

**Comments on Proposed Amendments to N.J.A.C. 13:75-1.4, 2.1, 2.6, 3.1, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 4.8, 4.10, 5.1, 5.2, 6.1, 7.1, and 7.2 and Proposed New Rules N.J.A.C. 13:75-5.3 and 8**

April 28, 2021

Mary Ellen Bonsper  
VCCO Director  
Victims of Crime Compensation Office  
50 Park Place  
Newark, New Jersey 07102

Dear Director Bonsper:

Partners for Women and Justice (“Partners”) and Volunteer Lawyers for Justice (“VLJ”) respectfully submit these comments regarding the proposed amendments to N.J.A.C. 13:75-1.4, 2.6, 3.1, 4.1-.10, 5.1, 5.2, 6.1, 7.1 and 7.2 and proposed new rules N.J.A.C. 13:75- 5.3 and 8, published on March 1, 2021.

Partners provides free legal assistance to low-income survivors of domestic violence and sexual assault in family court, primarily in Essex, Union, Middlesex, Hudson, and Passaic Counties. Partners’ services include representation at final domestic violence restraining order hearings, final sexual assault protective order hearings, and matters related to child support, safe visitation, and child custody, as well as advice and counsel to self-represented victims. Partners engages in advocacy to address systemic problems faced by low-income survivors, implicating deep-rooted constitutional rights.

VLJ is a non-profit legal services organization based in Newark, New Jersey. VLJ’s New Jersey Trafficking Victims Legal Assistance Program has been providing free legal assistance to survivors of human trafficking since 2016. VLJ serves survivors on a variety of legal issues,

including criminal record clearing, family law matters, immigration issues, victim-witness advocacy, criminal restitution, victim of crime compensation, and name change assistance.

Partners and VLJ broadly support these amendments, implementing the 2019 amendments to the Criminal Injuries Compensation Act, N.J.S.A. 52:4B-1 et seq. The statute and implementing regulations will greatly enhance access and eligibility to critical Victim of Crime Compensation Office (“VCCO”) funding for survivors of intimate partner violence and human trafficking, two populations who suffer a cascade of financial losses as a direct result of their victimization.<sup>1</sup> Low-income women experience disproportionate levels of domestic violence and more severe forms of abuse.<sup>2</sup> Lack of access to funds can lead to victims being trapped in a cycle of violence with their abusers and unable to leave the relationship.<sup>3</sup> Since the proposed regulations will expand eligibility for compensation, more survivors will have access to financial resources necessary to create a new life for themselves and their children, free from violence. Although the comments below focus on the needs of survivors of intimate partner violence and human trafficking, many of them apply to sexual assault victims as well.

## **I. The proposed amendments will significantly benefit victims of domestic violence.**

- 1. Additional Award for Emergent Need [13:75-2.1(h)]:** Expanding eligibility compensation to include an additional award for emergency housing will benefit victims of domestic violence and human trafficking, especially those at risk of becoming homeless. Domestic violence has been a leading cause of homelessness for several years.<sup>4</sup> Researchers have found that some domestic violence survivors choose to stay or move back in with their abuser when their only other option was homelessness.<sup>5</sup> Homelessness and housing insecurity also significantly increase the risk of sexual exploitation and human trafficking, often leading to re-victimization for those who are already vulnerable.<sup>6</sup> Access to emergency funds for victims to obtain shelter or transitional housing is important to combat both domestic violence and human trafficking in order to provide adequate support to victims.<sup>7</sup>
- 2. Victim’s Criminal Status [13:75- 2.1(h)]:** This amendment ensures that compensation will not be denied simply due to a victim’s criminal status and mandates providing emergency assistance for shelter when needed for the victim’s physical safety. The

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<sup>1</sup> Centers for Disease Control and Prevention, *Costs of Intimate Partner Violence Against Women in the United States*, 27-32 (2003), available at <https://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf>; Maggie Germano, *Domestic Violence Has a Financial Impact Too*, *Forbes* (Oct. 17, 2019), available at <https://www.forbes.com/sites/maggiegermano/2019/10/17/domestic-violence-has-a-financial-impact-too/?sh=619881a89d04>.

<sup>2</sup> Partners for Women and Justice & Seton Hall Law, *The Impact of COVID-19 Intensifies the Shadow Pandemic of Domestic Violence in New Jersey* (“COVID-19 Impact Report”), p. 8 (Dec. 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 21.

<sup>5</sup> *Id.* at 11.

<sup>6</sup> Human Trafficking and Housing & Homelessness, Polaris Project, <https://polarisproject.org/human-trafficking-and-housing-homelessness/>

<sup>7</sup> COVID-19 Impact Report at 5.

proposed language recognizes the complex challenges crime survivors endure. Victims acting in self-defense in response to violence or potential violence by their abuser are sometimes arrested by responding police officers who do not correctly identify the primary aggressor.<sup>8</sup> Defendants may retaliate by bringing municipal court complaints against their victim.<sup>9</sup> This issue is particularly prominent amongst human trafficking survivors, who are regularly arrested and prosecuted for crimes resulting from their trafficking.<sup>10</sup>

In addition, many victims of domestic violence, sexual assault, and human trafficking have untreated mental health issues, compounded by their victimization, and may self-medicate by turning to drugs and alcohol to help cope with their trauma.<sup>11</sup> Abuse of drugs or alcohol can lead to victims having criminal arrest records that is an indirect result of their victimization.

3. **Burden of Proof [13:75-2.6].** Partners and VLJ support the change in burden of proof contained in the proposed regulations. Shifting the victim's burden from an evidentiary standard to a burden of production is appropriate to further the agency's mandate to distribute funds to crime victims. Victims can submit evidence, and VCCO can process more claims efficiently with the credible evidence standard contained in the new language of the regulations.
4. **Funds for Moving Expenses and Home Security [13:75- 4.7(d)(2)]:** The proposed amendment of N.J.A.C. 13:75 to allocate funds that are not utilized for moving expenses towards the purchase of a security alarm system, new door locks, or any other reasonable home security device is also very helpful for victims. The ability to access those funds can significantly help survivors ensure that they are safe from their abusers and able to feel secure in their own home.
5. **Reasons for Non-Cooperation [13:75- 4.6(b)(7)]:** The inclusion of traumatic stress, fear, retribution, fear of law enforcement, or mental health crises as valid reasons for non-cooperation recognizes the intersecting challenges that survivors face and how those concerns may directly impact victims' interactions with law enforcement. Victims of color and foreign-born victims often shun police contact based on past negative police

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<sup>8</sup> Understanding Domestic Abusers, New York State Office for the Prevention of Domestic Violence, available at <https://opdv.ny.gov/professionals/abusers/responsiveipv.html>.

<sup>9</sup> Jessica Klein, *How Domestic Abusers Weaponize the Courts*, The Atlantic (July 18, 2019), available at <https://www.theatlantic.com/family/archive/2019/07/how-abusers-use-courts-against-their-victims/593086/>.

<sup>10</sup> A 2016 study from the National Survivor Network found that more than 90 percent of trafficking survivors reported having been arrested at least once, with more than 50 percent reporting that every arrest on their record was trafficking-related. Nat'l Survivor Network, *National Survivors Network Member Survey: Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* 3, 5 (Aug. 2016), available at <https://nationalsurvivornetwork.org/wp-content/uploads/2017/12/VacateSurveyFinal.pdf>.

<sup>11</sup> *Understanding the Connection Between Drug Addiction, Alcoholism, and Violence*, American Addiction Centers, available at <https://americanaddictioncenters.org/rehab-guide/addiction-and-violence>.

encounters<sup>12</sup> and fear of deportation.<sup>13</sup> Fear of retaliation, intimidation, and coercion by the abusive partner can also lead to victims' refusing to follow through with criminal prosecutions. The amended provision recognizes the complexity of the lived experiences of crime victims.

6. **Virtual Hearings [13:75-7.2(c)]:** Allowing claimants to attend hearings virtually will provide greater access to courts and justice. A virtual hearing option provides more flexibility and can be more efficient for victims rather than taking time off from work, securing childcare, and traveling to a VCCO office.
7. **Human Trafficking [13:75-8.1]:** Expanding eligibility for compensation to include victims of human trafficking will provide funding for a fresh start for survivors whose lives have been personally and financially impacted by the crimes committed against them.

## II. The Commission should revise the proposed amendments on costs and reporting procedures:

1. **Appropriate Law Enforcement Agency [13.75- 3.1(b)]:** The proposed amendments expand the victims' reporting options by permitting other law enforcement reporting, rather than requiring a report to police. While we support the direction of this provision, we respectfully urge VCCO to expand its definition of "other appropriate law enforcement agency" in the broadest and most flexible terms. The regulation should explicitly indicate that the issuance of temporary domestic violence or sexual assault restraining orders meets the reporting requirement.<sup>14</sup> This change would recognize the important function of the family court in determining if a plaintiff is a victim of domestic violence and/or sexual assault.<sup>15</sup> Greater clarity on this point may result in more victims recognizing their eligibility for VCCO compensation.

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<sup>12</sup> See, Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 WM. & MARY J. WOMEN & L. 39 (2017) *Intimate Partner Violence in New Jersey's African American Community, Findings and Recommendations of the New Jersey Domestic Violence Fatality and Near Fatality Review Board*, 1-6 (2013), available at <https://www.nj.gov/dcf/news/reportsnewsletters/taskforce/DVFNFRB%20Report.pdf>; Cortney A. Franklin and Alondra D. Garza, *Sexual Assault Disclosure: The Effect of Victim Race and Perpetrator Type on Empathy, Culpability, and Service Referral for Survivors in a Hypothetical Scenario*, 33 J. Interpersonal Violence 1, 5 (2018); Jameta Nicole Barlow, *Black Women, the Forgotten Survivors of Sexual Assault*, Am. Psychological Ass'n (Feb. 2020), available at <https://www.apa.org/pi/about/newsletter/2020/02/black-women-sexual-assault>.

<sup>13</sup> See, Tahirih Justice Center, "Immigrant Survivors Fear Reporting Violence," (May 2019), available at <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>, NOW, "Intimate Partner Violence: Undocumented and Immigrant Women," available at <https://now.org/wp-content/uploads/2017/06/Learn-More-IPV-and-Immigrant-Womenpdf.pdf>; New Jersey Domestic Violence Fatality and Near Fatality Review Board, "Intimate Partner Homicide in Immigrant Communities," (2018), available at <https://www.nj.gov/dcf/news/reportsnewsletters/taskforce/immigration.report.pdf>.

<sup>14</sup> Victims, as a whole, prefer to utilize the civil restraining order system (which the victim can initiate either at the police or at the courthouse), rather than making a criminal complaint to the police. See Administrative Office of the Courts, State of New Jersey, *Report on the Prevention of Domestic Violence Act*, at 18-29 (2017). This pattern of help-seeking behavior by victims is indicative of their strong preference to avoid criminal justice involvement of their partners, with whom they may share children and/or financially depend upon.

<sup>15</sup> Conversely, as VCCO has recognized in its practice, the denial of a final restraining order should not by itself serve as a basis for denial of VCCO eligibility. Even if the victim has proven the underlying predicate criminal act,

The VCCO should consider adopting reporting requirements similar to those for T-Visas.<sup>16</sup> For example:

- A provision explicitly stating that formal prosecution is not a necessary requirement, merely the reporting and willingness to cooperate with law enforcement
  - A provision for waiving the reporting requirements victims with serious psychological trauma
2. **Legal Costs [13:75- 4.10(b)]:** The proposed amendments in their current form only reference attorney’s fees. They do not explicitly specify whether this provision will also cover court costs. Partners and VLJ recommend retitling the provision to mirror N.J.S.A. 52:4B-8. Likewise, we urge VCCO to include the words “including costs” following attorney fee so that the section reads as follows:

13:75-4.10 Attorney fees **and costs**

(b) The Office may allow payment of an attorney fee, **including costs**, up to a maximum of [\$3,000] \$10,000, to an attorney who provides legal assistance to a victim in any legal matter, other than a decision of the Office, arising from, or related to, having been the victim of the offense that forms the basis of the victim’s or claimant’s application for compensation.

Without this change, the regulation could be construed to cover costs for VCCO applications, which are minimal but exclude them for other legal matters. In the context of domestic violence, sexual assault, and human trafficking cases, the most common costs include translation expenses, conversion of evidentiary materials in order to upload or display evidence onto the court’s data system, and subpoena fees. Occasionally, counsel needs to order part or all of a transcript, and transcription costs can be very expensive. The regulations should reflect that the \$10,000 cap per case is for legal assistance, including the advancement by counsel on behalf of the client of all costs.

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the court will deny the restraining order unless the victim can establish the need for future protection. *Silver v. Silver*, 387 N.J. Super. 112, 126-127 (App. Div. 2006).

<sup>16</sup> <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-human-trafficking-t-nonimmigrant-status>

### **III. CONCLUSION**

Partners and VLJ thank VCCO for the excellent revisions to its regulations, which will enable more crime victims to secure recompense for the harms they have endured.

Respectfully submitted,

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