



## SEEKING VICTIM COMPENSATION IN SEXUAL ASSAULT BACKLOG CASES

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Across the country, jurisdictions are moving to process previously untested sexual assault kits (SAKS), some of which had remained untested for decades. When such testing results in further investigation or the reopening of cases, victims may need counseling or other services to cope with the impact of the retesting. They may need to travel or take time from work to speak with investigators. To help pay for these services, they may need to seek crime victim compensation.

Crime victim compensation programs are state programs that reimburse victims for certain out-of-pocket expenses resulting from violent crime. Those programs typically require that the victim report the offense within a defined period of time, cooperate in the investigation and prosecution, and file an application for compensation by a specified deadline.

Whether—and under which circumstances—victims may access crime victim compensation depends on their state compensation regulations. The passage of time from the date the sexual assault was committed to the time to the expenses were incurred by the victim may pose a barrier to victims' access to compensation.

In most states, if the victim had filed an initial crime victim compensation claim at the time of the offense or within the statutorily prescribed filing deadline and later incurred additional expenses, victim compensation programs will consider those later expenses if the victim has not yet received the maximum allowable benefits. Some states, however, have a formal time limit for claiming additional expenses (e.g., up to three years) under a compensation claim. New Jersey recently amended its compensation law to extend the time limit for accepting claims for additional expenses to 10 years.<sup>1</sup> This change applies to any type of criminal case and is not dependent on the reopening of an investigation.

Cases in which victims did not file a compensation claim at the time of the offense may be more complicated. When victims in such cases seek victim compensation for newly incurred expenses, they may find that their state prohibits its compensation program from accepting claims outside the filing deadline. For example, Oklahoma's regulations prohibit consideration of any claim filed more than two years after the date of the injury or death on which the claim is based.<sup>2</sup>

Many state laws allow exceptions to the filing deadline or allow the compensation program to waive the deadline for "good cause" or similar reason. But such exceptions may be narrowly defined. Connecticut, for

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<sup>1</sup> N.J. Stat. § 52:4B-18 (2012).

<sup>2</sup> Okla. Admin. Code § 185:10-1-4 (2011).

instance, allows waivers only where the victim's failure to file a claim within the prescribed period results from the "physical, emotional, or psychological injuries caused by such personal injury or death."<sup>3</sup>

Other states allow more discretion in such cases. For example, Texas allows a waiver of the filing deadline for certain reasons, including "any other circumstances that the [Office of the Attorney General] considers significant."<sup>4</sup> Wisconsin allows a waiver of the filing deadline "in the interests of justice."<sup>5</sup> In states whose compensation programs allow more discretion in the finding of "good cause" to extend the filing deadline, it appears that the reopening of a cold case may qualify. In a National Center for Victims of Crime survey of compensation programs, 73 percent of those who reported that their states have a "good cause" exception to the filing deadline said they would be "very likely" or "likely" to apply that exception in cases where a DNA cold hit occurred after the application filing had passed.

When asked about other factors they might consider in determining "good cause," respondents mentioned the victim's cooperation in the prosecution of the offender; documentation (such as confirmation from a therapist that counseling is related to the DNA testing and identification of an offender); the age of the victim at the time of the offense; and whether victims knew of the existence of the crime victim compensation program or their ability to file a claim at the time of the crime.

States might also consider specifically amending their law to make it easier for victims in cold cases to receive compensation. For example, under Delaware law, which generally prohibits reopening compensation claims after two years, victims may apply for compensation for counseling, travel expenses to attend criminal justice proceedings, or expenses for personal safety in cases where a law enforcement agency conducts further investigation into a previously reported crime.<sup>6</sup>

As more victims are identified through the processing of sexual assault backlogs, new issues relating to compensation claims are likely to arise. The National Center encourages victim-serving and law enforcement professionals who work with victims in such cases to understand the compensation policies in their state and ensure that victims know about their right to apply.

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<sup>3</sup> Conn. Gen. Stat. § 54-211 (2012).

<sup>4</sup> 1 Tex. Admin. Code § 61.202 (2011).

<sup>5</sup> Wis. Admin. Code JUS § 11.07 (2011).

<sup>6</sup> Del. Code Ann. tit. 11, § 9009 (2012).