

# STOP Newsletter

**Services and Training  
for Officers and Prosecutors**

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## **Governor Signs Act 78 of 2006 Establishing Additional Insurance Protections for Victims of Domestic Violence**

**By Nancy Durborow, PCADV Health Projects Manager**

**P**ennsylvania House Bill 1632 (Act 78 of 2006) amending the Unfair Insurance Practices Act was passed unanimously in both the House and Senate and was signed into law by Governor Rendel on July 7, 2006. The law will go into effect on September 5, 2006.

The prime sponsor of Act 78 was Representative George Kenney (R) representing parts of Montgomery and Philadelphia counties. Representative Kenney became interested in this issue when in 2001, one of his constituents found herself and her children homeless after her estranged husband barricaded himself inside their home with their youngest child and set the house on fire. The insurance company filed a federal lawsuit, claiming no obligation to pay the \$60,000 in property damage because the batterer deliberately torched the house, even though the wife was completely innocent. When the story received extensive press, a company executive (although not legally obligated to do so), struck a deal and settled the claim.

### Act 78 Provisions

Act 78 will provide for the following:

1. Expansion of the definition of abuse in the Unfair Insurance Practices statute to include property damage and establish a statutory prohibition against an insurance company's refusal to pay automobile and homeowners' claims arising out of abuse to an innocent claimant when an abusive partner intentionally causes the property damage.

2. Requires that insurers investigating a claim for losses must notify a victim of abuse that the investigation could result in contact with other "insureds," which could include the batterer and that, if requested, the insurer will not disclose the location of the "insured" (victim of domestic violence).

3. Requires insurers to notify the victim of abuse at least 14 days prior to instituting any legal action against the insured alleged to have caused the loss.

4. Will allow insurers to not renew coverage or impose a surcharge on the insured that caused the loss but not until six months following payment of the claim or the policy's renewal date.

5. Requires insurers to provide the innocent co-insured with the national domestic violence hotline number.

6. That payment of a claim to a victim of abuse will constitute payment as to all other insureds under the policy as directed by the statute.

### Background

Information that insurance practices negatively affect victims of domestic violence first came to light in Pennsylvania in 1994. In late 1993, two insurance companies denied a Pennsylvania woman insurance based on information that she had been abused by her husband. The woman immediately sought the assistance of a domestic violence service organization, which led to public disclosure of the problem by PCADV. This woman's experience informed the public that domestic violence could disqualify someone from getting insurance.

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## Governor Signs Act 78 of 2006 Establishing Additional Insurance Protections for Victims of Domestic Violence

The Pennsylvania woman's experience was not an isolated instance. An investigation into the depth and scope of insurance practices affecting victims of domestic violence quickly demonstrated a common practice of underwriting on the basis of domestic violence in all lines of insurance-life, health, disability, homeowners, auto, and commercial property insurance.

After victim advocates and others learned that insurers consider domestic violence in determining whom to insure, several entities conducted surveys to find out how many insurers engaged in such underwriting practices. The first survey of insurance practices was done in 1994 by the staff of the Subcommittee on Crime and Criminal Justice of the United States House of Representatives Judiciary Committee. An informal survey of the largest insurers in the country revealed that eight of the sixteen insurers contacted used domestic violence as a factor when deciding whether to issue and how much to charge for an insurance policy.

In May 1995, the Insurance Commissioner of Pennsylvania reported the results of a formal survey of all accident, health, and life insurers doing business in the state regarding their underwriting practices relating to domestic violence. Overall, 26% of the 489 responding insurers reported that they considered domestic violence as an underwriting criterion. In response to a separate question about underwriting of new applications, domestic violence was reported to be an underwriting criterion by 74% of the responding life insurers, 65% of the responding health insurers, and 47% of the responding accident insurers. In response to the same question about underwriting the renewal of policies, domestic violence was reported to be a criterion for policy renewal by 34% of the responding life insurers, 19% of the responding health insurers, and 15% of the responding accident insurers.

During the 1995-96 legislative session, then Representative Patricia Vance, (R), Cumberland County, sponsored House Bill 1100, now Act 24 of 1996, to prohibit insurance companies from denying claims or surcharging an individual based on their history as a victim of domestic violence.

### Need for Protections Specific to Property and Casualty Insurance

Prior to Passage of Act 78, property and casualty insurance policies typically denied claims resulting from an "intentional act" by a named insured. This exclusion was developed to prohibit insureds from intentionally damaging their own

property in order to receive a financial gain. However, victims of domestic violence faced severe hardship due to this exclusion when batterers damaged property.

In 1997, the Superior Court of Pennsylvania addressed this issue in *Kundahl vs. Erie Insurance Group*, 703 A2d. 542. In this case, Mr. Kundahl intentionally set fire to the home jointly owned and insured by his spouse and him. The Court denied insurance benefits to Mrs. Kundahl based on the exclusionary clauses in the insurance policies (homeowners and auto). However, the Court ended their decision by stating:

"We do sympathize with Mrs. Kundahl's plight. Her home and her car are lost without the possibility of recovery. However, we cannot permit our sympathy to cloud the plain language of both policies. Nor can we force insurance companies to insert language in every policy they write to provide coverage for all innocent insureds. Such action is more properly left to our legislature. We, therefore, call upon the legislature to address this problem so that victimized spouses are no longer faced with the twin evils of destruction and destitution."

### Legislative Support

Senator Gib Armstrong (R), Lancaster, Senator Patricia Vance (R) Cumberland County, the Governors Policy Office and the Insurance Commissioner were instrumental in assisting with passage of Act 78.

### Need for a Federal Remedy

The PCADV and the Women's Law Project of Philadelphia have worked together over the last twelve years both state and

nationally to obtain these important protections for victims of domestic violence.

To date forty-one states have adopted some form of legislation prohibiting insurance discrimination against victims of domestic violence. Unfortunately these state laws vary widely in scope of coverage, including types of insurance to which they apply, types of practices prohibited, remedies and protected class. There remains a need for a federal remedy to insure comprehensiveness and uniformity of protection. Additionally, there is a segment of the population whose health insurance is governed only by federal law and therefore can only be reached through federal legislation.

**For further information contact Nancy Durborow, Health Projects Manager, at the PCADV offices, 1-800-932-4632.**

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# What is the Victims Compensation Assistance Program (VCAP)?

*Excerpted from PCAR's Sexual Assault/Victims Compensation Assistance Program Manual*

**S**exual violence is a crime of profound personal injury. Sexual violence victims endure physical injury, emotional trauma, and financial loss. Rape is the most costly of all crimes to its victims. The total cost of adult rape is \$127 billion per year, followed by child abuse at \$56 billion. Taking into account short-term medical care, mental health services, lost productivity, and pain and suffering, the cost per adult sexual assault is estimated at \$87,000 per episode of sexual violence (Miller, et al., 1996).

The Victims Compensation Assistance Program, created by Act 139 of July 1976, was established as a response to the financial losses incurred by victims of crime. The Commonwealth of Pennsylvania was the tenth state in the nation to establish a compensation program to help victims and their families by easing the financial burden that crime imposes on them. Individuals who are injured during a crime may be compensated for uninsured or unreimbursable medical expenses, counseling, relocation expenses, crime-scene cleanup expenses, loss of earnings, and stolen benefit cash. For sexual assault victims, health care providers may submit claims for the costs associated with forensic rape examinations when medical insurance is not available or the victim chooses not to access her/his insurance.

Financial compensation for victims of crime is one of the most important, tangible expressions of society's compassion for those who have been harmed by crime. While compensation cannot address all that victims suffer, it can provide a critical ingredient in repairing the harm.

## Persons Eligible for Compensation

A potential applicant for compensation (claimant) must qualify for at least one of the following categories:

- ◆ A victim of a crime in Pennsylvania.
 

The individual must have been victimized by a crime that occurred in PA, but the applicant does not need to be a PA resident. A PA resident who is injured in another state needs to apply to the compensation program in the state where the crime occurred.
- ◆ An intervenor.
 

An intervenor is a person who is hurt (physical and/or mental injury) or killed while helping someone who is the target of a crime.
- ◆ A surviving spouse, parent, or child of a deceased victim or intervenor.
- ◆ A parent/guardian of a child victim.
- ◆ Any other person dependent for her/his principal support upon a deceased victim or intervenor.
- ◆ Any person who assumes the obligation or who pays for the crime-scene cleanup, funeral, or burial expenses incurred as a direct result of the crime.



**NOTE:** A claim may be filed by/for anyone eligible for compensation no later than two years after the occurrence or no later than two years after the discovery of the occurrence of a crime.

Below is a list of individuals and agencies that may be contacted for verification and documentation requested of them.

### Police:

- ◆ verification that the crime occurred
- ◆ a request for the full incident report

### Healthcare Providers:

- ◆ dates of service
- ◆ the relation of the injuries or need for treatment to the crime incident
- ◆ billing information
- ◆ status of payments and insurance
- ◆ dates of counseling
- ◆ estimated length of treatment
- ◆ estimated cumulative cost
- ◆ counseling treatment goals and methods of accomplishing those goals
- ◆ the target completion date
- ◆ if there is possible need for victim to relocate

### Employer:

- ◆ Victim's lost time from work
 

**NOTE:** Filing for loss of earnings also requires verification from a physician, psychologist, or dentist who can confirm the victim's disability period.
- ◆ Benefits received

### Eligible expenses:

- ◆ The forensic rape exam at the hospital (treated as a separate expense and the responsibility of the health care facility)
- ◆ Other medical expenses such as doctor bills and medications

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# What is the Victims Compensation Assistance Program (VCAP)?

- ◆ Replacement of health care items lost or damaged during the crime, such as:
- ◆ Eyeglasses
- ◆ Counseling to help deal with the assault
- ◆ Child care and transportation costs to get to counseling sessions or doctors visits
- ◆ Income lost from missing work because of the assault.

For more information visit [www.pcar.org/resources](http://www.pcar.org/resources)  
**Sexual Assault/Victims Compensation Assistance Program Manual**; [www.pccd.state.pa.us](http://www.pccd.state.pa.us) , Victims.

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**CORRECTION:**

The last issue of the STOP Newsletter was incorrectly identified as the Summer edition when in fact it was the Spring edition.



Developed by the Pennsylvania Coalition Against Rape  
and the Pennsylvania Coalition Against Domestic Violence.

