or by appropriated funds of the United States.

OVC has determined that compensation programs funded by VOCA are not "Federal public benefits" within the meaning of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and therefore should not be denied to an individual on the ground that the person is not a "qualified alien" under that Act.

G. Confidentiality

According to the Attorney General's Office a public records custodian may deny public inspection when disclosure would invade an individual's privacy, and the invasion outweighs the public's right to know. *Scottsdale Unified Sch. Dist.*, 191 Ariz. at 300, 955 P.2d at 537.

With very limited exceptions the entire contents of a compensation claim file should be treated as confidential.

1. Protected Communication

The Arizona Criminal Justice Commission recognizes all county victim compensation program staff as serving in the capacity of crime victim advocates as defined under A.R.S § 13-4401.5. As such, under A.R.S § 13-4430:

- (A) A crime victim advocate shall not disclose as a witness or otherwise any communication made by or with the victim, including any communication made to or in the presence of others, unless the victim consents in writing to the disclosure.
- (B) Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on communications made by or with the victim, including communications made to or in the presence of others.
- (C) The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory evidence.
- (D) A defendant may make a motion for disclosure of privileged information. If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the defendant.
- (E) If, with the written or verbal consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose such material to the defendant's attorney only if such information is otherwise exculpatory.

(F) Notwithstanding subsections A and B, if a crime victim consents either verbally or in writing, a crime victim advocate may disclose information to other professionals and administrative support persons that the advocate works with for the purpose of assisting the advocate in providing services to the victim and to the court in furtherance of any victim's right pursuant to this chapter.

2. Disclosure

Certain information in the file is subject to disclosure. A defendant may make a motion for disclosure of privileged information. If the court finds there is a reasonable cause to believe the requested material is exculpatory, the court must hold a hearing *in camera*. Material the court finds exculpatory must be disclosed to the defendant.

Prior to turning over a file to the court for review, the victim's address, telephone number, place of employment, social security number, date of birth, and any other victim personal identification information should be redacted from the file to comply with *A.R.S. § 13-4434*. This provision states a victim has a right not to testify regarding the above mentioned information unless the victim consents or the court orders disclosure on the finding that a compelling need for the information exists. *Any request for disclosure of compensation file information should be reviewed by an attorney before any information is disclosed.*

3. Court Personnel

With the written consent of the victim, prosecutors and probation officers can receive award information and payer information for restitution purposes. The same information can be given to civil attorneys for subrogation purposes. Remember to redact all personal identifying information referencing the victim from any and all forms passed on to others. This information includes wage loss information, policy numbers, addresses, DOB, name of doctor, hospital name or anything else that could be used to identify or locate a victim.

4. Secretary of State's Address Confidentiality Program

The Address Confidentiality Program (ACP) allows persons who have been subjected to domestic violence offenses, sexual offenses or stalking to keep their residence addresses confidential and not accessible to the general public. Program participants will receive a substitute address that becomes the participant's lawful address of record.

For more information please contact the ACP staff at (602) 542-1653 or by email at acpinfo@azsos.gov.

5. Communication with Defendants

In the event that the defendant, a related family member, or a personal representative contacts the program, under no circumstances should compensation program staff speak with him or her. Program staff should contact the prosecutor for guidance. Some reasons why include the following:

- There is the potential risk of disclosing information about the victim without the victim's consent.
- Trust the victim has developed with the program and the agency can be jeopardized. Considering the trauma the victim has experienced, trust is almost always an issue and victims are extremely sensitive to any breach of trust. Violating a victim's trust can cause secondary trauma.
- In domestic violence cases this is an especially sensitive issue because domestic violence victims are frequently very distrustful of the law enforcement agency, county attorney, and the court process. This fear often stems from past experiences where they believe the system did not protect them.

6. Board Review / Discussion

Confidential records may be submitted to the board for review. Boards do not have to go into executive session to discuss confidential records, although they may do so. The board may discuss confidential records simply by using the initials of people in the report and not giving out any identifying information (e.g. home address). Any copies of confidential records sent to board members should contain a statement that the records are confidential. Confidential records should not be further disseminated and any copies should be destroyed.

Police reports received by a board should be treated as confidential records. Although not recommended, this does not prevent the documents from being included in a packet that the board members use at or in preparation for board meetings. Treating police reports as confidential records prohibits providing them to anyone from the public who requests a copy. The board can explain to the public that victim compensation file content is confidential and refer them to the appropriate law enforcement agency to request a copy of the police report. It is then up to the law enforcement agency whether to release the document or not.

H. Program Benefits

1. Claim Maximum

The maximum award per claim is \$25,000 for all economic loss sustained as a result of an incident of criminally injurious conduct (R10-4-108.D.1).

2. Qualifying Individuals

Eligibility for different compensation benefit categories varies depending on the type of individual making the request. Certain benefits are only available to certain individuals. The following abbreviations are used throughout this section to designate what individuals qualify for a particular compensation benefit:

V	Victim	CL	Claimant
DRV	Derivative Victim	PG	Parent / Guardian

Victim Compensation Benefit Categories

Category	Category Max	Qualifying Individuals	Backup Documentation	Primary Collateral Sources
Medical/ Dental Expenses	\$25,000	V	<ul style="list-style-type: none"> Copies of itemized bills and invoices(no estimates or explanation of benefits) Follow up with providers to verify availability of collateral sources, balances due, and to negotiate costs 	<ul style="list-style-type: none"> Health/ dental insurance Donations for medical/dental
Mental Health Expenses	\$5,000 each	V, DRV	<ul style="list-style-type: none"> Copies of detailed bills and invoices; (no estimates or explanation of benefits) Mental health treatment plan Follow up with providers to verify collateral sources and balances, request treatment plan, and negotiate costs 	<ul style="list-style-type: none"> Health insurance
Funeral Expenses	\$10,000	DRV, CL	<ul style="list-style-type: none"> Copies of detailed bills and invoices (no estimates or quotes) Follow up with providers to verify collateral sources, verify balances, and negotiate costs 	<ul style="list-style-type: none"> Funeral Insurance Donations for funeral expenses
Work Loss/ Loss of Support Subtypes: <ul style="list-style-type: none"> Inability to Work, Attending Appointments, Attending Court, Loss of support, Bereavement, Transportation of a Minor Victim, and Non-skilled nursing care 	\$25,000	V, DRV	<ul style="list-style-type: none"> All subtypes: A verification letter from claimant’s employer on agency letterhead Unable to Work: A letter from a counselor or medical provider verifying the V is unable to work due to a physical injury, medical condition, or mental distress resulting from the criminally injurious conduct Attending Medical/Mental Health Appointments: Letter or invoice from the counselor or medical provider verifying the V or DRV attended an appointment on the date(s) for which work loss is being claimed Attending Court: Documentation from the court confirming a proceeding related to the criminally injurious conduct on the date(s) of work loss Loss of Support: Documentation verifying the victim’s death resulted in a loss of support to the DRV Non-Skilled Nursing Care: Documentation from a medical provider that the V needs at home non-skilled nursing care. 	<ul style="list-style-type: none"> Sick/vacation leave Insurance policy with a work loss benefit Donations (sick/ vacation leave) Disability Insurance Social Security Disability Payments Social Security Survivor Benefits
			Calculation: Payments are limited to an amount per calendar week equal to 40 hours at the current minimum wage. (40 x current minimum wage = maximum allowed per calendar week)	
Crime Scene Cleanup Expenses	\$2,000 \$500	V, DRV, CL	<ul style="list-style-type: none"> Copies of itemized bills and invoices; do not approve payment based on estimates or quotes Follow up with providers to verify availability of collateral sources, verify remaining balances, and negotiate costs 	<ul style="list-style-type: none"> Home owners or renters insurance Donations for cleanup expenses
Transportation	\$2,000 each	V, DRV, CL	<ul style="list-style-type: none"> Mileage calculation or fare receipts Letter or invoice from the counselor or medical provider verifying the V or DRV attended a medical or mental health appointment on the date or dates for which transportation costs are being claimed. Documentation from the court confirming a proceeding related to the criminally injurious conduct on the date or dates for which transportation costs are being claimed. Documentation from the provider stating the forensic exam or interview was related to criminally injurious conduct, and the exam or interview was on the date for which transportation costs are being claimed. A police report or an order of protection. 	<ul style="list-style-type: none"> Prosecuting attorney if the victim is appearing in court at the request of the prosecution Arizona Coalition for Victim Services Relocation Project

3. Medical / Dental Expenses

The compensation program may cover reasonable and customary medical expenses due to the victimization and resulting in the victim's physical injury, mental health condition, medical condition, or death resulting from criminally injurious conduct (R10-4-108.C.1).

Medical expenses can also include the following:

- Repair of damage to a prosthetic device, eyeglasses or other corrective lenses, or dental device; and
- Durable medical equipment necessary to treat a physical injury or medical condition; and
- The Board shall not include as a medical expense a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary.

Current program rule (R10-4-108.C.1.b.ii) prohibits inclusion as a medical expense any drug, substance, or chemical included under Schedule I of the Federal Controlled Substances Act 21 U.S.C. § 812(c). This rule prohibits the compensation program from covering the cost of medical marijuana.

a) Medical Conditions

Under the current program rules, medical conditions directly resulting from criminally injurious conduct are eligible expenses for compensation. Medical conditions, as with any other medical claim, must demonstrate a direct connection to the victimization. Medical conditions can include, but are not limited to, the following: sexually transmitted diseases, adhesions, arthritis, and pregnancy.

b) Liens

Victims may have liens placed against their credit for medical services. If this occurs, the victim/claimant can check with the insurance company to verify payments made to the provider and clarify the specifics of the contract agreement. For medical services rendered a hospital will place a lien against a victim shortly after discharge. All auto accident victims automatically receive a lien because of the potential for auto insurance coverage. When a patient has medical insurance, the lien should only consist of the portion for the write-off and the patient's responsibility.

The lien remains on the victim's credit unless it is removed through negotiation or paid in full. When a lien has been satisfied, it is not known if the provider has purged the lien and filed a release. Therefore, it is the victim's responsibility to check on the status and request a copy of the "Release of Lien" that the provider must file with the Clerk of the Court.

c) Total and Permanent Disability

(See Eligibility, Total and Permanent Disability)

d) Abortion Costs

In accordance with Compensation Program rules and under A.R.S. § 35-196.02 public compensation monies may be used to reimburse the costs of abortions which terminate the pregnancies of crime victims only when the abortion is necessary to either save the life of the woman or to avert substantial and irreversible impairment of a major bodily function of the woman having the abortion.

Investigation and Substantiation of Abortion Costs

The Crime Victim Compensation Board may approve costs to cover pregnancy termination only if the following criteria are met:

- The pregnant woman meets all eligibility requirements of the Crime Victim Compensation Program as outlined in program rules;

AND ONE of the following conditions is present:

- The pregnant victim suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, which would, as certified by a physician, place the victim in danger of death unless the pregnancy is terminated.
- The pregnancy termination is medically necessary according to the medical judgment of a licensed physician who attests that continuation of the pregnancy could reasonably be expected to pose a serious physical health problem for the pregnant victim by:
 - Creating a serious physical health problem for the pregnant victim;
 - Seriously impairing a bodily function of the pregnant victim;
 - Causing dysfunction of a bodily organ or part of the pregnant victim;
 - Exacerbating a health problem of the pregnant victim; or
 - Preventing the pregnant victim from obtaining treatment for a health problem.

Conditions, Limitations and Exclusions

The attending physician must acknowledge that a pregnancy termination has been determined medically necessary by submitting the Certificate of Necessity for Pregnancy Termination (see below). The Certificate must certify that, in the physician's professional judgment, the above criteria have been met.

Additional Required Documentation

A written informed consent must be obtained by the provider and kept in the victim's chart for all pregnancy terminations. If the pregnant victim is younger than 18 years of age, or is 18 years of age or older and considered an incapacitated adult (as defined in A.R.S. § 14-5101), a dated signature of the pregnant victim's parent or legal guardian indicating approval of the pregnancy termination procedure is required.

Things to Keep In Mind

As with any other expense, the board has final say as to whether or not abortion costs will be covered. The program should provide enough information for board members to determine whether or not the eligibility criteria for abortion costs have been met; keeping in mind that sensitive or confidential medical treatment information should be presented in executive session.

Approved awards are made only for actual expenses not for quotes or estimates. When possible the provider should be paid directly. However, victims or claimants can be reimbursed for abortion costs as long as the above eligibility criteria are met.

Any concerns related to the approval of abortion costs should be submitted to ACJC staff for review and consideration.

4. Mental Health Expenses

The compensation program may cover reasonable and customary mental health counseling and care expenses due to a victim's or derivative victim's mental distress resulting from the criminally injurious conduct (10-4-108.C.4).

Mental health counseling and care must be provided by an individual who is one of the following:

- Licensed for independent practice by the Board of Behavioral Health Examiners,
- A behavioral health professional, including the following:
 - Psychiatrist
 - Behavioral health medical practitioner
 - Psychologist
 - Social worker
 - Counselor
 - Marriage and family therapist
 - Substance abuse counselor, or
 - Registered nurse with at least one year of full-time behavioral health work experience.

- Authorized to perform mental health counseling and care by the laws of a federally recognized tribe.

Charges for a private room in a hospital, clinic, convalescent home, nursing care facility, or any other institution that provides medical services are not eligible costs, unless the board determines that the private room is medically necessary.

a) Deductibles

The program will need to verify when there is an insurance provider and what deductible amounts apply. Some plans have separate deductibles for medical coverage and another for mental health. Some just have one that covers both areas. Some plans have co-pays and deductibles that vary for in-network versus out-of-network coverage. Some plans do not allow for clients to use any providers that are out-of-network. The program will need to verify which plan the victim/claimant has and pay accordingly.

When a victim/claimant has insurance with a deductible, Victim Compensation pays the provider rate, regardless of how much it is, up to the point that the deductible has been expended.

If the victim has insurance that allows for a certain number of counseling sessions per year, once that number of sessions has been exceeded the victim in effect no longer has a collateral source and Victim Compensation will pay at the appropriate level.

Some insurance plans have providers who agree to take the allowed amount from the insurance plan as payment in full and do an adjustment for any remaining amount. These types of plans often have a deductible that needs to be met as well. It is important to know what the coverage and limits are for a plan as often times providers who become aware that victim compensation is paying and will try to get the program to cover the difference between the allowed expense and what insurance will pay. Keep in mind victim compensation only pays the amount the victim would have been responsible for.

b) Treatment Plans

In order to ensure that all counseling is the direct result of criminally injurious conduct, it is necessary for the service provider to submit a treatment plan at regular intervals as required by the compensation program board. Boards will typically request updated treatment plans every three months. It is important to know that in all cases where payments related to mental health counseling are requested from victim compensation, a treatment plan should be submitted, even if the request is for travel reimbursement to and from counseling.

Review the treatment plan to ensure:

- The treatment plan clearly addresses the trauma suffered as a direct result of the crime;

- Provides a description of treatment methodologies, the recommended frequency of counseling sessions, and a summary of measurable outcomes expected by the end of the treatment period.

c) Mental Health Conditions

All mental health counseling expenditures must be for trauma sustained as a direct result of the crime and can include counseling to treat addiction, personality disorder, eating disorder, or other mental health conditions. These are eligible expenses if the treatment plan indicates that these conditions were either aggravated by the victimization, or were not originally present but may have developed in response to the crime.

Based on the treatment plan, compensation program boards should establish to what degree they feel the counseling expenses address the trauma sustained as a direct result of the crime. An award amount should directly reflect the connection between the crime related trauma and the course of action outlined in the treatment plan. This determination rests entirely with the board.

d) Approving Mental Health Awards

Mental health counseling is the only benefit category where the board regularly approves an award prior to the services being provided to the victim or derivative victim. As such it is important that boards try to avoid encumbering funds for counseling by specifying an exact dollar amount or number of counseling sessions. Boards can take the "up to" approval approach and designate a maximum number of sessions or period of time. An approved time period usually coincides with the duration of the treatment plan. The approved "up to" amounts should be based on the recommendations made in the treatment plan.

While the awards may have been approved by the board, payments are not made, or reported to ACJC, until the bills for completed counseling sessions are submitted to the program. Payments should only be made for completed sessions.

e) Maximum

The maximum allowed under this benefit category is \$5,000 per eligible victim or derivative victim. Meaning it is possible for a single claim to include a mental health benefit cost total that exceeds \$5,000, if more than one eligible individual is receiving mental health benefits under the one claim.

f) Total and Permanent Disability

(See Eligibility, Total and Permanent Disability)

5. Funeral Expenses

The compensation program may cover reasonable and customary funeral expenses for a victim who died as a result of criminally injurious conduct (R10-4-108.C.3). Personal attendee expenses for clothing, travel, lodging, food, or per diem to attend a victim's funeral,

cremation, or burial are not allowable funeral expenses, and shall not be included in a compensation award. Eligible funeral expenses are those costs incurred as a direct result of a victim's funeral ceremony, burial, or cremation.

Program rules do not provide an inclusive list of what is an allowable funeral expense. However, rules do require the expense be a direct cost of the funeral, burial, or cremation. Direct costs of a funeral are those the board determines are reasonable and customary.

In Arizona, the funeral board rules require a funeral establishment to provide the customer with a written itemized Statement of Funeral Goods and Services Selected (*see APPENDIX "D"*). This template document can be used as a helpful tool in determining the types of items that are typically included as a funeral expense. The form shows the itemized cost of each service or good selected by the customer. When a claimant requests reimbursement or coverage for items that appear on the Statement of Funeral Goods and Services Selected, it is easy to determine that these are costs incurred as a direct result of a victim's funeral, burial, or cremation. The following are examples of items that are included on the Statement of Funeral Goods and Services Selected: burial, cremation, embalming, forwarding remains to or from another funeral home, funeral director and staff services, preparation of the body, use of facilities, transfer of remains, use of hearse or limousine, casket, vault or liner, flowers, obituary notice, and death certificate.

Items not purchased through a funeral establishment are not excluded from being a reimbursable or covered funeral expense as long as the board determines the expenses were associated with the funeral, burial, or cremation and the costs are reasonable and customary. If funding is limited, boards may decide to restrict eligible funeral costs to those that are typically included on the Statement of Funeral Goods and Services Selected.

Expenses associated with funerals conducted under Native American tradition are eligible expenses under the victim compensation program. For these types of funerals, programs must still determine that the goods or services claimed are a direct cost of the funeral and not costs incurred by participants to attend the funeral. (See Native American Traditional Ceremonies)

6. Work Loss / Loss of Support

a) Sub-categories

The compensation program may cover reasonable and customary work loss expenses for the following (R10-4-108.C.2):

Unable to Work

Work loss may be paid to a victim whose ability to work is reduced because of physical injury, mental distress, or medical condition resulting from the criminally injurious conduct.

Work loss is typically paid out periodically giving the program the opportunity to follow up with medical or mental health providers to verify the victim is still unable to work. However, work loss may be paid out by the compensation program in a lump sum payment if the victim is requesting payment for work already missed or is totally and permanently

disabled (See Eligibility, Total and Permanent Disability). Detailed documentation of the payment timeframe and the applicability of collateral sources must be included in the claim file for either payment method.

Attend Medical / Mental Health Appointment

Work loss may be paid to a victim or derivative victim to make a medical or mental health counseling and care visit directly related to the criminally injurious conduct.

Attend a Court Proceeding

Work loss may be paid to a victim or derivative victim to attend a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.

Loss of Support

Payments may be made to a derivative victim if the board determines the victim's death resulted in a loss of support to the derivative victim.

Loss of support may be paid out by the compensation program in a lump sum payment or through periodic payments. Detailed documentation of the applicability of collateral sources must be included in the claim file for either payment method.

Transport a Minor Victim

Work loss may be paid to a parent or guardian of a minor victim to transport or accompany the minor victim to a medical or mental health counseling and care visit or criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.

Bereavement

Work loss may be paid to a derivative victim to make funeral arrangements or tend to the affairs of the deceased victim.

Non-skilled Nursing Care

Work loss may be paid to a family member or other derivative victim to provide non-skilled nursing care for the victim that is medically necessary as a result of the criminally injurious conduct.

b) Verification Letters

Employment verification letters should be submitted directly to the compensation program and include the following:

- Confirmation of the victim or claimant's employment;
- The date on which the claimant was first unable to work;

- The date on which the claimant returned to work;
- Total time lost from work;
- Hourly rate of pay;
- Number of hours worked each week;
- Number of hours worked each day;
- Name, address, and telephone number of employer;
- Name of supervisor.

The victim's employer should also answer the following questions:

- Was sick or vacation time available to the employee, how many hours were available and how many hours were used?
- Is the victim eligible for short or long term disability?
- Was the victim covered by an insurance policy?

For certain work loss categories the program must receive written verification from a medical provider or therapist that a victim is unable to work. Written verification should be received by the program directly from the provider. If verification is provided by the victim, the program should contact the provider and confirm all information provided by the victim is accurate.

c) Minimum Wage

As a general rule, the minimum wage rate payable on a claim is the rate in place at the time the board approves the work loss expense unless the claimant made an amount lower than the current minimum wage at the time of the loss. In this instance the claimant must be paid the rate of his/her actual loss even though it is lower than the current rate. Under no circumstances can a claimant be compensated for an amount greater than the actual loss. If the claimant made more than minimum wage at the time of the loss the claimant should be compensated at the minimum wage rate in effect at the time of the board decision.

d) Unique Situations

Self-employed Victims

When a victim is self-employed, the most recent tax documents can be used to verify income and the fact that they are self-employed. Self-employed individuals can file quarterly with the IRS. However, filing quarterly is not required. Examples of self-employment may include: house cleaning, beauticians, auto repossession, auto repair, home repair, realtors, silversmiths, babysitters, construction work, or private business

owner. It is important to verify if they have a disability policy or any other benefits to compensate work loss.

Food Servers

Often the check stub for a food service worker will reflect an hourly wage less than minimum wage. This is permitted because it is understood that these service workers receive tips that brings them up to or beyond minimum wage. Because the pay stubs reflect an hourly rate below minimum wage does the program reimburse at that hourly rate or is there some way to include tips earned? Compensation programs can call the employer and have them write a letter verifying the victim's hourly rate of pay and average tips per hour received. Food servers are required to declare a percentage of their earned tips for tax purposes.

New Employment

If the victim had been hired for a new job but was victimized before his or her first day of work, he or she may still qualify for work loss. The same process shall be followed as if the individual had been employed. The issue with these types of cases was whether there was a firm hire with a clear starting date versus a negotiation in process. Program staff will need to verify there was an exact start date and the wage the victim would have earned had he or she not been a victim of a crime.

e) More on Wage Loss Calculation

Compensation programs cannot pay more than the amount per calendar week equal to 40 hours at the current minimum wage. However, programs may pay less based on the availability of funds. Whatever the calculation method used the approved payment for work loss or loss of support may not exceed the victim or claimant's actual losses.

If a person receives Social Security disability payments, Social Security survivor benefits, or other wage replacement that is less than his or her actual losses as a result of the crime, the program can make up the difference in income up to the sub-category maximums. For example: John earned \$1,000.00 per week; he now receives \$800.00 per week in Social Security disability payments. He is eligible for up to \$200.00 per week from Victim Compensation.

f) Verifying Loss of Support

This section addresses claims in which a derivative victim is dependent upon a homicide victim's wages. In order to process the request, the program must verify employment of the deceased and the dependency of the derivative victim.

Methods for verifying dependency can include an attempt to secure canceled checks paid to the dependent from the decedent. If this is not available, request a letter from the dependent detailing how the individual was dependent on the victim for financial support. A second letter should be required from a third party who can verify that the dependent received financial assistance from the victim. These cases should always be sent to the

board as a “to be discussed” case, and it will be the board’s decision whether to pay loss of support based on the information provided.

Verification letters should include:

- Relationship of the dependent to the victim
- The writer's relationship to the dependent and the victim
- An explanation of how the writer has knowledge that support was provided by decedent to the dependent
- The duration and regularity of payments
- The amount of the financial support.

In addition, the claimant will have to supply verification of the victim's employment, wage history and support for up to a one year time period.

Child Support

If a parent requests loss of support for a child who was supported by the deceased victim through child support, the following documentation is needed:

- A copy of the birth certificate showing the deceased victim as the parent and or any court records that define the decedent as responsible for the child
- A copy of the court order for child support
- A record of payment history.

Remember, the child should qualify for social security benefits, so it is imperative to research this collateral source.

7. Crime Scene Cleanup Expenses

a) Eligibility

The victim compensation program may pay for crime scene cleanup expenses due to a victim’s homicide, aggravated assault, or sexual assault. These are the only crime types eligible for crime scene cleanup benefits. Additionally, eligible crime scene cleanup expenses include the reasonable and customary cost for only the following:

- Removing or attempting to remove bodily fluids, dirt, stains, and other debris that result from criminally injurious conduct occurring within a residence or the surrounding curtilage;
- Repairing or replacing exterior doors, locks, or windows damaged as a direct result of criminally injurious conduct occurring within a residence or the surrounding curtilage.

As stated above, crime scene cleanup is only available when the associated crime occurred within a residence or the surrounding curtilage. The curtilage is a legal term which delineates the land immediately surrounding a house or dwelling, including any closely associated buildings and structures, but excluding any associated open spaces beyond. It delineates the boundary within which a home owner can have a reasonable expectation of privacy and where intimate home activities take place.

In urban properties the location of the curtilage may be evident from the position of fences or walls; within larger properties it may be a matter of some legal debate as to where the private area ends and the open area starts.

b) Professional Services

The maximum for crime scene cleanup expenses is \$2,000 per claim for cleanup provided by a professional service. In the state of Arizona there is no professional standard or certification of professional crime scene cleanup service providers. Therefore, the designation of "professional" or "non-professional" for the purposes of a victim compensation payment is at the discretion of the compensation board.

ACJC compensation program staff recommends that the "professional" designation be reserved for a business or private contractor with regular cleaning or home repair experience. "Professional" should not include the victim's family members or volunteers unless they meet the criteria previously stated. ACJC program staff recognizes that the availability of eligible "professional" service providers may be severely limited in some areas.

c) Non-professional Services

Up to \$500 of the \$2,000 per claim maximum may be used for crime scene cleanup not provided by a professional service to include only repair or cleanup material costs for one-time use items. The intent of this sub-maximum is to provide family members or volunteers who undertake their own crime scene cleanup a limited compensation benefit. Eligible expenses are one-time use items only such as a new door, lock, or window. The rental of a carpet scrubber would be an eligible expense, while the purchase of a new vacuum would not be eligible because the purchase can extend beyond a one-time use.

8. Transportation Costs

The victim compensation program may pay for transportation costs incurred as a direct result of criminally injurious conduct.

a) Payments

Payments for transportation costs must be made as a reimbursement of actual transportation expenses. This can be a reimbursement of mileage, a transportation fare, or rental fee. Compensation programs should not prepay for transportation services or enter directly into a contract with transportation service providers. Claimants should understand that payments for any compensation benefit can take as long as six weeks,

and that the compensation program is not the best resource to address an urgent need to relocate.

b) Mileage Calculation

Mileage is calculated at the rate established by the operational unit. If the operational unit does not have an established mileage reimbursement rate the compensation program uses the state mileage reimbursement rate. The state mileage reimbursement rate is available on the State of Arizona Government Accounting Office (GAO) web site in the State of Arizona Travel Policy, Supplement I - Maximum Transportation, Lodging and Meal Reimbursement Rates. To calculate the payment amount the mileage rate is multiplied by the number of miles traveled round trip.

If the victim or claimant's mileage is reimbursed, the victim compensation claim file should contain documentation of how that mileage was calculated. A map indicated the number of miles traveled and highlighting the route from the victim or claimant's address to their destination is the most common form of documentation. If the victim or claimant's address is protected tracking mileage by logging odometer readings is an acceptable alternative.

c) Maximum

The maximum allowed under this benefit category is \$2,000 per eligible victim or derivative victim. Meaning it is possible for a single claim to include a transportation benefit cost total that exceeds \$2,000, if more than one eligible individual is receiving transportation benefits under the one claim.

d) Transportation Cost Sub-Categories

Eligible transportation cost sub-categories include the following:

Attend Medical / Mental Health Appointment

Transportation costs may be paid to a claimant to transport a victim or derivative victim to a medical or mental health counseling and care visit directly related to the criminally injurious conduct.

Attend a Court Proceeding

Transportation costs may be paid to a claimant for transporting a victim or derivative victim to attend a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.

Forensic Exam / Interview

Transportation costs may be paid to a claimant for transporting a victim or derivative victim to forensic exam or interview directly related to the criminally injurious conduct.

Risk to Safety

Transportation costs may be paid to a claimant for transporting a victim or derivative victim in response to a substantiated threat to the safety or well-being of the victim or a derivative victim directly related to the criminally injurious conduct.

Remember the victim compensation program cannot effectively address urgent safety needs of a victim. Even emergency compensation awards are not paid immediately and still require a substantial degree of investigation and time to process a payment. If a victim is facing an urgent safety risk please refer them to program personnel that can respond quickly to those needs.

9. Negotiating with Providers

Frequently, providers are willing to negotiate a reduced payment for a bill. When attempting a negotiation, it is helpful to explain that the program is a payer of last resort, funds are supplied by offenders, funds are limited, and this is one of the few programs that assist crime victims with financial expenses.

If the Victim Does Not Have Insurance

Always call to verify the balance of a bill and ask to speak to the person who can authorize settlements. In most cases, it will be a supervisor and you will need to send or fax a letter summarizing the proposed reduced payment. Always attempt to secure a 50 percent reduction. This would be a reduction from the patient's responsibility. Be sure to obtain the names of the parties who approved the write-off in order to make follow-up easier.

If the Victim Has Insurance

Request that insurance be accepted as payment in full. If the provider does not accept that proposal the same process should be followed as noted above.

Tips for Securing Write-offs

Sometimes it can be difficult to secure a write-off from a provider. The following are some ideas which can be used to encourage the providers to accept a write-off:

- Victim Compensation covers people who do not have insurance or qualify for state medical programs. Therefore, it is quite possible that the victim/claimant served by Victim Compensation will not be able to pay his or her bill because they do not have the financial ability to do so. Not only will the victim benefit in this write-off agreement, but the provider will receive a reasonable payment for services rendered.
- By agreeing to the reduced fee, the provider will be helping the entire community and innocent victims of crime
- The write-offs are tax deductible and many agencies can receive tax breaks for losses because of charitable contributions
- Insurance companies typically only pay 40 to 60 percent of the face value of a medical bill

- In the event that a bill is turned over to a collection agency for collection, the provider may receive only 30 to 50 percent of the face value of each bill.

Statutory Protections to Aid Negotiation

A.R.S. § 41-2407 contains two provisions intended to assist compensation program staff and victims with medical provider negotiations, collections, and payments. Subsection (E) states that if a medical service provider accepts payment for services from the victim compensation program, that payment shall be accepted as payment in full for services provided to the victim. The provider may not balance bill the victim for the remainder of the expense.

Subsection (F) states that medical service providers must cease any debt collection activities related to a victim who has submitted a claim to the victim compensation program, until the board has made a decision on the related claim expenses. This should prevent collections agencies from further contacting a victim who has filed a claim. Collections activity may resume once the board has made a decision on the claim.

The availability of a stay on collections activity should be communicated to the victim immediately after having submitted a claim to the program. Initial contact letters should include language that references subsection (F) of the statute and directs victims to notify medical collections agencies of the statutory requirement to cease collections activity until the board has made a decision on the claim.

Additionally, approval letters to providers and victims should reference subsection (E) of the statute and make it clear that if the provider accepts payment from the compensation program, that payment is considered payment in full for those medical expenses included under the claim.

10. Native American Traditional Ceremonies

Native American traditional ceremonies are an eligible expense under compensation program rules (R10-4-108.C.4.a.iv). The only requirement of program rules is that the provider of these traditional ceremonies be authorized to perform such ceremonies by the laws of a federally recognized tribe. Most often traditional ceremonies fall under the funeral, medical, or mental health benefit types. Traditional ceremonies vary from tribe to tribe and there are no formally established pricing standards.

Programs are advised to find a reliable resource familiar with local tribal community practices that can provide guidance on the appropriateness of a ceremony and judge the fairness of the price for any given service. Community resources may include the following:

- Tribal leadership
- Native American victim advocacy services
- College faculty in Native American Studies
- A Native American traditional healer

Boards are advised to carefully consider each claim for traditional ceremonies on its own merits and make a decision with the best interest of the victim and the compensation program in mind.

11. Other Non-traditional Treatments

Compensation boards must often decide whether or not to pay for treatments that may be considered non-traditional. These treatments may include acupuncture, reflexology, massage, hypnotherapy, equine therapy, and many others. The board may approve non-traditional treatments as long as the board determines the expenses are reasonable and customary and the treatment is to provide medical care, address a medical condition, or mental distress sustained as a direct result of criminally injurious conduct.

ACJC compensation program staff recommends the following when considering non-traditional treatments:

- Did the recommendation for non-traditional treatment come from the victim's physician or counselor?
- If so what value does the referring physician or counselor place on the non-traditional treatment?
- What are the intended outcomes of this treatment and how with they be measured?
- Are there any professional standards for practitioners of the non-traditional treatment and does the provider meet those standards?

12. Non-compensable Items

Some of the items that Victim Compensation cannot pay for include, but are not limited to:

- Copy fees;
- Cancelled appointments;
- Preparation of treatment plans/notes;
- Private rooms in hospitals or care homes unless medically necessary;
- Forensic exams or interviews*;
- Clothing, travel, lodging, food, or per diem for individuals attending a victim's funeral;
- Food or beverage expenses that are not determined by the board to be a reasonable and customary expense directly associated with a victim's funeral, burial, or associated with a traditional Native American ceremony;
- Attorney's fees;

- Medical record fees.
- Any drug, substance, or chemical included under Schedule I of the Federal Controlled Substances Act 21 U.S.C.-§812(c). This includes medical marijuana.

*Note: If the bill for a forensic exam or interview is submitted, contact the provider to verify if the appropriate prosecutor's office has been or will be billed. The prosecutor's office should pay for this expense if the procedure is necessary for the collection of evidence used to prosecute the defendant. If all program eligibility requirements are met, the compensation program can cover the costs of any medical treatment of the victim that resulted from the exam.

I. Emergency Awards

1. Purpose

If appropriate, an emergency award of up to \$1,000 may be provided to a victim, derivative victim, or claimant (R10-4-111). The total amount of an emergency award must be deducted from the \$25,000 claim maximum and any applicable benefit category limits such as funeral, counseling, or crime scene cleanup. Before an emergency award is processed the following questions should be answered:

- Is it likely that the person to whom the emergency award will be made is or will be an eligible claimant?
- Is there a collateral source available to meet the victim's immediate needs?
- Will serious hardship result to the applicant if an immediate compensation award is not made?

Some examples of when an emergency award might be appropriate include the following:

- A funeral home or mortuary refuses to proceed with providing services unless some type of initial down payment is made;
- A victim or claimant has wage loss needs and has reached a critical point with cost of living expenses;
- The victim's eyeglasses were damaged as a result of the crime and he or she needs an immediate replacement;
- The victim is in need of crisis counseling;
- A crime scene cleanup provider requires that some kind of initial payment be made.

2. Process Steps

While the timeline for processing emergency awards is greatly compressed, an emergency award must still meet all requirements of compensation program rules including the following:

- A completed and signed application must be received by the program before an emergency award can be investigated, approved or paid.
- To the best of his or her ability the program coordinator or advocate must:
 - Verify the victim or claimant is not delinquent in paying a state ordered fine, monetary penalty, or restitution;
 - Verify with law enforcement that a crime occurred, was reported and that there was no contributory conduct;
 - Verify the victim or claimant has no collateral sources accessible and obtainable to cover the requested emergency expense;
 - Establish whether the requested expenses are allowable under program rule.
- Process the payment through county finance. All emergency awards must follow the same payment processes as any other compensation award. These processes may vary from program to program across the state, but should be consistent within each program.

3. Application

A signed application is a legal document authorizing the program to access confidential information. This process step cannot be bypassed even when processing an emergency award. Additionally, a completed application is a valuable tool to aid with the investigation of the crime and determining the availability of collateral sources.

4. Police Report

A copy of the police report is not necessary to process an emergency award. A letter or e-mail from the law enforcement agency confirming eligibility, cooperation, and whether or not there was any contributory conduct would be ideal. However, because of time constraints and because the investigation may still be in the early stages, verbal confirmation of these criteria from law enforcement is enough. Confirmation of eligibility must be documented in detail within the claimant file.

If after interviewing law enforcement there is possible contributory conduct or lack of cooperation on the part of the victim, an emergency award should be denied until enough facts are available to clearly determine eligibility. If law enforcement provides confirmation of contributory conduct or lack of cooperation, an emergency award should not be made.

5. Bills / Invoices

As with any other claim an emergency award requires documented confirmation of eligible expenses. An itemized invoice or bill from the provider should be submitted in writing to the program before processing an emergency award.

6. Emergency Awards and the Board

Emergency awards are approved at the discretion of the operational unit without input from the board. In the past, board members were polled to verify that the applicant would most likely be ruled an eligible claimant. This practice is a violation of open meeting law.

Because emergency awards bypass the regular board process, with the increased potential of abuse, emergency awards will be subject to additional scrutiny during site visits and financial reviews.

J. Conflicts of Interest

1. With Operational Unit Staff

Operational units must address conflicts of interest between operational unit staff and the subject of a victim compensation claim. If appropriate, all aspects of processing the conflicted claim can be transferred to another operational unit. Compensation program staff should contact ACJC staff to review the circumstances of the conflict and to determine the appropriate operational unit to receive the conflicted claim.

2. With Operational Unit Board Members

(See Board Administration, Conflicts of Interest)

K. Claim Files

Victim compensation claim files are the written record of all activity related to that compensation claim. The phrase "document everything" should be directly reflected in the contents of all compensation claim files. Detailed case notes and support documentation are the only written history of how work on a claim was completed. Additionally, the contents of program files are the only record from which ACJC program compliance staff can determine compliance with program rules. Therefore, it is critical that all information related to a claim be included in the file.

The following is a sample list of items to include in compensation files:

- A completed original application
- Written documentation of all contacts, and attempted contacts with anyone regarding the claim. Be sure to include the date, contact name, and topics of discussion. Case notes should be thorough, concise and detailed enough to depict information received and disseminated with the contact

- Documentation of all pertinent information regarding collateral sources
- Documentation of all referrals made and any unusual circumstances
- Calculations on billing sheets or on related attachments showing how an expense was totaled
- All written correspondence with the victim, claimant or providers
- A copy of the police report
- A summary of all board action taken on the claim; this could be a copy of the meeting minutes or a copy of the board summary.

DO NOT DOCUMENT:

- Value judgments based upon the actions of the victim or claimant (i.e. “the victim was upset...angry because the victim used profanity”).
- Do not document any statement made by the detective that would not be considered public record.

Case file documentation should always be professional and relevant. The case notes are to state the facts only. Furthermore, because there is always the possibility of the case being subpoenaed, it is possible that all case notes could be made public. Therefore, all material must be suitable for public inspection. This includes all e-mails. It's a good practice to write your case notes and e-mails as though the information would be printed publically for all to review.

L. Records Retention Schedule

Arizona State Library, Archives, and Public Records has established the following records retention schedule for victim compensation program records (including applications, awards, and board decisions):

Approved Claims

Documentation related to a claims shall be maintained for twenty-five years after the date the application was approved.

Denied or Non-processed Claims

Documentation related to denied or non-processed claims shall be maintained for three years following the date of denial or following the date of receipt for non-processed claims.

Compensation Board Documentation

- Written minutes of compensation board meetings must be maintained permanently. Recorded minutes (audio or video) of compensation board meetings may be destroyed three months after date of meeting and after the written minutes are transcribed or summarized and approved. Executive session minutes may be destroyed ten years after creation.

- Board records including meeting notices, agendas, board packets, notes and other related records not needed to be retained with minutes must be maintained for three years after created.
- Correspondence of board that sets or discusses policies or other topics deemed historical must be maintained permanently.

IV. BOARD ADMINISTRATION

A. Coordinator Role

The compensation program coordinator serves as support staff to the compensation board. It is the coordinator's responsibility to gather all important information related to a claim, clarify the circumstances of the crime, and verify the eligibility of the claimant and requested expenses. At a board meeting this information is presented to the board for a decision.

The decision rests entirely with the board and in no way should be influenced by the opinions of the coordinator. Board members may ask the coordinator to clarify, to further explain the facts of the claim, or for his or her recommendation regarding the claim. Under no circumstances should a coordinator be directing the board in how to proceed.

B. Board Membership

1. Appointment

The authorized official for the operational unit recommends individuals to ACJC for appointment or reappointment to the victim compensation board. Once a candidate is identified the operational unit submits a written request (mail, email, fax) for board membership to ACJC. Please include basic contact information (full name, phone number, email address) for all compensation board candidates when submitting the written request. Once approved, ACJC will provide a letter to the operational unit confirming appointment of the board member.

Board members serve a three year term unless appointed to complete the term of a board member who has resigned or been removed. Existing board members are eligible for reappointment. An employee of the operational unit shall not serve as a compensation board member.

2. Training

All compensation board members are required to meet all training requirements within six months of appointment or reappointment to the board. Required coursework for all board members is available online through the ACJC website. If a board member is unable to complete the required training online alternative delivery methods are available. Please contact ACJC compensation program staff for more information.

Elective in person board training is available from ACJC staff at the request of the operational unit. Training can be tailored to meet the needs of a particular board and address any questions or concerns board members have. These trainings are not intended to fulfill the training requirements.

In addition, county program staff should take it upon themselves to train their board members in areas that are relevant to the program. Areas that are beneficial training subjects may include Native American traditions, the dynamics of domestic violence or issues faced by survivors of homicide. Representatives from community groups addressing all areas related to victimization are often willing to share information on their areas of expertise.

3. Attendance

All compensation board members must meet the attendance requirements outlined in the compensation program rules. A board member shall not miss more than one-third of board meetings in a year due to unexcused absence. The operational unit determines whether an absence is excused and how to deal with a board member who has failed to meet the attendance requirement.

C. Board Meetings

1. Open Meeting Law

As a public body, the victim compensation board is required to comply with Arizona's Open Meeting Law when conducting business related to compensation claims. Arizona's Open Meeting Law is driven by two core concepts that establish the foundation from which compensation programs should evaluate Open Meeting Law issues:

- First, the legislature mandated that all meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings (A.R.S. § 38-431.01.A).
- Second, the legislature has made the public policy clear. Meetings of public bodies must be conducted openly, and notices and agendas must be provided for such meetings. The notices must contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided A.R.S. § 38-431.09.

The legislature has directed that if a member of a public body is in doubt about whether the public body is in compliance with the Open Meeting Law, the public body should err in favor of open meetings. A.R.S. § 38-431.09.

a) Common Issues

Open Meeting Law issues that may present difficulty include:

Related Matters Not on the Agenda

The public body may not discuss or take action on a subject or issue that does not appear on the agenda, except in the case of an actual emergency. The Open Meeting Law restricts

discussion to “only [. . .] matters listed on the agenda and other matters related thereto” (A.R.S. § 38-431.02.H). If a new unrelated matter is introduced into a discussion, the public body should postpone discussion to another meeting and have the matter included on the agenda for the subsequent meeting. Courts interpret any exceptions to the Open Meeting Law very narrowly. In *Thurston v. City of Phoenix*, the City attempted to annex three parcels of land, only two of which were described on the meeting agenda. 157 Ariz. 343, 345, 757 P.2d 619, 621 (App. 1988). Even though the third parcel significantly overlapped the other two, the court invalidated the annexation of the third undescribed parcel because the public notice was “confusing and may have actually been misleading.”

Discussions in Executive Session

Discussions may not take place in executive session. Executive session is an opportunity for a public body to receive information only. Follow up questions may be asked, but all discussion and all decisions must be made in an open public meeting.

Splintering the Quorum

Members of the public body may not circumvent public discussion by splintering the quorum into smaller-than-quorum-size-groups, but ultimately having discussions with a majority of the public body members; additionally, subverting the law by meeting in person, by telephone or e-mail, or through other means, including using an intermediary, to discuss a topic outside of a public meeting that is or may be presented to the public body for a decision or to reach an agreement on how to vote, also violates the Open Meeting Law. Members of public bodies should refrain from any activities that may undermine public confidence in the public decision-making process established in the Open Meeting Law, including actions that may appear to remove discussions and decisions from public view.

b) Penalties

The Attorney General, County Attorney, and/or any interested person may file a lawsuit to enforce the Open Meeting Law (A.R.S. § 38-431.07.A). The formal relief may include civil penalties against individuals who violate the Open Meeting Law or who knowingly aid, agree to aid, or attempt to aid another person in violating the Open Meeting Law, assessment of attorneys’ fees and costs (against public officers or anyone who aided, agreed to aid, or attempted to aid the violation), removal from office, and other equitable relief. All action taken at a meeting at which a violation occurred is null and void (A.R.S. § 38-431.05.A). Informal sanctions may include embarrassment and loss of the public’s trust.

c) Disclosure Statement

Each operational unit shall post a statement on the operational unit’s website stating where all public notices of compensation meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings. Once posted, this statement does not need to be updated unless the notice posting locations change.

d) Notices

Open Meeting Law requires a minimum 24-hour advance notice of all meetings be given to members of the public body holding the meeting and to the public (A.R.S. § 38-431.02.C). The purpose of the notice is to expose the public body's decision-making process to public scrutiny. The public's access to the decision-making process could be thwarted if the notice requirement is not mandated and enforced.

Three exceptions exist to the general rule of 24-hour notice:

- First, if there is an *actual* emergency, less than 24 hours notice may be sufficient (A.R.S. § 38-431.02.D);
- Second, if a public body recesses and later resumes a properly noticed meeting, less than 24 hours notice may be acceptable (A.R.S. § 38-431.02.E);
- Third, 72-hour notice is required to ratify legal action taken at a meeting previously held in violation of the Open Meeting Law (A.R.S. § 38-431.05.B.4).

Operational units must post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required under Open Meeting Law.

e) Agendas

Agendas must contain information "reasonably necessary to inform the public of the matters to be discussed or decided" (A.R.S. § 38-431.09). However, agendas should not include any personal or confidential information. Claims to be heard by the board should be referred to by the claim number and not the victim's or claimant's name.

The agenda for each meeting must be available to the public at least 24 hours beforehand and must describe "the specific matters to be discussed, considered or decided at the meeting" (A.R.S. § 38-431.02.G-H). Agendas for executive sessions may describe the matters to be discussed more generally than agendas for public meetings in order to preserve confidentiality or to prevent compromising the attorney-client privilege, if it is necessary (A.R.S. § 38-431.02.I). Nonetheless, the agenda must provide more than a recital of the statute that authorizes the executive session.

f) Minutes

Public bodies, with the exception of subcommittees and advisory committees, must provide minutes of all meetings, including executive sessions. Meetings may either be recorded or written minutes may be kept. The minutes must include, but are not limited to:

- The date, time and place of the meeting;

- The names of the members of the public body either present or absent;
- A general description of the matters considered;
- An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion.

The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material (A.R.S. § 38-431.01.B).

Separate minutes are required for an executive session. These may be written or recorded and are not available to the public. Minutes taken in an executive session must include the items listed above in addition to any other matters found to be appropriate by the public body (A.R.S. § 38-431.01.C).

The minutes or a recording must be open for public inspection no later than three working days after the meeting, except as otherwise provided in the statute (A.R.S. § 38-431.01.D). Persons in attendance may record any portion of a public meeting, as long as the recording does not actively interfere with the meeting. Acceptable recording equipment includes digital recorders, cameras, or other means of reproduction (A.R.S. § 38-431.01.E).

g) Executive Session

Public bodies may hold an executive session under a few limited circumstances. In executive session, the public is not allowed to attend or listen, and the public body is not permitted to discuss or take final action (A.R.S. § 38-431.03.D). It is therefore not appropriate to vote or poll a public body in executive session. Topics allowed in executive session include:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than 24 hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorneys or attorneys of the public body.

4. Discussion or consultation with the attorneys of the public body to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
5. Discussions or consultations with designated representatives of the public body to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.
6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.
7. Discussions or consultations with designated representatives of the public body to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. § 38-431.03.A).

NOTE: Numbers 4, 5, and 7 allow a public body to instruct its attorneys in executive session to take action in specific areas. A public body must properly set the agenda and publicly vote on the matter before any legal action binds the public body (A.R.S. § 38-431.03.D).

Before a public body may meet in executive session, it must receive a motion and conduct a vote to enter executive session (A.R.S. § 38-431.03.A). Just because a public body is *authorized* to address something in an executive session does not mean that the public body *must* meet in private. Remember, an executive session is confidential (A.R.S. 38-431.03.B).

h) Call to the Public

An open call to the public is an agenda item that allows the public to address the public body on topics of concern within the public body's jurisdiction, even though the topic is not specifically included on the agenda (Arizona Attorney General Opinion 199-006). Although the Open Meeting Law permits the public to attend public meetings, it does not require public participation in the public body's discussions and deliberations and does not require a public body to include an open call to the public on the agenda (Arizona Attorney General Opinion 178-001). At properly conducted calls to the public, public officers must be cautious in three areas.

- First, an individual public officer may respond to criticism, ask staff to review an item or ask that an item be placed on a future agenda, but he or she may *not* dialogue with the presenter or collectively discuss, consider, or decide an item that is not listed on the agenda (A.R.S. § 38-431.01.G; Arizona Attorney General Opinion 199-006). Note that individual members of the public body may respond to criticism by individuals who addressed the public body during the call to the public, but the public body may not collectively discuss or take action on the

complaint unless the matter is specifically listed on the agenda (A.R.S. § 38-431.01.G).

- Second, although public bodies may impose reasonable time, place, and manner restrictions on speakers, any restrictions must be narrowly tailored to affect a compelling state interest and may not be content-based (Arizona Attorney General Opinion I99-006).
- Third, a member of the public body may not knowingly direct a staff member to communicate in violation of the Open Meeting Law (A.R.S. 38-431.01.H).

2. Board Packet

Every board member should be provided with a packet of information regarding the claims to be heard at a board meeting. Ideally this packet should be given to the board members well in advance of the meeting, giving individual board members adequate time to review the claims and come to any preliminary conclusions. Most often board packets are sent to board members a week before the board meeting.

Board packets should only include a summary of the claim and any issues that may need to be discussed at the meeting. Board packets should not include the following:

- Copies of the police report if the packet is mailed prior to the meeting
- Copies of medical bills
- Copies of mental health treatment plans
- Anything that can identify the victim or suspect.

All of the above information should be available for board members to review at the meeting, but not included in a packet sent beforehand. At the conclusion of the meeting all board packet information must be collected and destroyed by the program coordinator.

3. Departmental Report Summary

Whenever possible, board members should have access to and reviewed all reports related to a claim before making a decision. However, because of claim volume of some compensation programs, the time constraints some board members are under, and the considerable length of most departmental reports (DR) it may become necessary to create a summary of report content.

The purpose of the DR summary is to give the board concise and accurate information regarding the events of the criminally injurious conduct. In order to create the best possible summary, the entire report, including all supplemental reports, must be incorporated. The DR summary should only include information obtained from the police report and/or verbally from law enforcement.

DR summaries should be written in narrative form using complete sentences with the events of the crime placed in chronological order. The summary should clearly identify what source the information is coming from (police report or detective). A DR summary should include the following:

- What happened to the victim? List all injuries sustained, as noted in the DR;
- The date of the crime; date reported to law enforcement;
- Summary of the events of the crime, which will include statements from victims, witnesses, and/or the suspect(s);
- Other pertinent information that would be helpful in substantiating billed expenses that may be received later;
- The victim's willingness to prosecute;
- Charges the suspect was booked on and/or charges submitted for prosecution, if available. If program staff is aware of the charges filed by the prosecution, that information should be included. A distinction should be made as to whether information listed is coming from charges the defendant was booked under or whether they are the actual charges filed by the prosecutor;
- Source of information.

Names should not be used in the DR summary. Instead refer to the victim by using only their initials. Use either initials or identifiers for all other parties (Example: witness 1, witness 2, W1, W2, etc.) When referring to the offender the summary should use the word "suspect." Juvenile offenders are to be referred to as "juvenile suspect". Do not use the word "defendant" in DR summaries.

Accuracy, clarity, grammar, and spelling are very important in the DR summaries.

When reading the police report and preparing the DR summary, be aware of how the victim compensation program rules apply to this claim. Be sure to include all relevant information that the board may need in order to make a well informed decision that is in full compliance with program rules.

The police report summary should not include:

- Personal biases and opinions. The focus should be upon the facts of the case: who, what, when, where, and why;
- Opinions of others unless those opinions come from the DR; identify the person being quoted;
- Information that could identify a person or suspect by race, religion or ethnicity;

- Modifiers or adverbs that describe events and behaviors unless the verbiage is found in the police report. Example: "The victim was brutally beaten." If brutally was not included in the DR, do not use it in the summary;
- The name of an establishment or business;
- The type of event where a crime occurred. Example, a shooting occurred at a Quinceanera or bar mitzvah. These titles could identify the race/religion of the victim. It is better to refer to one of these events as a family party or gathering;
- Racial remarks, unless those remarks were included in the DR and would be considered antagonistic or intended to provoke an emotional response.

Following these guidelines will help ensure the board makes an objective, impartial decision regarding the validity of a claim.

4. Board Actions

a) Restrictions

According to program rules the board shall make a compensation award only if it determines the following (R10-4-106.A):

- The criminally injurious conduct occurred in Arizona or the victim is an Arizona resident and the crime occurred in an area without an accessible crime victim compensation program;
- The criminally injurious conduct directly resulted in the victim's physical injury, mental distress, medical condition, or death;
- The criminally injurious conduct was reported to the appropriate law enforcement agency within 72 hours after its discovery, unless good cause is shown to justify a delay;
- The victim, derivative victim, or claimant willingly cooperated with law enforcement agencies;
- The victim, derivative victim, or claimant incurred an eligible economic loss as a direct result of the criminally injurious conduct that is not compensable by a collateral source
- A claim was submitted to the county program within two years of discovery of the criminally injurious conduct unless good cause is shown to justify a delay.

b) Exclusions

According to program rules, a claim must be denied if the board determines that the person submitting the claim or the victim is any of the following (R10-4-106.A.3):

- The offender, an accomplice of the offender, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct that is the subject of the claim;
- Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct that is the subject of the claim;
- Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of claim submission to the operational unit;
- At the time of claim submission, convicted of a federal crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim compensation programs have access to an accurate and efficient criminal debt payment tracking system (see Compensation Claim Processing, Eligibility, Federally Ordered Delinquency);
- At the time of claim submission, convicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if identified by the Arizona Administrative Office of the Courts (AOC) or the Clerk of the Superior Court (see Compensation Claim Processing, Eligibility, State Ordered Delinquency);
- Wanted in Arizona on an active warrant, if warrant status is discovered anytime following submission of the claim.

Exceptions

Claimants who are found delinquent in paying a fine monetary penalty or restitution may still be eligible to receive compensation benefits in certain cases. (see Good Cause Exceptions)

c) Decision Types

Approval

According to program rules, victims must be notified in writing of the board's decision within ten business days of that decision (R10-4-108.A). This includes approvals. It is also a good idea to inform any providers awaiting payment of the approval, although this is not required by program rules and need not be in writing.

Claims may be given claimant eligibility approval by the board without having any expenses to pay. Essentially the board is approving eligibility of the claim according to program rule. Once the victim or claimant is determined to be eligible, any future bills submitted may be decided on without having to revisit whether or not the victim is eligible.

The intent of claimant eligibility approval is to expedite future expenditures related to the claim and more importantly to comply with the 60-day deadline for hearing a claim.

Denial or Reduction

All denial or reduction letters must be personally delivered or sent by certified mail within 10 business days and are considered served upon personal delivery or 5 days after mailing by certified mail (R10-4-109.C-D). All letters must state the reason for denial or reduction and cite the applicable program rule. Denial or reduction letters must also include information on how and when a victim or claimant may request a rehearing of his or her claim by the board.

Table

A claim should only be tabled if the board is unable to make an appropriate decision based on the information available. Often board members require some additional information from the victim, providers, or law enforcement in order to make a decision. If this is the case the claim should be tabled and the requested information should be provided at the next board meeting.

d) Good Cause Exceptions

After weighing the facts of a claim the board may, in limited instances, allow for a good cause exception to a program rule (R10-4-106.B). Good cause exceptions may be granted by the board when considering the following:

- Whether or not the crime was reported to law enforcement within 72 hours of discovery.

Example: Victims of domestic violence, sexual assault, or abuse often do not report to law enforcement immediately following the victimization. They may have been threatened by the offender, embarrassed by the incident, or even unclear if a crime occurred. In these instances boards often determine that discovery of the criminally injurious conduct took place when the crime was reported to law enforcement. This interpretation avoids any difficulty with the 72 hour reporting requirement. Alternatively in these instances, or for other victimization types, boards may grant a good cause exception to the 72 hour reporting requirement.

- Whether or not an application was filed with the program within two years of discovery of the crime.
- The board may waive the state ordered delinquency requirement if the board determines that a compensation award does not solely benefit a claimant who is delinquent in paying a state ordered fine, monetary penalty, or restitution (R10-4-106.D). The requirement may only be waived for the parent or guardian of a minor victim, or for a claimant paying for funeral expenses.

- The board may waive the cooperation requirement if the board determines that the failure to cooperate was due to a substantial health or safety risk (R10-4-108.H.1).

Whenever a good cause exception is granted by the board it must be fully documented in the claim file and in the meeting minutes. This should include a detailed summary of Board discussion and resulting action taken by the board.

5. Hearing or Rehearing a Claim

a) Initial Claim Hearing

If all prerequisite eligibility requirements are met, the board shall conduct a hearing regarding a claim. Hearing of claims must take place at an open public meeting. The claimant must be notified of the hearing at least ten business days in advance of the scheduled initial hearing date. Once the hearing is held the compensation program must provide written notice to the claimant of the board's decision within ten business days after the hearing. If the claim is reduced or denied written notification of the decision must be either personally delivered to the claimant or delivered by certified mail.

b) Claim Rehearing

The operational unit may request a rehearing by the Board of a decision at any time and for any reason related to compensation program rules.

A claimant who is aggrieved by a decision of the board made at a hearing may request a rehearing of the decision within 30 calendar days after the board serves notice of the decision. A claimant shall request a rehearing in writing and specify the grounds for the request. A claimant may amend or withdraw a request for a rehearing at any time before it is ruled on by the board.

The board shall grant a rehearing for any of the following reasons materially affecting a claimant's rights:

1. Irregularity in the proceedings of the board or its operational unit or any order or abuse of discretion that deprived the claimant of a fair board decision;
2. Misconduct of the board, the operational unit, or staff of the operational unit;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original board meeting;
4. Error in the admission or rejection of evidence or other error of law occurring at the board meeting; and
5. The decision is not justified by the evidence or is contrary to law.

When a rehearing is granted, the board and compensation program staff shall ensure that the rehearing covers only the matters specified in 1-5 above that materially affect a

claimant's rights. The Board may affirm or modify a decision on all or part of the matters specified. An order modifying a decision shall specify the reasons why the board decided to change the decision.

D. State-level Claim Review

1. Review Panel Members

The State Claim Review Panel shall serve as the decision-making body for state-level claim reviews. The State Claim Review Panel shall consist of the following members:

- The Arizona Criminal Justice Commission Crime Victim Services Program Manager,
- A representative of the Office of the Attorney General, and
- A Board chair from an operational unit that is not the operational unit that originally heard the claim being reviewed.

2. Review Process

A claimant who is aggrieved by a decision of a Board made at a rehearing may request a state-level claim review of the decision within 30 calendar days after the board serves notice of the rehearing decision. The claimant shall request a state-level claim review in writing, specify the grounds for the request, and submit the request directly to ACJC.

The State Claim Review Panel shall meet as needed to hear claimant requests for a state-level claim review. The State Claim Review Panel shall complete a state-level claim review within 30 calendar days after receiving the written request from the claimant.

A claimant may amend a request for a state-level claim review of a Board decision at any time before it is ruled on by the State Claim Review Panel.

When a state-level claim review is granted, the State Claim Review Panel shall ensure that the review:

- Considers only evidence previously presented to the Board, and
- Decides only whether the Board's decision was consistent with the standards under program rules.

A decision by the State Claim Review Panel is final. The State Claim Review Panel may affirm or overturn a decision made by a Board. If the Panel overturns a decision made by a Board related to:

- Eligibility, the operational unit where the claim originated shall proceed with any further action related to the claim; or
- An economic loss, the operational unit where the claim originated shall pay the economic loss using compensation funds available to the operational unit.

The State Claim Review Panel shall provide written notice of the Panel's decision to the claimant and the operational unit that originally heard the claim within ten business days after the state-level claim review.

APPENDIX A

Victim Compensation Program Rules

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

- R10-4-101.** Definitions
- R10-4-102.** Administration of the Fund
- R10-4-103.** Statewide Operation
- R10-4-104.** Operational Unit Requirements
- R10-4-105.** Crime Victim Compensation Board
- R10-4-106.** Prerequisites for a Compensation Award
- R10-4-107.** Submitting a Claim
- R10-4-108.** Compensation Award Criteria
- R10-4-109.** Hearing; Request for Rehearing
- R10-4-110.** State-level Claim Review
- R10-4-111.** Emergency Compensation Award

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

R10-4-101. Definitions

In this Article:

1. “Board” means the Crime Victim Compensation Board of an operational unit.
2. “Claim” means an application for compensation submitted under this Article.
3. “Claimant” means a natural person who files a claim.
4. “Collateral source” means a source of compensation for economic loss that a claimant received or is accessible to and obtainable by the claimant or that is payable to or on behalf of the victim. Collateral source includes the following sources of compensation:
 - a. The perpetrator or a third party responsible for the perpetrator’s actions;
 - b. The United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless:
 - i. The law providing for the compensation makes the compensation excess or secondary to benefits under this Article, or
 - ii. The compensation is made with federal funds granted under 42 U.S.C. 10602;
 - c. Social Security, Medicare, or Arizona Health Care Cost Containment System payments;
 - d. State-required, insurance for a temporary, non-occupational disability;
 - e. Worker’s compensation insurance;
 - f. Wage continuation program of any employer;
 - g. Insurance proceeds payable to cover a specific compensable cost due to criminally injurious conduct;

- h. A contract providing for prepaid hospital and other health care services or disability benefits; and
 - i. A gift, devise, or bequest to cover a specific compensable cost.
5. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
 6. "Compensable cost" means an economic loss for which a compensation award is allowed under this Article.
 7. "Compensation award" means a payment made to a claimant under the standards at R10-4-108.
 8. "Crime scene cleanup expense" means the reasonable and customary cost for:
 - a. Removing or attempting to remove bodily fluids, dirt, stains, and other debris that result from criminally injurious conduct occurring within a residence or the surrounding curtilage;
 - b. Repairing or replacing exterior doors, locks, or windows damaged as a direct result of criminally injurious conduct occurring within a residence or the surrounding curtilage.
 9. "Criminally injurious conduct" means conduct that:
 - a. Constitutes a crime as defined by state or federal law regardless of whether the perpetrator of the conduct is apprehended, charged, or convicted;
 - b. Poses a substantial threat of physical injury, mental distress, or death; and
 - c. Is punishable by fine, imprisonment, or death, or would be punishable but the perpetrator of the conduct lacked the capacity to commit the crime under applicable laws.
 10. "Derivative victim" means:
 - a. The spouse, child, parent, stepparent, stepchild, sibling, grandparent, grandchild, or guardian of a victim who died as a result of criminally injurious conduct;
 - b. A child born to a victim after the victim's death;
 - c. A person living in the household of a victim who died as a result of criminally injurious conduct, in a relationship determined by the Board to be substantially similar to a relationship listed in subsection (10)(a);
 - d. A member of the victim's family who witnessed the criminally injurious conduct or who discovered the scene of the criminally injurious conduct;
 - e. A natural person who is not related to the victim but who witnessed the criminally injurious conduct or discovered the scene of the criminally injurious conduct; or
 - f. A natural person whose own mental health counseling and care or presence during the victim's mental health counseling and care is recommended for the successful treatment of the victim.
 11. "Durable medical equipment" means an appliance, apparatus, device, or product that:
 - a. Is medically necessary to treat an injury or condition resulting from criminally injurious conduct;
 - b. Improves the function of an injured body part or delays deterioration of a patient's physical condition;
 - c. Is primarily and customarily used to serve a medical purpose rather than primarily for transportation, comfort, or convenience; and
 - d. Provides the medically appropriate level of performance and quality for the medical injury or condition present.
 12. "Economic loss" means financial detriment resulting from medical expense, mental health counseling and care expense, crime scene cleanup expense, funeral expense, or work loss.

13. "Fund" means all State, Federal, and jurisdiction financial resources dedicated to the compensation program through statute, this chapter, or federal grant award.
14. "Funeral expense" means a reasonable and customary cost, such as those listed on the Statement of Funeral Goods and Services Selected required under A.A.C. R4-12-307, incurred as a direct result of a victim's funeral, cremation, Native American ceremony, or burial.
15. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
16. "Inactive claim" means a claim for which no compensation award is made for 12 consecutive months.
17. "Incident of criminally injurious conduct" means all criminal actions that are related to or dependent upon each other regardless of the time involved in perpetrating the actions, number of persons perpetrating the actions, or the number of crimes with which the perpetrator is or could be charged.
18. "Jurisdiction" means any county in this state.
19. "Medical expense" means a reasonable and customary cost for medical care provided to a victim due to a physical injury, mental health condition, or medical condition that is a direct result of criminally injurious conduct.
20. "Mental distress" means a substantial disorder of emotional processes, thought, or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
21. "Mental health counseling and care expense" means a reasonable and customary cost to assess, diagnose, and treat a victim's or derivative victim's mental distress resulting from criminally injurious conduct.
22. "Minimum wage standard" means the uniform minimum wage payable in Arizona under federal or state law, whichever is greater.
23. "Operational unit" means a public or private agency authorized by the Commission to receive, evaluate, and present to the Board a claim.
24. "Program" means the Crime Victim Compensation Program.
25. "Proximate cause" means an event sufficiently related to criminally injurious conduct to be held the cause of the criminally injurious conduct.
26. "Reasonable and customary" means the normal charge within a specific geographic area for a specific service by a provider of a particular level of experience or expertise.
27. "Resident" means a natural person who is domiciled in Arizona or is in Arizona for other than a temporary or transitory purpose.
28. "Subrogation" means the substitution of the state or an operational unit in place of a claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award made to the claimant using funds of the state or operational unit.
29. "Total and permanent disability" means a physical or mental condition that the Board finds is a proximate result of criminally injurious conduct and:
 - a. Produces a significant and sustained reduction in the victim's former mental or physical abilities dramatically altering the victim's ability to interact with others and carry on normal functions of life;
 - b. Lessens the victim's ability to work to a material degree; or

- c. Causes a physical or neurophysical impairment from which no fundamental or marked improvement in the victim's crime-related condition can reasonably be expected.
30. "Transportation costs" means a travel expense that may be reimbursed to a claimant as follows:
- a. Mileage, calculated at the rate established by:
 - i. The operational unit, or
 - ii. The state if the operational unit has not established a mileage rate;
 - b. Fare or fee expenses; and
 - c. Vehicle rental at the cost specified in the rental agreement.
31. "Victim" means a natural person who suffers a physical injury or medical condition, mental distress, or death as a direct result of:
- a. Criminally injurious conduct,
 - b. The person's good faith effort to prevent criminally injurious conduct, or
 - d. c. The person's good faith effort to apprehend a person suspected of engaging in criminally injurious conduct.
32. "Work loss" means a reduction in income from:
- a. Work that a victim or derivative victim would have performed if the victim had not been a victim; and
 - b. Social Security or Supplemental Security Income that a victim would have received or from which a derivative victim would have benefitted if the victim had not been killed.

R10-4-102. Administration of the Fund

- A.** The Commission shall include in the Fund all funds received for compensating a claimant under this Chapter.
- B.** The Commission shall designate one operational unit for a jurisdiction or jurisdictions to receive an allocation from the Fund each state fiscal year.
- C.** The Commission shall distribute a portion of the Fund to each operational unit for expenditure by the Board. The Commission shall distribute the funds using an allocation formula approved by the Commission.
- D.** The Commission shall reserve the lesser of \$50,000 or 10 percent of the Fund to be used in the event of an unforeseen increase of victimization that causes an operational unit for a particular jurisdiction to lack the funds needed to provide compensation.
- E.** If there is an unforeseen increase in victimization in a particular jurisdiction, the Commission shall designate an additional operational unit to accept claims from that jurisdiction or make a compensation award based on the criteria established by R10-4-108.
- F.** If, at the end of a fiscal year, an operational unit has unexpended funds received from the Commission, the operational unit shall return the funds to the Commission within 90 days after the end of the fiscal year. The Commission shall deposit the returned funds in the Fund for use in the next fiscal year.
- G.** Funds collected by an operational unit through subrogation or restitution may be retained by the operational unit to the extent authorized by the Commission and shall be used to pay compensation awards based on the criteria established by R10-4-108.
- H.** An operational unit shall use funds to pay administrative costs only to the extent authorized by the Commission.

- I. An operational unit shall pay approved compensation program benefit expenses using benefit category cost rate schedules approved by the Commission. If the Commission has not approved a cost rate schedule for a benefit category, or if an eligible benefit cost is not covered by the approved rate schedule, the operational unit may negotiate a reasonable and customary cost with the service provider for the approved benefit expense.

R10-4-103. Statewide Operation

For any jurisdiction not served by an operational unit, the Commission shall operate a program in accordance with this Article, designate another operational unit as described in R10-4-104, or provide for a program by contract.

R10-4-104. Operational Unit Requirements

- A. To be designated by the Commission as an operational unit for a jurisdiction, a public or private agency shall submit to the Commission a written request for designation.
- B. The Commission shall designate a public or private agency as the operational unit for a jurisdiction or jurisdictions:
 - 1. Only if the public or private agency agrees not to:
 - a. Use Commission funds or federal funds to supplant funds otherwise available to compensate a victim or claimant;
 - b. Make a distinction between a resident and a non-resident in evaluating a claim; and
 - c. Make a distinction in evaluating a claim relating to a federal crime that occurs in Arizona and one relating to a state crime; and
 - 2. Only if the public or private agency agrees to:
 - a. Forward to the Board a claim relating to an incident of criminally injurious conduct occurring in the public or private agency's jurisdiction or jurisdictions;
 - b. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct occurring in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b);
 - c. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct occurring outside of the United States in an area without an accessible crime compensation program;
 - d. Notify the Commission of any change in the public or private agency's program procedures or program policies before the change takes effect and if the change is material, obtain written approval from the Commission before instituting the change;
 - e. Submit financial and program activity reports to the Commission, in a format required by the Commission, and at a frequency established annually by the Commission;
 - f. Provide an application form to a claimant;
 - g. Comply with all civil rights requirements;
 - h. Ensure that each claim is investigated and substantiated before forwarding the claim to the Board for a compensation award; and

- i. Monitor a compensation award to ensure that amounts paid are consistent with this Article.
- C. If more than one agency requests to be designated by the Commission as an operational unit for a jurisdiction, the Commission shall designate the agency that it determines is better able to evaluate claims and manage the expenditure of public funds. The Commission shall give preference to a public agency if both a public and private agency request designation.

R10-4-105. Crime Victim Compensation Board

- A. Each operational unit shall establish a Crime Victim Compensation Board that consists of an odd number of members with at least three members. Members of the Board shall not receive compensation for their services but are eligible for travel reimbursement under A.R.S. § 38-621.
- B. Board members serve a three-year term and are eligible for reappointment.
- C. When a Board is first established, approximately one-third of the members shall be appointed for a three-year term, one-third for a two-year term, and one-third for a one-year term. If a Board member is unable to complete the term of the Board member's appointment, the Commission Chairman shall appoint a new Board member for the unexpired term only.
- D. When a Board is first established and when a new member is appointed to an existing Board, the Commission Chairman shall choose the individual to be appointed from a list submitted by the operational unit.
- E. A majority of the Board membership constitutes a quorum that may transact the business of the Board.
- F. The Board shall elect from its membership a chairman and other necessary officers to serve terms determined by the Board.
- G. The Board shall make a compensation award according to this Article and perform other acts necessary for operation of the program.
- H. As required by A.R.S. Title 38, Chapter 3, Article 8, a Board member shall not participate in making any decision regarding a claim or compensation award if the Board member or a relative of the Board member, as defined at A.R.S. § 38-502, has a substantial interest in the decision.
- I. An employee of an operational unit shall not serve as a Board member.
- J. A newly appointed Board member shall meet all training requirements established by the Commission for new Board members within six months of the Board member's date of appointment.
- K. A Board member who is reappointed shall meet all training requirements established by the Commission for reappointed Board members within six months of the Board member's date of reappointment.
- L. A Board member shall not miss more than one-third of Board meetings in a year due to unexcused absence.

R10-4-106. Prerequisites for a Compensation Award

- A. The Board shall make a compensation award only if it determines that:
 - 1. Criminally injurious conduct:
 - a. Occurred in Arizona; or
 - b. Occurred outside of Arizona in an area without an accessible crime compensation program and affected a resident;
 - 2. The criminally injurious conduct directly resulted in the victim's physical injury, mental distress, medical condition, or death;

3. The victim of the criminally injurious conduct or a person who submits a claim regarding criminally injurious conduct was not:
 - a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct is the subject of the claim;
 - b. At the time of the criminally injurious conduct that is the subject of the claim:
 - i. Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough; or
 - ii. Incarcerated in any detention facility awaiting criminal sentencing or disposition.
 - c. At the time of claim submission to the operational unit for a jurisdiction:
 - i. Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough;
 - ii. Convicted of a federal crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim compensation programs have access to an accurate and efficient criminal debt payment tracking system; or
 - iii. Convicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court.
 - d. Wanted in Arizona on an active warrant, if warrant status is discovered anytime following submission of the claim.
 4. The criminally injurious conduct was reported to an appropriate law enforcement authority within 72 hours after its discovery;
 5. The victim, derivative victim, or claimant cooperated with law enforcement agencies;
 6. The victim, derivative victim, or claimant incurred economic loss as a direct result of the criminally injurious conduct that is not compensable by a collateral source; and
 7. A claim, as described in R10-4-107, was submitted to the operational unit within two years after discovery of the criminally injurious conduct.
- B.** The Board shall extend the time limits under subsections (A)(4) and (A)(7) if the Board determines there is good cause for a delay.
- C.** If a victim died as a result of criminally injurious conduct, the requirements under subsections (A)(3)(c)(ii), (A)(3)(c)(iii), and (A)(3)(d) are waived for the deceased victim. Expenses incurred by the deceased victim and eligible claimants may be covered.
- D.** If the Board determines that a compensation award does not solely benefit a claimant who is delinquent under subsections (A)(3)(c)(ii) and (A)(3)(c)(iii), the requirements under subsections (A)(3)(c)(ii) and (A)(3)(c)(iii) may be waived for:
1. A claimant who is the parent or legal guardian of a minor victim of criminally injurious conduct; or
 2. A compensation award for expenses under R10-4-108(C)(3).

R10-4-107. Submitting a Claim

- A.** If the prerequisites in R10-4-106 are met, a natural person is eligible to submit a claim if the person is:
1. A victim;
 2. A derivative victim;
 3. A person authorized to act on behalf of a victim or a deceased victim's dependent; or
 4. A person who assumed an obligation for or paid an expense directly related to a victim's economic loss.
- B.** If a person is eligible under subsection (A) to submit a claim regarding more than one incident of criminally injurious conduct, the person shall submit a separate claim regarding each incident of criminally injurious conduct.
- C.** If more than one person is eligible under subsection (A) to submit a claim regarding an incident of criminally injurious conduct, each person shall submit a separate claim.
- D.** To apply for a compensation award, a person who is eligible under subsection (A) shall submit a claim, using a form that is available from the Commission, to the operational unit for the jurisdiction in which the incident of criminally injurious conduct occurred or to the operational unit for the jurisdiction in which a victim lives if the incident of criminally injurious conduct occurred in an area without an accessible victim compensation program. The claimant shall provide the following:
1. About the victim:
 - a. Full name,
 - b. Residential address,
 - c. Gender,
 - d. Date of birth,
 - e. Residential and work telephone numbers,
 - f. Statement of whether the victim is deceased,
 - g. Ethnicity,
 - h. Statement of whether the victim is a resident, and
 - i. Statement of whether the victim is disabled;
 2. About the claimant if the claimant is not the victim:
 - a. Full name;
 - b. Residential address;
 - c. Gender;
 - d. Date of birth;
 - e. Residential and work telephone numbers;
 - f. Relationship to the victim; and
 - g. If there are multiple victims or derivative victims of an incident of criminally injurious conduct, the name, residential address, and date of birth of each, and for derivative victims, the relationship to the victim;
 3. About the crime:
 - a. Type of crime;

- b. Statement of whether the crime was related to domestic violence;
 - c. Statement of whether the crime was a federal crime;
 - d. Date on which crime was committed;
 - e. Date on which crime was reported to law enforcement authorities;
 - f. Name of law enforcement agency to which the crime was reported;
 - g. Name of law enforcement officer to whom the crime was reported;
 - h. Law enforcement report number;
 - i. Location of crime;
 - j. Name of perpetrator, if known; and
 - k. Brief description of the crime and resulting injuries;
4. About a civil lawsuit:
- a. Statement of whether the claimant has or will file a civil lawsuit related to the crime; and
 - b. If the answer to subsection (D)(4)(a) is yes, the name, address, and telephone number of the claimant's attorney;
5. About benefits from collateral sources:
- a. List of the benefits the claimant has received since the incident of criminally injurious conduct or is entitled to receive; and
 - b. For each benefit identified:
 - i. Type of benefit,
 - ii. Contact address and telephone number; and
 - iii. Claimant's identification or policy number;
6. About the economic loss for which compensation is requested:
- a. Medical expenses. A statement of whether the claim includes medical expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - b. Mental health counseling and care expenses. A statement of whether the claim includes mental health counseling and care expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - c. Work loss expenses. A statement of whether the claim includes work loss expenses and if so, the date on which the claimant was first unable to work, date on which the claimant returned to work, total time lost from work, hourly rate of pay, number of hours worked each week, number of hours worked each day, name, address, and telephone number of employer, and name of supervisor;
 - d. Funeral expenses. A statement of whether the claim includes funeral expenses and if so, the name, address, and telephone number of the provider and the amount paid; and
 - e. Crime scene cleanup expenses. A statement of whether the claim includes crime scene cleanup expenses and if so, the name, address, and telephone number of the provider and the amount paid;
 - f. Transportation costs. A statement of whether the claim includes transportation costs and if so, the reason for travel as listed under R10-4-108(C)(6) and if mileage is claimed, the date and mileage of each trip; and
7. The claimant's dated signature:

- a. Certifying that the claimant is eligible to submit a claim and that the information provided is true and correct to the best of the claimant's knowledge;
 - b. Subrogating to the state and operational unit the claimant's right to receive benefits from a collateral source;
 - c. Authorizing the release of confidential information necessary to administer the claim; and
 - d. Authorizing the release to the Program of protected health information that relates to care provided as a result of the criminally injurious conduct and is necessary to verify the claim.
- E.** A claimant shall submit the following in addition to the claim form submitted under subsection (D):
- 1. A copy of all bills, contracts, receipts, and insurance statements relating to each expense claimed under subsection (D)(6);
 - 2. If work loss expenses are claimed, a signed statement on official letterhead:
 - a. From the claimant's employer verifying the information provided under subsection (D)(6)(c); and
 - b. If applicable, from the physician or mental health care provider indicating the claimant:
 - i. Was unable to work as a result of being a victim or derivative victim, the length of time the claimant was unable to work, and the date on which the claimant was or will be able to return to work; or
 - ii. Is totally and permanently disabled.
 - 3. Any documentation required by the operational unit to fully investigate and substantiate claimant eligibility and all claim expense requests.

R10-4-108. Compensation Award Criteria

- A.** The Board shall meet at least every 60 days to decide, based on the findings made by the operational unit, the eligibility of the claimant, whether to make a compensation award, and the terms and amount of any compensation award. The Board shall make a decision within 60 days after the operational unit receives a complete and actionable claim under R10-4-107 unless good cause for delay exists. The Board shall inform the claimant in writing within 10 business days of the Board's decision.
- B.** The Board shall not make a compensation award unless it determines that the prerequisites in R10-4-106 are met.
- C.** The Board shall make a compensation award only for the following:
- 1. Reasonable and customary medical expenses due to the victim's physical injury, medical condition, mental health condition, or death.
 - a. The Board shall include the following as a medical expense:
 - i. Repair of damage to a victim's prosthetic device, eyeglasses or other corrective lenses, or a dental device; and
 - ii. Durable medical equipment required for treatment of the victim.
 - b. The Board shall not include as a medical expense:
 - i. A charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary; and
 - ii. Any drug, substance, or chemical included under Schedule I of the Federal Controlled Substances Act 21 U.S.C. §812(c).

2. Reasonable and customary work loss expenses for:
 - a. A victim whose ability to work is reduced due to physical injury, mental distress, or medical condition resulting from the criminally injurious conduct;
 - b. A victim or derivative victim to:
 - i. Make a medical or mental health counseling and care visit; or
 - ii. Attend a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.
 - c. A derivative victim listed in R10-4-101(10)(a) through (c) if the Board determines the death resulted in a loss of support from the victim to the derivative victim;
 - d. A parent or guardian of a minor victim to transport or accompany the minor victim to:
 - i. A medical or mental health counseling and care visit; or
 - ii. A criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.
 - e. A derivative victim to make funeral arrangements for a deceased victim, or tend to the affairs of a deceased victim; or
 - f. A family member or guardian or a person living in the victim's household in a relationship similar to those listed in R10-4-101(10)(a) to provide non-skilled nursing care for the victim that is medically necessary as a result of the criminally injurious conduct;
3. Reasonable and customary funeral expenses. Personal attendee expenses for clothing, travel, lodging, food, or per diem to attend a victim's funeral, Native American ceremony, or burial are not reasonable and customary funeral expenses and shall not be included in a claim for a compensation award;
4. Reasonable and customary mental health counseling and care expenses due to a victim's or derivative victim's mental distress resulting from the criminally injurious conduct if:
 - a. The mental health counseling and care is provided by an individual who:
 - i. Is licensed for independent practice by the Board of Behavioral Health Examiners,
 - ii. Is a behavioral health professional as defined at A.A.C. R9-20-101, or
 - iii. Is authorized to perform mental health counseling and care by the laws of a federally recognized tribe; and
 - b. The mental health counseling and care expenses do not include a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or any other institution that provides medical services unless the Board determines that the private room is medically necessary;
5. Reasonable and customary crime scene cleanup expenses due to a victim's homicide, aggravated assault, or sexual assault; and
6. Reasonable and customary transportation costs related to:
 - a. Obtaining medical care as defined in subsection (C)(1),
 - b. Obtaining mental health counseling and care as defined in subsection (C)(4),
 - c. A victim or derivative victim attending a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the incident of criminally injurious conduct,

- d. The victim obtaining a medical forensic examination or participating in a medical forensic interview, and
- e. Responding to a substantiated threat to the safety or well-being of the victim or a derivative victim listed in R10-4-101(10)(d).

D. The Board shall not make a compensation award to a claimant that exceeds:

- 1. Twenty-five thousand dollars for all economic loss submitted under a claim as a result of an incident of criminally injurious conduct;
- 2. The amount available to the operational unit and not committed to other compensation awards at the time the Board makes the compensation award determination;
- 3. For medical expenses for a victim, the maximum amount specified in subsections (D)(1) and (D)(2).
- 4. For work loss expenses:
 - a. Work loss expenses under subsections (C)(2)(a), (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), are limited to an amount per calendar week equal to 40 hours at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2),
 - b. Loss of support under subsection (C)(2)(c) may be awarded to the maximum allowed under subsections (D)(1) and (D)(2) in a lump sum or periodic payments;
- 5. For mental health counseling and care expenses, \$5,000 per victim or derivative victim;
- 6. For funeral expenses, \$10,000;
- 7. For crime scene cleanup expenses, \$2,000 for cleanup provided by a professional service, of which \$500 may be for crime scene cleanup not provided by a professional service to include only repair or cleanup material costs for one-time use items; and
- 8. For transportation costs, \$2,000 per victim or derivative victim paid as reimbursement of actual transportation expenses.

E. If the Board determines a victim is totally and permanently disabled, the Board may expedite a compensation award for the victim. The Board shall determine the amount of the expedited compensation award to the maximum allowed under subsection (D) and determine whether to provide the amount awarded in a lump sum or periodic payments.

F. The Board shall deny or reduce a compensation award to a claimant if:

- 1. The victim or claimant has recouped or is eligible to recoup the economic loss from an obtainable and accessible collateral source, including benefits from a federal or federally financed program;
- 2. The Board determines that the victim or claimant earned income from substitute work or unreasonably failed to perform available substitute work; or
- 3. The Board determines that the incident of criminally injurious conduct that is the subject of the claim was due in substantial part to the victim's:
 - a. Negligence,
 - b. Intentional unlawful conduct that was the proximate cause of the incident of criminally injurious conduct, or
 - c. Conduct intended to provoke or aggravate that was the proximate cause of the incident of criminally injurious conduct.

- G.** The Board shall deny or reduce a compensation award under subsection (F)(3) in proportion to the degree to which the Board determines the victim is responsible for the incident of criminally injurious conduct that is the subject of the claim.
- H.** The Board shall deny a compensation award to a claimant if:
 1. The Board determines that the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial medical, mental health, or safety risk. The Board shall use the following criteria to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:
 - a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct or failed to appear as a witness for the prosecution;
 - b. The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct escaped prosecution or the prosecution of the suspect was negatively affected; or
 - c. A law enforcement authority indicates to the Board that the victim or claimant delayed giving information pertaining to the criminally injurious conduct, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities.
 2. The Board determines that the victim or claimant knowingly made a false or misleading statement on the claim or in writing on supporting documents submitted to the Board or operational unit.
- I.** If there are insufficient funds to make a compensation award, the Board may:
 1. Deny the claim,
 2. Make a partial award and reconsider the claim later during the fiscal year, or
 3. Extend the claim into a subsequent fiscal year.
- J.** The Board shall not make a compensation award to pay attorney's fees incurred by a victim or claimant.
- K.** The operational unit, in its discretion, may pay a compensation award directly to a claimant or to a provider.

R10-4-109. Hearing; Request for Rehearing

- A.** If the prerequisites in R10-4-106 are met, the Board shall conduct a hearing regarding a claim submitted under this Article.
- B.** The Board shall provide a claimant with at least 10 business days' notice of a hearing or rehearing.
- C.** The Board shall provide written notice of its decision to the claimant within 10 business days after a hearing or rehearing.
- D.** The Board shall serve notice of a compensation-award denial or reduction by personal delivery or certified mail to the last known residence or place of business of the person being served. Service is complete upon personal delivery or five days after mailing by certified mail.
- E.** The operational unit may request a rehearing of a decision by the Board at any time and for any reason under this Article.
- F.** A claimant who is aggrieved by a decision of the Board made at a hearing may request a rehearing of the decision within 30 days after the Board serves notice of the decision. A claimant shall request a rehearing in writing and specify the grounds for the request.
- G.** A claimant may amend a request for a rehearing of a Board decision at any time before it is ruled on by the Board.
- H.** The Board may require additional written explanation of an issue raised in a request for rehearing of a Board decision and may provide for oral argument.

- I.** The Board shall grant a rehearing for any of the following reasons materially affecting a claimant's rights:
 1. Irregularity in the proceedings of the Board or its operational unit or any order or abuse of discretion that deprived the claimant of a fair Board decision;
 2. Misconduct of the Board, the operational unit, or staff of the operational unit;
 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original Board meeting;
 4. Error in the admission or rejection of evidence or other error of law occurring at the Board meeting; and
 5. The decision is not justified by the evidence or is contrary to law.
- J.** When a rehearing is granted, the Board shall ensure that the rehearing covers only the matters specified under subsection (I) that materially affect a claimant's rights.
- K.** The Board may affirm or modify a decision on all or part of the issues for any of the reasons listed in subsection (I). An order modifying a decision shall specify with particularity the grounds for the order.

R10-4-110. State-level Claim Review

- A.** A claimant who is aggrieved by a decision of a Board made at a rehearing under R10-4-109 may request a state-level claim review of the decision within 30 calendar days after the Board serves notice of the decision. The claimant shall request a state-level claim review in writing, specify the grounds for the request, and submit the request directly to the Commission.
- B.** The State Claim Review Panel shall serve as the decision-making body for state-level claim reviews. The State Claim Review Panel shall consist of the following members:
 1. The Arizona Criminal Justice Commission Crime Victim Services Program Manager,
 2. A representative of the Office of the Attorney General, and
 3. A Board chair from an operational unit that is not the operational unit that originally heard the claim being reviewed.
- C.** The State Claim Review Panel shall meet as needed to hear claimant requests for a state-level claim review. The State Claim Review Panel shall complete a state-level claim review within 30 calendar days after receiving the written request required under subsection (A).
- D.** A claimant may amend a request for a state-level claim review of a Board decision at any time before it is ruled on by the State Claim Review Panel.
- E.** When a state-level claim review is granted, the State Claim Review Panel shall ensure that the review:
 1. Considers only evidence previously presented to the Board, and
 2. Decides only whether the Board's decision was consistent with the standards in this Article.
- F.** The State Claim Review Panel may affirm or overturn a decision made by a Board.
- G.** A decision by the State Claim Review Panel is final. If the Panel overturns a decision made by a Board related to:
 1. Eligibility, the operational unit where the claim originated shall proceed with any further action related to the claim; or
 2. An economic loss, the operational unit where the claim originated shall pay the economic loss using compensation funds available to the operational unit.

- H. The State Claim Review Panel shall provide written notice of the Panel's decision to the claimant and the operational unit that originally heard the claim within 10 business days after the state-level claim review.

R10-4-111. Emergency Compensation Award

- A. After receiving a claim submitted under R10-4-107, an operational unit may grant one emergency compensation award for a claim if the operational unit determines there is a reasonable likelihood that:
 - 1. The person to whom the emergency compensation award is made is or will be an eligible claimant, and
 - 2. Serious hardship will result to the person if an immediate compensation award is not made.
- B. An operational unit that makes an emergency compensation award shall ensure that the emergency compensation award does not exceed \$1,000.
- C. If the Board decides under R10-4-108 to make a compensation award to the claimant, the Board shall ensure that the amount of the emergency compensation award is deducted from the final compensation award made to the claimant.

APPENDIX B

**Arizona Agency Handbook
Chapter 7
Open Meetings**

CHAPTER 7
OPEN MEETINGS

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CHAPTER 7

OPEN MEETINGS

7.1 Scope of this Chapter. This Chapter discusses Arizona's Open Meeting Law, A.R.S. §§ 38-431 to -431.09, with particular emphasis on the application of the Open Meeting Law to the day-to-day operations of state officers, bodies, and agencies. This Chapter shall be conspicuously posted on the Secretary of State's website for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies. A.R.S. § 38-431.01(G). Individuals elected or appointed to public office shall review this Chapter at least one day before taking office. *Id.*

This Chapter does not resolve all issues that may arise under the Open Meeting Law, but rather is intended to serve as a reference for public officials who must comply with the law. Officials faced with a situation not specifically addressed in this Chapter should consult their legal counsel before proceeding.

7.2 Arizona's Open Meeting Law.

7.2.1 History of Arizona's Open Meeting Law. All fifty states have enacted some type of legislation providing the public with a statutory right to openness in government. In addition, in 1976 the United States Congress enacted the Federal Open Meeting Act, 5 U.S.C. § 552b. Arizona enacted its Open Meeting Law in 1962 and has since amended it several times. For a detailed discussion of the early history of the Open Meeting Law through 1975, see Ariz. Att'y Gen. Op. 75-7.

7.2.2 Legislative Intent. The Legislature has repeatedly expressed its intent that the Open Meeting Law be construed to maximize public access to the governmental process. In first enacting the Open Meeting Law in 1962, the Legislature declared that: "It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly."

In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09(A). That statute now provides:

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.

Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings.

A.R.S. § 38-431.09(A). In keeping with this expressed intent, any uncertainty under the Open Meeting Law should be resolved in favor of openness in government. Any question whether the Open Meeting Law applies to a certain public body likewise should be resolved in favor of applying the law.

7.3 Government Bodies Covered by the Open Meeting Law.

7.3.1 Generally. The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S. § 38-431(6) as follows:

“Public body” means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

This definition specifically includes public bodies of all political subdivisions. A political subdivision is defined in A.R.S. § 38-431(5) to include "all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts."

The definition encompasses five basic categories of public bodies: 1) boards, commissions, and other multimember governing bodies, including those “established by the Arizona Constitution or by way of ballot initiative;” 2) quasi-governmental corporations; 3) quasi-judicial bodies; 4) advisory committees; and 5) standing and special committees and subcommittees of any of the above. See A.R.S. § 38-431(6).

7.3.2 Boards and Commissions. The Open Meeting Law covers all boards and commissions and other multimember governing bodies of the state or its political subdivisions or of the departments, agencies, institutions, and instrumentalities of the state

or its political subdivisions. See A.R.S. § 38-431(6). The multimember governing body must be created by law or by an official act pursuant to some legal authority. See *id.* Examples of public bodies created by law include the Arizona Legislature, county boards of supervisors, city and town councils, school boards, the governing boards of special districts, and all state, county, and municipal licensing and regulatory boards. See, e.g., Ariz. Att’y Gen. Op. I07-001 (Open Meeting Law applies to board appointed by governing bodies of various political subdivisions to administer employee benefits program). Ariz. Att’y Gen. Op. I04-001 (Open Meeting Law applies to joint underwriting association because it’s a multimember governing body created by statute). In addition, the Legislature amended the definition of public body specifically to include “all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.” A.R.S. § 38-431(6).

The Open Meeting Law applies only to multimember bodies and does not apply to the deliberations and meetings conducted by the single head of an agency. See Ariz. Att’y Gen. Ops. I92-007, 75-7. Accordingly, the director of a department or state agency is not subject to the Open Meeting Law when meeting with staff members to discuss the operations of the department.

7.3.3 Quasi-Governmental Corporations. The boards of directors of corporations and instrumentalities of the state or its political subdivisions are subject to the Open Meeting Law when the members of the board are appointed or elected by the state or its political subdivisions. See A.R.S. § 38-431(5), (6). In order to determine whether a quasi-governmental corporation or other entity is an “instrumentality,” and thus a “public body,” under the Open Meeting Law, one should consider the following factors that indicate the degree to which governmental interests dominate the nature of the entity. See Ariz. Att’y Gen. Op. I07-001.

1. The entity's origin (whether it was created by the government or independently of the government). For example, the Board of Directors of the Phoenix Civic Improvement Corporation falls into the category of an entity “created by the government.” The Open Meeting Law does not apply, however, to a private non-profit hospital association that has a board of directors elected by the electorate of the hospital district. *Prescott Newspapers, Inc. v. Yavapai Cmty. Hosp. Ass’n*, 163 Ariz. 33, 785 P.2d 1221 (App. 1989). See Ariz. Att’y Gen. Op. I07-001.
2. The nature of the function assigned to and performed by the entity, i.e., whether that function is one traditionally associated with government or is one commonly performed by private entities. For example, the board of trustees of a trust formed by several public bodies to administer employee benefit programs on their behalf would have a governmental function that supports a finding that the board is a public body.

3. The scope of authority granted to and exercised by the entity, i.e., whether the entity has authority to make binding governmental decisions or is it limited to making nonbinding recommendations.
4. The nature and level of government financial involvement with the entity.
5. The nature and scope of government control over the entity's operation.
6. The status of the entity's officers and employees, i.e., whether the officers and employees are government officials or government employees.

7.3.4 Quasi-Judicial Bodies. The Open Meeting Law defines a quasi-judicial body as "a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims." A.R.S. § 38-431(7). The legislature added this definition in 1978 to reverse the Arizona Supreme Court's decision in *Ariz. Press Club, Inc. v. Ariz. Bd. of Tax Appeals*, 113 Ariz. 545, 558 P.2d 697 (1976), which held that the Open Meeting Law did not apply to bodies conducting quasi-judicial functions, such as license revocation proceedings. See *Ariz. Att'y Gen. Op. 78-245*. The Arizona Board of Tax Appeals and similar quasi-judicial bodies are now expressly covered by the Open Meeting Law. A.R.S. § 38-431(6), (7).

Contested case proceedings or quasi-judicial or adjudicatory proceedings conducted by public bodies are subject to all of the requirements of the Open Meeting Law. *Rosenberg v. Ariz. Bd. of Regents*, 118 Ariz. 489, 578 P.2d 168 (1978); *City of Flagstaff v. Bleeker*, 123 Ariz. 436, 600 P.2d 49 (App. 1979); *Ariz. Att'y Gen. Op. 75-7*.

7.3.5 Advisory Committees. Advisory committees are subject to all of the requirements of the Open Meeting Law. A.R.S. § 38-431.01(A), (B). An advisory committee is defined as any entity, however designated, that is

officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

A.R.S. § 38-431(1). This definition does not include advisory groups established by the single head of an agency unless they are created pursuant to a statute, city charter, or other provision of law or by an official act pursuant to some legal authority. See *Ariz. Att'y Gen. Op. 192-007*; Section 7.3.2.

7.3.6 Special and Standing Committees and Subcommittees. Special and standing committees and subcommittees of, or appointed by, any of the public bodies

described above are also covered by the Open Meeting Law. A.R.S. § 38-431.01(A). A special or standing committee may consist of members of the public body who have been appointed by or authorized to act for the public body. A.R.S. § 38-431(6). The fact that a committee consists, in whole or in part, of persons who are not members of the public body does not affect its status as a public body subject to the Open Meeting Law. See Ariz. Att'y Gen. Op. 180-202.

7.4 Government Bodies and Proceedings Not Covered by the Open Meeting Law. Certain public bodies need not comply with all or portions of the Open Meeting Law in particular circumstances. This section identifies some of those limited exceptions.

7.4.1 Judicial Appointment Commissions. The Commissions on Appellate and Trial Court Appointments and the Commission on Judicial Qualifications are expressly exempt from the Open Meeting Law. A.R.S. § 38-431.08(A)(3).

7.4.2 Proceedings Before Courts. The Open Meeting Law does not apply to judicial proceedings of courts within the judicial branch of government. A.R.S. §§ 38-431(7), -431.08(A)(1).

7.4.3 The Legislature. Meetings of legislative conference committees must be open to the public; however, the committees are exempted from all other requirements of the Open Meeting Law. A.R.S. § 38-431.08(A)(2). The Open Meeting Law does not apply to the activities of a political caucus of the Legislature. *Id.* § (A)(1); *cf.* Ariz. Att'y Gen. Op. 183-128. The Open Meeting Law permits either house of the Legislature to adopt a rule or procedure exempting itself from the notice and agenda requirements of the Open Meeting Law or to allow standing or conference committees to meet through technological devices rather than in person. A.R.S. § 38-431.08(D).

7.4.4 Student Disciplinary Proceedings. Actions concerning the "discipline, suspension or expulsion of a pupil" are not subject to the Open Meeting Law. A.R.S. § 15-843(A). This same statute, however, prescribes the procedures that the school board must follow in handling these matters.

7.4.5 Insurance Guaranty Fund Boards. Special meetings of the property and casualty insurance guaranty fund in which the financial condition of any member insurer is discussed are exempt from the Open Meeting Law. A.R.S. § 20-671.

7.4.6 Hearings Held in Prison Facilities. Hearings held by the Board of Pardons and Paroles in a prison facility are subject to the Open Meeting Law, but the Director of the State Department of Corrections may prohibit certain individuals from attending such hearings because they pose a serious threat to the safety and security of others or the prison. Other conditions on attendance, such as signing an attendance log and submitting to a reasonable search, may be imposed as well. A.R.S. § 38-431.08(B).

7.4.7 Board of Fingerprinting. Good cause exception hearings conducted by the Board of Fingerprinting pursuant to A.R.S. § 41-619.55 are exempt from the Open Meeting Law. A.R.S. § 38-431.08(A)(4).

7.4.8 Homeowners Associations. Because they are not governmental "public bodies," homeowners associations are not covered by the Open Meeting Law. Ariz. Att'y Gen. Op. 97-012. They must, however, comply with separate notification requirements. *Id.* Those requirements must be enforced privately because the Attorney General and County Attorneys have no jurisdiction over such matters. For more information on the requirements of homeowners associations, see A.R.S. § 33-1801 *et seq.*

7.5 Actions and Activities Covered by the Open Meeting Law.

7.5.1 Generally. All meetings of a public body shall be public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings. A.R.S. § 38-431.01(A). All legal action of public bodies shall occur during a public meeting. *Id.* A meeting is defined as "the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action." A.R.S. § 38-431(4). The definition of meeting was modified by the Arizona Legislature in 2000 to prohibit a quorum of a public body from secretly communicating through technological devices, including, for example, facsimile machines, telephones, texting, and e-mail.

All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. Ariz. Att'y Gen. Ops. 75-8, 179-4. See *also* A.R.S. §§ 38-431.01(A), -431(3) and Ariz. Att'y Gen. Op. 105-004. Whether the matter to be discussed may foreseeably require final action is the key to this inquiry. It is difficult to say precisely when this foreseeability test has been met. Each case should be viewed on its own merits with doubts resolved in favor of compliance with the Open Meeting Law. The safest course of action is to assume the Open Meeting Law applies whenever a majority of the body discusses the business of the public body. It does not matter what label is placed on a gathering. It may be called a "work" or "study" session, or the discussion may occur at a social function. Ariz. Att'y Gen. Op. 179-4. Discussion of the public body's business may take place only in a public meeting or an executive session in accordance with the requirements of the Open Meeting Law.

The Open Meeting Law, however, does not prohibit a member of a public body from voicing an opinion or discussing an issue with the public either at a venue other than a public meeting of the body, or through media outlets or other public broadcast communications or technological means, so long as the "opinion or discussion is not

principally directed at or directly given to another member of the public body," and "there is no concerted plan to engage in collective deliberation to take legal action." A.R.S. § 38-431.09(B); Ariz. Att'y Gen. Op 107-013.

7.5.2 Circumventing the Open Meeting Law. Discussions and deliberations (in person or otherwise) between less than a majority of the members of a governing body, violate the Open Meeting Law when used to circumvent the purposes of the Open Meeting Law. See Ariz. Att'y Gen. Op. 75-8; *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that has been or later may be presented to the public body for a decision. Public officials should refrain from any activities that may undermine public confidence in the public decision making process established in the Open Meeting Law, including actions that may appear to remove discussions and decisions from public view.

For example, Board members cannot use email to circumvent the Open Meeting Law requirements. See Ariz. Att'y Gen. Op. 105-004 at 2. "[E]ven if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a 'meeting.'" See *Del Papa v. Bd. of Regents of Univ. and Cmty. Coll. Sys. Of Nev.*, 114 Nev. 388, 393, 956 P.2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place). Additionally, "[w]hen members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations, or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technical devices under the [Open Meeting Law]." See Ariz. Att'y Gen. Op. 105-004 at 1. This may be true even if none of the members of the public body respond to the email. *Id.* at 2-3. If the one-way communication proposes legal action, then it would violate the Open Meeting Law. *Id.* However, other one-way communications, with no further exchanges, are not *per se* violations, and further examination of the facts and circumstances would be necessary to determine if a violation occurred. *Id.* at 3.

7.5.3 Applicability to Staff Members and Others. The Open Meeting Law further provides that members of public bodies shall not knowingly direct any staff member to communicate in violation of the Open Meeting Law. A.R.S. § 38-431.01(H). People knowingly aiding, agreeing to aid or attempting to aid another person in violating the Open Meeting Law can be liable for civil penalties, attorneys' fees, and costs pursuant to A.R.S. § 38-431.07(A). See Sections 7.12.3 and 7.12.4. Splintering a quorum may also occur when members of a public body share their positions and proposals with other public body members through staff members or other non-members. For example, a staff member who meets with each member individually regarding official business and then shares the comments made by other members would violate the Open Meeting Law. Although a staff member may provide information to members separately (see Ariz. Att'y Gen. Op. 105-004

at 9), that person must be careful not to facilitate a discussion or deliberation by a quorum through sharing information with other members in subsequent meetings. Hence, staff members, representatives, citizens and others should take steps to ensure they are not acting in a manner to commit a violation or subject themselves to liability.

7.6 Notice of Meetings.

7.6.1 Generally. The Open Meeting Law requires at least 24-hour advance notice of all meetings to the public body and to the general public. Notice enables the public to attend public meetings by informing them of when and where to go, and how to get information regarding the matters under consideration. Arizona courts have emphasized the importance of sufficient notice. The Arizona Court of Appeals explained, "The notice provisions in the open meeting law are obviously designed to give meaningful effect to provisions such as A.R.S. §§ 38-431.01(A) and 38-431.09. The goal of exposing the public decision-making process to the public itself could be significantly, if not totally thwarted, in the absence of mandatory notice provisions and their enforcement." *Carefree Improvement Ass'n v. City of Scottsdale*, 133 Ariz. 106, 649 P.2d 985 (Ariz. App. 1982).

7.6.2 Notice to Members of the Public Body. Notice of all meetings, including executive sessions, must be given to the members of the public body. A.R.S. § 38-431.02(C). Generally, this requirement is met by mailing, hand-delivering, or delivering by electronic mail a copy of the notice to each member of the public body.

7.6.3 Notice to the Public. Notice of all meetings, including executive sessions, must be given to the public. A.R.S. § 38-431.02. Giving public notice is a two step process. *Id.*

7.6.3.1 Disclosure Statement. The first step is for the public body to conspicuously post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed. A.R.S. § 38-431.02(A). See Form 7.1. Public bodies of the State, counties, school districts, and governing bodies of charter schools must post the disclosure statement on their websites. *Id.* § (A)(1)-(2). Special districts governed by Title 48, A.R.S., must post the required disclosure statement on their own website or may file it with the Clerk of the Board of Supervisors. *Id.* § (A)(3). Public bodies of cities and towns must post the required information on their own websites or on the website of an association of towns and cities. *Id.* § (4). The notification location identified in the statement must be a place to which the public has reasonable access. The location should have normal business hours, should not be geographically isolated, should not have limited access and should not be difficult to find.

7.6.3.2 Public Notice of Meetings. Once the disclosure statement has been filed or posted, the second step is for the public body to give notice of each of its meetings by posting a copy of the notice on its website as well as at the location identified in the disclosure statement. A.R.S. § 38-431.02(A). See Forms 7.2, 7.3, 7.4. Public bodies shall

also give "additional public notice as is reasonable and practicable as to all meetings." *Id.* § (A)(1)(a). Various public bodies fulfill this obligation to provide "additional notice" by providing news releases concerning proposed meetings, mailing notices to those asking to be informed of meetings, including the date and time of such meetings in their newsletters and other publications, and making announcements on public access television. If there is a "technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website", and all other public notice requirements are met, then the meeting can convene as scheduled. *Id.* § (A)(1)(b). In anticipation of litigation or complaints arising from the lack of notice, the public body should document the nature and duration of the technological problem or failure along with an explanation of how it affected the ability of the public body to post proper notice of the public meeting.

In addition to complying with the requirements of the Open Meeting Law, the notice should conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 - 12213 (Supp. 1992). See Sections 15.25.2 - 15.25.5. Public bodies should include a statement such as the following in any notices that they issue: "Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name of designated agency contact person] at [telephone number and TDD telephone number]. Requests should be made as early as possible to allow time to arrange the accommodation."

7.6.4 Contents of the Notice. Generally, the notice should include information identifying the public body and the date, time, and place of the meeting. See Forms 7.2, 7.3. In identifying the place of the meeting, the notice should specify the street address of the building and the room number or other information identifying the specific room in which the meeting will be held. See Form 7.7 (Sample Notice and Agenda).

In addition, the notices of public meetings and notices of executive sessions must contain an agenda of the matters to be considered by the public body at the meeting or information on how the public may obtain a copy of such an agenda. A.R.S. § 38-431.02(G). For a complete discussion of the agenda requirements, see Section 7.7. Notice of a public meeting at which the public body intends to ratify a prior act must contain additional specific information. See Section 7.11; Form 7.12.

7.6.5 Time for Giving Notice. As a general rule, a meeting may not be held without giving the required notice at least twenty-four hours before the meeting. A.R.S. § 38-431.02(C). For purposes of the statute, the twenty-four hour period excludes Sundays and holidays. *Id.* Saturdays are included in the period if the public has access to the physical and electronic posted locations. *Id.* Of course, the best practice is for public bodies to give as much notice as possible. The public body should include a certification by the person responsible for posting the notice that states the time and location that the notice was posted. See Form 7.8 below.

There are three exceptions to the twenty-four hour notice requirement.

First, in the case of an "actual emergency," the meeting may be held upon such shorter notice as is "appropriate to the circumstances." *Id.* § (D). An actual emergency exists when, due to unforeseen circumstances, immediate action is necessary to avoid some serious consequence that would result from waiting until the required notice could be given. The existence of an actual emergency does not dispense with the need to give twenty-four hours' written notice to an employee to be discussed in executive session. A.R.S. § 38-431.03(A)(1); see Sections 7.7.9 and 7.9.4.

Second, notice of a meeting at which the public body will consider ratifying a prior act taken in violation of the Open Meeting Law must be given seventy-two hours in advance of the meeting. A.R.S. § 38-431.05(B)(4); see Section 7.11.

Finally, less than twenty-four hour notice may be given when a properly noticed meeting is recessed to a later date. A.R.S. § 38-431.02(E). A meeting may be recessed and resumed with less than twenty-four hour notice if public notice of the initial session of the meeting is given and, if before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given. *Id.* Notice of the resumption of a meeting must comply with the agenda requirements respecting the matters to be addressed when resumed. *Id.* § (G). This may be accomplished by the presiding officer of the public body either stating at the meeting the time, place, and agenda of the resumed meeting or stating where a written notice and agenda of the resumed meeting will be posted. If an executive session is to be recessed and resumed with less than twenty-four hour notice, the time, place, and agenda of the resumed meeting should be communicated to the members of the public body and to the public by reconvening in public session and following one of the two steps described above. If the meeting will not reconvene for more than 24 hours, a new meeting notice and agenda is recommended.

7.6.6 Notice of Regular Meetings. A public body that intends to meet for a specified calendar period on a regular day or date during the calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period and need not post additional notices for each meeting. A.R.S. § 38-431.02(F); see Form 7.4. The notice must specify the applicable notice period. *Id.* However, this method of posting notice will not satisfy the agenda requirements unless the notice also contains a clear statement that the agenda for any such meeting will be available at least twenty-four hours in advance of the meeting and a statement as to where and how the public may obtain a copy of the agenda. A.R.S. § 38-431.02(G).

7.6.7 Notice of Executive Sessions. When an executive session is to be held, the notice must state the specific provision of law authorizing the executive session. A.R.S. § 38-431.02(B); see Form 7.5. This provision requires that the notice specify the numbered paragraph of subsection (A) of A.R.S. § 38-431.03 that authorizes the executive session. A general citation to A.R.S. § 38-431.03 or subsection (A) of that section is insufficient. For example, a public body intending to meet in executive session for purposes of discussing

the purchase or lease of real property must cite in its notice "A.R.S. § 38-431.03(A)(7)." The public body must cite only the paragraphs applicable to the matters to be discussed and should not issue a standardized form notice that cites all executive session provisions. In addition, an agenda is required for an executive session. A.R.S. § 38-431.02(G); see Section 7.7.3.

In the case of an executive session concerning personnel matters, the public body must give written notice to the affected officer, appointee, or employee in addition to the public notice described above. A.R.S. § 38-431.03(A)(1); see Section 7.9.4; Form 7.13. Such written notice must be provided not less than 24 hours before the scheduled meeting.

Many public bodies do not know whether they will have any legal questions on matters on the agenda until the discussion occurs. The Attorney General previously opined that public bodies may provide with their notices and agendas a statement that matters on the public meeting agenda may be discussed in executive session for the purpose of obtaining legal advice thereon, pursuant to A.R.S. § 38-431.03(A)(3). Ariz. Att'y Gen. Op. 190-19. An example of such a statement is "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3)." Similar statements are not sufficient for other types of executive sessions. See Section 7.7 for further discussion.

7.6.8 Combined Notice of Public Meeting and Executive Session. In many cases the public body may want to have the option to retire into executive session during the course of a public meeting. Although separate notices of the public meeting and executive session may be given pursuant to Sections 7.6.6 and 7.6.7, the public body may choose to combine the notice of the public meeting and of the possible executive session in one document. An example for doing so is set forth in Form 7.6 and the sample notice and agenda, Form 7.7.

7.6.9 Maintaining Records of Notice Given. Each public body should keep a record of its notices, including a copy of each notice that was posted and information regarding the date, time, and place of posting. A suggested procedure is to file in the records of the public body a copy of the notice and a certification in a form similar to Form 7.8.

7.7 Agendas.

7.7.1 Generally. In addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G).

Although this Section provides guidelines for the preparation of agendas, it does not answer every question that may arise. Specific problems should be discussed with the public body's legal counsel. As a general rule, public bodies should always be mindful of

the Legislature's declaration of policy that agendas "contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.09(A). When in doubt, resolve questions in favor of greater disclosure of information.

7.7.2 Contents of the Agenda -- Public Meeting. The agenda for a public meeting must contain a listing of the "specific matters to be discussed, considered or decided at the meeting." A.R.S. § 38-431.02(H). This requirement does not permit the use of generic agenda items such as "personnel," "new business," "old business," or "other matters" unless the specific matters or items to be discussed are separately identified. See *Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). The degree of specificity depends on the circumstances. See Form 7.7 (Sample Notice and Agenda). Consider the following examples:

- "Discussion and possible action to approve the application of pesticides within 1/4 mile of a school" if an environmental board is going to consider whether to approve the application of pesticides within 1/4 mile of a school;
- "Discussion and possible action to remove Pesticide-A from list of approved pesticides" if the environmental board is going to consider removing a specific pesticide from an approved list;
- "Discussion and possible action regarding budget priorities and revisions for upcoming fiscal year" if a board intends to generate and discuss a number of different options for managing its budget;
- "Discussion and possible action regarding elimination of funding from budget for travel reimbursements, computer upgrades, and laptops for board members" if a board intends to adopt specific options to revise a budget.

If it is likely that the public body will find it necessary to discuss any particular agenda item in executive session with the public body's attorney, the agenda should plainly say so even if the general notice of executive session for legal advice is on the agenda. For example, the agenda might include a provision stating "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on the approval of pesticides for application within ¼ mile of a school pursuant to A.R.S. § 38-431.03(A)(3)."

7.7.3 Contents of the Agenda--Executive Session. The agenda for an executive session must contain a "general description of the matters to be considered." A.R.S. § 38-431.02(I). The description must amount to more than just a recital of the statutory provisions authorizing the executive session, but should not contain any information that "would defeat the purpose of the executive session, compromise the legitimate privacy

interests of a public officer, appointee or employee or compromise the attorney-client privilege." *Id.*

In preparing executive session agenda items, the public body must weigh the legislative policy favoring public disclosure and the legitimate confidentiality concerns underlying the executive session provision. For example, if a board desires to consider the possible dismissal of its executive director, the board may list on the agenda "Personnel matter -- consideration of continued employment of the board's executive director." However, when the public disclosure of the board's consideration of charges against an employee might needlessly harm the employee's reputation or compromise the employee's privacy interests, the board may eliminate from the agenda description the identity of the employee being considered. If it is already publicly known that the board is considering charges against the employee, disclosure of the employee's identity in the agenda would not defeat the purpose of the executive session.

7.7.4 Distribution of the Agenda. The agenda may be made available to the public by including it as part of the public notice or by stating in the public notice how the public may obtain a copy of the agenda and then distributing the agenda in the manner prescribed. A.R.S. § 38-431.02(G); see Forms 7.2 - 7.4, 7.6, 7.7. Because both the public notice and the agenda must be available at least twenty-four hours in advance of a meeting, the simplest procedure is to include the agenda with the public notice. See Form 7.7 (Sample Notice and Agenda). However, when issuing public notice well in advance of a meeting, as in the case of notice of regularly scheduled meetings, see Section 7.6.6, it may be more appropriate to state how the public may obtain a copy of the agenda and distribute it accordingly.

7.7.5 Consent Agendas. Public bodies may use "consent agendas" so long as they meet certain requirements. Consent agendas are typically used as a time-saving device when there are certain items on the agenda which are unlikely to generate controversy and are ministerial in nature. Some examples are approval of travel requests and approval of minutes. Public bodies often take one vote to approve or disapprove the consent agenda as a whole. When using a consent agenda format for some of the items on a meeting agenda, public bodies should fully describe the matters on the agenda and inform the public where more information can be obtained. A good practice is to require the removal of an item from the consent agenda upon the request of any member of the public body. See Form 7.7 (Sample Notice and Agenda).

Public bodies should exercise caution when using consent agendas. The Arizona Supreme Court previously held that taking legal action, including that taken after an executive session, must be preceded by a disclosure of "that amount of information sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting." *Karol v. Bd. of Educ. Trustees*, 122 Ariz. 95, 98, 593 P.2d 649, 652 (1979). The court also condemned the practice of voting on matters designated only by number, thereby effectively hiding actions from public examination. *Id.*

7.7.6 Discussing and Deciding Matters Not Listed on the Agenda. The public body may discuss, consider, or decide only those matters listed on the agenda and "other matters related thereto." A.R.S. § 38-431.02(H). The "other matters" clause provides some flexibility to a public body but should be construed narrowly. The "other matters" must in some reasonable manner be "related" to an item specifically listed on the agenda. *Thurston v. City of Phoenix*, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988).

If a matter not specifically listed on the agenda is brought up during a meeting, the better practice, and the one that will minimize subsequent litigation, is to defer discussion and decision on the matter until a later meeting so that the item can be specifically listed on the agenda. If the matter demands immediate attention and is a true emergency, the public body should consider using the emergency exception described in Section 7.6.9.

However, if action is taken at a meeting on an item not properly noticed, then that particular action violates the Open Meeting Law and is null and void. *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001); A.R.S. § 38-431.05(A). The public body may ratify the action pursuant to A.R.S. § 38-431.05(B), although the violation may still subject the public body to the penalties described in A.R.S. § 38-431.07(A). Any other actions that were taken at the meeting and were properly noticed are not void. *Karol*, 122 Ariz. at 98, 593 P.2d at 652; Ariz. Att'y Gen. Op. 108-001.

7.7.7 Calls to the Public. In 2000, the Legislature clarified the limitations on open calls to the public during public meetings. A.R.S. § 38-431.01(H) now provides that a public body may make an open call to the public to allow individuals to address the public body on any issue within the jurisdiction of the public body. Members of the public body may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. *Id.* Public body members may, however, respond to criticism made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda. *Id.* See also Ariz. Att'y Gen. Op. 199-006.

The best practice is to include language similar to the following on the agenda to explain in advance the reason members of the public body cannot respond to topics brought up during the call to the public that are not on the agenda: "Call to the Public: This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date."

7.7.8 Current Event Summaries. The Open Meeting Law allows the chief administrator, presiding officer or a member of a public body to present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that the summary is listed on the agenda and that the public body does not propose,

discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action. A.R.S. § 38-431.02(K). Thus, the summary of current events consists merely of one of the above-referenced people summarizing recent occurrences without any discussion or feedback from the remainder of the public body. The agenda should specifically list "Summary of Current Events" as an agenda item and identify who will present the summary.

Reports that address matters other than a summary of current events or that are delivered by someone other than a proper official with the public body do not come within the provision authorizing current events summaries and must comply with the agenda requirements of the Open Meeting Law. The only report that can be given without listing the contents of the presentation is the brief summary of current events by the chief administrator, the presiding officer of the Council, or a member under A.R.S. § 38-431.02(K). As to other reports presented to a public body, the agenda must list descriptions of the topics that will be presented and state whether the public body will discuss or take action on such matters. A generic agenda item, such as "Police Department" report or "Fire Department" report does not satisfy the requirement that the agenda provide information that is "reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.02(H). Public bodies should limit use of the current events summary provision to appropriate situations and should strive to provide as much advance information as possible to the public.

7.7.9 Emergencies. A public body may discuss, consider, and decide a matter not on the agenda when an actual emergency exists requiring that the body dispense with the advance notice and agenda requirements. A.R.S. § 38-431.02(D). See Section 7.6.5 for a discussion of what constitutes an actual emergency.

To use the emergency exception, the public body must do several things. First, the public body must give "such notice as is appropriate to the circumstances" and must "post a notice within twenty-four hours declaring that an emergency session has been held" and setting forth the same information required in an agenda for a regular meeting. A.R.S. § 38-431.02(D); see Form 7.9.

Next, prior to the emergency discussion, consideration, or decision, the public body must announce in a public meeting the reasons necessitating the emergency action. A.R.S. § 38-431.02(J). If the emergency discussion or consideration is to take place in an executive session, this public announcement must occur at a public meeting prior to the executive session. *Id.*

Finally, the public body must place in the minutes of the meeting a statement of the reasons for the emergency. *Id.* In the case of an executive session, this statement will appear twice, once in the minutes of the public meeting where the reasons were publicly announced, and again in the minutes of the executive session where the emergency discussion or consideration took place. See Section 7.8.2(7).

7.7.10 Changes to the Agenda. If a public body finds it necessary to change an agenda by modifying the listed matters or adding new ones, a new agenda must be prepared and distributed in the same manner as the original agenda, at least twenty-four hours in advance of the meeting. Ariz. Att'y Gen. Op. 179-45. Changes in the agenda within twenty-four hours of the meeting may be made only in case of emergency. Ariz. Att'y Gen. Op. 179-192; see Section 7.7.9. However, the public body does not need to discuss or act on an item that appears on the agenda for the meeting and can vote at the meeting to remove agenda items from consideration without violating the Open Meeting Law.

7.8 Minutes. Minutes must be taken of all public meetings and executive sessions.

7.8.1 Form of and Access to the Minutes. Minutes may be taken in writing or may be recorded by an audio or video recorder. A.R.S. § 38-431.01(B); see Forms 7.10, 7.11. The minutes or a recording of a public meeting must be available for public inspection within three working days after the meeting. A.R.S. § 38-431.01(D). Public bodies concerned about distributing minutes before they have been officially approved at a subsequent meeting should mark the minutes "draft" or "unapproved" and make them available within three working days of the meeting. If the minutes have been recorded by an audio or video recorder, allowing the public to have access to that recording is sufficient. However, if the minutes were taken in shorthand, those minutes must be typed or written out in longhand in order to comply with this requirement. See Form 7.10. The minutes of an executive session are confidential and may not be disclosed except to certain authorized persons. A.R.S. § 38-431.03(B); see Section 7.8.4. To ensure confidentiality and avoid inadvertent disclosure, minutes of executive sessions should be stored separately from regular session minutes.

The approved minutes of all city or town council meetings must be posted on the city's website within two working days of their approval, A.R.S. § 38-431.01(E)(2). In no event should minutes be withheld from the public pending approval. Minutes must be reduced to a form that is readily accessible to the public. See A.R.S. § 38-431.01(D). A public body of a city or a town with a population exceeding 2,500 people shall, within three working days after any meeting, post on its website a statement showing legal actions taken by the public body or any recordings made during the meeting. A.R.S. § 38-431.01(E)(1). Posted statements and recordings shall remain accessible on the website for at least one year after the meeting. *Id.* § (J). In addition, any recordings and minutes are public records subject to record retention requirements.

7.8.2 Contents of the Minutes of Public Meetings. The minutes of a public meeting must contain the following information:

1. "The date, time and place of the meeting." A.R.S. § 38-431.01(B)(1).

2. "The members of the public body recorded as either present or absent." *Id.* § (B)(2).
3. "A general description of the matters [discussed or] considered." *Id.* § (B)(3). Minutes must contain information regarding matters considered or discussed at the meeting even though no formal action or vote was taken with respect to the matter. *See id.* § (B)(4). Although the minutes do not need to be a verbatim transcript of the meeting to satisfy this requirement, they must summarize the discussion, including the topics addressed, and identify all speakers who participated in the discussion, including members of the public body.
4. "An accurate description of all legal actions proposed, discussed or taken, and the names of persons who proposed each motion." *Id.* This does not require that the name of each person who votes on a motion be indicated, but only that the member who proposed it be shown in the minutes. For its own benefit, an agency will usually include the names of the member who seconded and those who voted in favor of or against the motion. It is preferable for the minutes to reflect how the body voted and the numerical breakdown of the vote, e.g., 3 in favor, 1 against, 1 abstention.
5. The name of each person "making statements or presenting material to the public body and a [specific] reference to the legal action," (see item 4) to which the statement or presentation relates. *Id.*
6. If the discussion in the public session did not adequately disclose the subject matter and specifics of the action taken (such as an action to approve matters on a consent agenda), the minutes of the public meeting at which such action was taken should contain sufficient information to permit the public to investigate further the background or specific facts of the decision. *See* Section 7.7.5; *Karol*, 122 Ariz. 95, 593 P.2d 649.
7. If matters not on the agenda were discussed or decided at a meeting because of an actual emergency, the minutes must contain a full description of the nature of the emergency. A.R.S. § 38-431.02(J); *see* Sections 7.6.5 and 7.7.9.
8. If a prior act was ratified, the minutes must contain a copy of the disclosure statement required for ratification. A.R.S. § 38-431.05(B)(3); *see* Section 7.11.2; Form 7.10.

7.8.3 Contents of the Minutes of Executive Sessions. The minutes of executive sessions must contain the following information:

1. "The date, time and place of the meeting." A.R.S. § 38-431.01(B)(1), (C).

2. "The members of the public body recorded as either present or absent." *Id.* § (B)(2), (C).
3. "A general description of the matters considered." *Id.* § (B)(3), (C); see Section 7.8.2(3). Like the minutes for a public session of the public body, the minutes must summarize the discussion, including the topics addressed, and identify all speakers who participated in the discussion, including members of the public body.
4. An accurate description of all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7). See Sections 7.9.7, 7.9.8 and 7.9.10.
5. A statement of the reasons for emergency consideration of any matters not on the agenda. See A.R.S. § 38-431.02(J); Section 7.8.2(7).
6. Such other information as the public body deems appropriate. For example, the public body might record in its minutes that those present were advised that the information discussed in the session and the session minutes are confidential. See Form 7.11.

"A party who asserts that a public body violated the open meeting laws has the burden of proving that assertion." *Tanque Verde Unified Sch. Dist. No. 13 of Pima County v. Bernini*, 206 Ariz. 200, 205, 76 P.3d 874, 879 (App. 2003). However, Arizona courts have held that once a complainant alleges facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation, the burden of proof immediately shifts to a public body to prove that an affirmative defense or exception to the Open Meeting Law authorized an allegedly inappropriate executive session. *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 122, 912 P.2d 1345, 1351 (App. 1995). See also *Tanque Verde*, 206 Ariz. 200 at 205, 76 P.3d 874 at 881. The best practice is for public bodies to keep an audio or video recording of the executive session or to transcribe the executive session to ensure that they are prepared to meet their burden of proof in the event a lawsuit is filed.

7.8.4 Confidentiality of Executive Session Minutes. The minutes of an executive session and all discussions that take place at an executive session are confidential under A.R.S. § 38-431.03(B) and may not be disclosed to anyone except the following people:

1. Any member of the public body, regardless of whether he or she attended the executive session. A.R.S. § 38-431.03(B)(1); *Picture Rocks Fire Dist. v. Updike*, 145 Ariz. 79, 699 P.2d 1310 (App. 1985).

2. Any officer, appointee, or employee who was the subject of discussion at an executive session authorized by A.R.S. § 38-431.03(A)(1) may see those portions of the minutes directly pertaining to them. A.R.S. § 38-431.03(B)(2); see Section 7.9.4.
3. Staff personnel, to the extent necessary for them to prepare and maintain the minutes of the executive session.
4. The attorney for the public body, to the extent necessary for the attorney to represent the public body.
5. The Auditor General in connection with the lawful performance of its duty to audit the finances or performance of the public body. A.R.S. § 38-431.03(B)(3); Ariz. Att'y Gen. Op. 179-130.
6. The Attorney General or County Attorney when investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4).
7. The court, for purposes of a confidential inspection where an open meeting violation has been alleged. A.R.S. § 38-431.07(C).

The Open Meeting Law requires a public body to advise all persons attending an executive session or obtaining access to executive session minutes or information that such minutes and information are confidential. A.R.S. § 38-431.03(C). Public bodies should maintain executive session minutes in a secure file separate from the public meeting minutes to guard against accidental disclosure.

Members of a public body and others attending the executive session must ensure that the information remains confidential. In addition to violating the Open Meeting Law, criminal charges may arise from a release of confidential information from executive session. "A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law." A.R.S. § 38-504(B). The law designates a knowing or intentional violation of this provision as a Class 6 felony and a reckless or negligent violation as a Class 1 misdemeanor. A.R.S. § 38-510(A). Either type of violation could lead to criminal penalties in addition to forfeiture of office or employment. A.R.S. § 38-510(B).

7.9 Executive Sessions. A.R.S. Section 38-431.03 contains an exception to the general requirement that all meetings must be open to the public. That Section identifies seven specific instances in which a public body may discuss matters in an executive session. See Sections 7.9.4 - 7.9.10. An executive session is defined as "a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03]." A.R.S. § 38-431(2). An executive session may be convened solely for the purpose of discussing matters and, in limited instances,

giving instructions to attorneys and designated representatives. A.R.S. § 38-431.03(D). No legal action may be taken in the executive session. *Id.*

Arizona courts have strictly construed the seven authorized executive session topics because their legislative charge is to "promote openness in government, not to expand exceptions which could be used to obviate the rule." See *Fisher v. Maricopa County Stadium Dist.*, 185 Ariz. 116, 124, 912 P.2d 1345, 1353 (App. 1995). Thus, unless the proposed discussion plainly falls within one of the Open Meeting Law's executive session topics or is specifically authorized by the public body's enabling legislation, discussion should take place only in a public meeting.

7.9.1 Deciding to Go Into Executive Session. Before a public body may go into executive session, a majority of the members constituting a quorum must vote in a public meeting to hold the executive session. A.R.S. § 38-431.03(A). The motion must state the ground(s) for the executive session so that the public understands why the public body is entering executive session. For example, a member of the public body may make the following motion: "I move to enter executive session for the purpose of receiving legal advice." Generally, the vote will be taken immediately before going into executive session. However, in some cases an agency may know that at a future date it will need to meet in executive session, in which case it can then vote at the public meeting to meet on the later date in executive session. On that future date, the agency does not have to first meet again in a public session.

7.9.2 Executive Session Requirements. Once the majority of members of a public body votes to hold an executive session, the chairman of the public body should ask the public to leave and to take with them all materials such as briefcases and backpacks to ensure that no recording devices are left in the room. All persons must leave the meeting except the members of the public body and those individuals whose presence is reasonably necessary for the public body to carry out its executive session responsibilities. A.R.S. § 38-431(2). The chairman should remind all present that the business conducted in executive sessions is confidential pursuant to A.R.S. § 38-431.03(C).

7.9.3 Authorized Executive Sessions. The Open Meeting Law permits only seven categories of topics to be discussed in executive session. A.R.S. § 38-431.03(A). These categories are discussed in Sections 7.9.4 - 7.9.10. In addition, the Legislature may create specific authority for executive sessions in other statutes. See A.R.S. § 38-797.03(B) (authorizing the Arizona State Retirement System Board to hold hearings or to consider administrative law judge decisions involving long term disability benefits in executive session). Because courts are likely to construe these provisions strictly, unless the proposed discussion plainly falls within an executive session category it should take place only in a public meeting. Finally, the Open Meeting Law does not require that these discussions take place in executive session. If public disclosure of the public body's discussion is not prohibited by any other statutory provision and government interests are not threatened, a public body may choose to conduct all of its discussions in a public setting.

7.9.4 Personnel Matters. The discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, discipline, resignation, or dismissal of a public officer, appointee, or employee of a public body may take place in an executive session. A.R.S. § 38-431.03(A)(1); *City of Flagstaff v. Bleeker*, 123 Ariz. 436, 600 P.2d 49 (App. 1979). This authorization for an executive session applies only to discussions concerning specific officers, appointees, and employees. This provision permits discussion in executive session of applicants for employment or appointment even though the applicants may not be currently employed by the public body.

If the public body proposes to discuss a personnel matter in an executive session, and the affected officer, appointee, or employee requests that the discussion occur in a public meeting instead, then these discussions must be conducted in a public meeting and not in an executive session. A.R.S. § 38-431.03(A)(1). Accordingly, the Open Meeting Law requires that an officer, appointee, or employee who is the subject of the discussion in executive session must be given advance written notice of the proposed executive session. *Id.* The notice given to the officer, appointee, or employee must describe the matters to be considered by the public body in a manner sufficient to enable the employee to make the initial decision whether to have the matters discussed in a public meeting. *Id.* In addition, the written notice must be given sufficiently in advance of the proposed meeting, and in no event less than twenty-four hours prior to the meeting, to enable the employee to make the foregoing determination and to prepare an appropriate request for a public meeting. *Id.*; see Ariz. Att'y Gen. Op. 179-49. See also Form 7.13. There is no emergency exception to the requirement that an affected officer, appointee, or employee receive at least twenty-four hours' notice. However, the public body can discuss personnel matters in a public meeting with less than twenty-four hours' notice if an actual emergency exists. A.R.S. § 38-431.02(D). See Sections 7.6.5 and 7.7.9. There is no requirement to provide advance written notice to the affected officer, appointee, or employee when the public body proposes to discuss a personnel matter in a public session and not in an executive session.

Although the public body may *permit* the public officer, appointee, or employee who is the subject of discussion to attend the executive session, the Open Meeting Law is unclear whether that person has the right to attend. Whether he attends or not, the public body must make the minutes of the executive session available to the public officer, appointee, or employee who was the subject of discussion in the executive session. A.R.S. § 38-431.03(B)(2).

A public body may consider several persons for appointment to a position or consider several employees for possible disciplinary action. In such cases, the public body may consider the matter in executive session provided all those being considered are given the required notice. If some, but not all of those given notice request a public meeting, the public body has two options: the public body may limit the public discussion to those persons filing the request and discuss the remaining persons in an executive session; or, because the Open Meeting Law does not require the public body to discuss personnel

matters in executive session, the public body may discuss the entire matter in a public meeting.

Public bodies should take care to ensure they limit the scope of executive sessions for personnel discussions to true personnel matters. The Attorney General opined that the Open Meeting Law prohibits public bodies from conducting in executive sessions lengthy information gathering meetings that explore the operation of public programs under the guise of conducting a personnel evaluation. Only the actual evaluation - discussion or consideration of the performance of the employee - may take place in an executive session.

See Ariz. Att'y Gen. Op. I96-012. A public body wishing to discuss or consider an employee's evaluation in executive session, pursuant to A.R.S. § 38-431.03(A)(1), should adopt a bifurcated process permitting the public body to gather information about public programs at a public meeting, while allowing the public body to enter executive session to discuss or consider the actual evaluation. Ariz. Att'y Gen. Op. I96-012.

Similarly, a public body may not discuss a class of persons in executive session under the Personnel Matters provision. For instance, a public body may not use this executive session provision to discuss a potential reduction in force. Each employee who will be discussed in executive session must get the notice as required by A.R.S. § 38-431.03(A)(1).

7.9.5 Confidential Records. An executive session may be held when the public body considers or discusses "records exempt by law from public inspection." A.R.S. § 38-431.03(A)(2). This specifically includes situations in which the public body receives or discusses "information or testimony that is specifically required to be maintained as confidential by state or federal law." *Id.* This provision allows the use of an executive session whenever the public body intends to discuss or consider matters contained in records that are confidential by law. See Ariz. Att'y Gen. Ops. I90-058, I87-131. However, when confidential matters can be adequately safeguarded, the discussion may take place during a public meeting. *Cf.* Ariz. Att'y Gen. Op. I87-038 (medical records). The record under consideration need not be expressly made confidential by statute, but rather may fall within the category of confidential records discussed in Chapter 6 of this handbook. For example, to preserve confidentiality, preliminary audit reports of state agencies prepared by the Auditor General are confidential and should be discussed by the public body in executive session. Ariz. Att'y Gen. Op. I80-035. Similarly, complaints against licensees investigated by a public body may be discussed in executive session. Ariz. Att'y Gen. Op. I83-006. In 2000, the Legislature revised the statute to allow public bodies to take testimony in executive sessions in certain situations. Public bodies should ensure that state or federal law requires that the public body maintain confidentiality of the information it receives before convening an executive session under A.R.S. § 38-431.03(A)(2). Written materials, however, do not become confidential merely because they are discussed in executive session.

7.9.6 Legal Advice. A public body may also go into executive session for the purposes of "discussion or consultation for legal advice with the attorney or attorneys of the

public body." A.R.S. § 38-431.03(A)(3). For this exemption to apply, the attorney giving the legal advice must be the attorney for the public body. *Id.* For purposes of this discussion, the "attorney for the public body" means a licensed attorney representing the public body, whether that attorney is a full time employee of the body, the attorney general or county, city, or town attorney responsible for representing the public body, an attorney hired on contract, or an attorney provided by an insurance carrier to represent the public body.

This provision authorizes consultations between a public body and its attorney. Accordingly, the only persons allowed to attend this executive session are the members of the public body, the public body's attorney, and those employees and agents of both whose presence is necessary to obtain the legal advice. The mere presence of an attorney of the public body in the meeting room is not sufficient to justify the use of this executive session provision. This provision can only be used for the purpose of obtaining "legal advice," which involves the exchange of communications between lawyer and client. Once the public body obtains the legal advice, the public body must go back into public session unless another executive session provision applies and has been identified in the notice. *See City of Prescott v. Town of Chino Valley*, 166 Ariz. 480, 803 P.2d 891 (1990). Discussion between the members of the public body about what action should be taken is beyond the realm of legal advice, and such discussions must be held in public session.

7.9.7 Litigation, Contract Negotiations, and Settlement Discussions. A public body may hold an executive session for the purpose of "[d]iscussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation." A.R.S. § 38-431.03(A)(4). This provision allows consideration and instruction only - it does *not* allow a public body to conduct contract negotiations or settlement discussions in an executive session.

This provision allows a public body to give its attorneys instructions on how they should proceed in contract negotiations, pending or contemplated litigation involving the public body, and settlement discussions. For example, the public body might authorize its attorney to settle a lawsuit on the most favorable terms possible up to a certain amount. Of course, if the attorney were to obtain an agreed settlement, the public body must formally approve it at a public meeting.

This provision is unique in that it permits public bodies to "instruct" their attorneys. In these limited situations, the public body must be able to discuss and arrive at some consensus on its position before it instructs its legal counsel. Executive session minutes must contain an accurate description of all instructions given. A.R.S. § 38-431.01(C). The best practice is for a public body, upon return to the open session, to vote to authorize its attorney to act "as instructed in the executive session." After the attorney takes the action authorized and the need for confidentiality has passed, the public body must formally approve of the action in open session.

Like the provision that allows legal advice to be given in executive session, this provision requires that the attorney of the public body be present at the executive session. Similarly, the discussion in Section 7.9.6 of the definition of “attorney for the public body” also applies to this Section.

7.9.8 Discussions with Designated Representatives Regarding Salary Negotiations. A public body may hold an executive session for the purpose of “[d]iscussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.” A.R.S. § 38-431.03(A)(5). This provision permits a public body, in executive session, to consult and discuss with its representatives its position on negotiating salaries or compensation paid in the form of fringe benefits and to instruct representatives on how they should deal with the employee organizations. It does not authorize an executive session for purposes of meeting with the employees’ representative. If the public body or any standing, special, or advisory committee or subcommittee of the public body conducts the negotiations, those negotiations must be conducted in a public meeting.

This provision also allows the public body to “instruct” its representatives. The discussion in Section 7.9.7 of the practice of confirming instructions in public session and the minute-taking requirements applies with equal force to this Section.

7.9.9 International, Interstate, and Tribal Negotiations. A public body may go into executive session for the purpose of “[d]iscussion, consultation, or consideration for international and interstate negotiations.” A.R.S. § 38-431.03(A)(6). This provision does not apply to meetings at which the public body receives recommendations from representatives of federal agencies. Ariz. Att’y Gen. Op. 180-159.

This provision also permits a city or town, or its designated representatives, to enter into executive session with “members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.” A.R.S. § 38-431.03(A)(6). This is the only type of executive session in which negotiations with another party can take place.

7.9.10 Purchase, Sale or Lease of Real Property. A public body may meet in executive session to discuss and consult with its representatives concerning negotiations for the purchase, sale, or lease of real property. A.R.S. § 38-431.03(A)(7). This provision does not authorize an executive session for the purpose of meeting with representatives of the party with whom the public body is negotiating. For example, a school district violates open meeting laws by choosing a site for a proposed high school in executive session. *Tanque Verde*, 206 Ariz. at 204-5, 76 P.3d at 878-9. This provision permits the public body to instruct its representatives regarding the purchase, sale or lease of real property. For

example, the public body can authorize its representative to negotiate up to a certain amount. Of course, the final contract must be approved by the public body in a public meeting.

This provision also allows the public body to "instruct" its representatives. The discussion in Section 7.9.7 of the practice of confirming instructions in public session and the minute-taking requirements also applies to this Section.

7.9.11 Taking Legal Action. In an executive session, the public body may discuss and consider only the specific matters authorized by the statute. Furthermore, the public body may not take a vote or make a final decision in the executive session, but rather must reconvene in a public meeting for purposes of taking the binding vote or making final decisions. For example, "[a] decision to appeal transcends 'discussion or consultation' and entails a 'commitment' of public funds. Therefore, once [a] Board [has] finished privately discussing the merits of appealing, the open meeting statutes require[] that board members meet in public for the final decision to appeal." *Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd.*, 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001). Taking a straw poll or informal or preliminary vote in executive session is unlawful under the Open Meeting Law. See A.R.S. § 38-431.03(D). No motion or vote is taken to adjourn the executive session; the chair is responsible for adjourning the executive session and reconvening the public session.

7.10 Public Access to Meetings.

7.10.1 Public Participation and Access. The public must be allowed to attend and listen to deliberations and proceedings taking place in all public meetings, A.R.S. § 38-431.01(A). However, the Open Meeting Law does not establish a right for the public to participate in the discussion or in the ultimate decision of the public body. Ariz. Att'y Gen. Op. 78-1. Other statutes may, however, require public participation or public hearings. For example, before promulgating rules, state agencies must permit public participation in the rule making process, including the opportunity to present oral or written statements on the proposed rule. See Chapter 11. See *also* Section 7.7.7 for a discussion of the authorization (but not requirement) for public bodies to use an open call to the public.

The public body must provide public access to public meetings. See A.R.S. § 38-431.01(A). This requirement is not met if the public body uses any procedure or device that obstructs or inhibits public attendance at public meetings, such as holding the meeting in a remote location, in a room too small to accommodate the reasonably anticipated number of observers, in a place to which the public does not have access, such as private clubs, or at an unreasonable time. The Open Meeting Law, however, does not prevent a public body from requiring persons who intend to speak at the meeting to sign a register so as to permit the public body to comply with the minute-taking requirements. See Section 7.8.2(5).

"All or any part of a public meeting . . . may be recorded by any person in attendance by means of a tape recorder or camera or other means of sonic reproduction." A.R.S. § 38-

431.01(F). A public body may prohibit or restrict such recordings only if they actively interfere with the conduct of the meeting. *Id.*

In addition to complying with the Open Meeting Law, the notice and accommodations should conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 - 12213 (Supp. 1992). See Section 15.22; see *also* section 7.6.3.2 (notice requirements relating to reasonable accommodations).

7.10.2 Remote Conferencing. If any members of a public body are unable to be present in person at a public meeting, they may participate by telephone or video or internet conference if the practice is approved by the public body and is not prohibited by statutes applicable to meetings of the public body. Ariz. Att'y Gen. Ops. 108-008, 191-033, 183-135. This practice presents some practical problems and should be used only where there are no reasonable alternatives to presence at the meeting.

A public body should comply with the following guidelines to avoid violations of the Open Meeting Law.

1. The notice and the agenda should state that one or more members of the public body may participate by telephonic, video or internet communications. In the appropriate notice, insert the following after the first sentence: "Members of the [name of public body] may attend either in person or by telephone, video or internet conferencing."
2. The public meeting place where the public body normally meets should have facilities that permit the public to observe and hear all telephone, video or online communications.
3. The public body should develop procedures for clearly identifying all members participating by telephonic, video or internet communications.
4. The minutes of the meeting should identify the members who participated by telephonic or video communications and describe the procedures followed to provide the public access to all communications during the meeting.

7.10.3 Record of the Proceedings. A public body of a city or town with a population of more than 2,500 people must post on its website either a recording of the meeting or a statement of the legal actions taken during the meeting. A.R.S. § 38-431.01(E)(1). This statement must be posted within three working days of the meeting and must remain accessible on the website for at least one year thereafter. A.R.S. § 38-431.01(E)(1), (J). Subcommittees and advisory committees have ten working days after the meeting to post the recording or statement. A.R.S. § 38-431.01(E)(3), (J).

7.11 Quorum. Arizona statutes generally define a quorum as a majority of the members of a board of commission. A.R.S. § 1-216. This definition applies in the absence of a more specific definition. Vacant positions do not reduce the quorum requirement.

7.11.1 Effect of Disqualification on the Quorum Requirement. Board members may be disqualified from voting on a particular matter for a variety of reasons, most commonly because they have a conflict of interest. The disqualification of a board member may make it difficult for the public body to obtain a quorum. The general rule on disqualification is that a disqualified member, even though present at a meeting of the public body, may not be counted for purposes of convening the quorum to discuss or decide the particular matter for which the member is disqualified. See *Croaff v. Evans*, 130 Ariz. 353, 358, 636 P.2d 131, 136 (App. 1981).

For example, if four members of a seven member board are required for a quorum and only four members are present at a board meeting to discuss several matters, the board could not discuss a particular matter in which one of the four members has been disqualified, because for purposes of discussing or deciding that matter, the necessary quorum of four members is not present. If one or more of the other three positions on the board is filled by a duly qualified and serving member, the board must defer action on the proceeding until the absent member or members can be present. If the other three positions in the above hypothetical are vacant, the board cannot proceed until the appointing authority has filled at least one of the vacant positions.

If a majority of the total membership of a public body is disqualified, thereby making it impossible for the public body to convene a quorum to discuss or decide the matter, the disqualified members may disclose in the public record their reasons for disqualification and proceed to act as if they were not disqualified. A.R.S. § 38-508(B); *Nider v. Homan*, 89 P.2d 136, 140 (Cal. App. 1939).

7.12 Ratification.

7.12.1 Generally. A public body may ratify action previously taken in violation of the Open Meeting Law. See A.R.S. § 38-431.05(B). Ratification is appropriate when the public body needs to retroactively validate a prior act in order to preserve the earlier effective date of the action. For example, a public body may be required by law to approve its budget by a certain date. If the public body discovered after the statutory deadline that its earlier approval violated the Open Meeting Law, it could face serious legal problems. Even if the body met quickly to properly approve the budget, the approval would not have been made prior to the statutory deadline. Accordingly, the 1982 amendments permit the public body to meet and approve retroactively the action previously taken -- that is, to ratify its prior action.

Ratification must take place “within 30 days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.” A.R.S.

§ 38-431.05(B)(1). A judicial determination that the public body took legal action in violation of public meeting laws triggers the thirty-day period. *Tanque Verde*, 206 Ariz. at 208-210, 76 P.3d at 882-884. However, it is not triggered by letters from attorneys notifying the board of their intent to challenge the legal action or by filing a lawsuit. *Id.* at 883.

Ratification merely validates the prior action; it does not eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees.

7.12.2 Procedure for Ratification. The Open Meeting Law provides the following detailed procedure for ratification under A.R.S. § 38-431.05(B):

1. The decision to ratify must take place at a public meeting held in accordance with the Open Meeting Law.
2. Ratification must take place within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
3. The public notice of the meeting at which ratification is to take place, in addition to complying with the other requirements of the Open Meeting Law, see Sections 7.6 and 7.7, must include (a) a description of the action to be ratified, (b) a clear statement that the public body proposes to ratify a prior action, and (c) information on how the public may obtain a written description of the action to be ratified. See Form 7.12.
4. In addition to the notice and agenda of the meeting, the public body must make available to the public a detailed written description of the action to be ratified and a description of all prior deliberations, consultations, and decisions by members of the public body related to the action to be ratified.
5. The description required under paragraph 4 must be included as part of the minutes of the meeting at which the decision to ratify was made.
6. The public notice, agenda, and written description discussed in paragraphs 3 and 4 must be made available to the public at least seventy-two hours prior to the public meeting.

7.13 Sanctions for Violations of the Open Meeting Law.

In litigation, the burden of proof is initially on the complainant to "allege facts from which a reasonable inference may be drawn supporting an Open Meeting Law violation." *Id.*, 185 Ariz. at 122, 912 P.2d at 1351. The burden then immediately shifts to the public body to prove that an affirmative defense or exception to the Open Meeting Law authorized the executive session. *Id.*

7.13.1 Nullification. All legal action transacted by any public body during a meeting held in violation of any provision of the Open Meeting Law is null and void unless subsequently ratified. A.R.S. § 38-431.05(A). The procedures for ratification are described in Section 7.11.2. However, the Open Meeting Law does not render null and void all legal action taken at a meeting at which a violation occurs with respect to a single improperly noticed agenda item. Ariz. Att'y Gen. Op. I08-001.

The Arizona Supreme Court, however, has held that legal actions taken in violation of the Open Meeting Law are voidable at the discretion of the court. *Karol*, 122 Ariz. at 97, 593 P.2d at 651. In *Karol*, the court held that "a technical violation having no demonstrated prejudicial effect on the complaining party does not nullify all the business in a public meeting when to conclude otherwise would be inequitable, so long as the meeting complies with the intent of the legislature." *Id.*, 122 Ariz. at 98, 593 P.2d at 652. This decision imposes a substantial compliance test and requires a weighing of the equities before a court will declare an action void. The decision, however, preceded the 1982 amendment to the Open Meeting Law which specifically authorized a procedure for ratification. It remains to be seen whether this change will cause the court to follow the literal language of the Open Meeting Law. Nevertheless, serious consequences flow from having an action of a public body declared, and the public body should take every precaution to avoid even technical violations of the Open Meeting Law. In some cases, the public body may have discussed a matter at an unlawful meeting, but thereafter met in a lawful open meeting at which it took a formal vote as its "final action." The Arizona Court of Appeals has held that the subsequent "final action" taken at a lawful meeting is not void. *Valencia v. Cota*, 126 Ariz. 555, 617 P.2d 63 (App. 1980). The public body taking the final action at the subsequent lawful meeting should make available at that time the substance of all discussions that took place at the earlier unlawful meeting. If the public body wishes to preserve the effective date of the earlier action rather than simply redecide the matter, it must go through the ratification process. See Section 7.11.

7.13.2 Investigation and Enforcement. The 2000 Legislature enacted substantial revisions to the Open Meeting Law, including extensive changes to the investigation and enforcement provisions. The Attorney General and County Attorneys are authorized to investigate alleged Open Meeting Law violations and enforce the Open Meeting Law. A.R.S. § 38-431.06.

The Open Meeting Law specifically provides that the Attorney General and County Attorneys shall have access to executive session minutes when they are investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4). The Open Meeting Law also provides that disclosure of executive session information (such as disclosure to the Attorney General) does not constitute a waiver of the attorney-client privilege and directs courts reviewing executive session information to protect privileged information. *Id.* § (F).

The investigative authority of the Attorney General and County Attorneys was strengthened by the 2000 Legislature. The Attorney General and County Attorneys may issue written investigative demands to any person, administer oaths or affirmations to any person for the purpose of taking testimony, conduct examinations under oath, examine accounts, books, computers, documents, minutes, papers and recordings, and require people to file written statements, under oath, of all the facts and circumstances requested by the Attorney General or County Attorney. A.R.S. § 38-431.06(B). If a person fails to comply with a civil investigative demand, the Attorney General or County Attorney may seek enforcement of the demand in Superior Court.

Any person affected by "legal action" of a public body, the Attorney General, or the County Attorney for the county in which the alleged violation occurred, may file suit in superior court to require compliance with or prevent violations of the Open Meeting Law or to determine whether the law is applicable to certain matters or legal actions of the public body. A.R.S. § 38-431.07.

Additionally, when the provisions of the Open Meeting Law have not been complied with, a court of competent jurisdiction may issue a writ of mandamus requiring a meeting to be open to the public. A.R.S. § 38-431.04. A writ of mandamus is an order of the court compelling a public officer to comply with certain mandatory responsibilities imposed by law.

In 2007, in an effort to increase government awareness and provide the citizens of Arizona an effective and efficient means to get answers and resolve public access disputes, legislation expanded the Arizona Ombudsman-Citizens' Aide Office to provide free services to citizens and public officials regarding public access issues. The duties of the Ombudsman include: preparing materials on public access laws, training public officials, coaching, assisting and educating citizens, investigating complaints, requesting testimony or evidence, conducting hearings, making recommendations, and reporting misconduct. A.R.S. § 41-1376.01.

7.13.3 Civil Penalties. The court may impose a civil penalty not exceeding five hundred dollars against any person for each violation of the Open Meeting Law. A.R.S. § 38-431.07(A). This penalty can be assessed against a person who violates the Open Meeting Law or who knowingly aids, agrees to aid or attempts to aid another person in violating the Open Meeting Law. *Id.* This penalty is assessed against the individual and not the public body, and the public body may not pay the penalty on behalf of the person assessed, *see id.*

7.13.4 Attorney's Fees. The court may also order payment of reasonable attorney's fees to a successful plaintiff in an enforcement action brought under the Open Meeting Law. A.R.S. § 38-431.07(A). Normally those fees will be paid by the state or political subdivision of which the public body is a part or to which it reports. *Id.* However, if the court determines that a public officer violated the Open Meeting Law "with intent to deprive the public of information," the court must assess against that public officer or a person who

knowingly aided, agreed to aid or attempted to aid the public officer in violating the Open Meeting Law all of the costs and attorney's fees awarded to the plaintiff. *Id.* As in the case of an award of civil penalties, the public body may not pay such an award of attorney's fees assessed against the public officer individually. *See id.*

7.13.5 Expenditure for Legal Services by Public Body Relating to the Open Meeting Law. A public body may not retain counsel or expend monies for legal services to defend an action brought under the Open Meeting Law unless the public body has legal authority to make such an expenditure pursuant to other provisions of law and it approves the expenditure at a properly noticed open meeting prior to incurring the obligation. A.R.S. § 38-431.07(B).

7.13.6 Removal From Office. If the court determines that a public officer violated the Open Meeting Law "with intent to deprive the public of information," the court may remove the public officer from office. A.R.S. § 38-431.07(A).

Form 7.1

Disclosure Statement

Section 7.6.3.1

**STATEMENT OF LOCATIONS WHERE ALL NOTICES OF THE MEETINGS
OF THE [NAME OF PUBLIC BODY] WILL BE POSTED**

Pursuant to A.R.S. § 38-431.02, the [name of public body] hereby states that all notices of the meetings of the [name of public body] and any of its committees and subcommittees will be posted [identify the location where notices will be posted and include the hours during which such locations are open to the public, for example, "in the lobby of the State Capitol located at 1700 West Washington, Phoenix, Arizona, and at the press room of the State Senate Building, 1700 West Washington, Phoenix, Arizona. Both locations are open to the public Monday through Friday from 8:00 a.m. to 5:00 p.m. except legal holidays."] Such notices will indicate the date, time, and place of the meeting and will include an agenda or information concerning the manner in which the public may obtain an agenda for the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.2

Notice of Public Meeting of a Public Body

Sections 7.6.3, 7.7.4, 7.10.1

**NOTICE OF PUBLIC MEETING OF THE
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location].

The agenda for the meeting is as follows:

[List the specific matters to be discussed, considered, or decided. See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.3

Notice of Public Meeting of a Subcommittee or Advisory Committee of a Public Body

Sections 7.6.3, 7.10.1

NOTICE OF MEETING OF THE [NAME OF SUBCOMMITTEE OR ADVISORY COMMITTEE] OF THE [NAME OF PUBLIC BODY]

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of committee] of the [name of public body] and to the general public that the [name of committee] of the [name of public body] will hold a meeting open to the public on the [date, time, and exact location].

The agenda for the meeting is as follows:

[List the specific matters to be discussed, considered or decided. See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.4

Notice of Regular Meetings of a Public Body

Sections 7.6.3, 7.6.6, 7.7.4, and 7.10.1

**NOTICE OF REGULAR MEETINGS OF THE
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02(F), notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold regular meetings on the [specific day of month] of each month during the year [year]. The meetings will begin at [time] and will be held at [exact location].

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.5

Notice of Meeting and Possible Executive Session of a Public Body

Sections 7.6.8 and 7.10.1

**NOTICE OF MEETING AND POSSIBLE EXECUTIVE SESSION OF THE
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location] for the purpose of deciding whether to go into executive session. If authorized by a majority vote of the [name of public body], the executive session will be held immediately after the vote and will not be open to the public.

The agenda for the meeting is as follows:

[Include a general description of the matters to be discussed or considered, but exclude information that would defeat the purpose of the executive session. See Form 7.7 (Sample Notice and Agenda)]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

This executive session is authorized under A.R.S. § 38-431.03, Subsection (A), paragraph [list applicable provision].

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.6

Notice of Combined Public Meeting and Executive Session

Sections 7.6.8, 7.7.4, and 7.10.1

**NOTICE OF COMBINED PUBLIC MEETING AND EXECUTIVE SESSION OF
[NAME OF PUBLIC BODY]**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location]. As indicated in the agenda, pursuant to A.R.S. § 38-431.03(A) [specific paragraph that justifies the executive session]. The [name of public body] may vote to go into executive session, which will not be open to the public, to discuss certain matters.

The agenda for the meeting is as follows:

[List the specific matter to be discussed, considered, or decided. See Form 7.7 (Sample Notice and Agenda). Identify those matters that may be discussed or considered in executive session and identify the paragraph of A.R.S. § 38-431.03(A) authorizing the executive session, but exclude information that would defeat the purpose of the executive session.]

[OR]

A copy of the agenda for the meeting will be available at [location where the agenda will be available] at least twenty-four hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.7

Sample Notice and Agenda of Public Meeting and Executive Session

Sections 7.6.4, 7.6.8, 7.7.2, 7.7.4, and 7.10.1

NOTICE AND AGENDA OF MEETING OF THE ARIZONA COMMISSION ON THE ENVIRONMENT

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Arizona Commission on the Environment and to the general public that the Arizona Commission on the Environment will hold a meeting open to the public on January 21, 2000, beginning at 8:30 a.m. in Room 201, Health Building, 1740 West Adams, Phoenix, Arizona. As indicated in the following agenda, the Arizona Commission on the Environment may vote to go into executive session, which will not be open to the public, to discuss certain matters.

The agenda for the meeting is as follows:

- I. Call to Order. (Chairman Smith)
- II. Approval of Minutes of October 19, 1999 Meeting.
- III. Committee Reports. (Oral reports of the following committees and discussion thereon.)
 1. Computer Committee. Report by the chair of the Commission's Advisory Committee on proposals for acquiring a new computer system for the Commission.
- IV. Personnel.
 1. Consideration of applicants for Director of the Commission. The Commission may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(1). The names of the applicants may be obtained by contacting the Commission's Executive Secretary.
 2. Selection of Director of the Commission. The Commission may defer a decision on this matter to a later date.

V. Litigation.

1. *State v. Acme Polluters*. Discussion and decision concerning possible settlement. The Commission may vote to discuss this matter with the Commission's attorneys in executive session pursuant to A.R.S. § 38-431.03(A)(3) and (4). The Commission may decide the matter in the public meeting or defer decision to a later date.
2. Instituting Litigation. Discussion with and instruction to the Commission's attorneys concerning the filing of an enforcement action against The Brown Corporation. The Commission may discuss this matter in executive session pursuant to A.R.S. § 38-431.03(A)(2), (3), and (4). The Commission may decide the matter in the public meeting or defer decision to a later date.

VI. Consent Agenda.

Approval of routine warrants, purchase orders, travel claims, employee leave and transfer requests, and employee resignations. (Documentation concerning the matters on the consent agenda may be reviewed at the Commission's office.) Any matter on the Consent Agenda will be removed from the Consent Agenda and discussed as a regular agenda item upon the request of any Commission member.

1. Approval of purchase order numbers 1204, 1205, and 1206 for purchase of computer equipment.
2. Approval of travel claims for employees John Q. Smith and Mary M. McGee.
3. Approval of resignation of Daniel Warren and resolution to thank Daniel Warren for ten years of service.

VII. Call to the Public.

This is the time for the public to comment. Members of the Board may not discuss items that are not on the agenda. Therefore, action taken as a result of public comment will be limited to directing staff to study the matter or scheduling the matter for further consideration and decision at a later date.

VIII. Summary of Current Events.

The chief administrator, presiding officer or a member of the board may present a brief summary of current events pursuant to A.R.S. § 38-431.02(K). The Board will not discuss or take action on any current event summary.

IX. Future Meeting Dates and Items for Future Agendas.

The Board may discuss future dates for meetings and direct staff to place matters on future agendas.

A copy of the agenda background material provided to Commission members (with the exception of material relating to possible executive sessions) is available for public inspection at the Commission's office, Room 402, Health Building, 1740 West Adams, Phoenix, Arizona.

Dated this 7th day of January, 2000.

ARIZONA COMMISSION ON THE ENVIRONMENT

Chris Jones
Executive Secretary

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.8

Certification of Posting of Notice

Section 7.6.9

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the attached notice was duly posted at [place] on [date and time] in accordance with the statement filed by the [name of public body].

Dated this ____ day of _____, 20__.

[name and title of person signing the certificate]

Form 7.9

Special Notice of Emergency Meeting

Section 7.7.9

**SPECIAL NOTICE OF AN EMERGENCY MEETING OF
[NAME OF PUBLIC BODY] HELD [DATE]**

Pursuant to A.R.S. § 38-431.02(D), notice is hereby given that an emergency session of the [name of public body] was held on [date, time, and exact location].

At the emergency session the [name of public body] [describe the specific matters discussed, considered, or decided, or in the case of matters considered in an emergency executive session, a general description of the matters considered, provided that no information is included that would defeat the purpose of the executive session].

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.10

Minutes of Public Meeting

Sections 7.8.1 and 7.8.2

**MINUTES OF PUBLIC MEETING OF THE
[NAME OF PUBLIC BODY] OF MEETING HELD [DATE]**

A public meeting of the [name of public body] was convened on [date, time, and exact location]. Present at the meeting were the following members of the [name of public body]: [names of members present]. Absent were: [names of members absent]. The following matters were discussed, considered, and decided at the meeting:

1. [Generally describe all matters discussed or considered by the public body.]
2. [Describe accurately all legal actions proposed, discussed, or taken and the names of persons who proposed each motion].
3. [Identify each person making statements or presenting material to the public body, making specific reference to the legal action about which they made statements or presented material.]
4. [Other required information. See Section 7.8.2(6), (7), (8).]

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.11

Minutes of Executive Session

Sections 7.8.1, 7.8.3

**MINUTES OF EXECUTIVE SESSION OF THE
[NAME OF PUBLIC BODY] HELD [DATE]**

An executive session of the [name of public body] was convened on [date, time, and exact location]. The [name of public body] voted to go into executive session at a public meeting on [date, time, and exact location]. Present at the executive session were the following members of the [name of public body]: [names of members present]. Absent were: [names of members absent]. Also attending the executive session were: [names of those present including the reasons for their presence, for example, attorney for the public body, etc.]

The following matters were discussed and considered at the meeting:

1. [Generally describe the matters discussed or considered by the public body.]
2. [Describe all instructions given to attorneys or designated representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7).]
3. [If the executive session is held as an emergency session, include the statement of reasons for the emergency consideration. See Section 7.8.2(7).]
4. [Include such other information as the public body deems appropriate, including information necessary to establish that executive session was proper and appropriate. See Section 7.8.3(5).]

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Form 7.12

Notice of Action to be Ratified

Sections 7.6.4, 7.10.1, and 7.12.2

**NOTICE OF PUBLIC MEETING OF THE [NAME OF PUBLIC BODY]
FOR THE PURPOSE OF RATIFYING PAST ACTION TAKEN
IN VIOLATION OF OPEN MEETING LAW**

Pursuant to A.R.S. § 38-431.05, notice is hereby given to the members of the [name of public body] and to the general public that the [name of public body] will hold a meeting open to the public on [date, time, and exact location].

The purpose of the meeting is to ratify an action of the [name of public body] that may have been taken in violation of the Open Meeting Law. This action involved:

[Describe the action.]

The public may obtain a detailed written description of the action to be ratified, and all deliberations, consultations, and decisions by members of the public body that preceded and relate to this action to be ratified at [identify the location and include hours] at least 72 hours in advance of the meeting.

Dated this ____ day of _____, 20__.

[name of public body]

By [authorized signature]

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Form 7.13

Employee Notice of Executive Session

Section 7.9.4

[DATE]

[Name and Address of Officer
or Employee who is the subject
of discussion at the executive
session]

Dear [Name of employee]:

This is to advise you that the [name of public body] will meet in executive session at its next meeting on [date, time, and exact location] to discuss [describe nature of matters to be discussed or considered]. You may request that the discussion take place during the [name of public body's] public meeting rather than in executive session, by contacting the undersigned not later than [date and time by which notification must be given*].

Any person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name, telephone number, TDD telephone number]. Requests should be made as early as possible to arrange the accommodation.

Very truly yours,

[authorized signature]

* Since the public body must post its notice of either a public meeting or an executive session at least twenty-four hours before the meeting, the deadline for the employee to exercise his or her right to demand a public meeting must be more than twenty-four hours before the meeting.

APPENDIX C

Statement of Funeral Goods and Services Selected

Board of Funeral Directors and Embalmers

Appendix B. Statement of Funeral Goods and Services Selected

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

The charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing.

FUNERAL OF _____

Table with funeral services and costs: FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME, RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME, DIRECT CREMATION, TRANSFER OF REMAINS TO FUNERAL HOME, IMMEDIATE BURIAL, FUNERAL ARRANGEMENTS, AUTOMOTIVE EQUIPMENT, ACKNOWLEDGMENT CARDS, CASKET SELECTED, VAULT OR LINER, OTHER ITEMS.

Table with CASH ADVANCE ITEMS: Organist and/or other music, Hairdresser or barber, Flowers, Pallbearers, Motorcycle escorts, Clergy Honoraria, Obituary Notice, Death Certificate(s), Gratuities, Other (describe).

TOTAL COST FOR ARRANGEMENTS SELECTED FOR FUNERAL HOME, Arranged by, Date

NOTICE TO PURCHASER

You may choose to purchase a casket or container for the funeral services and final disposition. However, except under certain public health circumstances pursuant to A.R.S. § 36-136, state law does not require the purchase or use of caskets or containers.

METHOD OF PAYMENT AND INTEREST CHARGES [describe the method of payment required by the funeral establishment for the funeral services and any interest charges.

[Statement not used as final bill]

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

Appendix C. Expired

Historical Note

Adopted effective January 1, 1985 (Supp. 85-1). Appendix expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective December 29, 2011 (Supp. 12-1).