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Crime Victim Compensation: A Valuable Resource for Victim Recovery

In the aftermath of crime, victims often incur significant financial costs associated with needed medical care, mental health counseling, moving expenses, missed work, and more. Crime victim compensation programs (CVCP), which are designed to reimburse victims for out-of-pocket expenses related to their victimization, can be a significant resource to mitigate the financial consequences of the crime. Accessing victim compensation benefits can be particularly valuable for victims without health insurance or employment-related benefits, or for those victims whose offenders are not prosecuted or who are indigent.[1]

Every state has a statutorily created CVCP. Although program details vary, they are generally similar in purpose, process and scope of expenses covered. Providing holistic victim services requires an understanding of CVCPs to ensure that eligible victims access this important financial resource and obtain the maximum allowable awards.

This article outlines three basic components of victim compensation: (1) victim eligibility; (2) types of covered expenses and required proof; and (3) review of unfavorable decisions.

I. Victim Eligibility for Victim Compensation

There are two basic criteria and three affirmative obligations for victims in order for a person to be eligible for funds from most CVCPs. The two basic criteria are: (1) the applicant must be a victim of a violent crime, which excludes victims of property crimes, including identity theft;[2] and (2) the victim must not have contributed to his or her victimization or participated in the crime.[3]

In addition to satisfying these basic criteria, victims are also required to take the following affirmative actions: (1) they must report the crime to law enforcement within the CVCPs time period;[4] (2) they must cooperate in the investigation and prosecution of the crime;[5] and (3) they must submit an application within established timelines.[6] Eligibility is not contingent on an offender being either apprehended or prosecuted.[7]

II. Covered Expenses and Proving Losses

Unfortunately, CVCPs do not cover every expense that a victim may incur as a result of the crime. But CVCPs do cover some common expenses, including medical and mental health care, lost wages resulting from missed work, funeral costs, and attorney fees for services related to the victim compensation process.[8]
There are two general limits on recovery. First, CVCPs do not reimburse for expenses that are, or could be, covered by a collateral source.[9] If a victim receives money from a compensation program for a specific expense and later obtains money from a collateral source for that same

expense, the victim may be required to reimburse the CVCP for that amount.[10] This may occur, for example, if the offender is convicted after a compensation award has issued and is ordered to pay restitution for the same expenses.[11] Second, each CVCP has a cap on the maximum amount of compensation a victim may be awarded, and in some states specific categories of expenses are also capped separately.[12]

To recover, victims must demonstrate their losses by a preponderance of the evidence.[13] Rules of evidence in the compensation process are relaxed; for example, hearsay is often permitted. But evidence must amount to more than mere speculation.[14] For example, the uncorroborated testimony of the self-employed victim as to the amount of his or her anticipated earnings may not be sufficient without documentation demonstrating prior work history.[15]

III. Challenging an Unfavorable Compensation Award

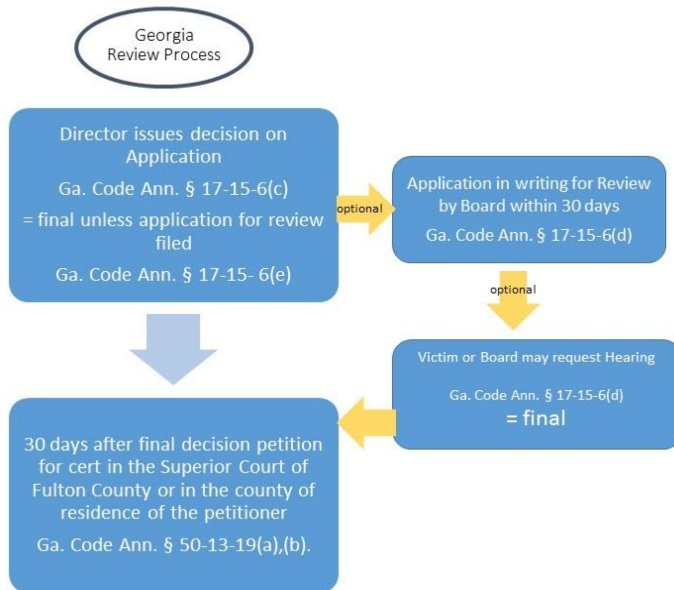
Despite all of the similarities between CVCPs, procedures for seeking review of an unsatisfactory compensation award vary greatly from CVCP to CVCP. Each CVCP has processes for seeking administrative review of an unfavorable decision; however, judicial review of a final, unfavorable administrative decision may be explicitly authorized in the compensation statute,[16] may fall under the administrative agency review process,[17] or may require petitioning for writ of mandamus.[18] Regardless of whether compensation statutes explicitly provide for judicial review, victims should not be without recourse when faced with an unfavorable compensation award.[19]

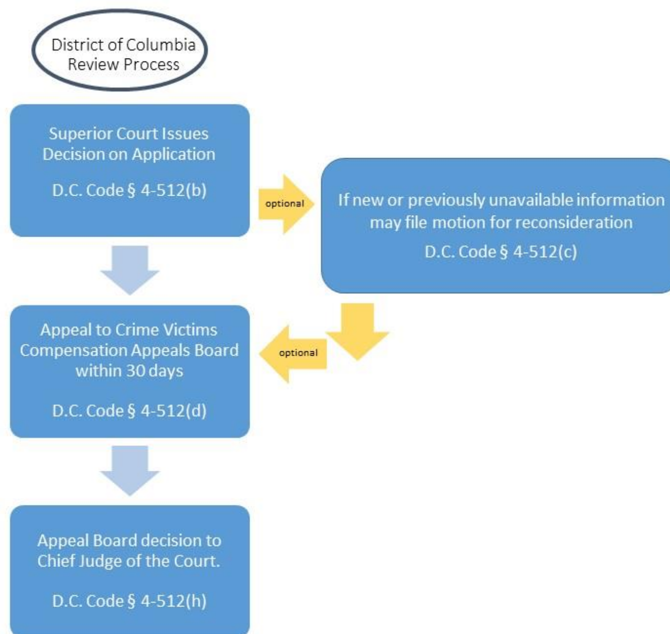
When a victim receives an unfavorable CVCP decision he or she wishes to challenge, the victim must first exhaust all administrative remedies—which is another way of saying that the victim must pursue all avenues of relief within the administrative agency—before seeking judicial review of the decision.[20] The following steps should be taken to help ensure the victim's exhaustion of administrative remedies:

1. Determine whether the victim is permitted or required to seek a reconsideration of the decision.[21] It should be noted that the scope of reconsideration may be limited to cases in which the victim can show there is new or previously unavailable evidence proving expenses.[22]
2. Determine what constitutes a final CVCP decision. If the decision was made on the application alone—without a hearing—the victim may need to request an agency hearing to first contest the decision. Compensation statutes may make requesting a hearing optional, however, where a state's administrative procedures require a "contested hearing" before judicial review is allowed, a hearing would be required before a victim could seek further review.[23]

The following flow charts demonstrate a few processes for seeking review of an unfavorable CVCP decision:

New York
Review Process
Decision on Application
Request Reconsideration within 30 days
N.Y. Exec. Law § 627(2)
= final decision
Seek Judicial Review (Special Proceeding) under Article 78
N.Y. Exec. Law § 629(1)
Special Proceeding Process
N.Y. Civ. Prac. L. R. §§ 7801 - 7805


Georgia
Review Process
Director issues decision on Application
Ga. Code Ann. § 17-15-6(c)
= final unless application for review filed
Ga. Code Ann. § 17-15- 6(e)
optional
Application in writing for Review by Board within 30 days
Ga. Code Ann. § 17-15-6(d)
optional
Victim or Board may request Hearing
Ga. Code Ann. § 17-15-6(d)
= final
30 days after final decision petition for cert in the Superior Court of Fulton County or in the county of residence of the petitioner
Ga. Code Ann. § 50-13-19(a),(b).



Conclusion

CVCPs were created to compensate individuals who suffer financial injury as the result of certain crimes when there is no other recompense available. Practitioners should take advantage of these valuable resources as an important avenue to obtain financial assistance for victims.

Practice Pointers

- *Obtain documentation*. In preparing for the application process, the victim will want gather copies of the police report as well as records and receipts detailing expenses incurred. For more information about victim access to police reports and other important case information, *see Meaningful Crime Victims' Rights Require Discovery of Case Information and Records*, NCVLI Newsletter of Crime Victim Law, 17th Ed. (Nat'l Crime Victim Law Inst., Portland, Or.), Sept. 2016.

- *Protect victim privacy*. Draft any required releases of information narrowly (e.g., only for the purpose of compensation); redact names from any documents when appropriate before submitting to CVCP; and review CVCP's statutes and regulations to understand its policies regarding the confidentiality of records in its possession.

- *You may not have to wait*. While CVCPs are designed as reimbursement programs, many CVCPs make a certain portion of funds available on an emergency basis if waiting will result in undue hardship. *See, e.g.*, D.C. Code § 4-510(a); Mont. Code Ann. § 53-9-126. Consider this particularly for relocation, housing and counseling expenses.

- *Attorney fees from challenging unfavorable award*. Recovery of attorney fees incurred when challenging a compensation decision is not governed by CVCP rules or regulations but instead must be awarded by the reviewing court and generally only if the victim is successful. *See, e.g.,* Cal. Gov't Code § 13960 (2) ("In case of appeal by the board of a decision on the petition for writ of mandate that results in a decision in favor of the applicant, the court may order the board to pay to the applicant's attorney reasonable attorney fees."); Tex. Crim. Proc. Code Ann. § art. 56.48 (d) (limiting attorney fees in the event of review to 25% of total recovery).

This product was supported by Grant No. 2014-XV-BX-K013, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions or recommendations expressed in this document are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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[1] Njeri Mathis Rutledge, *Looking A Gift Horse in the Mouth-the Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims*, 19 Duke J. Gender L. & Pol'y 223, 259–60 (2011) ("[F]or a victim whose offender is never captured, is never convicted, or is unable to pay, [crime victim compensation] funds may be that victim's only source of compensation.").

[2] *See, e.g.,* Ga. Code Ann. § 17-15-7(g) ("No award of any kind shall be made under this chapter to a victim of a crime for loss of property."); Mont. Code Ann. § 53-9-125(6)(a) (defining victim as "a person who suffers bodily injury or death"); *In re Application of Days*, 34 Ill. Ct. Cl. 417, 418 (1980) (finding that in order for a claimant to be eligible for compensation under the Crime Victims Compensation Act, there must be evidence that the claimant was a victim of one of the violent crimes listed under the Act); *but see* Colo. Rev. Stat. § 24-4.1-102(4)(I) (defining compensable crime as "[a]n intentional, knowing, reckless, or criminally negligent act of a person or [DUII], that results in residential property damage to or bodily injury or death of another person or results in loss of or damage to eyeglasses, dentures, hearing aids, or other prosthetic or medically necessary devices and which, if committed by a person of full legal capacity, is punishable as a crime in this state"); N.Y. Exec. Law § 631(8) (providing for limited recovery for elderly or disabled victims who did not suffer a physical injury).

[3] *See, e.g.,* Alaska Stat. § 18.67.130(b)(3) (barring compensation if the victim violated a penal law of the state and the violation caused or contributed to the victim's injuries or death); Colo. Rev. Stat. § 24-4.1-108(e) (stating that a victim is entitled to an award of compensation if the "death of or injury to the victim was not substantially attributable to his wrongful act or substantial provocation of his assailant"); D.C. Code § 4-508(a)(1) (barring compensation for a claimant who "knowingly or willingly participated in the commission of the crime which forms the basis for the claim; provided, that a claimant who was a minor and a victim of sex trafficking of children, may be awarded compensation"); Tex. Code Crim. Proc. Ann. § art. 56.41(b)(3) ("The attorney general shall deny an application for compensation under this subchapter if . . . the victim knowingly and willingly participated in the criminally injurious conduct."); Tex. Code Crim. Proc. Ann. § 56.45(4) (authorizing the attorney general to deny or reduce an award if the victim was engaging in an activity that was prohibited by law at the time of the injury); *but see* Minn. Stat. Ann. § 611A.54(2) (providing that contributory misconduct does not automatically disqualify a victim from eligibility, however the compensation board may reduce or deny the award to the extent "deemed reasonable" by the board).

[4] *See, e.g.,* D.C. Code § 4-506(3) (requiring "report[ing of] the crime to a law enforcement office within 7 days of its occurrence. If the crime cannot be reasonably reported within that time period, the crime must be reported within 7 days from the time a report can reasonably be made"); Mont. Code Ann. § 53-9-125(3) (precluding compensation unless the criminally injurious conduct was reported to law enforcement within 72 hours after its occurrence, except in a case involving a sexual offense against a minor or when the office finds there was good cause for the failure to report within that time); N.Y. Exec. Law § 631(1) (requiring reporting within one week of the incident unless there is good cause for a delay); Tex. Code Crim. Proc. Ann. § art. 56.46(a) (requiring reporting within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime and may be extended if there are extraordinary circumstances); *but see* Cal. Gov't Code § 13956(b)(2),(3) (providing an exception from police report requirement for claims based on domestic violence or sexual assault).

[5] *See, e.g.,* D.C. Code § 4-508(2) (denying compensation if "[t]he claimant failed to provide information to a requesting law enforcement agency or did not reasonably cooperate with law enforcement officials in apprehending the offender. Refusal of a victim or claimant to testify against the offender may be excused if testifying would subject the victim or claimant to a substantial risk of serious physical or emotional injury."); 740 Ill. Comp. Stat. 45/6.1(c) (establishing as a criteria of entitlement to compensation that "[t]he applicant has cooperated with law enforcement officials in the apprehension and prosecution of the assailant. If the applicant or victim has obtained an order of protection, a civil no contact order, or a stalking no contact order or has presented himself or herself to a hospital for sexual assault evidence collection and medical care, such action shall constitute cooperation under this subsection"); Mont. Code Ann. § 53-9-125(4) (requiring victim to fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct). What constitutes cooperation under any given compensation statute is a suitable topic of litigation and where a victim has a reason for not actively cooperating with the investigation or prosecution, he or she should not be dissuaded from applying for compensation. *See, e.g., In re Application of Lewis*, 45 Ill. Ct. Cl. 489 (1992) (reversing denial of compensation claim for failing to cooperate with police where victim was heavily sedated and hemorrhaging from eight stab wounds when police interviewed him as he had cooperated with law enforcement "to the best of his ability under the circumstances"); *Ellis v. N. Carolina Crime Victims Comp. Comm'n*, 432 S.E.2d 160, 165 (N.C. Ct. App. 1993) (reversing denial of compensation to a domestic violence victim in case in which the

agency determined she did not cooperate with law enforcement because there was no prosecution of her offender, finding there was no evidence in the record that the victim refused to cooperate or prosecute the case); *but see Casad v. Delaware Violent Crimes Comp. Bd.*, No. 92-A-06-004, 1993 WL 544011, at *2 (Del. Super. Ct. Dec. 29, 1993) (upholding compensation board's denial of claim where victim refused to speak to law enforcement following the arrest of her daughter for the crime because even though the court may find a mother's refusal to speak against her daughter reasonable, it would not substitute its judgment of reasonableness for that of the compensation board).

[6] The common timeframes for filing a claim following the criminally injurious conduct are one to three years. *See, e.g.*, Alaska Stat. § 18.67.130(a)(1) (two years); Ga. Code Ann. § 17-15-5(b)(1) (three years); Mont. Code Ann. § 53-9-125(1) (within one year unless extended by the office for good cause shown); N.Y. Exec. Law § 625(2) (one year unless extended for good cause shown); Tex. Code Crim. Proc. Ann. § art. 56.37(a),(b) (three years unless the attorney general extends the time for good cause shown).

[7] *See, e.g.*, Alaska Stat. § 18.67.080(d) (authorizing an award "whether or not a person is prosecuted or convicted of an offense arising out of the act that caused the injury or death involved in the application"); Ga. Code Ann. § 17-15-6(b) ("Claims shall be investigated and determined regardless of whether a perpetrator has been apprehended, prosecuted, or convicted of any crime based upon the same incident or whether the alleged perpetrator has been acquitted or found not guilty of the crime in question."); Mont. Code Ann. § 53-9-127(2) (authorizing an award "whether or not any person is prosecuted or convicted").

[8] *See, e.g.*, Cal. Gov't Code § 13957(1) (authorizing reimbursement for "medical or medical-related expenses incurred for services that were provided by a licensed medical provider, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime" and for "outpatient psychiatric, psychological, or other mental health counseling-related expenses"); Colo. Rev. Stat. § 24-4.1-109(1) (listing compensable losses, including reasonable medical and hospital expenses, loss of earnings, homemaker and homehealth services, burial expenses, loss of support to dependents, mental health counseling, and household support); Ga. Code Ann. § 17-15-8 (c)(2) (examples of compensable losses include: lost wages; funeral expenses; financial hardship or loss of support; medical, counseling; and crime scene sanitation); 740 Ill. Comp. Stat. 45/2(h) (providing recovery for expenses including, but not limited to, appropriate medical expenses and hospital expenses, rehabilitation, medically required nursing care expenses, and appropriate psychiatric care or psychiatric counseling expenses); N.Y. Exec. Law § 631(2) (providing recovery for loss of earnings, burial expenses, crime scene clean up, and relocation expenses). In addition, attorney fees for services provided in the compensation process are covered in most states. *See, e.g.,* Alaska Stat. § 18.67.050 (allowing for reasonable attorney fees with limits); Cal. Gov't Code § 13957.7(g) (allowing for the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less).

[9] "'Collateral source' means a source of benefits or advantages for economic loss . . . which the victim or claimant has received, or which is readily available to the victim[.]" Minn. Stat. Ann. § 611A.52(5). Examples of collateral sources include: the offender; Social Security, Medicare, and Medicaid; state required temporary nonoccupational disability insurance; workers' compensation; wage continuation programs of any employer; insurance proceeds; disability benefits; any private source as a voluntary donation or gift; or lawsuit proceeds. *Id.*

[10] *See, e.g.*, Alaska Admin. Code tit. 2, § 80.080(b) ("If additional recovery is received by the claimant after compensation is awarded, it is the responsibility of the claimant to advise the board of the amount, source, and nature of the additional recovery. The board will notify the claimant if the additional recovery results in the claimant owing a repayment of the compensation awarded or any portion of it."); 740 Ill. Comp. Stat. 45/17 (d) (requiring victim to refund to the state any monies that were paid in compensation if the victim later receives any money from another source "which would have been deducted [from the compensation award] at the time the award was made").

[11] *See, e.g.,* Colo. Rev. Stat. § 24-4.1-110(3) ("If a defendant is ordered to pay restitution . . . to a person who has received compensation . . . an amount equal to the compensation awarded shall be transmitted from such restitution to the board for allocation to the fund."); D.C. Code § 4-507(f) ("Restitution ordered for an offense that was the basis for an award under this chapter, up to the amount of the award, shall be payable directly to the Fund"); 740 Ill. Comp. Stat. 45/17(f) (requiring the victim to give written notice to the Attorney General within 10 days after an offender is ordered by a court to pay restitution and providing that after entry of the order "[t]he circuit court clerk shall send restitution payments directly to the compensation program for any paid expense reflected in the Court of Claims' decision"). To avoid a victim having to repay any collected restitution to the CVCP, in states that do not require restitution payments to be made directly to CVCP, it may be desirable to request the sentencing court to draft the restitution order such that payments are made to the CVCP for any amount that would be reimbursable under the statute. Courts should order payments to the CVCP only after the victim has received restitution payments for any losses not covered by the compensation award.

[12] *See, e.g.*, Alaska Stat. § 18.67.130(c) ($40,000 per incident or $80,000 to dependents if death results); D.C. Code § 4-507(b) ($25,000 per victimization); Ga. Code Ann. § 17-15-8 (c)(2) (limiting awards for certain categories of losses: $10,000 for lost wages; $3,000 for funeral expenses; $10,000 for financial hardship or loss of support; $15,000 for medical expenses, $3,000 for counseling; and $1,500 for crime scene sanitation); Minn. Stat. Ann. § 611A.54 (3) ($50,000); N.Y. Exec. Law § 631(2) ($30,000 for loss of earnings; $6,000 for burial expenses; $2,500 for crime scene clean up; and $2,500 for relocation expenses); Tex. Code Crim. Proc. Ann. § art. 56.42 ($50,000, with an additional $75,000 for "extraordinary pecuniary losses").

[13] *See, e.g.*, Cal. Gov't Code § 13959(c) ("the person seeking compensation shall have the burden of establishing, by a preponderance of the evidence"); Colo. Rev. Stat. § 24-4.1-106(2) ("The burden of proof is upon the applicant to show that the claim is reasonable and is compensable. . . . The standard of proof is by a preponderance of the evidence."); Mont. Code Ann. § 53-9-127(1) ("The office shall award compensation benefits under this part if satisfied by a preponderance of the evidence that the requirements for compensation have been met."); Tex. Code Crim. Proc. Ann. § art. 56.41(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.").

[14] *In re Application of Dixon*, 47 Ill. Ct. Cl. 599, 602 (1992) (allowing the introduction of police report as evidence, noting that the Crime Victims Compensation Act makes clear that all documents and information are to be considered by the court even if that evidence would not be admissible in a court of law); *Application of Bavido (Gerald Wayne)*, 44 Ill. Ct. Cl. 449, 460–61 (1992) (finding that an award in crime victim compensation cases is dependent on claimant establishing injury and a reasonable value of those injuries and will not be awarded on the basis of conjecture or speculation); *Johnson v. Criminal Injuries Comp. Bd.*, 801 A.2d 1092, 1103 (Md. Ct. Spec. App. 2002) (finding that although "hearsay evidence can be the sole basis for an administrative agency's decision, the hearsay evidence must be 'credible and probative.'").

[15] *See Starkman v. Fischetti*, 675 N.Y.S.2d 703, 704 (N.Y. App. Div. 1998) (upholding CVCP's denial of lost wages award because "[i]n circumstances where it is established that a claimant is unemployed at the time of the injury, a denial of a claim for lost earnings will be sustained in the absence of nonspeculative proof").

[16] *See* Tex. Code Crim. Proc. Ann. § art. 56.48(a) (authorizing the victim to bring suit in the district court having jurisdiction, based on location of crime or where victim resided at time of crime, if dissatisfied with the attorney general's final decision).

[17] *See* Alaska Stat. § 44.62.560(a) ("Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency."); *Usibelli Coal Mine, Inc. v. State, Dep't of Nat. Res.*, 921 P.2d 1134, 1150 (Alaska 1996) ("All final administrative actions are presumptively reviewable.").

[18] *See Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 46 A.3d 473, 502 (Md. Ct. Spec. App. 2012), *aff'd,* 68 A.3d 843 (Md. 2013) ("'In those circumstances where there is no statutory provision for judicial review . . . the Legislature cannot divest the courts of the inherent power they possess to review and correct actions by an administrative agency which are arbitrary, *illegal,* capricious or unreasonable,' … Courts exercise this inherent power through the writ of mandamus, by injunction or otherwise, to correct abuses of discretion and arbitrary, illegal, capricious or unreasonable acts; but in exercising that power, care must be taken not to interfere with the legislative prerogative, or with the exercise of sound administrative discretion, where discretion is clearly conferred.").

[19] There is no absolute right to appeal an administrative decision. *See, e.g., Lewis v. Connecticut Gaming Policy Bd.*, 620 A.2d 780, 783–84 (Conn. 1993) ("There is no absolute right of appeal to the courts from a decision of an administrative agency."); *Criminal Injuries Comp. Bd. v. Gould*, 331 A.2d 55, 64 (Md. 1975) ("The right to an appeal [an administrative agency decision] is not a right required by due process of law, nor is it an inherent or inalienable right."). But victims cannot be deprived of access to the courts when an administrative agency's decision deprives them of their fundamental rights. *See id.* at 64-65 ("The Legislature cannot, of course, interfere with the judicial process by depriving litigants from raising questions involving their fundamental rights in any appropriate judicial manner, nor can it deprive the courts of the right to decide such questions in an appropriate proceeding.").

[20] The exhaustion of administrative remedies doctrine is a jurisdictional device that requires the administrative body and an individual affected by an administrative decision to fully litigate the issues before subject matter jurisdiction is bestowed on a court. The purposes of the doctrine are to: (1) prevent piecemeal application of judicial relief; (2) conserve judicial resources; (3) enable the agency to compile a record that is adequate for judicial review; and (4)

afford an agency the opportunity to correct its own errors, thus minimizing the risk of judicial intervention in the administrative process and preserving the agency's autonomy. *State v. Golden's Concrete Co.*, 962 P.2d 919, 923 (Colo. 1998), *as modified on denial of reh'g* (June 22, 1998). States uniformly apply the doctrine. *See, e.g, id.* (noting that the district court is without jurisdiction to hear the action if the parties fail to satisfy the exhaustion requirement); *Sierra Club & Pub. Citizen v. Texas Comm'n on Envtl. Quality*, No. 03-14-00130-CV, 2016 WL 1304928, at *4 (Tex. Ct. App. Mar. 31, 2016) (stating that Texas has long recognized the exhaustion of administrative remedies doctrine, and it is a well-established doctrine in administrative law jurisprudence).

[21] Not every state requires the victim to pursue reconsideration before taking the next step in the review process. *See, e.g.,* Cal. Gov't Code § 13960(a) ("The right to [seek appellate review] shall not be affected by the failure to seek reconsideration before the board.").

[22] *See, e.g.,* D.C. Code § 4-512(c) ("The claimant may, within 30 days after receiving the notice of determination, request reconsideration based on new or previously unavailable information. The Court must render a decision based on the additional information within 30 days after receiving the information."); *but see* Tex. Code Crim. Proc. Ann. § art. 56.47(a) (authorizing the attorney general to reconsider the decision to make or deny an award or the amount of an award).

[23] For example, in Connecticut "[t]here is no absolute right of appeal to the courts from a decision of an administrative agency[,]" and Connecticut's Uniform Administrative Procedure Act, which governs review in administrative proceedings, limits review to decisions in contested cases. *Lewis v. Connecticut Gaming Policy Bd.*, 620 A.2d 780, 783–84 (Conn. 1993); *see also Furlong Companies, Inc. v. City of Kansas City*, 189 S.W.3d 157, 165 (Mo. 2006) (explaining the difference between contested (law provides opportunity for a hearing before administrative body) and non-contested cases (no hearing before the administrative body) in administrative proceedings and the different judicial review processes for each type—on the record and trial de novo, respectively—under the Missouri Administrative Procedure Act).