

CODE OF CRIMINAL PROCEDURE  
CHAPTER 56. RIGHTS OF CRIME VICTIMS  
SUBCHAPTER A. CRIME VICTIMS RIGHTS

Art. 56.01. Definitions

In this chapter:

(1) "Close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(2) "Guardian of a victim" means a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim.

(3) "Victim" means a person who is the victim of sexual assault, kidnapping, or aggravated robbery or who has suffered bodily injury or death as a result of the criminal conduct of another.

Added by Acts 1985, 69th Leg., ch. 588, Sec. 1, eff. Sept. 1, 1985.

Art. 56.02. Crime victims' rights

(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may

necessitate the absence of the victim from work for good cause;  
(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code;

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice; and

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole.

(b) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case.

(c) The office of the attorney representing the state, and the sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Subsection (a) of this article and, on request, an explanation of those rights.

(d) A judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this article. The failure or inability of any person to provide a right or service enumerated in this article may not be used by a defendant in a criminal case as a ground for appeal, a ground to set aside the conviction or sentence, or a ground in a habeas corpus petition. A victim, guardian of a victim, or close relative of a deceased victim does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

Added by Acts 1985, 69th Leg., ch. 588, Sec. 1, eff. Sept. 1, 1985. Subsec. (a) amended by Acts 1987, 70th Leg., ch. 433, Sec. 1, eff. Aug. 31, 1987; Subsecs. (a), (c) amended by Acts 1987, 70th Leg., ch. 929, Sec. 1, eff. Sept. 1, 1987; Subsec. (c) amended by Acts 1989, 71st Leg., ch. 996, Sec. 1, eff. Sept. 1, 1989; Subsecs. (a), (d) amended by Acts 1991, 72nd Leg., ch. 202, Sec. 3, eff. Sept. 1, 1991; Subsec. (a) amended by Acts 1993, 73rd Leg., ch. 811, Sec. 3, eff. Sept. 1, 1993; Subsec. (a)(6) amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(108), eff. Sept. 1, 1995; Subsecs. (a), (b) amended by Acts 2001, 77th Leg., ch. 1034, Sec. 3, eff. Sept. 1, 2001.

#### Art. 56.03. Victim impact statement

(a) The Texas Crime Victim Clearinghouse, with the participation of the Texas Adult Probation Commission and the Board of Pardons and Paroles, shall develop a form to be used by law enforcement agencies, prosecutors, and other participants in the criminal justice system to record the impact of an offense on a victim of the offense, guardian of a victim, or a close relative of a deceased victim and to provide the agencies, prosecutors, and participants with information needed to contact the victim, guardian, or relative if needed at any stage of a prosecution of a person charged with the offense. The Texas Crime Victim Clearinghouse, with the participation of the Texas Adult Probation Commission and the Board of Pardons and Paroles, shall also develop a victims' information booklet that provides a general explanation of the criminal justice system to victims of an offense, guardians of victims, and relatives of deceased victims.

(b) The victim impact statement must be in a form designed to inform a victim, guardian of a victim, or a close relative of a deceased victim with a clear statement of rights provided by Article 56.02 of this code and to collect the following information:

(1) the name of the victim of the offense or, if the victim has a legal guardian or is deceased, the name of a guardian or close relative of the victim;

(2) the address and telephone number of the victim, guardian, or relative through which the victim, guardian of a victim, or a close

relative of a deceased victim, may be contacted;

(3) a statement of economic loss suffered by the victim, guardian, or relative as a result of the offense;

(4) a statement of any physical or psychological injury suffered by the victim, guardian, or relative as a result of the offense, as described by the victim, guardian, relative, or by a physician or counselor;

(5) a statement of any psychological services requested as a result of the offense;

(6) a statement of any change in the victim's, guardian's, or relative's personal welfare or familial relationship as a result of the offense;

(7) a statement as to whether or not the victim, guardian, or relative wishes to be notified in the future of any parole hearing for the defendant and an explanation as to the procedures by which the victim, guardian, or relative may obtain information concerning the release of the defendant from the Texas Department of Corrections; and

(8) any other information, other than facts related to the commission of the offense, related to the impact of the offense on the victim, guardian, or relative.

(c) The victim assistance coordinator, designated in Article 56.04(a) of this code, shall send to a victim, guardian of a victim, or close relative of a deceased victim a victim impact statement, a victims' information booklet, and an application for compensation under Subchapter B, Chapter 56, along with an offer to assist in completing those forms on request. The victim assistance coordinator, on request, shall explain the possible use and consideration of the victim impact statement at sentencing and future parole hearing of the offender.

(d) If a victim, guardian of a victim, or close relative of a deceased victim states on the victim impact statement that he wishes to be notified of parole proceedings, the victim, guardian, or relative is responsible for notifying the Board of Pardons and Paroles of any change of address.

(e) Prior to the imposition of a sentence by the court in a criminal case, the court, if it has received a victim impact statement, shall consider the information provided in the statement. Before sentencing the defendant, the court shall permit the defendant or his counsel a reasonable time to read the statement, excluding the victim's name, address, and telephone number, comment on the statement, and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the statement. If the court sentences the defendant to a term of community supervision, the court shall forward any victim's impact statement received in the case to the community supervision and corrections department supervising the defendant, along with the papers in the case.

(f) The court may not inspect a victim impact statement until after a finding of guilt or until deferred adjudication is ordered and the contents of the statement may not be disclosed to any person unless:

(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

(2) the defendant in writing authorizes the court to inspect the statement.

(g) A victim impact statement is subject to discovery under Article 39.14 of this code before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material.

(h) Not later than December 1 of each odd-numbered year, the Texas Crime Victim Clearinghouse, with the participation of the Texas Adult Probation Commission and the Board of Pardons and Paroles, shall update the victim impact statement form and any other information provided by the commission to victims, guardians of victims, and relatives of deceased victims, if necessary, to reflect changes in law relating to criminal justice and the rights of victims and guardians and relatives of victims.

(i) In addition to the information described by Subsections (b)(1)-(8), the victim impact statement must be in a form designed to collect information on whether, if the victim is a child, there is an existing court order granting to the defendant possession of or access to the victim. If information collected under this subsection indicates the defendant is granted access or possession under court order and the defendant is subsequently confined by the

Texas Department of Criminal Justice as a result of the commission of the offense, the victim services office of the department shall contact the court issuing the order before the defendant is released from the department on parole or mandatory supervision.

Added by Acts 1985, 69th Leg., ch. 588, Sec. 1, eff. Sept. 1, 1985. Subsecs. (a), (c) amended by Acts 1987, 70th Leg., ch. 929, Sec. 2, eff. Sept. 1, 1987; Subsec. (e) amended by Acts 1987, 70th Leg., ch. 433, Sec. 2, eff. Aug. 31, 1987; Subsec. (h) added by Acts 1987, 70th Leg., ch. 929, Sec. 3, eff. Sept. 1, 1987; Subsec. (c) amended by Acts 1989, 71st Leg., ch. 996, Sec. 2, eff. Sept. 1, 1989; amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(108), eff. Sept. 1, 1995; Subsec. (i) added by Acts 1997, 75th Leg., ch. 670, Sec. 5, eff. Sept. 1, 1997; Subsec. (e) amended by Acts 2001, 77th Leg., ch. 1034, Sec. 4, eff. Sept. 1, 2001.

Art. 56.04. Victim assistance coordinator; crime victim liaison

(a) The district attorney, criminal district attorney, or county attorney who prosecutes criminal cases shall designate a person to serve as victim assistance coordinator in that jurisdiction.

(b) The duty of the victim assistance coordinator is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, and relatives by Article 56.02 of this code. The victim assistance coordinator shall work closely with appropriate law enforcement agencies, prosecuting attorneys, the Board of Pardons and Paroles, and the judiciary in carrying out that duty.

(c) Each local law enforcement agency shall designate one person to serve as the agency's crime victim liaison. Each agency shall consult with the victim assistance coordinator in the office of the attorney representing the state to determine the most effective manner in which the crime victim liaison can perform the duties imposed on the crime victim liaison under this article.

(d) The duty of the crime victim liaison is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, or close relatives of deceased victims by Subdivisions (4), (6), and (9) of Article 56.02(a) of this code.

(e) The victim assistance coordinator shall send a copy of a victim impact statement to the court sentencing the defendant. If the court sentences the defendant to imprisonment in the Texas Department of Corrections, it shall attach the copy of the victim impact statement to the commitment papers.

Added by Acts 1985, 69th Leg., ch. 588, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 996, Sec. 3, eff. Sept. 1, 1989; Subsec. (a) amended by Acts 1991, 72nd Leg., ch. 202, Sec. 4, eff. Sept. 1, 1991.

Art. 56.045. Presence of Advocate or Representative During Forensic Medical Examination

(a) Before conducting a forensic medical examination of a person who consents to such an examination for the collection of evidence for an alleged sexual assault, the physician or other medical services personnel conducting the examination shall offer the person the opportunity to have an advocate from a sexual assault program as defined by Section 420.003, Government Code, who has completed a sexual assault training program described by Section 420.011(b), Government Code, present with the person during the examination, if the advocate is available at the time of the examination.

(b) The advocate may only provide the injured person with:

- (1) counseling and other support services; and
- (2) information regarding the rights of crime victims under Article 56.02.

(c) Notwithstanding Subsection (a), the advocate and the sexual assault program providing the advocate may not delay or otherwise impede the screening or stabilization of an emergency medical condition.

(d) The sexual assault program providing the advocate shall pay all costs associated with providing the advocate.

(e) Any individual or entity, including a health care facility, that provides an advocate with access to a person consenting to an examination under Subsection (a) is not subject to civil or criminal liability for providing that access. In this subsection, "health care facility" includes a hospital licensed under Chapter 241, Health and Safety Code.

(f) If a person alleging to have sustained injuries as the victim of a sexual assault was confined in a penal institution, as defined by

Section 1.07, Penal Code, at the time of the alleged assault, the penal institution shall provide, at the person's request, a representative to be present with the person at any forensic medical examination conducted for the purpose of collecting and preserving evidence related to the investigation or prosecution of the alleged assault. The representative may only provide the injured person with counseling and other support services and with information regarding the rights of crime victims under Article 56.02 and may not delay or otherwise impede the screening or stabilization of an emergency medical condition. The representative must be approved by the penal institution and must be a:

- (1) psychologist;
- (2) sociologist;
- (3) chaplain;
- (4) social worker;
- (5) case manager; or
- (6) volunteer who has completed a sexual assault training program described by Section 420.011(b), Government Code.

Added by Acts 2001, 77th Leg., ch. 1019, Sec. 1, eff. Sept. 1, 2001.  
Art. 56.05. Reports Required

(a) The Board of Pardons and Paroles, the Texas Adult Probation Commission, and the Texas Crime Victim Clearinghouse, designated as the planning body for the purposes of this article, shall develop a survey plan to maintain statistics on the numbers and types of persons to whom state and local agencies provide victim impact statements during each year.

(b) At intervals specified in the plan, the planning body may require any state or local agency to submit, in a form prescribed for the reporting of the information, statistical data on the numbers and types of persons to whom the agency provides victim impact statements and any other information required by the planning body. The form must be designed to protect the privacy of persons afforded rights under this chapter and to determine whether the selected agency or office is making a good faith effort to protect the rights of the persons served.

(c) The Texas Crime Victim Clearinghouse shall develop crime victim assistance standards and distribute those standards to law enforcement officers and attorneys representing the state to aid those officers and prosecutors in performing duties imposed by this chapter.

Added by Acts 1985, 69th Leg., ch. 588, Sec. 1, eff. Sept. 1, 1985.  
Subsec. (c) added by Acts 1989, 71st Leg., ch. 996, Sec. 4, eff. Sept. 1, 1989.

Art. 56.06. Costs of medical examination

(a) A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination. On application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of that examination if the examination was performed by a physician or by a sexual assault examiner or sexual assault nurse examiner, as defined by Section 420.003, Government Code.

(b) A law enforcement agency or prosecuting attorney's office may pay all costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of the medical examination or manner in which it was performed.

(c) This article does not require a law enforcement agency to pay any costs of treatment for injuries.

Added by Acts 1989, 71st Leg., ch. 2, Sec. 5.05(a), eff. Aug. 28, 1989. Subsec. (a) amended by Acts 1991, 72nd Leg., ch. 75, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1507, Sec. 1, eff. June 15, 2001.

Art. 56.07. Notification

(a) At the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall provide the victim a written notice containing:

- (1) information about the availability of emergency and medical services, if applicable;
- (2) notice that the victim has the right to receive information regarding compensation to victims of crime as provided by Subchapter B, Chapter 56, including information about:

(A) the costs that may be compensated under that Act and the amount

of compensation, eligibility for compensation, and procedures for application for compensation under that Act;

(B) the payment for a medical examination for a victim of a sexual assault under Article 56.06 of this code; and

(C) referral to available social service agencies that may offer additional assistance;

(3) the name, address, and phone number of the law enforcement agency's victim assistance liaison;

(4) the address, phone number, and name of the crime victim assistance coordinator of the office of the attorney representing the state;

(5) the following statement:

"You may call the law enforcement agency's telephone number for the status of the case and information about victims' rights"; and

(6) the rights of crime victims under Article 56.02 of this code.

(b) At the same time a law enforcement agency provides notice under Subsection (a), the agency shall provide, if the agency possesses the relevant information, a referral to a sexual assault program as defined by Section 420.003, Government Code, and a written description of the services provided by that program. A sexual assault program may provide a written description of its services to a law enforcement agency.

Added by Acts 1991, 72nd Leg., ch. 202, Sec. 5, eff. Sept. 1, 1991. Subd. (2) amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(108), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 788, Sec. 1, eff. June 20, 2003.

Art. 56.08. Notification of rights by attorney representing the state

(a) Not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, the attorney representing the state shall give to each victim of the offense a written notice containing:

(1) a brief general statement of each procedural stage in the processing of a criminal case, including bail, plea bargaining, parole restitution, and appeal;

(2) notification of the rights and procedures under this chapter;

(3) suggested steps the victim may take if the victim is subjected to threats or intimidation;

(4) notification of the right to receive information regarding compensation to victims of crime as provided by Subchapter B of this chapter, including information about:

(A) the costs that may be compensated under Subchapter B of this chapter, eligibility for compensation, and procedures for application for compensation under Subchapter B of this chapter;

(B) the payment for a medical examination for a victim of a sexual assault under Article 56.06 of this code; and

(C) referral to available social service agencies that may offer additional assistance;

(5) the name, address, and phone number of the local victim assistance coordinator;

(6) the case number and assigned court for the case;

(7) the right to file a victim impact statement with the office of the attorney representing the state and the pardons and paroles division of the Texas Department of Criminal Justice; and

(8) notification of the right of a victim, guardian of a victim, or close relative of a deceased victim, as defined by Section 508.117, Government Code, to appear in person before a member of the Board of Pardons and Paroles as provided by Section 508.153, Government Code.

(b) If requested by the victim, the attorney representing the state, as far as reasonably practical, shall give to the victim notice of any scheduled court proceedings, changes in that schedule, the filing of a request for continuance of a trial setting, and any plea agreements to be presented to the court.

(c) A victim who receives a notice under Subsection (a) of this article and who chooses to receive other notice under law about the same case must keep the following persons informed of the victim's current address and phone number:

(1) the attorney representing the state; and

(2) the pardons and paroles division of the Texas Department of Criminal Justice if after sentencing the defendant is confined in the institutional division.

(d) An attorney representing the state who receives information concerning a victim's current address and phone number shall immediately provide that information to the community supervision

and corrections department supervising the defendant, if the defendant is placed on community supervision.

(e) The brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) shall include a statement that:

(1) the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement; and

(2) the judge before accepting the plea bargain is required under Section 26.13(e) to ask:

(A) whether a victim impact statement has been returned to the attorney; and

(B) if a statement has been returned, for a copy of the statement.

Added by Acts 1991, 72nd Leg., ch. 202, Sec. 5, eff. Sept. 1, 1991. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 253, Sec. 2, eff. Sept. 1, 1995; Subsec. (a)(4) amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(108), eff. Sept. 1, 1995; Subsec. (d) added by Acts 1995, 74th Leg., ch. 252, Sec. 2, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 165, Sec. 12.04, eff. Sept. 1, 1997; Subsec. (e) added by Acts 2001, 77th Leg., ch. 1034, Sec. 5, eff. Sept. 1, 2001.

Art. 56.09. Victim's right to privacy

As far as reasonably practical, the address of the victim may not be a part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be a part of the court file.

Added by Acts 1991, 72nd Leg., ch. 202, Sec. 5, eff. Sept. 1, 1991.

Art. 56.10. Victim's discovery attendance

Unless absolutely necessary, victims or witnesses who are not incarcerated may not be required to attend depositions in a correctional facility.

Added by Acts 1991, 72nd Leg., ch. 202, Sec. 5, eff. Sept. 1, 1991.

Art. 56.11. Notification to Victim of Release or Escape of Defendant

(a) The Texas Department of Criminal Justice or the sheriff, whichever has custody of the defendant in the case of a felony, or the sheriff in the case of a misdemeanor, shall notify the victim of the offense whenever a person convicted of an offense described by Subsection (c):

(1) completes the person's sentence and is released; or

(2) escapes from a correctional facility.

(b) If the Texas Department of Criminal Justice is required by Subsection (a) to give notice to the victim of an offense, the department shall also give notice to local law enforcement officials in the county in which the victim resides.

(c) This article applies to a person convicted of an offense described by Section 508.187(a), Government Code, or an offense involving family violence, stalking, or violation of a protective order or magistrate's order.

(d) It is the responsibility of a victim desiring notification of the offender's release to provide the Texas Department of Criminal Justice or the sheriff, as appropriate, with the address and telephone number of the victim or other person through whom the victim may be contacted and to notify the department or the sheriff of any change of address or telephone number of the victim or other person. Information obtained and maintained by the Texas Department of Criminal Justice or a sheriff under this subsection is privileged and confidential.

(e) The Texas Department of Criminal Justice or the sheriff, as appropriate, shall make a reasonable attempt to give the notice required by Subsection (a):

(1) not later than the 30th day before the person completes the sentence and is released; or

(2) immediately if the person escapes from the correctional facility.

(f) An attempt by the Texas Department of Criminal Justice or the sheriff to give notice to the victim at the victim's last known address, as shown on the records of the department or agency, constitutes a reasonable attempt to give notice under this article.

(g) In this article:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

Added by Acts 1993, 73rd Leg., ch. 10, Sec. 6, eff. March 19, 1993. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 657, Sec. 6, eff. June 14, 1995; amended by Acts 1997, 75th Leg., ch. 1, Sec. 8, eff. Jan. 28, 1997. Amended by Acts 1997, 75th Leg., ch. 670, Sec. 6, eff. Sept. 1, 1997; Subsec. (c) amended by Acts 2001, 77th Leg., ch. 978, Sec. 3, eff. Sept. 1, 2001; Subsec. (g) amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(k), eff. Sept. 1, 2003.

#### Art. 56.12. Notification of Escape or Transfer

(a) The Texas Department of Criminal Justice shall immediately notify the victim of an offense, the victim's guardian, or the victim's close relative, if the victim is deceased, if the victim, victim's guardian, or victim's close relative has notified the institutional division as provided by Subsection (b) of this article, whenever the offender:

- (1) escapes from a facility operated by the institutional division; or
- (2) is transferred from the custody of the institutional division to the custody of a peace officer under a writ of attachment or a bench warrant.

(b) It is the responsibility of the victim, guardian, or close relative desiring notification of an offender's escape or transfer from custody under a writ of attachment or bench warrant to notify the Texas Department of Criminal Justice of the desire for notification and any change of address.

(c) In providing notice under Subsection (a)(2), the institutional division shall include the name, address, and telephone number of the peace officer receiving the inmate into custody. On returning the inmate to the custody of the institutional division, the victim services division of the Texas Department of Criminal Justice shall notify the victim, the victim's guardian, or the victim's close relative if the victim is deceased, of that fact.

Added by Acts 1995, 74th Leg., ch. 251, Sec. 1, eff. May 29, 1995. Amended by Acts 2001, 77th Leg., ch. 1034, Sec. 6, eff. Sept. 1, 2001.

#### Art. 56.13. Victim-Offender Mediation

The victim services division of the Texas Department of Criminal Justice shall:

- (1) train volunteers to act as mediators between victims, guardians of victims, and close relatives of deceased victims and offenders whose criminal conduct caused bodily injury or death to victims; and
- (2) provide mediation services through referral of a trained volunteer, if requested by a victim, guardian of a victim, or close relative of a deceased victim.

Added by Acts 2001, 77th Leg., ch. 1034, Sec. 7, eff. Sept. 1, 2001.

#### Art. 56.14. Clearinghouse Annual Conference

(a) The Texas Crime Victim Clearinghouse may conduct an annual conference to provide to participants in the criminal justice system training containing information on crime victims' rights.

(b) The clearinghouse may charge fees to persons attending the conference described by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1034, Sec. 7, eff. Sept. 1, 2001.

### SUBCHAPTER B. CRIME VICTIMS COMPENSATION

#### Art. 56.31. Short Title

This subchapter may be cited as the Crime Victims' Compensation Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.311. Legislative Findings and Intent

The legislature recognizes that many innocent individuals suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene to prevent criminal acts often suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds that there is a need for the compensation of victims of crime and those who suffer personal injury or death in the prevention of crime or in the apprehension of criminals. It is the legislature's intent that the compensation of innocent victims of violent crime encourage greater public cooperation in the successful apprehension and prosecution of criminals.

Added by Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.32. Definitions

(a) In this subchapter:

- (1) "Child" means an individual younger than 18 years of age who:

- (A) is not married; or
  - (B) has not had the disabilities of minority removed for general purposes under Chapter 31, Family Code.
- (2) "Claimant" means, except as provided by Subsection (b), any of the following individuals who is entitled to file or has filed a claim for compensation under this subchapter:
- (A) an authorized individual acting on behalf of a victim;
  - (B) an individual who legally assumes the obligation or who voluntarily pays medical or burial expenses of a victim incurred as a result of the criminally injurious conduct of another;
  - (C) a dependent of a victim who died as a result of criminally injurious conduct;
  - (D) an immediate family member or household member of a victim who:
    - (i) requires psychiatric care or counseling as a result of the criminally injurious conduct; or
    - (ii) as a result of the criminally injurious conduct, incurs with respect to a deceased victim expenses for traveling to and attending the victim's funeral or suffers wage loss from bereavement leave taken in connection with the death of that victim; or
  - (E) an authorized individual acting on behalf of an individual who is described by Subdivision (C) or (D) and who is a child.
- (3) "Collateral source" means any of the following sources of benefits or advantages for pecuniary loss that a claimant or victim has received or that is readily available to the claimant or victim from:
- (A) the offender under an order of restitution to the claimant or victim imposed by a court as a condition of community supervision;
  - (B) the United States, a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this subchapter;
  - (C) social security, Medicare, or Medicaid;
  - (D) another state's or another country's crime victims' compensation program;
  - (E) workers' compensation;
  - (F) an employer's wage continuation program, not including vacation and sick leave benefits;
  - (G) proceeds of an insurance contract payable to or on behalf of the claimant or victim for loss that the claimant or victim sustained because of the criminally injurious conduct;
  - (H) a contract or self-funded program providing hospital and other health care services or benefits; or
  - (I) proceeds awarded to the claimant or victim as a result of third-party litigation.
- (4) "Criminally injurious conduct" means conduct that:
- (A) occurs or is attempted;
  - (B) poses a substantial threat of personal injury or death;
  - (C) is punishable by fine, imprisonment, or death, or would be punishable by fine, imprisonment, or death if the person engaging in the conduct possessed capacity to commit the conduct; and
  - (D) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle, unless the conduct is intended to cause personal injury or death or the conduct is in violation of Section 550.021, Transportation Code, or one or more of the following sections of the Penal Code:
    - (i) Section 19.04 (manslaughter);
    - (ii) Section 19.05 (criminally negligent homicide);
    - (iii) Section 22.02 (aggravated assault);
    - (iv) Section 49.04 (driving while intoxicated);
    - (v) Section 49.05 (flying while intoxicated);
    - (vi) Section 49.06 (boating while intoxicated);
    - (vii) Section 49.07 (intoxication assault); or
    - (viii) Section 49.08 (intoxication manslaughter).
- (5) "Dependent" means:
- (A) a surviving spouse;
  - (B) a person who is a dependent, within the meaning of the Internal Revenue Code, of a victim; and
  - (C) a posthumous child of a deceased victim.
- (6) "Household member" means an individual who resided in the same permanent household as the victim at the time that the criminally injurious conduct occurred and who is related by consanguinity or affinity to the victim.
- (7) "Immediate family member" means an individual who is related to

a victim within the second degree by affinity or consanguinity.

(8) "Intervenor" means an individual who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in criminally injurious conduct, or to aid a peace officer.

(9) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred as a result of personal injury or death for:

(A) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;

(B) actual loss of past earnings and anticipated loss of future earnings and necessary travel expenses because of:

(i) a disability resulting from the personal injury;

(ii) the receipt of medically indicated services related to the disability resulting from the personal injury; or

(iii) participation in or attendance at investigative, prosecutorial, or judicial processes related to the criminally injurious conduct and participation in or attendance at any postconviction or postadjudication proceeding relating to criminally injurious conduct;

(C) care of a child or dependent;

(D) funeral and burial expenses, including, for an immediate family member or household member of the victim, the necessary expenses of traveling to and attending the funeral;

(E) loss of support to a dependent, consistent with Article 56.41(b)(5);

(F) reasonable and necessary costs of cleaning the crime scene;

(G) reasonable replacement costs for clothing, bedding, or property of the victim seized as evidence or rendered unusable as a result of the criminal investigation;

(H) reasonable and necessary costs, as provided by Article 56.42(d), incurred by a victim of family violence or a victim of sexual assault who is assaulted in the victim's place of residence for relocation and housing rental assistance payments; and

Text of Par. (I) as added by Acts 2003, 78th Leg., ch. 1286, Sec. 1

(I) for an immediate family member or household member of a deceased victim, bereavement leave of not more than 10 work days.

Text of Par. (I) as added by Acts 2003, 78th Leg., ch. 1303, Sec. 2

(I) reasonable and necessary costs of traveling to and from a place of execution for the purpose of witnessing the execution, including one night's lodging near the place at which the execution is conducted.

(10) "Personal injury" means physical or mental harm.

(11) "Victim" means, except as provided by Subsection (c):

(A) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct or as a result of actions taken by the individual as an intervenor, if the conduct or actions occurred in this state; and

(ii) is a resident of this state, another state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession or territory of the United States;

(B) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct or as a result of actions taken by the individual as an intervenor, if the conduct or actions occurred in a state or country that does not have a crime victims' compensation program that meets the requirements of Section 1403(b), Crime Victims Compensation Act of 1984 (42 U.S.C. Section 10602(b));

(ii) is a resident of this state; and

(iii) would be entitled to compensation under this subchapter if the criminally injurious conduct or actions had occurred in this state; or

(C) an individual who:

(i) suffers personal injury or death as a result of criminally injurious conduct caused by an act of international terrorism as defined by 18 U.S.C. Section 2331 committed outside of the United States; and

(ii) is a resident of this state.

(12) "Family violence" has the meaning assigned by Section 71.004(1), Family Code.

(b) In this subchapter "claimant" does not include a service provider.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1993, 73rd Leg., ch. 805, Sec. 3, 4, eff. Aug. 30,

1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Subsec. (a)(4) amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.27, eff. Sept. 1, 1995; Subsec. (a)(8) amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.55, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997; Subsec. (a)(9) amended by Acts 1999, 76th Leg., ch. 1470, Sec. 1, eff. June 19, 1999; Subsec. (a)(9) amended by Acts 2001, 77th Leg., ch. 11, Sec. 1, eff. Sept. 1, 2001; Subsec. (a)(12) added by Acts 2001, 77th Leg., ch. 11, Sec. 2, eff. Sept. 1, 2001; Subsec. (a)(2) amended by Acts 2003, 78th Leg., ch. 1286, Sec. 1, eff. Sept. 1, 2003; Subsec. (a)(9) amended by Acts 2003, 78th Leg., ch. 1286, Sec. 1, eff. Sept. 1, 2003; amended by Acts 2003, 78th Leg., ch. 1303, Sec. 2, eff. June 21, 2003.

#### Art. 56.33. Administration; Rules

(a) The attorney general shall adopt rules consistent with this subchapter governing its administration, including rules relating to the method of filing claims and the proof of entitlement to compensation and the review of health care services subject to compensation under this chapter. Subchapters A and B, Chapter 2001, Government Code, except Sections 2001.004(3) and 2001.005, apply to the attorney general.

(b) The attorney general may delegate a power, duty, or responsibility given to the attorney general under this subchapter to a person in the attorney general's office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.34. Compensation

(a) The attorney general shall award compensation for pecuniary loss arising from criminally injurious conduct if the attorney general is satisfied by a preponderance of the evidence that the requirements of this subchapter are met.

(b) The attorney general, shall establish whether, as a direct result of criminally injurious conduct, a claimant or victim suffered personal injury or death that resulted in a pecuniary loss for which the claimant or victim is not compensated from a collateral source.

(c) The attorney general shall award compensation for health care services according to the medical fee guidelines prescribed by Subtitle A, Title 5, Labor Code.

(d) The attorney general, a claimant, or a victim is not liable for health care service charges in excess of the medical fee guidelines. A health care provider shall accept compensation from the attorney general as payment in full for the charges unless an investigation of the charges by the attorney general determines that there is a reasonable health care justification for the deviation from the guidelines.

(e) A claimant or victim is not liable for the balance of service charges left as a result of an adjustment of payment for the charges under Article 56.58.

(f) The compensation to victims of crime fund and the compensation to victims of crime auxiliary fund are the payers of last resort.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

#### Art. 56.35. Types of Assistance

If the attorney general approves an application for compensation under Article 56.41, the attorney general shall determine what type of state assistance will best aid the claimant or victim. The attorney general may do one or more of the following:

(1) authorize cash payment or payments to or on behalf of a claimant or victim for pecuniary loss;

(2) refer a claimant or victim to a state agency for vocational or other rehabilitative services; or

(3) provide counseling services for a claimant or victim or contract with a private entity to provide counseling services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.36. Application

(a) An applicant for compensation under this subchapter must apply in writing on a form prescribed by the attorney general.

(b) An application must be verified and must contain:

- (1) the date on which the criminally injurious conduct occurred;
- (2) a description of the nature and circumstances of the criminally injurious conduct;
- (3) a complete financial statement, including:
  - (A) the cost of medical care or burial expenses and the loss of wages or support the claimant or victim has incurred or will incur; and
  - (B) the extent to which the claimant or victim has been indemnified for those expenses from a collateral source;
- (4) if appropriate, a statement indicating the extent of a disability resulting from the injury incurred;
- (5) an authorization permitting the attorney general to verify the contents of the application; and
- (6) other information the attorney general requires.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

Art. 56.37. Time for Filing

- (a) Except as otherwise provided by this article, a claimant or victim must file an application not later than three years from the date of the criminally injurious conduct.
- (b) The attorney general may extend the time for filing for good cause shown by the claimant or victim.
- (c) If the victim is a child, the application must be filed within three years from the date the claimant or victim is made aware of the crime but not after the child is 21 years of age.
- (d) If a claimant or victim presents medically documented evidence of a physical or mental incapacity that was incurred by the claimant or victim as a result of the criminally injurious conduct and that reasonably prevented the claimant or victim from filing the application within the limitations period under Subsection (a), the period of the incapacity is not included.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 805, Sec. 10, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

Art. 56.38. Review; Verification

- (a) The attorney general shall appoint a clerk to review each application for compensation under Article 56.36 to ensure the application is complete. If an application is not complete, the clerk shall return it to the claimant or victim and give a brief statement showing the additional information required. Not later than the 30th day after receiving a returned application, a claimant or victim may:

- (1) supply the additional information; or
- (2) appeal the action to the attorney general, who shall review the application to determine whether it is complete.

- (b) The attorney general may investigate an application.

- (c) Incident to the attorney general's review, verification, and hearing duties under this subchapter, the attorney general may:

- (1) subpoena witnesses and administer oaths to determine whether and the extent to which a claimant or victim qualifies for an award; and

- (2) order a claimant or victim to submit to a mental or physical examination by a physician or psychologist or order an autopsy of a deceased victim as provided by Article 56.39, if the mental, physical, or emotional condition of a claimant or victim is material to a claim.

- (d) On request by the attorney general and not later than the 14th business day after the date of the request, a law enforcement agency shall release to the attorney general all reports, including witness statements and criminal history record information, for the purpose of allowing the attorney general to determine whether a claimant or victim qualifies for an award and the extent of the qualification.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

Art. 56.385. Review of Health Care Services

- (a) The attorney general may review the actual or proposed health care services for which a claimant or victim seeks compensation in an application filed under Article 56.36.

- (b) The attorney general may not compensate a claimant or victim for

health care services that the attorney general determines are not medically necessary.

(c) The attorney general, a claimant, or a victim is not liable for a charge that is not medically necessary.

Added by Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.39. Mental or Physical Examination; Autopsy

(a) An order for a mental or physical examination or an autopsy as provided by Article 56.38(c)(3) may be made for good cause shown on notice to the individual to be examined and to all persons who have appeared.

(b) An order shall:

(1) specify the time, place, manner, conditions, and scope of the examination or autopsy;

(2) specify the person by whom the examination or autopsy is to be made; and

(3) require the person making the examination or autopsy to file with the attorney general a detailed written report of the examination or autopsy.

(c) A report shall set out the findings of the person making the examination or autopsy, including:

(1) the results of any tests made; and

(2) diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(d) On request of the individual examined, the attorney general shall furnish the individual with a copy of the report. If the victim is deceased, the attorney general on request shall furnish the claimant with a copy of the report.

(e) A physician or psychologist making an examination or autopsy under this article shall be compensated from funds appropriated for the administration of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.40. Hearings

(a) The attorney general shall determine whether a hearing on an application for compensation under this subchapter is necessary.

(b) If the attorney general determines that a hearing is not necessary, the attorney general may approve the application in accordance with the provisions of Article 56.41.

(c) If the attorney general determines that a hearing is necessary or if the claimant or victim requests a hearing, the attorney general shall consider the application at a hearing at a time and place of the attorney general's choosing. The attorney general shall notify all interested persons not less than 10 days before the date of the hearing.

(d) At the hearing the attorney general shall:

(1) review the application for assistance and the report prepared under Article 56.39 and any other evidence obtained as a result of the attorney general's investigation; and

(2) receive other evidence that the attorney general finds necessary or desirable to evaluate the application properly.

(e) The attorney general may appoint hearing officers to conduct hearings or prehearing conferences under this subchapter.

(f) A hearing or prehearing conference is open to the public unless in a particular case the hearing officer or attorney general determines that the hearing or prehearing conference or a part of it should be held in private because a criminal suspect has not been apprehended or because it is in the interest of the claimant or victim.

(g) The attorney general may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make an emergency award under Article 56.50.

(h) Subchapters C through H, Chapter 2001, Government Code, do not apply to the attorney general or the attorney general's orders and decisions.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.41. Approval of Claim

(a) The attorney general shall approve an application for compensation under this subchapter if the attorney general finds by a preponderance of the evidence that grounds for compensation under this subchapter exist.

(b) The attorney general shall deny an application for compensation under this subchapter if:

- (1) the criminally injurious conduct is not reported as provided by Article 56.46;
- (2) the application is not made in the manner provided by Articles 56.36 and 56.37;
- (3) the claimant or victim knowingly and willingly participated in the criminally injurious conduct;
- (4) the claimant or victim is the offender or an accomplice of the offender;
- (5) an award of compensation to the claimant or victim would benefit the offender or an accomplice of the offender;
- (6) the claimant or victim was incarcerated in a penal institution, as defined by Section 1.07, Penal Code, at the time the offense was committed; or
- (7) the claimant or victim knowingly or intentionally submits false or forged information to the attorney general.

(c) Except as provided by rules adopted by the attorney general to prevent the unjust enrichment of an offender, the attorney general may not deny an award otherwise payable to a claimant or victim because the claimant or victim:

- (1) is an immediate family member of the offender; or
- (2) resides in the same household as the offender.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Subsec. (b) amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.28, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

#### Art. 56.42. Limits on Compensation

(a) Except as otherwise provided by this article, awards payable to a victim and all other claimants sustaining pecuniary loss because of injury or death of that victim may not exceed \$50,000 in the aggregate.

(b) In addition to an award payable under Subsection (a), the attorney general may award an additional \$75,000 for extraordinary pecuniary losses, if the personal injury to a victim is catastrophic and results in a total and permanent disability to the victim, for lost wages and reasonable and necessary costs of:

- (1) making a home or automobile accessible;
- (2) obtaining job training and vocational rehabilitation;
- (3) training in the use of special appliances;
- (4) receiving home health care;
- (5) durable medical equipment;
- (6) rehabilitation technology; and
- (7) long-term medical expenses incurred as a result of medically indicated treatment for the personal injury.

(c) The attorney general may by rule establish limitations on any other pecuniary loss compensated for under this subchapter, including limitations on pecuniary loss incurred as a result of a claimant's travel to and attendance of a deceased victim's funeral.

(d) A victim who is a victim of family violence or a victim of sexual assault who is assaulted in the victim's place of residence may receive a onetime-only assistance payment in an amount not to exceed:

- (1) \$2,000 to be used for relocation expenses, including expenses for rental deposit, utility connections, expenses relating to the moving of belongings, motor vehicle mileage expenses, and for out-of-state moves, transportation, lodging, and meals; and
- (2) \$1,800 to be used for housing rental expenses.

(e) An immediate family member or household member of a deceased victim may not receive more than \$1,000 in lost wages as a result of bereavement leave taken by the family or household member.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997; Subsec.

(d) added by Acts 1999, 76th Leg., ch. 1470, Sec. 2, eff. June 19, 1999; Subsec. (b) amended by Acts 2001, 77th Leg., ch. 274, Sec. 1, eff. Sept. 1, 2001; Subsec. (d) amended by Acts 2001, 77th Leg., ch. 11, Sec. 3, eff. Sept. 1, 2001; Subsec. (c) amended by Acts 2003, 78th Leg., ch. 1286, Sec. 2, eff. Sept. 1, 2003; Subsec. (e) added by Acts 2003, 78th Leg., ch. 1286, Sec. 2, eff. Sept. 1, 2003.

#### Art. 56.43. Attorney Fees

(a) As part of an order, the attorney general shall determine and award reasonable attorney's fees, commensurate with legal services rendered, to be paid by the state to the attorney representing the

claimant or victim. Attorney fees shall not exceed 25 percent of the amount the attorney assisted the claimant or victim in obtaining. Where there is no dispute of the attorney general's determination of the amount of the award due to the claimant or victim and where no hearing is held, the attorney fee shall be the lesser of either 25 percent of the amount the attorney assisted the claimant or victim in obtaining or \$300.

(b) Attorney fees may be denied on a finding that the claim or appeal is frivolous.

(c) An award of attorney fees is in addition to an award of compensation.

(d) An attorney may not contract for or receive an amount larger than that allowed under this article.

(e) Attorney fees may not be paid to an attorney of a claimant or victim unless an award is made to the claimant or victim.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 805, Sec. 9, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.44. Payments

(a) The attorney general may provide for the payment of an award in a lump sum or in installments. The attorney general shall provide that the part of an award equal to the amount of pecuniary loss accrued to the date of the award be paid in a lump sum. Except as provided in Subsection (b), the attorney general shall pay the part of an award for allowable expense that accrues after the award is made in installments.

(b) At the request of the claimant or victim, the attorney general may provide that an award for future pecuniary loss be paid in a lump sum if the attorney general finds that:

(1) paying the award in a lump sum will promote the interests of the claimant or victim; or

(2) the present value of all future pecuniary loss does not exceed \$1,000.

(c) The attorney general may not provide for an award for future pecuniary loss payable in installments for a period for which the attorney general cannot reasonably determine the future pecuniary loss.

(d) The attorney general may make payments only to an individual who is a claimant or a victim or to a provider on the individual's behalf.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

#### Art. 56.45. Denial or Reduction of Award

The attorney general may deny or reduce an award otherwise payable:

(1) if the claimant or victim has not substantially cooperated with an appropriate law enforcement agency;

(2) if the claimant or victim bears a share of the responsibility for the act or omission giving rise to the claim because of the claimant's or victim's behavior;

(3) to the extent that pecuniary loss is recouped from a collateral source; or

(4) if the claimant or victim was engaging in an activity that at the time of the criminally injurious conduct was prohibited by law or a rule made under law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

#### Art. 56.46. Reporting of Crime

(a) Except as otherwise provided by this article, a claimant or victim may not file an application unless the victim reports the criminally injurious conduct to the appropriate state or local public safety or law enforcement agency within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime after the criminally injurious conduct is committed.

(b) The attorney general may extend the time for reporting the criminally injurious conduct if the attorney general determines that the extension is justified by extraordinary circumstances.

(c) Subsection (a) does not apply if the victim is a child.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1,

1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

Art. 56.47. Reconsideration

(a) The attorney general, on the attorney general's own motion or on request of a claimant or victim, may reconsider:

- (1) a decision to make or deny an award; or
- (2) the amount of an award.

(b) At least annually, the attorney general shall reconsider each award being paid in installments.

(c) An order on reconsideration may require a refund of an award if:

- (1) the award was obtained by fraud or mistake; or
- (2) newly discovered evidence shows the claimant or victim to be ineligible for the award under Article 56.41 or 56.45.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1993, 73rd Leg., ch. 805, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Subsec. (c) amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.85(b). Amended by Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

Art. 56.48. Judicial Review

(a) Not later than the 40th day after the attorney general renders a final decision, a claimant or victim may file with the attorney general a notice of dissatisfaction with the decision. Not later than the 40th day after the claimant or victim gives notice, the claimant or victim shall bring suit in the district court having jurisdiction in the county in which:

- (1) the injury or death occurred;
- (2) the victim resided at the time the injury or death occurred; or
- (3) if the victim resided out of state at the time of the injury or death, in the county where the injury or death occurred or in a district court of Travis County.

(b) While judicial review of a decision by the attorney general is pending, the attorney general:

- (1) shall suspend payments to the claimant or victim; and
- (2) may not reconsider the award.

(c) The court shall determine the issues by trial de novo. The burden of proof is on the party who filed the notice of dissatisfaction.

(d) A court may award not more than 25 percent of the total recovery by the claimant or victim for attorney fees in the event of review.

(e) In computing a period under this article, if the last day is a legal holiday or Sunday, the last day is not counted, and the time is extended to include the next business day.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997.

Art. 56.49. Exemption; Assignability

(a) An award is not subject to execution, attachment, garnishment, or other process, except that an award is not exempt from a claim of a creditor to the extent that the creditor provided products, services, or accommodations, the costs of which are included in the award.

(b) An assignment or agreement to assign a right to benefits for loss accruing in the future is unenforceable except:

(1) an assignment of a right to benefits for loss of earnings is enforceable to secure payment of alimony, maintenance, or child support; and

(2) an assignment of a right to benefits is enforceable to the extent that the benefits are for the cost of products, services, or accommodations:

(A) made necessary by the injury or death on which the claim is based; and

(B) provided or to be provided by the assignee.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

Art. 56.50. Emergency Award

(a) The attorney general may make an emergency award if, before acting on an application for compensation under this subchapter, it appears likely that:

(1) a final award will be made; and

(2) the claimant or victim will suffer undue hardship if immediate economic relief is not obtained.

(b) An emergency award may not exceed \$1,500.

(c) The amount of an emergency award shall be:

(1) deducted from the final award; or

(2) repaid by and recoverable from the claimant or victim to the extent the emergency award exceeds the final award.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.51. Subrogation

If compensation is awarded under this subchapter, the state is subrogated to all the claimant's or victim's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a collateral source.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.52. Notice of Private Action

(a) Before a claimant or victim may bring an action to recover damages related to criminally injurious conduct for which compensation under this subchapter is claimed or awarded, the claimant or victim must give the attorney general written notice of the proposed action. After receiving the notice, the attorney general shall promptly:

(1) join in the action as a party plaintiff to recover benefits awarded;

(2) require the claimant or victim to bring the action in the claimant's or victim's name as a trustee on behalf of the state to recover benefits awarded; or

(3) reserve the attorney general's rights and do neither in the proposed action.

(b) If the claimant or victim brings the action as trustee and recovers compensation awarded by the attorney general, the claimant or victim may deduct from the benefits recovered on behalf of the state the reasonable expenses of the suit, including attorney fees, expended in pursuing the recovery for the state. The claimant or victim must justify this deduction in writing to the attorney general on a form provided by the attorney general.

(c) A claimant or victim shall not settle or resolve any such action without written authorization to do so from the attorney general. No third party or agents, insurers, or attorneys for third parties shall participate in the settlement or resolution of such an action if they actually know, or should know, that the claimant or victim has received moneys from the fund and is subject to the subrogation provisions of this article. Any attempt by such third party, or agents, insurers, or attorneys of third parties to settle an action is void and shall result in no release from liability to the fund for any rights subrogated pursuant to this article. All such agents, insurers, and attorneys are personally liable to the fund for any moneys paid to a claimant or victim in violation of this subsection, up to the full amount of the fund's right to reimbursement. A claimant, victim, third party, or any agents, attorneys, or insurers of third parties who knowingly or intentionally fail to comply with the requirements of this chapter commits a Class B misdemeanor.

(d) A person adjudged guilty of a Class B misdemeanor shall be punished by:

(1) a fine not to exceed \$500;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and imprisonment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1993, 73rd Leg., ch. 805, Sec. 11, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.53. Annual Report

Annually, the attorney general shall report to the governor and the legislature on the attorney general's activities, including a statistical summary of claims and awards made and denied. The reporting period is the state fiscal year. The attorney general shall file the report not later than the 100th day after the end of the fiscal year.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

#### Art. 56.54. Funds

(a) The compensation to victims of crime fund and the compensation

to victims of crime auxiliary fund are in the state treasury.

(b) Except as provided by Subsections (h), (i), (j), and (k) and Article 56.541, the compensation to victims of crime fund may be used only by the attorney general for the payment of compensation to claimants or victims under this subchapter. For purposes of this subsection, compensation to claimants or victims includes money allocated from the fund to the Crime Victims' Institute created by Section 96.65, Education Code, for the operation of the institute and for other expenses in administering this subchapter. The institute shall use money allocated from the fund only for the purposes of Sections 96.65, 96.651, and 96.652, Education Code.

(c) Except as provided by Subsections (h) and (i), the compensation to victims of crime auxiliary fund may be used by the attorney general only for the payment of compensation to claimants or victims under this subchapter.

(d) The attorney general may not make compensation payments in excess of the amount of money available from the combined funds.

(e) General revenues may not be used for payments under this subchapter.

(f) The office of the attorney general is authorized to accept gifts, grants, and donations to be credited to the compensation to victims of crime fund and compensation to victims of crime auxiliary fund and shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all gifts, grants, and donations received and disbursed, used, or maintained by the office for the attorney general that are credited to these funds.

(g) Money in the compensation to victims of crime fund or in the compensation to victims of crime auxiliary fund may be used only as provided by this subchapter and is not available for any other purpose. Section 403.095, Government Code, does not apply to the fund.

(h) An amount of money deposited to the credit of the compensation to victims of crime fund not to exceed one-quarter of the amount disbursed from that fund in the form of compensation payments during a fiscal year shall be carried forward into the next succeeding fiscal year and applied toward the amount listed in the next succeeding fiscal year's method of financing.

(i) If the sums available in the compensation to victims of crime fund are sufficient in a fiscal year to make all compensation payments, the attorney general may retain any portion of the fund that was deposited during the fiscal year that was in excess of compensation payments made during that fiscal year as an emergency reserve for the next fiscal year. Such emergency reserve may not exceed \$10,000,000. The emergency reserve fund may be used only to make compensation awards in claims and for providing emergency relief and assistance, including crisis intervention, emergency housing, travel, food, or expenses and technical assistance expenses incurred in the implementation of this subsection in incidents resulting from an act of mass violence or from an act of international terrorism as defined by 18 U.S.C. Section 2331, occurring in the state or for Texas residents injured or killed in an act of terrorism outside of the United States.

(j) The legislature may appropriate money in the compensation to victims of crime fund to administer the associate judge program under Subchapter C, Chapter 201, Family Code.

(k) The attorney general may use the compensation to victims of crime fund to reimburse a law enforcement agency for the reasonable costs of a medical examination that are incurred by the agency under Article 56.06.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 805, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995; Subsec. (b) amended by Acts 1997, 75th Leg., ch. 1042, Sec. 2, eff. Sept. 1, 1997; Subsec. (h) added by Acts 1997, 75th Leg., ch. 1042, Sec. 1, eff. June 19, 1997. Amended by Acts 1997, 75th Leg., ch. 1434, Sec. 1, eff. Sept. 1, 1997; Subsec. (j) added by Acts 1999, 76th Leg., ch. 1302, Sec. 13, eff. Sept. 1, 1999; Subsec. (b) amended by Acts 2001, 77th Leg., ch. 1507, Sec. 2, eff. June 15, 2001; Subsec. (k) added by Acts 2001, 77th Leg., ch. 1507, Sec. 3, eff. June 15, 2001; Subsec. (b) amended by Acts 2003, 78th Leg., ch. 927, Sec. 2, eff. Sept. 1, 2003.

Art. 56.541. Appropriation of Excess Money for Other Crime Victim Assistance

(a) Not later than December 15 of each even-numbered year, the attorney general, after consulting with the comptroller, shall prepare forecasts and certify estimates of:

(1) the amount of money that the attorney general anticipates will be received from deposits made to the credit of the compensation to victims of crime fund during the next state fiscal biennium, other than deposits of:

- (A) gifts, grants, and donations; and
- (B) money received from the United States;

(2) the amount of money from the fund that the attorney general anticipates will be obligated during the next state fiscal biennium to comply with this chapter; and

(3) the amount of money in the fund that the attorney general anticipates will remain unexpended at the end of the current state fiscal year and that is available for appropriation in the next state fiscal biennium.

(b) At the time the attorney general certifies the estimates made under Subsection (a), the attorney general shall also certify for the next state fiscal biennium the amount of excess money in the compensation to victims of crime fund for purposes of Subsection (c), calculated by multiplying the amount estimated under Subsection (a)(2) by 120 percent, and subtracting that product from the sum of the amounts estimated under Subsections (a)(1) and (a)(3).

(c) For a state fiscal biennium, the legislature may appropriate from the compensation to victims of crime fund the amount of excess money in the fund certified for the biennium under Subsection (b) to state agencies that deliver or fund victim-related services or assistance.

(d) The attorney general and the comptroller shall cooperate in determining the proper allocation of the various sources of revenue deposited to the credit of the compensation to victims of crime fund for purposes of this article.

(e) The attorney general may use money appropriated from the compensation to victims of crime fund for grants or contracts supporting victim-related services or assistance, including support for private Texas nonprofit corporations that provide victim-related civil legal services directly to victims, immediate family members of victims, or claimants. A grant supporting victim-related services or assistance is governed by Chapter 783, Government Code.

(f) The attorney general shall adopt rules necessary to carry out this article.

Added by Acts 1997, 75th Leg., ch. 1042, Sec. 3, eff. Sept. 1, 1997. Subsec. (e) amended by Acts 1999, 76th Leg., ch. 1077, Sec. 1, eff. Aug. 30, 1999.

#### Art. 56.542. Payments for Certain Disabled Peace Officers

(a) In this article, "peace officer":

(1) means an individual elected, appointed, or employed to serve as a peace officer for a governmental entity under Article 2.12 or other law; and

(2) includes a former peace officer who because of an injury suffered while performing duties as a peace officer is entitled to receive payments under this article.

(b) If a peace officer employed by the state or a local governmental entity in this state sustains an injury as a result of criminally injurious conduct on or after September 1, 1989, in the performance of the officer's duties as a peace officer and presents evidence satisfactory to the attorney general that the officer's condition is a total disability resulting in permanent incapacity for work and that the total disability has persisted for more than 12 months, the officer is entitled to an annual payment equal to the difference between:

(1) any amounts received by the officer on account of the injury or disability from other sources of income, including settlements related to the injury or disability, insurance benefits, federal disability benefits, workers' compensation benefits, and benefits from another governmental entity, if those amounts do not exceed the amount described by Subdivision (2); and

(2) an amount equal to the officer's average annual salary during the officer's final three years as a peace officer.

(c) The amount of the payment under Subsection (b) is subject to an annual cost-of-living adjustment computed by the attorney general. The attorney general shall compute the amount of the cost-of-living adjustment by multiplying the amount of the annual payment received

by the peace officer under this section during the previous year times the percentage by which the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, or its successor index, increased during the previous calendar year.

(d) The attorney general shall compute the amount of an initial payment based on an injury suffered after September 1, 1989, by:

(1) computing the amount to which the officer is entitled under Subsection (b); and

(2) adding to that amount the cumulative successive cost-of-living adjustments for the intervening years computed from the date of the injury.

(e) To receive a payment under this section, a peace officer must furnish to the attorney general:

(1) proof that the injury was sustained in the performance of the applicant's duties as a peace officer and is a total disability resulting in permanent incapacity for work; and

(2) other information or evidence the attorney general requires.

(f) The attorney general may approve the application without a hearing or may conduct a hearing under Article 56.40. The decision of the attorney general is subject to judicial review under Article 56.48.

(g) The attorney general may appoint a panel of physicians to periodically review each application for assistance under this article to ensure the validity of the application and the necessity of continued assistance to the peace officer.

(h) The attorney general shall notify the comptroller of the attorney general's determination that a claim under this section is valid and justifies payment. On receipt of the notice, the comptroller shall issue a warrant to or in behalf of the claimant in the proper amount from amounts in the compensation to victims of crime fund. A payment under this section to or in behalf of a peace officer is payable as soon as possible after the attorney general notifies the comptroller.

(i) The attorney general and the comptroller by rule shall adopt a memorandum of understanding to establish procedures under which annual payments continue to a peace officer until continued assistance is no longer necessary.

(j) Article 56.37 does not apply to the filing of an application under this article. Other provisions of this chapter apply to this article to the extent applicable and consistent with this article.

(k) The limits on compensation imposed by Article 56.42 do not apply to payments made under this article, but the total aggregate amount of all annual payments made to an individual peace officer under this section may not exceed \$200,000.

Added by Acts 2001, 77th Leg., ch. 1512, Sec. 2, eff. Sept. 1, 2001.  
Art. 56.58. Adjustment of Awards and Payments

(a) The attorney general shall establish a policy to adjust awards and payments so that the total amount of awards granted in each calendar year does not exceed the amount of money credited to the fund during that year.

(b) If the attorney general establishes a policy to adjust awards under Subsection (a), the attorney general, the claimant, or the victim is not liable for the amount of charges incurred in excess of the adjusted amount for the service on which the adjusted payment is determined.

(c) A service provider who accepts a payment that has been adjusted by a policy established under Subsection (a) agrees to accept the adjusted payment as payment in full for the service and is barred from legal action against the claimant or victim for collection.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

Art. 56.60. Public Notice

(a) A hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this subchapter. The attorney general shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this subchapter to each hospital and physician licensed to practice in this state.

(b) Each local law enforcement agency shall inform a claimant or victim of criminally injurious conduct of the provisions of this subchapter and make application forms available. The attorney general shall provide application forms and all other documents

that local law enforcement agencies may require to comply with this article. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with the attorney general a description of the procedures adopted by each agency to comply.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

Art. 56.61. Compensation for Certain Criminally Injurious Conduct Prohibited

The attorney general may not award compensation for economic loss arising from criminally injurious conduct that occurred before January 1, 1980.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.84(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

Art. 56.62. Public Letter of Reprimand

(a) The attorney general may issue a letter of reprimand against an individual if the attorney general finds that the person has filed or has caused to be filed under this subchapter an application for benefits or claim for pecuniary loss that contains a statement or representation that the person knows to be false.

(b) The attorney general must give the person notice of the proposed action before issuing the letter.

(c) A person may challenge the denial of compensation and the issuance of a letter of reprimand in a contested case hearing under Chapter 2001, Government Code (Administrative Procedure Act).

(d) A letter of reprimand issued under this article is public information.

Added by Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

Art. 56.63. Civil Penalty

(a) A person is subject to a civil penalty of not less than \$2,500 or more than \$25,000 for each application for compensation that:

(1) is filed under this subchapter by the person or is filed under this subchapter as a result of conduct of the person; and

(2) contains a material statement or representation that the person knows to be false.

(b) The attorney general shall institute and conduct the suit to collect the civil penalty authorized by this article on behalf of the state.

(c) A civil penalty recovered under this article shall be deposited to the credit of the compensation to victims of crime fund.

(d) The civil penalty authorized by this article is in addition to any other civil, administrative, or criminal penalty provided by law.

(e) In addition to the civil penalty authorized by this article, the attorney general may recover expenses incurred by the attorney general in the investigation, institution, and prosecution of the suit, including investigative costs, witness fees, attorney's fees, and deposition expenses.

Added by Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.

Art. 56.64. Administrative Penalty

(a) A person who presents to the attorney general under this subchapter, or engages in conduct that results in the presentation to the attorney general under this subchapter of, an application for compensation under this subchapter that contains a statement or representation the person knows to be false is liable to the attorney general for:

(1) the amount paid in reliance on the application and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made;

(2) payment of an administrative penalty not to exceed twice the amount paid because of the false application for benefits or claim for pecuniary loss; and

(3) payment of an administrative penalty of not more than \$10,000 for each item or service for which payment was claimed.

(b) In determining the amount of the penalty to be assessed under Subsection (a)(3), the attorney general shall consider:

(1) the seriousness of the violation;

(2) whether the person has previously submitted a false application for benefits or a claim for pecuniary loss; and

(3) the amount necessary to deter the person from submitting future false applications for benefits or claims for pecuniary loss.

(c) If the attorney general determines that a violation has occurred, the attorney general may issue a report that states the

facts on which the determination is made and the attorney general's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(d) The attorney general shall give written notice of the report to the person. Notice under this subsection may be given by certified mail and must:

- (1) include a brief summary of the alleged violation;
- (2) include a statement of the amount of the recommended penalty; and
- (3) inform the person of the right to a hearing on:
  - (A) the occurrence of the violation;
  - (B) the amount of the penalty; or
  - (C) both the occurrence of the violation and the amount of the penalty.

(e) Not later than the 20th day after the date the person receives the notice, the person, in writing, may:

- (1) accept the attorney general's determination and recommended penalty; or
- (2) request in writing a hearing on:
  - (A) the occurrence of the violation;
  - (B) the amount of the penalty; or
  - (C) both the occurrence of the violation and the amount of the penalty.

(f) If the person accepts the determination and recommended penalty of the attorney general, the attorney general by order shall approve the determination and impose the recommended penalty.

(g) If the person requests a hearing as provided by Subsection (e) or fails to respond to the notice in a timely manner, the attorney general shall set a contested case hearing under Chapter 2001, Government Code (Administrative Procedure Act), and notify the person of the hearing. The administrative law judge shall make findings of facts and conclusions of law and promptly issue to the attorney general a proposal for a decision regarding the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the attorney general by order may:

- (1) find that a violation has occurred and impose a penalty; or
- (2) find that a violation has not occurred.

(h) Notice of the attorney general's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(i) Not later than the 30th day after the date that the attorney general's order is final under Section 2001.144, Government Code, the person shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting:
  - (A) the occurrence of the violation;
  - (B) the amount of the penalty; or
  - (C) the occurrence of the violation and the amount of the penalty;or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting:
  - (A) the occurrence of the violation;
  - (B) the amount of the penalty; or
  - (C) the occurrence of the violation and the amount of the penalty.

(j) Within the 30-day period, a person who acts under Subsection (i)(3) may:

- (1) stay enforcement of the penalty by:
  - (A) paying the amount of the penalty to the court for placement in an escrow account; or
  - (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the attorney general's order is final; or
- (2) request the court to stay enforcement of the penalty by:
  - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty or to give the supersedeas bond; and
  - (B) delivering a copy of the affidavit to the attorney general by certified mail.

(k) On receipt by the attorney general of a copy of an affidavit under Subsection (j)(2), the attorney general may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable

and shall stay the enforcement of the penalty on finding that the alleged facts are true. A person who files an affidavit under Subsection (j)(2) has the burden of proving that the person is financially unable to pay the amount of the penalty or to give a supersedeas bond.

(l) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the attorney general may file suit for collection of the amount of the penalty.

(m) Judicial review of the order of the attorney general:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is governed by the substantial evidence rule.

(n) If the court upholds the finding that a violation occurred, the court may order the person to pay the full or reduced amount of the penalty. If the court does not uphold the finding, the court shall order that no penalty is owed.

(o) If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(p) A penalty collected under this article shall be sent to the comptroller and deposited to the credit of the compensation to victims of crime fund.

(q) All proceedings under this article are subject to Chapter 2001, Government Code.

(r) In addition to the administrative penalty authorized by this article, the attorney general may recover all expenses incurred by the attorney general in the investigation, institution, and prosecution of the suit, including investigative costs, witness fees, attorney's fees, and deposition expenses.

Added by Acts 1995, 74th Leg., ch. 779, Sec. 1, eff. Sept. 1, 1995.