

THE ADVOCATE'S LEGAL GUIDE TO **NEW YORK** VICTIM COMPENSATION CLAIMS

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Executive Summary

When people experience violent crimes—shootings, stabbings, sexual assaults, or otherwise—norms of daily life are thrown into disarray. Survivors will need medical attention, psychological and emotional support, and solutions for the economic consequences of victimization. State victim compensation programs provide financial assistance for such consequences, but most crime victims are not aware that they exist. Moreover, programs have a reputation for lengthy processes and administrative barriers that prevent access to these public benefits.

In recognition of the many difficulties that survivors endure, the Advocate’s Legal Guide to New York Victim Compensation provides a roadmap for crime victim professionals to better assist survivors through the victim compensation process. The guide is a result of broad legal investigation of the New York Office of Victim Services by GIFFORDS, which developed this resource through direct representation, stakeholder engagement, and statutory and administrative analysis. It is the most thorough legal treatment of victim compensation in New York State, and it will enable any provider, advocate, violence interventionist, or lawyer as they navigate the challenges of accessing program benefits on behalf of survivors. In turn, greater access will help survivors heal and create safer communities throughout New York.

Section 1: Introduction to Victim Compensation

Throughout the 1960s and 70s—when the US and state governments were continually re-organizing their relationship to the public—a popular and bipartisan policy idea emerged: victims and survivors should be compensated for the financial losses they endured as a result of violent crime.¹ Victim compensation policies were enacted in various states like Hawaii and Massachusetts,² and in 1982, a comprehensive presidential investigation into crime victims recommended that financial compensation be an “integral” part of assisting victims. Congress later passed the Victims of Crime Act of 1984 (VOCA).³ The purpose of VOCA was to provide millions of dollars for services to victims and to subsidize reimbursement for their crime-related expenses.⁴

In New York, the legislature established the Crime Victims Compensation board in 1966 after a “Good Samaritan” was killed in a subway incident, becoming one of the first states to pass a victim compensation law.⁵ The law created the Office of Victim Services (OVS) with a mission to provide compensation to eligible victims of crime in a “timely, efficient and compassionate manner,” fund direct services to victims of crime, and “advocate for the rights and benefits of all victims of crime.”⁶ These OVS objectives follow from the New York legislature’s intent of providing aid to victims of crime “as a matter of grace.”⁷ The legislature “recogniz[ed] that many innocent persons suffer personal physical injury or death as a result of criminal acts...and determin[ed] that there is a need for government financial assistance for such victims of crime.”⁸

Though OVS’s statutory charge is clear and uncontroversial, recent attention on state victim compensation programs has underscored the various barriers to accessing assistance. From a national perspective, only one in twelve violent crime survivors receive victim compensation, which means that 96% of individuals who could have been eligible to receive support from state victim compensation did not receive it.⁹ This finding is consistent with a civil legal needs assessment that focused on New York crime victims, whose most prevalent issues

¹ Jeremy R. Levine & Kelly L. Russell, *Crime Pays the Victim: Criminal Fines, the State, and Victim Compensation Law 1964–1984*, 128 AM. J. SOC. 1158, 1172 (2023).

² U.S. DEP’T OF JUSTICE, CRIME VICTIMS’ RIGHTS IN AMERICA: AN HISTORICAL OVERVIEW, https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/OVC_Archives/ncvrv/1998/html/histover.htm (last visited June 2, 2025).

³ LOIS HAIGHT HERRINGTON, FINAL REPORT: PRESIDENT’S TASK FORCE ON VICTIMS OF CRIME 38 (1982); see Levine, *supra* note 1, at 1160.

⁴ See Levine, *supra* note 1, at 1160.

⁵ *Man Pleads Guilty to Subway Slaying of Good Samaritan*, N.Y. TIMES (Nov. 12, 1966), <https://www.nytimes.com/1966/11/12/archives/man-pleads-guilty-to-subway-slaying-of-good-samaritan.html>; see *Office of Victim Services’ 50th Anniversary: Commemorating 50 Years*, N.Y. STATE, <https://ovs.ny.gov/office-victim-services-50th-anniversary> (last visited June 5, 2025).

⁶ *About OVS*, N.Y. STATE, <https://ovs.ny.gov/about-ovs> (last visited June 5, 2025).

⁷ N.Y. EXEC. LAW § 620.

⁸ *Id.*

⁹ ALLIANCE FOR SAFETY AND JUSTICE, CRIME SURVIVORS SPEAK 2022: NATIONAL SURVEY OF VICTIMS’ VIEWS ON SAFETY AND JUSTICE 20 (2022).

concerned awareness of available services and the financial impacts of their victimization.¹⁰ Nevertheless, even when victims know that OVS may offset crime-related costs, the legal and administrative barriers surrounding compensation are difficult to navigate.¹¹ Even worse, these barriers combine with biases that affect perceptions of crime victims, often creating pronounced racial disparities in the administration of compensation. For instance, recent reporting found that “Black applicants [for compensation] were almost three times as likely as applicants of other races to be denied for behavior-based reasons.”¹² In New York state, “Black families [are] more likely to be denied for subjective reasons, such as whether they may have said or done something to provoke a violent crime.”¹³

These administrative and cultural barriers to victim compensation, as well as the general lack of awareness around its availability, are precisely why more resources should be dedicated to assisting victims with victim compensation applications.¹⁴ To help meet this need, this guide aims to provide a deeper, legal-based review of the New York victim compensation process and to offer practical guidance for advocates assisting victims. Though it does not offer a comprehensive account of OVS’s governing laws and practice, the guide will provide a strong foundation for any medical or mental healthcare provider, social worker, victim advocate, violence intervention specialist, or other allied professional seeking to better navigate the victim compensation process. In turn, this knowledge should enable practitioners to more confidently encourage the submission of compensation claims, and it will provide a starting point for legal professionals to address issues in administrative disputes and appeals with OVS.

Accordingly, this guide will begin with a brief discussion of the federal and state laws governing OVS. The guide’s application sections will then proceed in three parts: (1) preparing to file a claim application, (2) the pendency of the application, and (3) claimant awards. Eligibility requirements warranting greater analysis—such as claim types, law enforcement cooperation requirements, and contributory conduct—will be explored at greater length.

Section 2: Governing Law

Federal Law

¹⁰ UNIVERSITY AT ALBANY, STATE UNIVERSITY OF NEW YORK, THE CIVIL LEGAL NEEDS OF VICTIMS OF CRIME IN NEW YORK STATE: AN ASSESSMENT OF THE ISSUES, SERVICES, AND CHALLENGES IN MEETING THE CIVIL LEGAL NEEDS OF VICTIMS 19-20 (2017). (“Money/finances, family, housing and employment were the most common problems indicated by all respondents...[n]early half the victim [respondents] indicated they needed help with knowing what services are available.”)

¹¹ *Id.* at 21. (“Over half of service providers cited legal representation, legal advice, and help with preparing forms/filing documents as unmet needs among their clients...[while more than] one-third of [victim] respondents indicated that no one informed them of their rights as a victim.”)

¹² Mike Catalini & Claudia Lauer, *Every state offers victim compensation. For the Longs and other Black families, it often isn’t fair*, ASSOCIATED PRESS (May 17, 2024), <https://apnews.com/article/crime-victims-compensation-racial-bias-58908169e0ec05d4389c57f975eac49b?>; see also JEREMY R. LEVINE, INEQUALITY IN CRIME VICTIM COMPENSATION 4 (2024).

¹³ Catalini, *supra* note 12.

¹⁴ Video Interview with Crime Victims Legal Network (Sep. 27, 2023).

As mentioned in the introduction, OVS operates under the Victims of Crime Act (VOCA) of 1984. VOCA makes funding available to states for (1) direct services and (2) direct compensation to victims of crime.¹⁵ Concerning direct compensation, VOCA mandated that state programs offer reimbursement for medical expenses and lost wages attributable to a physical injury from a compensable crime of violence, in addition to burial expenses attributable to a death from a compensable crime.¹⁶ In victim compensation parlance, a “compensable” crime or expense is one for which a victim compensation program can provide financial assistance. VOCA also requires that state “program[s] promote[] victim cooperation with the reasonable requests of law enforcement authorities.”¹⁷ Importantly, VOCA obliges victim compensation programs to fulfill a secondary role in relationship to certain “Federal program[s]...or [] federally financed State or local program[s],” such as Medicaid and Medicare, that would also cover certain costs associated with victimization.¹⁸

In light of recent funding issues around the Crime Victims’ Fund—the federal funding source created by VOCA to distribute grant money—Congress passed the VOCA Fix to Sustain the Crime Victims Fund Act of 2021 (VOCA Fix). VOCA Fix expressly codifies states’ discretion regarding the requirement that compensation programs promote cooperation with criminal investigations and prosecutions.¹⁹ Traditionally, states have implemented this requirement by mandating individual victims’ cooperation with law enforcement, but VOCA Fix provides wide exceptions where victim cooperation requirements may be impacted by age, physical condition, psychological state, cultural or linguistic barriers, or “any other health or safety concern” jeopardizing the victim’s wellbeing.²⁰ The DOJ later issued guidance on this provision, reiterating that states historically have had wide discretion “to interpret and apply the provision requiring [programs] to promote victim cooperation.”²¹ In the DOJ’s view, VOCA Fix “resolve[d] any ambiguity” about reasonable barriers to law enforcement cooperation and provided “clear language and criteria” for exceptions.²²

¹⁵ VOCA’s direct services funding stream is known as the Victim Assistance Program formula grant, which is annually awarded to states that in turn re-grant the money to eligible victim service providers. *See* Victims of Crime Act Victim Assistance Program, 28 C.F.R. § 94.111 (2016); *see also, e.g.*, EQUAL JUSTICE USA, APPLY FOR VOCA FUNDING: A TOOLKIT FOR ORGANIZATIONS WORKING WITH CRIME SURVIVORS IN COMMUNITIES OF COLOR AND OTHER UNDERSERVED COMMUNITIES 3 (2017); DEPT. OF JUST., OFFICE OF VICTIMS OF CRIME, VOCA VICTIM ASSISTANCE FUNDS MAY SUPPORT COMMUNITY VIOLENCE INTERVENTION (2021).

¹⁶ Victims of Crime Act (VOCA) 34 U.S.C § 20102(b)(1)(a)–(c) (2025). VOCA extends the definition of medical expenses to include, “to the extent provided under the eligible crime victim compensation program, expenses for eyeglasses or other corrective lenses, for dental services and prosthetic devices, and for services in accordance with a method of healing recognized by the law of the State.” *Id.* § 20102(d)(2).

¹⁷ *Id.* § 20102(b)(2)

¹⁸ *Id.* § 20102(e)(1)–(2); *see also* Victims of Crime Act Victim Compensation Grant Program Final Guidelines, 66 Fed. Reg. 27158 (May 16, 2001) [hereinafter Victim Compensation Final Guidelines].

¹⁹ 34 U.S.C § 20102(b)(2).

²⁰ *Id.*

²¹ DEPT. OF JUST., OFFICE FOR VICTIMS OF CRIME, VOCA FIX EXCEPTION RE: VOCA COMPENSATION ELIGIBILITY REQUIREMENT TO PROMOTE VICTIM COOPERATION WITH LAW ENFORCEMENT (2021). This historical discretion comes under the DOJ’s compensation regulation, which states that programs may create their own victim cooperation standards, to include reporting to police or “other person[s] knowledgeable about the crime.” Victim Compensation Final Guidelines, *supra* note 18, at 27,162.

²² VOCA FIX EXCEPTION, *supra* note 21.

In May 2001, the Department of Justice (DOJ) promulgated the VOCA Victim Compensation Grant Program Final Guidelines to assist states in their administration of compensation funding.²³ The Victim Compensation Final Guidelines clarified that (1) VOCA does not prohibit states from offering compensation for victims of nonviolent crimes, to include crimes involving threats of injury or economic crime where there is no physical injury, and (2) VOCA requires state programs to offer mental health counseling and care as part of the statute's mandated expenses.²⁴ The guidelines also provided a list of other "allowable" expenses that state programs may choose but are not required to cover for victims.²⁵ These allowable expenses include the following: property damage and loss; travel and transport to secure bodies of deceased; temporary lodging; necessary building modifications and equipment for physical disabilities resulting from compensable crimes; crime scene cleanup; attorney's fees related to claims for compensation, guardianship, and estate settling; payment for forensic sexual assault exams; dependent care; financial counseling; and pain and suffering, among others.²⁶

Earlier this year, the DOJ published additional victim compensation guidance to "identif[y] issue areas and correlating recommendations" for state programs. In particular, the guidance focused on criminal history denials, procedural barriers, allowable compensable expenses, engagement with Tribal jurisdictions, contributory conduct determinations, and cooperation with law enforcement.²⁷ On the latter issue areas, DOJ "urge[d] those states that consider contributory conduct to revisit their requirements in light of the potential for evidentiary incompleteness or inconsistency," and forcefully stated VOCA "does not include a mandate that individual victims must report to or otherwise participate in law enforcement activities related to criminal activity to validate their victimization."²⁸

New York State Law

The state statutory provisions establishing OVS and providing for the administration of OVS's victim compensation program are found in the New York Executive Law.²⁹ OVS later issued regulations to establish certain eligibility rules and to detail the administrative process for compensation applications.³⁰ In recent years, there have been many noteworthy changes to New York's victim compensation law, and the most significant changes are discussed below.

The Fair Access to Victim Compensation Act

²³ Victim Compensation Final Guidelines, 66 Fed. Reg. 27158.

²⁴ 66 Fed. Reg. at 27,161–27,162.

²⁵ 66 Fed. Reg. at 27,162.

²⁶ *Id.* ("Property damage and loss not resulting from replacements costs of clothing, bedding, windows, and locks are not expenses that are eligible to be reported to DOJ for the purpose of VOCA's grant matching formula.")

²⁷ *See* DEPT. OF JUST., OFFICE FOR VICTIMS OF CRIME, DEAR COLLEAGUE LETTER 2–7 (2025); contributory conduct refers to a program's determination of whether a victim directly or indirectly contributed to their own victimization, "regardless of whether [the victim] was charged or convicted for criminal conduct that caused their injuries." JOHN MAKI & HEATHER WARNKEN, *REALIZING THE PROMISE OF VICTIM COMPENSATION: RECOMMENDATIONS TO HELP COMMUNITY VIOLENCE INTERVENTION MEET THE NEEDS OF UNDERSERVED VICTIMS* 6 (2023).

²⁸ *See id.* at 4–5.

²⁹ N.Y. EXEC. LAW §§ 620–636.

³⁰ *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 525.

In alignment with VOCA Fix, the Fair Access to Victim Compensation Act (FAVC), effective December 31, 2015, changed OVS's eligibility determinations by eliminating the requirement that victims report to police within one week of victimization.³¹ Instead, FAVC does not impose a timeframe for reporting victimization, and it permits applicants to satisfy reporting requirements by reporting to certain non-law-enforcement professionals and organizations that interact with crime victims, including "city or state contracted provider[s]" and "licensed medical or mental health services provider[s]."³² If any of these providers have given service to a reporting victim, FAVC will allow them to attest to the condition of the victim and whether that condition is related to the crime.³³ OVS recently held a webinar on the implementation of this new reporting mechanism, announcing that the provider attestation will require a written statement demonstrating service to a qualifying crime victim.³⁴ There will be differing attestation forms depending upon whether the verifying service provider is a medical and mental health professional or victim service agency.³⁵ In addition to provider-based avenues for reporting, victims and survivors will now be allowed to satisfy this requirement through a temporary or permanent restraining or protective order.³⁶

Other significant changes introduced by FAVC include an extension of the application window and clarifications regarding OVS's claim investigation requirements. Under current law, victims and survivors must submit an application within one year of the crime; FAVC extends this application window to three years.³⁷ For OVS claim investigations, FAVC changed the definition of crime, clarifying that a crime may have occurred, and therefore that a claimant may be eligible for compensation, "regardless of whether any suspect was arrested, charged, apprehended, or prosecuted for [the crime] or whether the claimant has interacted with a criminal justice agency."³⁸ Notably, as a special point of emphasis, FAVC also introduces this language in another statutory section on OVS's claim determinations, making clear that OVS must investigate and decide claims regardless of arrest or charge of any suspect(s).³⁹ These provisions will go into effect on December 31, 2025, a little more than two years after Governor Kathy Hochul signed FAVC.⁴⁰

2025-2026 Public Protection and General Government Budget

As a follow up to FAVC, the public protection and general government section of New York's 2025-26 state budget included several changes to the state victim compensation law. In Governor Hochul's initial budget proposal, the governor recognized that "existing limits on

³¹ EXEC. § 631 (effective Dec. 31, 2025).

³² See EXEC. § 631(c)(iii)(B); (1-b) (effective Dec. 31, 2025).

³³ See *id.*

³⁴ See *id.*; see also Off. of Victim Servs., *Fair Access to Victim Compensation: Implementation Update Webinar*, YOUTUBE (June 11, 2025), <https://www.youtube.com/watch?v=am4i6WHJ44I>.

³⁵ See Implementation Update Webinar, *supra* note 34.

³⁶ EXEC. § 631(c)(iii)(A) (effective Dec. 31, 2025).

³⁷ EXEC. § 625(2) (effective Dec. 31, 2025).

³⁸ EXEC. § 621(3)(a) (effective Dec. 31, 2025).

³⁹ EXEC. § 627(1)(c) (effective Dec. 31, 2025).

⁴⁰ Press Release, Governor's Kathy Hochul Press Office, Governor Hochul Signs Legislation to Support Victims and Survivors of Crime (Dec. 9, 2023), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-support-victims-and-survivors-crime#:~:text=benefits%20they%20deserve.%E2%80%9D-Legislation%20S.,be%20eligible%20to%20receive%20compensation.>

compensation, outdated reimbursement caps, and restrictive eligibility criteria hinder effective support for vulnerable populations.”⁴¹ The most significant change introduced through this legislation was the elimination of certain contributory conduct decisions.⁴² Specifically, surviving next of kin can no longer be denied when a deceased family member is alleged to have contributed to their victimization.⁴³ Thus, the narrowing of the contributory conduct mandate should ensure that mothers, for instance, are not denied funeral expenses if their child is killed in a victimization.⁴⁴

In addition to this contributory conduct provision, the state budget expanded eligibility and increased coverage in different ways. Notably, the \$6,000 limit for burial and funeral expenses was doubled to \$12,000.⁴⁵ Scam victims will now be permitted to recover some or all of their cash losses, up to the cap of \$2,500.⁴⁶ Third party individuals and entities will now be eligible for reimbursement of crime scene clean-up expenses, regardless of whether the third party is considered next-of-kin.⁴⁷ The budget legislation also simplifies the definition of “disabled victims,” making clear that such victims need only to produce “medical records” demonstrating an impairment that “prevents the exercise of a normal bodily function.”⁴⁸ All of the budget provisions will go into effect on November 5, 2025.

Section 3: Preparing to File a Claim

Against the statutory and regulatory framework outlined above, this section of the guide outlines the practical steps that victims—or advocates—must take to submit a claim in New York. It details the process with attention to two major parts: (1) evaluation of eligibility and (2) the actual completion of the application.

Evaluating Eligibility

The most considerable aspect of filing an application begins with evaluating eligibility, which requires that (1) the victim be an “innocent victim of crime;” (2) that the claimant have compensable out-of-pocket losses; and (3) that the claimant be a qualifying victim or have a qualifying crime victimization. OVS developed a “claim type” process for evaluating whether a potential applicant is a qualifying victim or has a qualifying crime. Recently, OVS consolidated the application form to be more convenient for survivors, who no longer have to submit information that OVS has determined is not necessary for determining eligibility.⁴⁹

⁴¹ GOVERNOR KATHY HOCHUL, 2025 STATE OF THE STATE 36 (2025).

⁴² S3005C, 2025 Leg., Reg. Sess. (N.Y. 2025).

⁴³ EXEC. § 631(5)(g) (Effective Nov. 5, 2025).

⁴⁴ New York State Senate Bill S4584, informally known as the “Survivors First Act,” would completely eliminate this contributory conduct mandate from the New York victim compensation statute, among other changes like the removal of crowdfunding as a collateral source consideration for OVS. S4584, 2025 Leg., Reg. Sess. (N.Y. 2025).

⁴⁵ EXEC. § 631(2) (Effective Nov. 5, 2025).

⁴⁶ EXEC. § 631(9)(b) (Effective Nov. 5, 2025).

⁴⁷ EXEC. § 624(1)(l) (Effective Nov. 5, 2025).

⁴⁸ See EXEC. § 621(10) (Effective Nov. 5, 2025).

⁴⁹ N.Y. State Office of Victim Services, *N.Y. Shortened Compensation Application: Information Session*, YOUTUBE, <https://www.youtube.com/watch?v=x7O7Zu6gaUw> (last visited Jun. 5, 2025).

Innocent Victim of Crime Who Reported Victimization

Perhaps the most controversial aspects of compensation eligibility under New York law begin with the requirement that the victim be an “innocent” victim of crime who has reported to and cooperated with law enforcement.⁵⁰ “Innocent victim of crime” is statutory language that refers to whether the victim contributed to their victimization (i.e., contributory conduct).⁵¹ New York law states OVS must determine whether “because of his conduct, the victim...contributed to the infliction of his injury,” and accordingly the office must reduce the award or reject the claim based on that contribution.⁵² The OVS regulation further defines “innocent victim of crime,” stating that contributory conduct is “culpable conduct logically and rationally related to the crime by which the victim was victimized and contributing to the injury suffered by the victim.”⁵³ Critically, VOCA and the Victim Compensation Final Guidelines do not provide any framework for the implementation of a contributory conduct standard.⁵⁴

Until FAVC takes effect at the end of 2025, the victim must also demonstrate that they reported their victimization to police.⁵⁵ Under current law, survivors and victims have one week from the occurrence of the crime to report to law enforcement, unless the victim had “good cause” for any delay beyond a week.⁵⁶ Victims are also required to cooperate with the “reasonable requests” of law enforcement while investigation of the crime proceeds.⁵⁷ Below, the claim investigation section will address contributory conduct and the law enforcement aspects of claim process in greater detail, but it is critical to remember that revisions to New York victim compensation law will alter these initial eligibility considerations beginning in 2026.

Compensable Loss

In preparing an application, a victim or assisting professional must next consider whether the claimant has compensable out of pocket costs. The New York compensation statute defines out of pocket loss as “unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary” from the victim’s crime-related injury, including expenses that result from exacerbation of a pre-existing disability or condition.⁵⁸ The definition also includes counseling costs as an eligible out-of-pocket expense.⁵⁹ According to OVS, the following expenses are eligible for reimbursement: medical, pharmacy, dental, vision, and counseling expenses; loss or damage to essential personal property; lost wages or lost support; occupational or vocational rehabilitation; burial and funeral expenses; use of domestic

⁵⁰ Under these eligibility requirements, programs may be more prone to administering benefits in a racially discriminatory manner. *See Catalini, supra* note 12. (“The AP found disproportionately high denial rates in 19 out of 23 states willing to provide detailed racial data, the largest collection of such data to date. In some states...Black applicants were nearly twice as likely to as white applicants to be denied.”).

⁵¹ EXEC. § 631(5)(a).

⁵² *Id.*

⁵³ *See* N.Y. COMP. CODES R. & REGS. tit. 9, § 525.3.

⁵⁴ *See* 34 U.S.C § 20102; *see also* Victim Compensation Final Guidelines, 66 Fed. Reg. 27,158.

⁵⁵ EXEC. § 631(1)(c).

⁵⁶ *See id.*

⁵⁷ 9 N.Y. Comp. Codes R. & Regs. § 525.6(c).

⁵⁸ EXEC. § 626(1).

⁵⁹ *Id.*

violence shelters; moving and storage expenses; court or medical related transportation costs; crime scene clean up; and security devices.⁶⁰

Claim Type

The final step in evaluating eligibility requires categorizing the victim and/or the qualifying crime into an appropriate “claim type.” More specifically, the victim, survivor, or crime type must fall within an enumerated statutory category. Though the statute does not establish an explicit system of categorization, OVS has created three “claim types” or categories for compensation applications: (1) Personal injury; (2) Essential Personal Property (EPP); and (3) Death.⁶¹ In determining claim type, the selection of the wrong category is the most common mistake committed by applicants, and service providers report that it is not an “easy question to answer.”⁶² Accordingly, OVS’s legal information partner—the Crime Victims Legal Network (CVLN)—has created a “Victim Compensation Claim Navigator” that asks a series of questions to lead claimants to the correct claim.⁶³

Personal Injury Claims

The first “claim type” is a personal injury claim, which is defined by OVS as a “victim who has suffered physical injury as a result of a crime.”⁶⁴ This definition is apparently derived from the first of many clauses in the statutory definition of victim: “victim shall mean (a) a person who suffers personal physical injury as a direct result of the crime.”⁶⁵ The statute also partially ties victimization to physical injury in the provision on awards, which states no victim shall receive an award unless OVS finds that the “crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability, or condition, or death of, the victim.”⁶⁶ As part of the system of categorization, OVS classified certain “exceptions” to its primary definition of a victim as someone who suffers physical injury. Technically, these “exceptions” reflect specific crimes that are included in the definition of victim in the compensation statute.⁶⁷

Accordingly, crimes such as menacing, harassment or aggravated harassment, criminal contempt, stalking, hate crimes, unlawful imprisonment, kidnapping, criminal mischief, and robbery are crimes that qualify for personal injury claims under OVS’ claim categories.⁶⁸

⁶⁰ N.Y. State Office of Victim Services, *Introduction to Claims*, YOUTUBE, https://www.youtube.com/watch?v=Osx4K49s__M&t=0s (last visited Jun 5, 2025).

⁶¹ The claim types are for ease of administrability, and emphasis is placed upon physical injury in the language used by OVS. However, victims with physical injuries are only one clause among many in the statute’s definition of victim. See N.Y. State Office of Victim Services, *Personal Injury Claims*, YOUTUBE, https://www.youtube.com/watch?v=3W_0kks4gRE&t=0s (last visited Jun 5, 2025); see also EXEC. § 621(5).

⁶² *What type of Claim to apply for*, EMPIRE JUSTICE CENTER, https://crimevictimshelpny.org/compensation/prepare/item.10381-What_type_of_Claim_to_apply_for (last visited Jun. 5, 2025).

⁶³ *Victim Compensation Claim Navigator*, EMPIRE JUSTICE CENTER, <https://probononet.neotalogic.com/a/compensationnavigator> (last visited Jun. 5, 2025).

⁶⁴ See *Personal Injury Claims*, *supra* note 61.

⁶⁵ See N.Y. EXEC. LAW § 621(5).

⁶⁶ See EXEC. § 631(1).

⁶⁷ See EXEC. § 621(5).

⁶⁸ *Personal Injury Claims*, *supra* note 61.

However, the range of compensable expenses for these crimes is limited by statutory language.⁶⁹ For instance, the crimes of unlawful imprisonment and criminal mischief can only be compensated for loss of earnings, crime scene cleanup and securing, and costs of counseling.⁷⁰ Others, like menacing (depending on the degree), aggravated harassment, and criminal contempt, permit a wider range of compensable expenses that may include the costs of utilizing shelter services, transportation expenses for court appearances, relocation expenses, and occupational or job training.⁷¹

Similar to the exception from the physical injury requirement for victims of these specific crimes, there are certain categories of victims who will qualify for personal injury claims without actually sustaining physical injury. OVS categorizes these victims as “exceptions” to its physical injury requirement, but they are reflected in the statute as additional clauses in the definition of victim.⁷² These categories of victims who qualify for OVS “exceptions” include disabled victims,⁷³ elderly victims,⁷⁴ vulnerable people who are unable to care for themselves,⁷⁵ and child victims.⁷⁶ Child victims, in particular, are eligible for compensation for “physical, mental, or emotional injury,” and may even submit a claim “as a result of witnessing a crime or any violation listed in [§ 631(12)].”⁷⁷ For these qualifying victims who do not have physical injury, however, the statute limits the expenses for which they may be compensated. For instance, with child victims who are not physically injured or who witness a crime without physical injury, they are only eligible for repair or replacement of essential personal property, transportation expenses in connection with prosecution of the crime, and counseling commenced within one year of the crime.⁷⁸ For elderly and disabled victims who did not suffer physical injury, they are eligible for the same limited expenses, in addition to the costs of financial counseling.⁷⁹ Where there is a vulnerable person who was victimized in a non-physical way, the vulnerable person is only eligible for compensation on loss of savings.⁸⁰

Essential Personal Property Claims

The second claim type is an Essential Personal Property (EPP) claim. The New York statute defines EPP as “articles of personal property necessary and essential to the health, welfare or safety of the victim.”⁸¹ OVS regards the following as compensable EPP expenses: eyeglasses, contact lenses, clothing, and cash (up to \$100).⁸² According to OVS, the total limit for

⁶⁹ See EXEC. § 631(11).

⁷⁰ See *id.*

⁷¹ See EXEC. § 631(12).

⁷² See EXEC. § 621(5).

⁷³ EXEC. § 621(10); see also EXEC. § 624(f).

⁷⁴ EXEC. § 621(9); see also EXEC. § 624(e).

⁷⁵ EXEC. § 621(5).

⁷⁶ EXEC. § 621(11).

⁷⁷ *Id.*

⁷⁸ EXEC. § 631(17).

⁷⁹ EXEC. § 631(8).

⁸⁰ EXEC. § 631(8-a).

⁸¹ EXEC. § 621(8).

⁸² N.Y. State Office of Victim Services, *Essential Personal Property Claims*, YOUTUBE, <https://www.youtube.com/watch?v=KIFaLCLxqKo&t=0s> (last visited Jun 5, 2025).

reimbursement or repair of EPP is \$500,⁸³ but this seems to be at odds with the statutory provision on EPP awards, which provides that “any award made for...[EPP], shall be limited to an amount of [\$2,500...]. In the case of medically necessary life-sustaining equipment which was lost or damaged as the direct result of the crime, the award shall be limited to the amount of [\$10,000].”⁸⁴

To be eligible for an EPP claim, the victim must be (1) an innocent victim of crime, and (2) either a child victim, an elderly victim, or a disabled victim.⁸⁵ For victims who have lost or damaged EPP who do not fall into a special category of victims, such victims must seek reimbursement on their EPP via personal injury claims.⁸⁶

Death Claims

The third claim type is a death claim, which are available when the crime victim has died as a result of the crime.⁸⁷ The statutory provisions for a death claim begin with a definition for family: “(a) any person related to such [deceased] person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such [deceased] person, or (c) any person residing in the same household with such [deceased] person.”⁸⁸ Thus, to be eligible for a death claim, one may be a spouse, domestic partner, grandparent, parent, stepparent, guardian, brother, sibling, stepsibling, child, stepchild or grandchild of a deceased victim,⁸⁹ including when the crime resulting in the victim’s death occurred in the shared residence of any person having such relationship of consanguinity or affinity with the deceased victim.⁹⁰ Others who are eligible to file for death claims are “any [] person dependent for [their] principal support” upon a deceased victim,⁹¹ “any person or business” bearing some or all costs for burial expenses for the deceased victim,⁹² and surviving spouses of deceased victims who did not die as a result of criminal injury.⁹³

Compensable expenses for death claims include loss of support,⁹⁴ and for two or more qualifying persons who submit such a claim pertaining to the death of the same victim, OVS must apportion the loss of support award among the claimants.⁹⁵ The additional compensable

⁸³ *Id.*

⁸⁴ EXEC. § 631(9).

⁸⁵ *See Essential Personal Property*, *supra* note 82; *see also* EXEC. § 631(8); (17).

⁸⁶ *Essential Personal Property*, *supra* note 82.

⁸⁷ N.Y. State Office of Victim Services, *Death Claims*, YOUTUBE, <https://www.youtube.com/watch?v=SDEAuesDDUU&t=0s> (last visited Jun 5, 2025).

⁸⁸ EXEC. § 621(4). While subdivision (c) of the statutory provision seems broad enough to support a claim by a roommate of the deceased, the eligibility limitations in EXEC. § 624 make clear that roommates are not intended compensation award recipients.

⁸⁹ EXEC. § 624(b).

⁹⁰ EXEC. § 624(k).

⁹¹ EXEC. § 624(c).

⁹² EXEC. § 624(d).

⁹³ EXEC. § 624(i). (“A surviving spouse of a crime victim who died from causes not directly related to the crime when such victim died prior to filing a claim with the office or subsequent to filing a claim but prior to the rendering of a decision by the office. Such award shall be limited to out-of-pocket loss incurred as a direct result of the crime.”)

⁹⁴ EXEC. § 631(3).

⁹⁵ *Id.*

expenses are burial and funeral expenses, crime scene cleanup, and counseling.⁹⁶ Finally, there are specific statutory limitations on death claims, including a contributory conduct provision that mandates that OVS shall “reduce the amount of the award by no more than fifty percent” when it has determined that the deceased victim “contributed to the infliction of his or her injury.”⁹⁷ Further, OVS is not obligated to “maintain the same standard of living enjoyed by the claimant prior to death.”⁹⁸

Completing the Compensation Application

After evaluating these initial eligibility considerations, the next step is to complete the application. The application can be completed online at the OVS website,⁹⁹ where the applicant is required to create a NY.gov ID, or the applicant may print and complete a paper application.¹⁰⁰ In light of service provider feedback, OVS recently shortened the application from four to two pages.¹⁰¹ This new shortened application will focus on facilitating OVS’s eligibility determination and no longer requires claimants to gather and produce documents with the application.¹⁰² Rather, any documents needed to prove compensable loss will be requested by an investigating OVS officer after eligibility is determined.¹⁰³ The application will continue to ask for demographic information, information regarding the person completing the form, restitution information, expenses related to the crime, replacement of essential personal property, the applicant’s “other benefits or insurance,” attorney representation, and abbreviated information about the crime (i.e., the claim type, the crime report number, where the crime occurred, and a narrative of the circumstances of the crime).¹⁰⁴ Specifically, the application asks for the “police or criminal justice agency reported to,” and further requests an explanation of why a victim may have taken longer than seven days to report the crime to law enforcement.¹⁰⁵

In addition to submitting the shortened application, victims should provide OVS with other forms that facilitate communication and a speedier processing of the application. Certain forms, such as the OVS Health Insurance Portability and Accountability Act (HIPAA) Form,¹⁰⁶ the OVS Victim/Claimant’s Authorization,¹⁰⁷ and the OVS Authorization for Representative Form (which requires notarization),¹⁰⁸ should be submitted alongside the initial application. Under OVS regulations, victims are required to communicate with OVS about changes in contact

⁹⁶ See *Death Claims*, *supra* note 87.

⁹⁷ EXEC. § 631(5)(g).

⁹⁸ EXEC. § 631(6)(d).

⁹⁹ *Victim Compensation*, N.Y. STATE, <https://ovs.ny.gov/victim-compensation> (last visited Jun. 5, 2025).

¹⁰⁰ *OVS Claim Application and Instructions*, N.Y. STATE, https://ovs.ny.gov/system/files/documents/2024/01/ovs-claim-application-dec-2023_eng.pdf (last visited Jun. 5, 2025).

¹⁰¹ *N.Y. Shortened Compensation Application*, *supra* note 49.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *Claim Application and Instructions*, N.Y. STATE, <https://ovs.ny.gov/victim-compensation-claim-application> (last visited Jun. 6, 2025).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Victim/Claimant’s Authorization*, N.Y. STATE, <https://ovs.ny.gov/claimantauthorization> (last visited Jun. 6, 2025).

¹⁰⁸ *Authorization for Representative Form*, N.Y. STATE, <https://ovs.ny.gov/authorization-representative-form> (last visited Jun. 6, 2025).

information, so applicants should also be aware of the OVS change of address form.¹⁰⁹ CVLN indicates that failures to submit both the HIPAA and change of address forms are a common mistake made by applicants. Finally, for survivors or victims who are filing an application after the period permitted by statute (i.e., one or three years), the Affidavit in Support of Late Filing must be submitted for OVS to consider their application.¹¹⁰

The OVS statute, however, provides certain notice requirements that can extend the statutory application window.¹¹¹ Specifically, OVS must allow the submission of an application when a claimant was (1) not informed of their crime victim rights, pursuant to section 625-A of the New York Executive Law, and (2) had no knowledge of compensation eligibility.¹¹² In order to satisfy the first requirement, the agency receiving the claimant's crime report must share the availability of victim assistance programs and provide OVS "application blanks [] and information cards" to the victim.¹¹³ If a claimant was not provided with this notice and did not have any knowledge regarding OVS, they may use this lack of notice as a reason to file the late filing affidavit.¹¹⁴ Additionally, since lack of notice can extend the application period by operation of the OVS statute, lack of notice may also create a strong "good cause" exception for a victim who did not file a police report within one week of victimization.¹¹⁵ In any case, the specific requirement to report to police will no longer be in force when FAVC goes into effect at the end of this year.¹¹⁶

Administratively, to "evaluate program metrics," OVS tracks three statuses regarding the submission of applications, including claims received, claims accepted, and claims awarded.¹¹⁷ If a victim submits an application to OVS, the agency considers that application to be a claim "received;" in 2023-2024, for instance, OVS received 9,050 applications.¹¹⁸ If a victim submits an application without mistake and with all required documentation, then OVS considers the claim "accepted"—the application metric that measures "accuracy and completeness."¹¹⁹ Last year, OVS accepted 8,113 applications.¹²⁰ Under state regulation, if the application is submitted incomplete by the claimant, OVS shall return the application to (1) the victim services provider who completed the application for the victim; (2) to the victim, if the application was completed directly by them, and after assigning a staff person to obtain the necessary information from the claimant or other parties; or (3) to the victim to obtain the necessary information.¹²¹ The third application status concerns claims "awarded," which denotes the applications determined to be

¹⁰⁹ See N.Y. COMP. CODES R. & REGS. tit. 9, § 525.15(b); *Change of Address Form*, N.Y. STATE, <https://www.ny.gov/services/change-address-form-crime-victim-compensation> (last visited Jun. 6, 2024).

¹¹⁰ *Affidavit in Support of Late Filing Form*, N.Y. STATE, <https://ovs.ny.gov/affidavit-support-late-filing-form> (last visited Jun. 6, 2025).

¹¹¹ See EXEC. § 625(2).

¹¹² *Id.*

¹¹³ EXEC. § 625-A.

¹¹⁴ *Affidavit in Support of Late Filing*, N.Y. STATE, <https://ovs.ny.gov/system/files/documents/2022/06/blank-affidavit-late-filing-form.pdf> (Jun 5, 2025).

¹¹⁵ EXEC. § 631(1)(c).

¹¹⁶ EXEC. § 631(1)(b)–(c) (effective Dec. 31, 2025).

¹¹⁷ N.Y. OFF. OF VICTIM SERVS., VICTIM COMPENSATION RACE/ETHNICITY SUPPLEMENTAL REPORT 1 (2025).

¹¹⁸ See *id.* at 3.

¹¹⁹ *Id.* at 1.

¹²⁰ *Id.* at 4.

¹²¹ See N.Y. COMP. CODES R. & REGS. tit. 9, § 525.4(d).

eligible for compensation benefits by OVS.¹²² In other words, an “awarded” claim does not mean that OVS has paid benefits, but rather that OVS has determined that benefits may be paid to the applicant.¹²³ Out of the 9,050 applications received by OVS in 2023-2024, 5,494 of those applications were determined eligible for victim compensation.¹²⁴

Section 4: The Pendency of the Application

After a claim application is submitted and accepted by OVS, the claim will be investigated and a determination will be made, subject to the appeal and judicial review rights of the claimant. It is during this period that emergency awards will also be considered by OVS. Accordingly, this section of the guide will discuss statutory and regulatory provisions on (1) emergency awards, (2) the investigation of claims by OVS, and (3) decisions on claims, including notice requirements, contributory conduct, and administrative and judicial review.

Emergency Awards

Emergency awards are a statutory mechanism to hasten payments for crime-related expenses. Applications for emergency awards may be made alongside the submission of the claim application,¹²⁵ at which time the claimant must contact the OVS Claims Intake Unit at ea@ovs.ny.gov or by fax at 518-402-0921 to request an expedited decision.¹²⁶ Such awards are only given “before services have been received and/or paid for.”¹²⁷ The claimant must meet two statutory requirements to be eligible for an emergency award: (1) it must appear to OVS “that such claim is one with respect to which an award probably will be made,” and (2) “undue hardship will result” if the immediate payment is not made.¹²⁸ The OVS statute, regulations, and policies, however, do not provide a definition of “undue hardship.” In any case, OVS will deduct the value of the emergency award from the final award that the agency pays to the claimant, unless no final award is made, in which case the claimant must repay the value of the emergency award.¹²⁹

Under OVS’s regulations, no request for an emergency award may be considered without a completed claim application, and each request for an emergency award must be “expeditiously acted upon.”¹³⁰ While CVLN reports that decisions upon emergency requests are “usually made within 24-hrs,” OVS indicates that an emergency claim “can take several days to process.”¹³¹ The regulations also go on to impose certain minimum investigatory obligations upon OVS before it can make an emergency award, including consideration of (1) whether a crime in fact

¹²² See SUPPLEMENTAL REPORT, *supra* note 117, at 5.

¹²³ *Id.* at 1.

¹²⁴ See *id.* at 5.

¹²⁵ *Personal Injury Claims*, *supra* note 61.

¹²⁶ *Emergency Awards*, EMPIRE JUSTICE CENTER (last visited Jan. 24, 2025), https://crimevictimshelpny.org/compensation/prepare/item.10413-Emergency_Awards (last visited Jun. 5, 2025).

¹²⁷ *Id.*

¹²⁸ N.Y. EXEC. LAW § 630(1).

¹²⁹ *Id.*

¹³⁰ N.Y. COMP. CODES R. & REGS. tit. 9, § 525.11(a).

¹³¹ *Emergency Awards*, *supra* note 126; *Emergency Award Guidelines*, N.Y. STATE, <https://ovs.ny.gov/system/files/documents/2022/08/emergency-awards.pdf> (last visited Jun. 8, 2025).

occurred, (2) the claimant's eligibility, (3) contributory conduct of the victim, (4) OVS' statutory charge as a payor of last resort (i.e., whether other sources may pay for the crime-related loss), (5) the cooperation of the victim with law enforcement, and (6) the actual out-of-pocket loss for which an emergency award is requested.¹³² The regulation further limits the amount that may be awarded to the "actual out-of-pocket loss" of the claimant.¹³³

Though there appears to be no statutory or regulatory limitation on the emergency expenses for which OVS can provide financial assistance, in practice OVS limits emergency awards to certain costs. On the OVS website, the Emergency Award Guidelines indicate that emergency awards may be granted for funeral expenses; HIV medication for sexual assault and prescription drugs; moving, storage, and relocation; loss of earnings; lock replacement or security system installation; and eyeglasses, contacts, and emergency medical equipment; and clean up and securing of a crime scene.¹³⁴ On the other hand, CVLN indicates that loss of support "which results in hardship" may also be eligible for an emergency award.¹³⁵ Both the guidelines and the CVLN webpage are consistent with OVS's internal policy on eligible emergency award expenses. Regarding limitations on how much OVS can pay on an emergency claim, the statute mandates that the maximum allowable emergency award is \$2,500,¹³⁶ but funeral expenses have a maximum allowable award of \$3,000.¹³⁷ On November 5th of this year, this year's state budget legislation will increase this maximum funeral emergency award to \$6,000.¹³⁸

In practice, OVS's implementation of the emergency award mechanism appears to be more complicated than the statute or regulations would suggest. Specifically, while OVS regulations mandate that emergency award claims be expedited, the actual process of proving eligibility for an emergency award can significantly delay the claim.¹³⁹ For example, taking the expense of loss of support (LOS), OVS requires the victim to provide the same documents on both an emergency and non-emergency basis.¹⁴⁰ Thus, OVS's administrative requirements seem to defeat the statutory purpose of expedited emergency awards "pending a final decision" on the claim.¹⁴¹ This administrative burden on OVS's emergency award mechanism is consistent with

¹³² 9 N.Y. Comp. Codes R. & Regs., § 525.11(b).

¹³³ EXEC. § 525.11(c).

¹³⁴ See *Emergency Award Guidelines*, N.Y. STATE, <https://ovs.ny.gov/system/files/documents/2022/08/emergency-awards.pdf> (last visited Jun. 5, 2025).

¹³⁵ *Emergency Awards*, *supra* note 126.

¹³⁶ EXEC. § 630(1).

¹³⁷ EXEC. § 630(2).

¹³⁸ *Id.* (Effective Nov. 5, 2025).

¹³⁹ This administrative issue was informed by a real OVS claim, which did not receive any payments—emergency or otherwise—until two and a half months after the submission of an emergency award request.

¹⁴⁰ For loss of support claims, the OVS Emergency Award Procedures require a (1) death certificate, (2) employment documents, such as tax filings or an "Employment Questionnaire," (3) collateral source materials, such as veteran, pension, and social security benefit decisions and civil lawsuit information, and (4) proof of dependence documents, such as marriage and birth certificates. N.Y. OFFICE OF VICTIM SERVS., EMERGENCY AWARD PROCEDURES 21 (2024); the OVS Investigation Procedures similarly require these documents, including a death certificate, employment documents, collateral source materials (requiring decision letters for all household dependents in the case of social security survivor benefits), and proof of dependence. See N.Y. OFFICE OF VICTIM SERVS., PERSONAL INJURY AND DEATH CLAIMS INVESTIGATION PROCEDURES 55 (2024) [hereinafter OVS INVESTIGATION PROCEDURES].

¹⁴¹ EXEC. § 630(1).

recent analysis of compensation issues throughout the country, which found that emergency awards are “time-consuming decision-making processes that seem at odds with the emergency situations that low-income victims may find themselves in.”¹⁴²

Claim Investigation

Regardless of whether a claimant seeks an emergency award, OVS will assign the claimant’s application for investigation by an OVS officer. Under OVS’s regulations, an “accepted” claim shall be assigned for investigation as soon as practicable, but it must be assigned no more than three months after application acceptance.¹⁴³ The assigned officer must then conduct an investigation into “the validity of the claim” no later than six months after assignment, which altogether leaves a regulatory period of up to nine months before a claimant could potentially receive a decision.¹⁴⁴ In practice, while OVS strives to complete its investigation and render a decision on a claim within 90 days, the average time to reach a decision takes 120 days.¹⁴⁵ OVS reported that this period had ballooned to 140 to 150 days in light of recent personnel issues but has since decreased back to the average.¹⁴⁶

To accelerate the process of the investigation, the claimant must be ready to produce documents that prove victimization and out-of-pocket loss. OVS’s recently shortened application no longer requires these documents upfront. Once OVS makes threshold eligibility determinations based upon the shortened application, the claimant will then be required to produce their documents proving crime-related expense.¹⁴⁷ In reality, however, the fastest way to receive a decision is still the simultaneous submission of the application with any documents proving victimization and crime-related loss.

Investigation Stage Documents

To facilitate the process of gathering these documents, OVS created a “desk guide” that details what is needed for each claim type.¹⁴⁸ For example, during the investigation stage, death claims will require claimants to produce financial information, restitution information, burial insurance information (if any), GoFundme and crowdfunding burial information, death certificates or medical examiners’ reports, employer information for loss of support, and investigating detective or district attorney information.¹⁴⁹ To demonstrate compensable loss, the claimant must produce burial contracts; reports, itemized bills, explanations of benefits and birth certificates showing familial relationship (for counseling costs); and employment questionnaires or tax returns for loss of support.¹⁵⁰

¹⁴² MAKI, *supra* note 27, at 7.

¹⁴³ N.Y. COMP. CODES R. & REGS. tit. 9, § 525.5(a).

¹⁴⁴ 9 N.Y. Comp. Codes R. & Regs., § 525.11(b).

¹⁴⁵ N.Y. *Shortened Compensation Application*, *supra* note 49.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Compensation Documentation Desk Guide*, N.Y. STATE, <https://ovs.ny.gov/victim-compensation-documentation-desk-guide> (last visited Jan. 29, 2025).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

The documents are more or less the same during the investigation phase for any compensation claim type, but the documents required to prove compensable loss will vary more significantly depending on whether the claim is for essential personal property or personal injury.¹⁵¹ The investigating officer will typically send a letter to the claimant that lists each of the items needed for OVS to determine its reimbursement obligations.¹⁵² Depending upon the expense for which the victim is making a claim, some of the required documents may be more difficult for the victim to obtain. In claims where a victim is seeking reimbursement for mental health counseling expenses, victims must provide an itemized bill and proof of the counseling provider's license. OVS also requires a "mental health treatment report"—a form that a provider must use to assess the victim or claimant's trauma. In particular, the form asks the provider to render a formal diagnosis and make determinations about whether the applicant's trauma is related to their victimization.¹⁵³ Specific prompts on the treatment report include detailed descriptions of "the relationship between the crime and the need for treatment," and "what percentage of treatment is a direct result of the crime."¹⁵⁴

In reviewing this form, one clinician stated their view that the mental health treatment report may "pathologize" victims, especially when "any person who lives through violent crime would likely benefit from counseling." But despite these comments, this mental health treatment report requires the victim to identify a counselor who is willing to complete the report (in the event that the victim is not already receiving service). Unfortunately, it does not appear that OVS maintains a list of providers who have previously completed these reports or accepted payment at OVS's policy-restricted counseling rates.¹⁵⁵ In any case, should the claimant need additional counseling "one year after [service] has begun," the claimant will have additional documentary obligations, including evidence that the "counseling is causally connected to the crime" and, potentially, an potential independent medical examination ordered by OVS.¹⁵⁶

Notice of Right to Attorney Representation

Concerning notice and the scope of the claim investigation, there are certain statutory and regulatory obligations imposed upon the investigating officer at the commencement of the investigation. Specifically, the notice that OVS must provide at the beginning of the investigation relates to the applicant's right to be represented by counsel "at any stage of a

¹⁵¹ *Id.*

¹⁵² *Death Claim Checklist Sample*, EMPIRE JUSTICE CENTER, https://crimevictimshelpny.org/library/item.753218-Death_Claim_Checklist_Sample (last visited Jun. 5, 2025).

¹⁵³ *Mental Health Treatment Report – Outpatient*, N.Y. STATE, https://ovs.ny.gov/system/files/documents/2024/08/blank-mental-health-treatment-i-18-form_0.pdf (last visited Jun 5, 2025).

¹⁵⁴ *Id.*

¹⁵⁵ Email from Off. of Victim Servs., to GIFFORDS L. Center (Dec 5, 2024, 16:02 ET) (on file with author); see also OVS INVESTIGATION PROCEDURES, *supra* note 140, at 39. OVS compensates most mental health providers at a maximum rate of \$100, while psychologists holding a doctorate are paid at \$125 and psychiatrists holding a medical degree are paid at \$150. *Id.*

¹⁵⁶ N.Y. COMP. CODES R. & REGS. tit. 9, § 525.5(12)(g)(4).

claim.”¹⁵⁷ The notice shall include the claimant’s eligibility to collect attorney’s fees from OVS only upon successful prosecution of the claim during administrative or judicial review.¹⁵⁸

It should be noted that OVS is subject to a one thousand-dollar statutory limit for the “cost of reasonable attorney’s fees.”¹⁵⁹ In evaluating whether the maximum one-thousand dollars would be reasonable for the representation, OVS considers factors such as “the time and labor required, the novelty and difficulty of the [legal] questions involved,” “the fee customarily charged,” and “the experience, reputation, and ability” of the involved attorneys.¹⁶⁰ If counsel representing a claimant in an administrative or judicial review seeks these fees, the attorney must file an OVS Notice of Appearance or, in OVS’s terminology, an “I-66”.¹⁶¹ In any case, if a claimant utilizes an attorney, an advocate, a clinician, or any other individual for personal representation during an OVS claim, the claimant must complete a “notarized authorization” or Representative’s Authorization—which OVS references as an “I-20” form.¹⁶² Under OVS’s internal policy, OVS will not communicate with any personal representative without the submission of the completed original version (including wet signature) of this form.¹⁶³ The Notice of Appearance, on the other hand, is not required for the personal representative to communicate with OVS.¹⁶⁴

Scope of the Claim Investigation

Regarding the investigation of the claim, the investigating officer “may, but need not necessarily” use the following information gained during the investigation to facilitate rendering a decision: verification of information supplied by the claimant and development of new information; the victim’s contributory conduct; whether the claimant reported the crime to the appropriate authorities and their cooperation with law enforcement or OVS; the status of the victim as elderly or disabled; and, among other factors of consideration, “any other matter deemed relevant to the claim.”¹⁶⁵

Over the course of the investigation, the investigating officer may wield certain regulatory powers and make specific decisions depending upon whether the investigation develops certain information. For instance, under OVS regulations, the officer may direct a medical examination of the claimant, take depositions or affidavits, order hearings, and issue subpoenas.¹⁶⁶ The OVS regulations set the parameters for administrative hearings “to ascertain the substantial rights of the parties,” including the claimant’s attendance, the office’s discretion

¹⁵⁷ See N.Y. EXEC. LAW § 627; *see also* 9 N.Y. Comp. Codes R. & Regs. § 525.9(a).

¹⁵⁸ 9 N.Y. Comp. Codes R. & Regs. § 525.9(a). (“However, only those fees incurred by a claimant during (1) the administrative review...and/or (2) the judicial review of the final decision...may be considered for reimbursement.”).

¹⁵⁹ See EXEC. § 626(1).

¹⁶⁰ 9 N.Y. Comp. Codes R. & Regs. § 525.9(d).

¹⁶¹ OVS INVESTIGATION PROCEDURES, *supra* note 140, at 91.

¹⁶² 9 N.Y. Comp. Codes R. & Regs. § 525.3(c); *see also* OVS INVESTIGATION PROCEDURES, *supra* note 140, at 92.

¹⁶³ OVS INVESTIGATION PROCEDURES, *supra* note 140, at 92.

¹⁶⁴ *See id.* at 91.

¹⁶⁵ EXEC. § 525.5(b).

¹⁶⁶ EXEC. § 525.5(c).

to receive any information deemed relevant to the claim, and the claimant's burden of proof.¹⁶⁷ There are a number of cases in which New York state courts affirm OVS denials where the claimant failed to carry their burden, particularly in circumstances when the claimant cannot substantiate that they were employed at the time of or before the victimization, or where the claimant cannot demonstrate reporting of income to the appropriate taxing authority.¹⁶⁸ Regarding the regulatory evidentiary power of OVS, the investigating officer may issue subpoenas and subpoenas *duces tecum*¹⁶⁹ on behalf of itself, upon request of the claimant, or any party "made not less than five days prior to the hearing."¹⁷⁰ Notably, the claimant will bear the costs of any subpoenas made at their request.¹⁷¹ Furthermore, OVS regulations require the investigating officer to take or cause to be taken depositions "whenever necessary" and upon "application of the claimant."¹⁷²

Crime Committed

One critical investigative inquiry is the determination of whether a crime—both factually and legally—was committed against the applicant. Statutorily, OVS cannot make a victim compensation award "unless the office finds that [] a crime was committed."¹⁷³ The OVS statute places this limiting provision in the section on OVS awards, rather than the section covering the determination of claims, but in practice the requirement that a "crime was committed" is a threshold inquiry at the beginning of the investigation. Unfortunately, the OVS regulations provide no additional mandates or interpretation of the crime committed eligibility requirement.¹⁷⁴

However, the statute itself does provide an important guardrail in OVS's administration of this requirement: OVS must investigate and determine eligibility no matter whether there is any criminal process resulting from the claimant's victimization.¹⁷⁵ Specifically, the statute compels OVS to receive and decide claims "regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted...or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption."¹⁷⁶ Especially in light of the fact that many criminal investigations—such as investigations of non-fatal shootings—do not yield arrests or prosecution, this requirement is a key recognition that lack of criminal process does not mean that a claimant was not a victim of crime. Conceivably, the statutory requirement should prevent OVS from citing a lack of criminal charges or prosecution

¹⁶⁷ EXEC. § 525.5(8).

¹⁶⁸ See *Pelaez v. State of NY Exec. Dept. Crime Victims Bd*, 186 A.D.3d 831 (2d Dept 2020); see also *Matter of Starkman v. Fischetti*, 252 A.D.2d 845 (3d Dept 1998); *Rigaud v. Crime Victims Compensation Bd*, 94 A.D.2d 602 (1st Dept 1983).

¹⁶⁹ A subpoena *duces tecum* is defined as "a type of subpoena that requires the witness to produce a document or documents pertinent to a proceeding." Legal Information Institute, *Subpoena Duces Tecum*, CORNELL L. SCH., https://www.law.cornell.edu/wex/subpoena_duces_tecum (last visited Jun. 5, 2025).

¹⁷⁰ 9 N.Y. Comp. Codes R. & Regs. § 525.10(a).

¹⁷¹ EXEC. § 525.10(b).

¹⁷² EXEC. § 525.10(c).

¹⁷³ See EXEC. § 631(1).

¹⁷⁴ See 9 N.Y. Comp. Codes R. & Regs., §§ 525.1–525.30. The only mention of "crime committed" refers to the eligibility of claimants who were victimized by family members. *Id.* § 525.19.

¹⁷⁵ See EXEC. § 627(1)(c).

¹⁷⁶ *Id.*

as a reason to deny a claims under the “crime committed” inquiry, but the latest annual OVS report cites denials for “failure to...prosecute.”¹⁷⁷

In any case, FAVC made slight modifications to this OVS investigatory requirement, adding that claims must be investigated and determined “regardless of whether the alleged criminal has been arrested [or] charged.”¹⁷⁸ Further discussion of the crime committed requirement—particularly in comparison to OVS’s investigation of contributory conduct—will be discussed in a section below, as the OVS Investigation Procedures provide the same analysis for “verifying [a] crime occurred and determining contributory conduct.”¹⁷⁹

Crime Reporting and Law Enforcement Cooperation

Another threshold eligibility requirement is the determination of whether the claimant has reported the crime and cooperated with law enforcement. Much like the “crime committed” requirement, the OVS statute places this mandate in the section on claimant awards.¹⁸⁰ This provision requires claimants to “promptly report” their victimization “to the proper authorities.”¹⁸¹ Importantly, the statute provides a timeframe for reporting victimization to law enforcement, stating that OVS may not make an award if the report was made “more than one week after the occurrence of such crime,” unless the delay is justified for “good cause shown.”¹⁸²

Despite this current statutory obligation, the reality is that a majority of victims do not report to police for various reasons,¹⁸³ including a fear of stigmatization.¹⁸⁴ Moreover, OVS frequently struggles to obtain police reports during the course of claim investigations, which stall without this information and create another barrier for even those claimants who are willing to cooperate with police.¹⁸⁵ Indeed, the OVS Investigation Procedures contain specific directives to close claims as “No Information” when at least two months of law enforcement outreach have been unsuccessful.¹⁸⁶ OVS’s 2023-2024 annual report appears to be consistent with this investigatory process, as OVS reported 1,595 denials for “No Information Supplied” and made another 123 denials for “Unable to Locate Police Report.”¹⁸⁷

¹⁷⁷ N.Y. OFF. OF VICTIM SERVS., 2023-24 ANNUAL REPORT 13 (2025). It is not clear whether other denial categories of “no crime” and “victim not a victim of crime” may include other cases in which a failure of law enforcement apprehension or prosecution was a reason for denial. Nevertheless, citing a lack of criminal charges as the reason for a denial appears to violate the OVS statute. *See* EXEC. § 627(1)(c).

¹⁷⁸ EXEC. § 627(1)(c) (effective Dec. 31, 2025).

¹⁷⁹ OVS INVESTIGATION PROCEDURES, *supra* note 140, at 24.

¹⁸⁰ *See* EXEC. § 631(1)(c).

¹⁸¹ *Id.*

¹⁸² EXEC. LAW § 631(1)(c).

¹⁸³ *See* A. Thompson & S. Tapp, CRIMINAL VICTIMIZATION, 2022 1 (2023); VOCA Fix enshrined in federal law some of the reasons that victims do not report to law enforcement, including “age, physical condition, psychological state, [and] cultural or linguistic barriers.” VOCA Fix 34 U.S.C § 20102(b)(2).

¹⁸⁴ The other reasons that victims do not report to law enforcement include general distrust or lack of confidence in police; fear of stigmatization or being blamed for their victimization; or fear of retaliation or repeat victimization. *See* CRIME SURVIVORS SPEAK, *supra* note 9, at 16.

¹⁸⁵ Video Interview with Crime Victims Legal Network, *supra* note 14.

¹⁸⁶ *See* OVS INVESTIGATION PROCEDURES, *supra* note 140, at 24–25.

¹⁸⁷ 2023-24 ANNUAL REPORT, *supra* note 177, at 13.

Beyond the statutory obligation to report to police, OVS regulations affirmatively require the claimant to cooperate with law enforcement investigations. These regulations permit OVS to deny claims with prejudice where the “claimant and/or the victim failed to cooperate with the reasonable requests of law enforcement authorities, including prosecutors.”¹⁸⁸ In the contributory conduct section of the OVS Investigation Procedures, claim investigators are instructed to ask law enforcement whether “the victim/claimant cooperate[d] with [law enforcement’s] reasonable requests...in the investigation and/or prosecution of this case[.]”¹⁸⁹ Further, if law enforcement relays that the claimant has not been cooperative, OVS investigators are instructed to (1) ask law enforcement whether the victim provided reasons for their non-cooperation, and (2) contact the claimant to verify their reason(s) for non-compliance.¹⁹⁰ A considerable “discrepancy” between the statements of the claimant and law enforcement require the investigator to “consult with [a] supervisor to determine whether [the claim] should really be denied for lack of cooperation.”¹⁹¹ If the victim and/or police do not share a fear for personal safety as the reason for non-cooperation, the claim will likely be denied because “OVS does not consider any other reasons to be acceptable,” despite the other federally-recognized reasons for non-cooperation.¹⁹²

In two real cases that OVS presented during a victim assistance program training, non-cooperation with police was a driving issue. In one case, OVS reported that “the claimant and their family were unwilling to go to the police station to cooperate due to previous issues with officers.”¹⁹³ Consequently, the claimant’s emergency award was denied, and they later had a phone call with law enforcement, which “then deemed [the claimant] cooperative.”¹⁹⁴ Despite this new cooperation, however, OVS subsequently denied the claim for contributory conduct.¹⁹⁵ In another non-cooperation denial, OVS reported that the claimant had been shot while walking one evening, after which time a friend drove the claimant to the hospital.¹⁹⁶ OVS contacted police to inquire into contributory conduct and cooperation, and police relayed that the victim “refused to give [] any further details including the name of the friend who drove him to the hospital.”¹⁹⁷ Police then called the victim “several times” and visited the victim at home, but the victim “avoided the detectives.”¹⁹⁸ OVS unsuccessfully tried to contact the victim outreach to the victim via phone call and letter, and thus the claim was “denied for no cooperation.”¹⁹⁹

As noted in earlier sections of this guide, the statutory provision requiring law enforcement interaction will change at the end of December 2025, at which time claimants will be permitted to report their victimization to professionals other than law enforcement.²⁰⁰ After

¹⁸⁸ 9 N.Y. Comp. Codes R. & Regs. § 525.6(c).

¹⁸⁹ See OVS INVESTIGATION PROCEDURES, *supra* note 140, at 25.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² See *id.* If an investigator hears a reason other than fear for personal safety that investigator believes OVS should accept, the investigator may “send that information up through [their] supervisor and it can be reviewed.” *Id.*

¹⁹³ Online Victim Assistance Program (VAP) Training, Albany Investigations Unit, New York Office of Victim Services (May 21, 2024).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ EXEC. § 631(1)(a)–(c) (effective Dec. 31, 2025).

FAVC goes into effect, victims will be able to report to organizations and professionals defined as “support agenc[ies] for survivors of crime.”²⁰¹ Some of these “support agencies” were already available entities through which victims could report their victimization, including child and adult protective government agencies, family courts, or medical facilities that have provided sexual assault exams for applicant victims.²⁰²

Notably, FAVC added “city or state contracted victim service provider[s]” and “licensed medical or mental health service provider[s]” as professionals through which victims may report a crime.²⁰³ However, these new avenues for reporting are only available when a “physically injured claimant and/or victim” cannot report because of “age, physical condition, psychological state, cultural or linguistic barrier, or any health or safety concern that jeopardizes the victim’s wellbeing.”²⁰⁴ If the victim meets any of these considerations under FAVC, the provider giving service to the victim will be permitted to provide written attestation that the victim’s injuries are consistent with violent victimization.²⁰⁵ If a victim has made multiple provider-based reports that are inconsistent with one another, OVS “shall consider the totality of the circumstances among all reports in the light most favorable to the victim.”²⁰⁶ Aside from these provider-based reports, FAVC also permits victims to satisfy the crime reporting requirement through temporary or permanent restraining orders.²⁰⁷

Contributory Conduct

The final but perhaps most critical eligibility inquiry is whether “the victim contributed to the infliction of their own injury.”²⁰⁸ The OVS statute limits this obligation by mandating a maximum of half reductions where a claimant requests compensation on behalf of a deceased victim.²⁰⁹ However, similar to the investigating officer’s discretion in determining the scope of the investigation, OVS regulations state that the investigating officer (1) “may” include determinations regarding contributory conduct in the claim decision, and if included, (2) “shall” reduce the award according to the level of contribution.²¹⁰ OVS regulations define contributory conduct as “[1] culpable conduct [2] logically and rationally related to the crime by which the victim was victimized and [3] contributing to the injury suffered by the victim.”²¹¹ Although the regulations do appear to provide the investigating officer discretion to make contributory conduct determinations, should those determinations be made, the officer must impose certain numerical reductions based on what the investigation reveals about the claimant’s “culpable conduct.” For instance, OVS regulations require the officer to issue “100 percent denial of [an] award” if law enforcement indicates that there was any conduct on the part of the victim “constituting felonies

²⁰¹ EXEC. § 631(1)(c) (effective Dec. 31, 2025).

²⁰² *See id.*

²⁰³ *See* EXEC. § 631(c)(iii)(B); (1-b) (effective Dec. 31, 2025).

²⁰⁴ *See* EXEC. § 631(c)(iii) (effective Dec. 31, 2025).

²⁰⁵ *See* EXEC. § 631(c)(iii)(B) (effective Dec. 31, 2025).

²⁰⁶ *See* EXEC. § 631(c)(iii)(1-c) (effective Dec. 31, 2025).

²⁰⁷ *See* EXEC. § 631(c)(iii)(A) (effective Dec. 31, 2025).

²⁰⁸ *See* EXEC. LAW § 631(5).

²⁰⁹ N.Y. EXEC. LAW § 631(5)(g).

²¹⁰ N.Y. COMP. CODES R. & REGS. tit. 9, § 525.5(b).

²¹¹ 9 N.Y. Comp. Codes R. & Regs. § 525.3(b).

or misdemeanors involving violence.”²¹² Where law enforcement reports contributory conduct from non-violent felonies or non-violent misdemeanors, OVS regulations require the investigating officer to reduce any award by 75 percent or 50 percent, respectively.²¹³ “All other [contributory] conduct on the part of the victim” is subject to a 25 percent reduction.²¹⁴

OVS’s Investigation of Contributory Conduct and Crime Committed

The OVS Personal Injury and Death Claims Investigation Procedures manual (“OVS manual”)—which acts as OVS’s internal policy—provides additional critical guidance on contributory conduct determinations. Substantively, it appears that the OVS manual pairs the investigation of contributory conduct with an inquiry of whether a crime in fact occurred.²¹⁵ Pairing these two investigative inquiries is significant because it suggests that law enforcement narratives may compel OVS to arrive at the same denial of eligibility where the facts of the victimization are allegedly “unclear or ambiguous.”²¹⁶ In other words, this single analysis invites legal questions about whether two differing eligibility requirements are being used alternatively and potentially improperly to maintain claim denials.²¹⁷ Beyond instructions to request the penal code charged by law enforcement when ascertaining whether a victim sustained physical injury, the OVS manual does not appear to provide significant investigatory guidance on determining whether a crime occurred.

Instead, the questions OVS investigators are obliged to ask law enforcement focus on whether *the victim* was committing a crime.²¹⁸ In particular, the OVS manual instructs claim investigators to inquire closely with police regarding contributory conduct.²¹⁹ It states that if there is anything in police report narratives that is ambiguous, a phone call must be made to law enforcement (i.e., detectives or the prosecuting attorney’s office).²²⁰ If contact is made with law enforcement, the manual instructs investigators to utilize a “Police Information Request” form to ask specific questions. These questions include the following:

1. Was the victim committing a crime at the time the crime was committed against the victim? If so, please explain and get the precise criminal offense and penal codes, if possible. Was the victim charged?

²¹² 9 N.Y. Comp. Codes R. & Regs. § 525.12(m)(1)(i). (“Violence shall include, but not be limited to: gang activity, the dealing of illegal drugs, being the initial aggressor, and the use or brandishing of illegal firearms or other dangerous instruments at or near the time of the crime.”)

²¹³ 9 N.Y. Comp. Codes R. & Regs. § 525.12(m)(1)(ii), (iii).

²¹⁴ 9 N.Y. Comp. Codes R. & Regs. § 525.12(m)(1)(iv).

²¹⁵ OVS INVESTIGATION PROCEDURES, *supra* note 140, at 24.

²¹⁶ *See id.*

²¹⁷ A real OVS claim—initially denied for contributory conduct but subsequently denied as no crime committed— informs this legal concern, demonstrating how one basis for denying eligibility may be transformed into the other. A comparison of the most recent denial numbers further underscores this concern: while OVS reported 12 contributory conduct denials in its annual report for 2023-2024, OVS reported 148 denials for “unsubstantiated or no crime.” Further policy investigation and analysis of this potential issue may be warranted in the future. 2023-24 ANNUAL REPORT, *supra* note 177, at 13.

²¹⁸ OVS INVESTIGATION PROCEDURES, *supra* note 140, at 25.

²¹⁹ *See id.* at 24–25.

²²⁰ *See id.* at 24.

2. Did the victim's conduct at the time the crime was committed against the victim contribute to the victim's injury or death?

It appears from the manual that contact with law enforcement can be dispositive for a claim determination. Investigators are specifically told that “every effort to speak with someone in law enforcement must be made in order to close the claim.”²²¹ This maximal effort includes a recommended 45-day window for multiple outreach attempts to law enforcement, and investigators are further instructed to reach out to supervising detectives or prosecutors when the initial attempts are unsuccessful.²²² When such escalated outreach yields no response, the manual states that investigators should “send a 15 day letter to the claimant requesting [law enforcement] to contact the [OVS investigator].”²²³ If repeated attempts to discuss contributory conduct with law enforcement are unsuccessful, the investigator may then close the claim for “No Information.”²²⁴ Such “no information” denials are significant because it is common for law enforcement to not provide or issue reports.²²⁵ Based on these aspects of the OVS manual, it is unclear the extent to which OVS investigators develop facts around contributory conduct and a claimant's alleged victimization beyond law enforcement narratives, despite their clear regulatory power to do so.²²⁶

Additionally, OVS does not appear to be subject to a required evidentiary standard in rendering a contributory conduct decision. CVLN, however, states that contributory conduct determinations are subject to a “substantial evidence” requirement, but contributory conduct is only subject to this standard in judicial review after an administrative hearing upon the OVS determination.²²⁷ Considering that OVS is a public benefit program that must investigate claims regardless of prosecution, the high criminal law standard of “beyond a reasonable doubt” is inappropriate for contributory conduct determinations.²²⁸

Special Considerations: Specific Victim Populations

Still, the OVS manual instructs investigators to apply contributory conduct determinations differently in specific contexts. The OVS regulations regard membership in certain victim populations—such as minors, survivors of human trafficking, sex workers, and sexual assault victims—as mitigating factors, in light of which “the office may make an award without reduction for conduct contributing.”²²⁹ The OVS manual adds that contributory conduct

²²¹ *Id.*

²²² *See id.*

²²³ *Id.* at 25.

²²⁴ *See id.*

²²⁵ Video Interview with Crime Victims Legal Network, *supra* note 14.

²²⁶ N.Y. COMP. CODES R. & REGS. tit. 9, § 525.5(b)–(c).

²²⁷ *Innocent Victim of Crime and Contributory Conduct*, EMPIRE JUSTICE CENTER 1 (2021); *see also* Cox v. Off. of Victim Servs., 110 A.D.3d 797 (2d Dept 2013).

²²⁸ In CVLN “Innocent Victim of Crime and Contributory Conduct” memorandum, the memorandum states that victim compensation is not available where the victim bears “criminal responsibility” for, rather than conduct contributing to, the criminal victimization. This assessment seems to be an oversight based on the statutory provision used to explain contributory conduct, which is not the same as when a victim may meet the standards for criminal charges and or conviction. Instead, one might conceive of contributory conduct as the comparative fault of the victim. *See Innocent Victim of Crime and Contributory Conduct*, *supra* note 227, at 2.

²²⁹ 9 N.Y. Comp. Codes R. & Regs. § 525.12(2).

should be applied to the actions of these victims “carefully on a case-by-base basis,” and it includes good samaritans as an additional victim population whose potential contributory conduct should be viewed less harshly.²³⁰ With respect to deceased victims (i.e., death claims), the OVS manual instructs that claimant awards shall be reduced by (1) fifty-percent where contributory conduct regulations would require a complete denial, and (2) twenty-five percent where regulations would require a seventy-five percent denial. Helpfully, the OVS manual provides some examples of reductions, explaining that partial reductions should be applied to the maximum award for capped expenses (i.e., funeral and burial costs, moving expenses, and essential personal property), unless the claimant has requested less than the maximum award for such costs.²³¹ For instance, if a claimant request a \$12,000 funeral award for a victim deemed to have contributed to their victimization, OVS would apply a fifty-percent reduction to the maximum statutory award for funerals: \$6,000. As such, the claimant would be entitled to a \$3,000 award for burial expenses.²³²

Contributory Conduct Cases: Fact Patterns and Case Law

In practice, there is a critical shortage of case law and publicly available claim fact patterns that demonstrate OVS’s administration of contributory conduct. Recent reporting, however, indicates that OVS has previously issued complete denials for contributory conduct “without further explanation.”²³³ A real OVS fact pattern—presented at an OVS victim assistance program training—illustrates the issues around these administrative contributory conduct determinations. Specifically, OVS described a scenario in which a male victim was found dead with multiple people fleeing the scene.²³⁴ According to OVS’s own narrative, the victim “was found with a gun on his person,” and thus law enforcement’s investigation would determine whether the victim had contributed to the victimization *or* whether the shooter had acted in self-defense, which would result in an OVS finding of “no crime committed.”²³⁵ OVS stated that “a crime must occur against [the] victim for them to be considered eligible,” and OVS held the claim unresolved for ten months, including by denying requests for emergency awards, until law enforcement could determine whether a crime occurred.²³⁶ When law enforcement definitively shared with OVS that the shooter, if found, would be charged with murder, OVS still denied the claim, stating the “victim was found with a gun in his hand” and “since the victim was found brandishing a gun, he was determined to have participated in contributory conduct for this crime.” It is unclear what evidentiary basis OVS used to declare that the victim had been brandishing a gun. Setting aside the fact that the OVS narrative initially stated that the victim was found “with a gun on his person,” if the victim actually died with a gun in his hand, it is just as likely that the victim may have drawn the gun for the purpose of self-defense.²³⁷ Thus, not only does this case present the seemingly conflated analysis of contributory conduct and whether

²³⁰ OVS INVESTIGATION PROCEDURES, *supra* note 140, at 26.

²³¹ *See id.* at 27.

²³² *See id.* at 28.

²³³ *See Catalini, supra* note 12. (Concerning a denial of such nature, one applicant stated “[i]t felt racial. It felt like they saw a young African American man who was shot and killed and assumed he must have been doing something wrong.”).

²³⁴ Online Victim Assistance Program (VAP) Training, *supra* note 193.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

a crime occurred—which seems to be alternatively used to arrive at the same conclusion, but it also appears to show the unsubstantiated analytical leaps OVS can make with contributory conduct determinations.

This real-life fact pattern is consistent with the limited case law on this topic. In Cox v. Off. of Victim Servs., 110 A.D.3d 797 (2d Dept. 2013), OVS reduced a mother's claim for burial expenses by half where the victim was "known to police department as an illegal drug dealer."²³⁸ The reviewing court found that law enforcement's assertion that the autopsy report would include a description "of illicit narcotics secreted on the victim" was not supported by the record, as no such evidentiary records contained any reference to illegal narcotics.²³⁹ Going further, the court continued by stating that "general knowledge that narcotics sellers are subject to a greater risk of being violently murdered is not sufficient to provide a record-based relationship between the subject homicide and the victim's alleged conduct." Accordingly, the court ruled that the OVS decision was arbitrary and made "taken without sound basis in reason or regard to the facts."²⁴⁰ As with the previous fact pattern shared by OVS, this case demonstrates how biases, oversimplifications, or stereotypes may come to inappropriately infect determinations regarding contributory conduct.²⁴¹ Despite the ostensible analytical leaps and generalities, in light of the aforementioned case law, there is indication that OVS has moved away from the latter issue. Indeed, OVS has stated in other trainings that "contributory conduct cannot be based on past conduct."²⁴²

Another important contributory conduct case reached the opposite conclusion. In Calicutt v. Executive Dep't, Crime Victims Bd., 245 A.D.2d 689 (1997), OVS's predecessor agency denied a mother's compensation claim because the deceased victim "contributed substantially to the cause of his injuries."²⁴³ Importantly, the reviewing court found that the claimant had not refuted OVS's contention that the victim was engaged in a dispute with a neighbor in the days leading up to the death, or alternatively that the claimant provided no evidence that the victim did not contribute to his death.²⁴⁴ Notably, the court relies only on information received "from [the] investigating detective and the Assistance District Attorney just days before the murder."²⁴⁵ The court, however, does not describe the nature of the dispute (i.e., whether it was verbal, whether crimes were committed by the deceased victim against the perpetrator, etc.). Under OVS's current governing law, regulatory provisions would have obligated OVS to totally deny the award only if the victim had engaged in felonies or misdemeanors of violence against the perpetrator, and the regulatory provision on contributory conduct reductions would have

²³⁸ Cox v. Off. of Victim Servs., 110 A.D.3d 797, 798 (2d Dept. 2013).

²³⁹ See *id.*

²⁴⁰ See *id.* at 799.

²⁴¹ See *Innocent Victim of Crime and Contributory Conduct*, *supra* note 227, at 1 ("OVS cannot rely on generalities" in making contributory conduct determinations).

²⁴² *Id.* ("The example the OVS staff member provided: Person who was considered generally 'a bad person' was released from prison; 5 days later (with no criminal activity during this time period) that person is shot and killed; at the moment of death, there was no criminal conduct by the victim.").

²⁴³ Calicutt v. Exec. Dept., Crime Victims Bd., 245 A.D.2d 689 (3d Dept 1997).

²⁴⁴ See *id.* at 690.

²⁴⁵ *Id.* (emphasis added). The court's acknowledgement that this case encapsulated a murder demonstrates the perniciousness of attempts to categorize victims as innocent or guilty; in either case, there are still victims and surviving family who must face the fallout of victimization.

obligated OVS to reduce the award to this claimant by a maximum of fifty percent.²⁴⁶ OVS was not under these mandates when the case was decided.²⁴⁷

Application Closures

Concerning other decisions the officer has discretion to make, the OVS regulations provide for prejudicial and non-prejudicial administrative closures. Regarding prejudicial closures (i.e., claims that OVS will not re-open), the OVS regulations permit investigating officers to deny claims when it is revealed that claimants have “failed to cooperate with the reasonable requests of law enforcement.”²⁴⁸ Regarding non-prejudicial administrative closures, the investigating officer may deny a claim when (1) the claimant has withdrawn their application, (2) the claimant has failed to supply information requested by OVS, (3) a claim concerning the same transaction is pending before another agency, or (4) the claimant cannot be located.²⁴⁹ In practice, it would appear that OVS sometimes exercises this ability to administratively close claims *before* the claimant has had the opportunity to produce necessary documentation and eligibility or award determinations are made.²⁵⁰ CVLN specifically flags this potentiality, stating “you may receive a letter from OVS stating that they need more information...and until then[] your claim is temporarily closed.”²⁵¹

Administrative and Judicial Review

Once OVS completes its investigation and reaches a decision, the New York compensation statute provides the claimant with a right to administrative review. The statutory and regulatory term for such review is a “request for reconsideration,” but in practice OVS refers to administrative review as appeals.²⁵² When the investigating officer reaches their decision, they are statutorily obligated to provide notice to the claimant by generating a written decision informing the claimant of their (1) right to a copy of such decision and (2) rights of appeal.²⁵³ OVS regulations affirm that the notice “shall...stat[e] the reasons” supporting the decision.²⁵⁴ When OVS provides a defective notice (i.e., one that does not explain the reasons for the decision, provide notice of rights to appeal, etc.), the notice can extend the time to file an appeal.²⁵⁵

²⁴⁶ N.Y. COMP. CODES R. & REGS. tit. 9, § 525.12(m)(1)(ii); N.Y. EXEC. LAW § 631(5)(g).

²⁴⁷ *About OVS*, N.Y. STATE, <https://ovs.ny.gov/about-ovs> (last visited Jun. 5, 2025).

²⁴⁸ 9 N.Y. Comp. Codes R. & Regs. § 525.6(c).

²⁴⁹ 9 N.Y. Comp. Codes R. & Regs. § 525.6(a).

²⁵⁰ *After getting an OVS decision*, EMPIRE JUSTICE CENTER, https://crimevictimshelpny.org/compensation/after/item.10322-After_getting_an_OVS_decision (last visited Jun. 5, 2025).

²⁵¹ *Id.*; see also *No Info Supplied Sample*, EMPIRE JUSTICE CENTER, https://crimevictimshelpny.org/library/item.753219-No_Info_Supplied_Sample (last visited Jun. 5, 2025). OVS’s shortened application may change this temporary closure process, but providers may question whether it is efficient to close claims before applicants have been able to perform their documentary and informational obligations.

²⁵² NY CRIME VICTIMS LEGAL NETWORK, BRIEF OVERVIEW OF OVS VICTIM COMPENSATION APPLICATION PROCESS AND APPEALS 13 (2021).

²⁵³ N.Y. EXEC. LAW § 627(e) (emphasis added).

²⁵⁴ 9 N.Y. Comp. Codes R. & Regs. § 525.6(e).

²⁵⁵ See *Matter of Zellweger v. New York State Dept of Social Services*, 74 N.Y.2d 404 (1989).

To exercise the appeal rights, the claimant must make an application in writing to OVS “within thirty days after receipt of the decision of the office.”²⁵⁶ If OVS does not receive a written appeal application within that timeframe, the OVS decision becomes the final determination.²⁵⁷ The OVS regulations set further parameters governing the scope of this administrative review, obligating OVS to re-open the claim for further investigation or to review the record for affirmation or modification.²⁵⁸ Claimants must state the reason(s) for their appeal and physically send the application to the following address: OVS, AE Smith State Office Building, 80 South Swan St., 2nd Floor, Albany, NY 12210.²⁵⁹ In practice, however, it does appear that OVS will accept claimant signed and scanned appeal requests via email to OVSIntake@ovs.ny.gov. If the application is based wholly upon the law, OVS will render an appeal decision without a hearing.²⁶⁰ If the application is “based in part of wholly upon the facts of the claim,” OVS must notify the claimant of the time and place during which OVS will consider their application, and the claimant may request a hearing.²⁶¹ Upon completion of the administrative review, OVS must provide a written decision stating the reasons for its conclusion, which will be the final determination of the office.²⁶² It is important to note, however, that OVS “may reinvestigate or reopen cases *at any time*, as the office deems necessary.”²⁶³

If the administrative review decision is adverse to the claimant, the claimant may seek judicial review via Article 78 of New York’s Civil Practice Law and Rules (CPLR). The claimant has up to four months after receiving OVS’s final decision to bring this judicial review proceeding.²⁶⁴ Both the OVS statute and regulations create the right for such judicial review.²⁶⁵ Article 78, however, limits the questions a claimant can raise at judicial review to the following: (1) whether OVS failed to perform a duty enjoined by law; (2) whether OVS proceeded, is proceeding, or is about to proceed without or in excess of its jurisdiction; (3) whether a determination was made in violation of lawful procedure, affected by error of law or was arbitrary and capricious, including abuse of discretion, and (4) whether a determination pursuant to a hearing is supported by substantial evidence.²⁶⁶ The claimant, who at this stage of the review is the petitioner, must file a notice of petition or order to show cause with the reviewing court, along with a verified petition with affidavits with an option to submit a memorandum of law.²⁶⁷ OVS, here the respondent, will respond with a verified answer (accompanied by affidavits and certified transcript of the record) and a motion to dismiss.²⁶⁸

²⁵⁶ EXEC. § 627(2).

²⁵⁷ 9 N.Y. Comp. Codes R. & Regs. § 525.6(g).

²⁵⁸ 9 N.Y. Comp. Codes R. & Regs. § 525.13(b).

²⁵⁹ *After getting an OVS decision, supra* note 250.

²⁶⁰ 9 N.Y. Comp. Codes R. & Regs. § 525.13(b).

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ 9 N.Y. Comp. Codes R. & Regs. § 525.13(e). (emphasis added)

²⁶⁴ *After getting an OVS decision, supra* note 250.

²⁶⁵ N.Y. EXEC. LAW § 629; 9 N.Y. Comp. Codes R. & Regs. § 525.14(a).

²⁶⁶ N.Y. C.P.L.R. § 7803.

²⁶⁷ *See* CRIME VICTIMS LEGAL NETWORK, *supra* note 252, at 17.

²⁶⁸ *Id.*

Section 5: Claimant Awards

Once OVS reaches an affirmative decision to provide compensation to a claimant, the money distributed or “awards” are subject to certain statutory and regulatory rules. This section will briefly explain award requirements, award notifications, the manner of award payment, and specific statutorily-imposed caps on compensable expenses. Importantly, there will be some discussion concerning OVS’ statutory charge as a “payor of last resort,” which subjects OVS compensation awards to certain limitations based on a claimant’s potential collateral sources and financial difficulty.

Award Requirements

The first and most important statutory obligations regarding awards are the findings that OVS must make before a claimant may receive payment. As noted earlier in the guide, the statute places these requirements under the award section, rather than the section on OVS’s determination of claims.²⁶⁹ The provision specifically mandates that OVS shall make no award unless (1) a crime was committed, (2) the crime resulted in physical injury or “exacerbation of a preexisting disability, or condition, or death of, the victim,” and (3) the crime was promptly reported to law enforcement.²⁷⁰ Despite this provision’s placement in the statute, these requirements are threshold questions that OVS investigates before deciding a claimant’s eligibility for a compensation award.

Award and Expense Caps

Regarding award notification, the manner of payment, and expense caps, various statutory and regulatory provisions require OVS to inform the claimant of their expected award. Specifically, the statutorily-required written notices that must state the reasons for OVS’s determination must also include a “projected date of payment in the case of an award.”²⁷¹ The payment of the award itself must be “paid in a lump sum,” but where there are cases involving death or “protracted disability,” OVS will provide the award through periodic payments.²⁷² There are also other regulatory limitations on the award, including annual verification of disability or dependency (in death claims),²⁷³ payment to relatives, guardians, and other appropriate recipients where the claimant is a minor or “incompetent,”²⁷⁴ and apportionment of awards when there is more than one qualifying recipient on a single claim.²⁷⁵

The statute goes on to impose expense caps depending upon the out-of-pocket costs being covered, chiefly that any award shall not exceed the claimant’s actual out-of-pocket costs, including medical and other service-related debt.²⁷⁶ Any payments for loss of earnings or support

²⁶⁹ EXEC. § 631(1).

²⁷⁰ *Id.*

²⁷¹ EXEC. § 627(1)(e); *see also* N.Y. COMP. CODES R. & REGS. tit. 9, § 525.6(e); (f).

²⁷² 9 N.Y. Comp. Codes R. & Regs. § 525.12(a).

²⁷³ 9 N.Y. Comp. Codes R. & Regs. § 525.12(e), (f).

²⁷⁴ 9 N.Y. Comp. Codes R. & Regs. § 525.12(b).

²⁷⁵ 9 N.Y. Comp. Codes R. & Regs. § 525.12(c).

²⁷⁶ EXEC. § 631(2).

are limited to \$30,000,²⁷⁷ and the recipient of such benefits may only receive \$600 per week.²⁷⁸ Other notable caps include a burial expense limitation of \$6,000, a relocation limitation of \$2,500, and a crime scene cleanup limitation of \$2,500.²⁷⁹ Transportation expenses for court appearances, however, are subject to a “reasonable” limitation, rather than a numerical cap.²⁸⁰

Payor-of-Last Resort and Award Limitations

OVS must also comply with its statutory and regulatory obligation to be the “payor of last resort” with respect to the claimant’s crime-related expenses. “Payor of last resort,” though not explicitly defined in the statute or regulations, means that the claimant must exhaust all “collateral sources” before OVS can make payment.²⁸¹ Where the claimant receives collateral source payments for expenses that OVS has previously covered, OVS possesses statutory subrogation rights that compel debt collection of the money OVS paid to the claimant.²⁸² Accordingly, OVS must reduce awards from the following five collateral sources: (1) payments from or on behalf of the person who committed the crime; (2) payments from insurance programs mandated by law; (3) payment from public funds; (4) payments from any insurance contract in which claimant is insured or a beneficiary; and (5) payments from OVS pursuant to emergency award requests.²⁸³ However, OVS will not consider damages that are received from private civil actions brought by the victim against the “profits of [the] crime” or the “funds of a convicted person” when reducing awards under its payor of last resort obligations.²⁸⁴

Under these obligations, the OVS statute provides that acceptance of an OVS award “shall subrogate the state, to the extent of such award, to *any right or right of action* accruing to the claimant.”²⁸⁵ This means that, unless the claimant brings a claim for damages against their “assailant or any third party who, as a result of the crime, may be liable in damages,” the claimant’s cause(s) of action are given to New York State.²⁸⁶ This statutory right provides OVS with broad discretion over the claims that the state can bring against any party potentially liable for action or inaction surrounding the circumstances of a claimant’s victimization. Given this expansive right, the statute requires OVS to (1) identify claims that have resulted in awards greater than one-thousand dollars and (2) submit a list of such claims along with potential private “causes of action” to the attorney general on a monthly basis.²⁸⁷ In practice, it is neither known whether OVS provides such monthly lists to the attorney general, nor the extent to which the attorney general commences actions that have been subrogated by the claimant. The statute further compels OVS to “compile information” on the number of cases, the volume of actions

²⁷⁷ *Id.*

²⁷⁸ EXEC. § 631(3).

²⁷⁹ EXEC. § 631(2). As explained earlier in the guide, the 2025-2026 state budget will increase the burial expense cap to \$12,000 on November 5, 2025.

²⁸⁰ EXEC. § 631(10).

²⁸¹ N.Y. COMP. CODES R. & REGS. tit. 9, § 525.12(k)(1).

²⁸² “Subrogation is the process where one party assumes the legal rights of another []. Subrogation can also occur when one party takes over another’s right to sue.” Legal Information Institute, *Subrogation*, CORNELL L. SCH., <https://www.law.cornell.edu/wex/subrogation> (last visited Jun. 5, 2025).

²⁸³ EXEC. § 631(4).

²⁸⁴ EXEC. § 632-a(3); *see also* 9 N.Y. Comp. Codes R. & Regs. § 525.12(k)(1).

²⁸⁵ EXEC. § 634(1)(a) [emphasis added].

²⁸⁶ *Id.*

²⁸⁷ EXEC. § 634(1)(a).

instituted, and the value of any recoveries in such actions by the attorney general and share the compilation via OVS's annual report.²⁸⁸ The latest annual report, however, does not contain such detailed information about OVS's exercise of its subrogation rights.²⁸⁹ Instead, OVS provides the month-by-month value of the recoveries it made to offset claimant awards—a value that totals nearly \$258,000 for the 2023-2024 period covering the annual report.²⁹⁰

Regardless of whatever claims are assigned to the state, where an OVS claimant proves eligibility and accepts an award, the OVS statute creates a lien on certain proceeds from the claimant's potential private causes of action. Specifically, OVS's lien on lawsuit monies attaches to "the proceeds of any recovery from the *person or persons liable for the injury or death* giving rise to the award," to the extent of the value of any OVS award.²⁹¹ As noted above, though the claimant assigns any cause of action from the circumstances of the crime to New York state, the statutory language on liens seem to be limited to proceeds from the person(s) liable for the injury or death.²⁹² OVS's claimant authorization form—required for all OVS applications—contains language that takes the broader view of OVS's lien, as the authorization creates a lien "on *any recovery* relating to the crime."²⁹³ Given this contrast, there are outstanding legal questions about certain causes of action and factual circumstances that may not fall within the scope of the statutory language on liens, including privacy violations or medical malpractice claims, among others.

In any case, the OVS manual provides more useful guidance on OVS's exercise of subrogation rights. In particular, the manual instructs OVS investigators to send a "payment recovery required" note to the OVS legal unit, providing the investigator with key considerations for when such a referral would be required.²⁹⁴ Investigators are directed to provide such referrals when the claimant has restitution, civil recoveries, or any other outstanding "overpayment[s]."²⁹⁵ The procedures specify certain key words or locations that may signal to the investigator that OVS may exercise its subrogation rights, including words like "attorney," "no fault," "insurance," and "probation department," as well as locations like "apartment building," "bar," "school or school grounds," and "shopping mall."²⁹⁶

The manual also instructs OVS investigators to identify claimant crowdfunding—fundraising conducted via online platforms like GoFundMe and community organizations like churches—as collateral sources against which OVS may exercise its subrogation rights.²⁹⁷ However, the language of such fundraising campaigns, according to the OVS manual, do provide a limitation about when OVS will consider the campaigns as collateral.²⁹⁸ If the campaign says

²⁸⁸ EXEC. § 634(6).

²⁸⁹ See 2023-24 ANNUAL REPORT, *supra* note 177, at 20.

²⁹⁰ See 2023-24 ANNUAL REPORT, *supra* note 177, at 20. In the future, these statutorily-required monthly reports to the attorney general, as well as the complete compilation, may be ripe for public disclosure requests.

²⁹¹ EXEC. § 634(2) [emphasis added].

²⁹² *Id.*

²⁹³ *Victim/Claimant's Authorization*, *supra* note 107.

²⁹⁴ See OVS INVESTIGATION PROCEDURES, *supra* note 140, at 154.

²⁹⁵ See *id.* at 155.

²⁹⁶ *Id.*

²⁹⁷ "Fund raising [sic] techniques like GoFundMe or other web fund raising sites, church congregation fund raisers or those started by the community need to be looked at by OVS." *Id.* at 22.

²⁹⁸ *Id.*

the money raised is for funeral expenses (or any other expense that OVS may cover), then it is a collateral source subject to OVS subrogation. However, if the campaign uses vague language that says the money is “for the family,” for instance, then the money is not subject to a recovery by OVS.²⁹⁹ In practice, OVS has relayed that the agency typically only discovers crowdfunding campaigns via news articles or, in other cases, when the claimant explicitly shares their crowdfunding campaign with OVS.

Finally, because OVS’s subrogation and lien rights implicate a broad scope of claimant awards, there is an important intersection between subrogation, contributory conduct, and emergency awards. In general, the OVS statute contemplates that OVS will make emergency awards to claimants before the agency conducts a full investigation. If the investigation reveals any eligibility requirements purported to be unmet by OVS, then OVS will deem any prior emergency awards as improper and subject to recovery against the claimant.³⁰⁰ The OVS investigation procedures provide a useful example of an internal case note capturing such a scenario: “[OVS] spoke with Detectives. This victim is NOT innocent and claim will be denied. The [emergency award] of \$2,500 that was paid to the funeral home needs to be recovered.”³⁰¹ Thus, in situations where the claimant requests funeral expenses on behalf of a deceased victim, contributory conduct may represent a bar to a complete award.

Still, OVS is subject to current the statutory obligation to reduce awards by a maximum of fifty percent where the victim has died.³⁰² In this regard, the OVS Emergency Award Procedures provide useful guidance: “[d]eath claims should be reduced by increments of 50% or 25%...[f]or example[,] if funeral costs are \$7,000 and the conduct of the victim indicates a 50% award, then 50% will be taken of \$6,000 (the maximum award for funeral costs). An [emergency award] could be awarded for \$3,000.”³⁰³ Despite this guidance, the emergency award procedures ostensibly go on to contradict OVS’s provided example, stating that OVS will provide the maximum emergency award of \$3,000 for funeral expenses only where “no reduction of contributory conduct is required.”³⁰⁴

The final significant limitation upon OVS awards concerns the statutory obligation to make payments only when the claimant will suffer financial difficulty. The statute provides certain non-exhaustive considerations that can assist the office in determining whether the potential awardee will suffer financial difficulty.³⁰⁵ These considerations include (1) the number of claimant’s dependents; (2) the reasonable living expenses of the claimant and their family; (3) the claimant’s employment situation including income and potential earning capacity; and, among other factors, (4) the claimants net financial resources.³⁰⁶ In determining net financial resources, OVS may not include the “present value of [the claimant’s] future earnings,” and OVS must deduct certain assets and property (i.e., the claimant’s homestead, the claimant’s personal clothing and effects, “a family automobile,” life insurance “except in death claims,” etc.) from

²⁹⁹ *Id.* at 23.

³⁰⁰ *See id.* at 155.

³⁰¹ *Id.* at 156.

³⁰² N.Y. EXEC. LAW § 631(5)(g).

³⁰³ EMERGENCY AWARD PROCEDURES, *supra* note 140, at 15.

³⁰⁴ *Id.*

³⁰⁵ EXEC. § 631(6)(a).

³⁰⁶ *Id.*

the net value ascertained.³⁰⁷ OVS must also exempt reasonable living expenses, which include “the value of inventory or other property necessary for the claimant’s business or occupation or the production of income,” from the claimant’s financial resources.³⁰⁸ In making payment, OVS is not under any obligation to “maintain the same standard of living enjoyed by the claimant prior to death or injury.”³⁰⁹ One significant case provides extensive discussion of an OVS determination that a claimant would not suffer “severe financial hardship” in light of OVS’ claim denial.³¹⁰

³⁰⁷ EXEC. § 631(6)(b).

³⁰⁸ EXEC. § 631(6)(c).

³⁰⁹ EXEC. § 631(6)(d).

³¹⁰ *Matter of Regan v. Crime Victims Compensation Bd.*, 57 N.Y.2d 190, 193 (Ct. App. 1982)