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Compensating Victims of Crime: An Analysis of American Programs

by
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Issues and Practices in Criminal Justice is a publication series of the National Institute of Justice. Designed for the criminal justice professional, each *Issues and Practices* report presents the program options and management issues in a topic area, based on a review of research and evaluation findings, operational experience, and expert opinion in the subject. The intent is to provide criminal justice managers and administrators with the information to make informed choices in planning, implementing and improving programs and practice.

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FOREWORD

The National Institute of Justice presents this study of victim compensation programs as part of its on-going research effort to address the needs of crime victims in America. For it is the victim who is aggrieved, whose rights have been violated, whose safety threatened. If justice is to be served, it is essential that we address those needs and bring a balance to the system.

We are all victims of crime. But for victims of violent crime, pain and suffering often are compounded by the financial burdens — which may be overwhelming: medical and hospital bills, months of lost wages, continuing costs of long-term treatment, or permanent disability and forced career change. Families of slain victims confront not only personal grief but total loss of family income. For the most vulnerable, the poor and the elderly, even modest losses can be devastating. Assaulted and robbed of the money for food and rent, how can the elderly victim replace shattered eyeglasses and a broken hearing aid?

It is to respond to these crucial needs that programs of crime victim compensation were developed. These programs provide monetary compensation to victims injured as the result of a crime and to the dependents of those killed. Since 1965, when California initiated the first American program, more than 35 states and territories have passed victim compensation legislation. As legislators in different states struggled to balance compassion for the innocent with a prudent concern for the budget, the resulting programs varied widely—in level of benefits paid, eligibility criteria, procedural requirements, and overall costs. Not surprisingly, assessments of their success in alleviating the financial problems of injured victims have been equally varied.

In 1981, the Attorney General's Task Force on Violent Crime recommended a broad spectrum of reforms to reduce the level of crime and fear in America and the cost to its victims. Earlier proposals for federal compensation legislation had sparked intense Congressional debate over the potential costs and the appropriate government role in victim reparation. Recognizing the range and variety of the existing state efforts, the Task Force recommended that a "study be conducted of the various crime victim compensation programs and their results." The National Institute of Justice initiated the present study in response to that recommendation and designed it also to meet the information needs of the President's Task Force on Victims of Crime.

The resulting analysis of current victim compensation programs proposes no single or perfect model. Rather, it examines the relative advantages and disadvantages of different organizational structures and operating procedures, the range of program costs and sources of funding, and the factors influencing state and federal legislative efforts. While recognizing that fiscal realities may inevitably limit full achievement of broad program goals, the researchers found many examples of efficient programs with dedicated staff working to expand and improve compensation to victims of violent

crime. The report highlights the procedures being developed to streamline administrative costs, speed payments for the victim, and improve emergency award procedures. It assesses new funding sources—particularly the use of fines and penalties as an alternative to tax dollars—to support victim compensation. It reviews current debates in the field on eligibility criteria and the role of means tests in compensation programs. And, it describes the strategies emerging to ensure coordination between victim compensation programs and other victim services.

The President's Task Force on Victims of Crime, in recommending "legislation to provide federal funding to assist state crime victim compensation programs," noted that Compensating Victims of Crime: An Analysis of American Programs had served as the cornerstone of its inquiry into the area. It is our hope that this report will be equally useful to other policy and program officials concerned with the design, operation, oversight, and improvement of crime victim compensation efforts.

James K. Stewart
Director
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PREFACE

The topic of crime victim compensation has received considerable national attention in recent years, and since 1965 victim compensation programs have been developed in thirty-six states and the District of Columbia. At the federal level, crime victim compensation legislation has been repeatedly proposed and has been the subject of extensive Congressional debate and investigation. In light of these developments, the Attorney General's Task Force on Violent Crime recommended in its Final Report in September, 1981: "The Attorney General should order that a relatively inexpensive study be conducted of the various crime victim compensation programs and their results." The present study was designed in response to the Task Force mandate and has sought to address the following basic issues regarding crime victim compensation programs:

1. the current extent of program development across the United States, including descriptions of program policies and procedures;
2. the relative advantages and disadvantages of different program structures and operating procedures;
3. the costs of the various state programs and their sources of funding; and
4. factors influencing federal and state legislative efforts to develop victim compensation statutes.

In April, 1982 the President's Task Force on Victims of Crime was established. Close contacts have been maintained with the President's Task Force; a briefing on the study's interim findings was presented to the Task Force, in June, 1982; project staff testified at Task Force hearings in September, 1982; and the current study has sought to respond to the information needs of the President's Task Force as well as the Attorney General's Task Force on Violent Crime. The President's Task Force recommendations regarding victim compensation are presented in Appendix E.

Methods Used to Conduct the Study

Major data collection efforts associated with the present study have included:

(1) A national telephone survey of project directors of victim compensation programs to gather information regarding program characteristics and operating procedures. The results of the phone survey were summarized in a series of seven matrices describing the policies and procedures of programs across the nation. These matrices were reviewed by program project directors for errors or omissions and the information was updated in light of the directors' comments. These validated matrices appear in Appendix A.

(2) A telephone survey of legislative policymakers in states not currently having victim compensation programs to determine what attempts (if any) there had been in the past to develop programs and what plans (if any) existed for the development of such programs in the future.

(3) A review of available research studies on the topic of victim compensation, including those exploring the relevant legal, political, and economic factors involved in the development of such mechanisms.

(4) A review of the legislative histories of the various federal bills that have been proposed to support victim compensation programs, and a review of the legislative histories of selected state victim compensation statutes to provide insights regarding the range of views held regarding such programs and their rationales.

(5) Site visits to six state programs to obtain detailed information regarding the operations of selected programs and to attempt to determine their strengths and weaknesses. Given the range of goals of the study noted earlier, the sites were selected to maximize the collection of relevant information to meet the various goals, and to provide detailed case study information to supplement the telephone review of program characteristics. In particular, states were selected to vary in types of funding mechanisms and regional location.

The six sites (New York, New Jersey, Florida, Tennessee, Montana, and California) were recommended to the members of the study's Advisory Board and approved by them prior to the visits. The site visits were conducted during April, May, and June of 1982. During the site visits project directors and their staffs were interviewed, project forms and written materials were collected, and relevant legislators were interviewed when possible.

As was noted earlier, the Attorney General's Task Force on Violent Crime recommended the conduct of a "relatively inexpensive study" of victim compensation issues. This study provides highly detailed descriptive information regarding existing programs, but resource and time constraints precluded the possibility of an intensive evaluation of program impacts, including

an assessment of the perceptions of programs by victims, justice system agencies and others. Furthermore, data summaries were developed from information provided by the projects and have not been collected independently by evaluators.

Acknowledgements

Five persons have served on the Advisory Board of the study and have provided the project staff with valuable advice. The Advisory Board members are: Mr. Robert Bucknam, U.S. Department of Justice liaison for the Attorney General's Task Force on Violent Crime; Mr. Frank Carrington, Victims Assistance Legal Organization Director and member of the President's Task Force on Victims of Crime; Professor Gilbert Geis, University of California, Irvine; Mr. Richard Gross, North Dakota Crime Victims Reparations Program Director and former President of the National Association of Crime Victim Compensation Boards; and Mr. Ronald Zweibel, New York Crime Victims Board Chairman and current President of the National Association of Crime Victim Compensation Boards. In addition, Thomas Hutchison of the House Judiciary Committee staff was very helpful in providing documentation and information on the history of victim compensation legislative efforts in the House of Representatives, and Paul Summitt of the Senate Judiciary Committee staff was similarly helpful in providing access to the extensive Senate files of information on federal victim compensation. A briefing was held for House and Senate Judiciary Committee personnel in June, 1982. We would like particularly to thank our government project monitor, Virginia Baldau, for her assistance, encouragement, and extremely valuable advice throughout the course of the project.

Organization of the Report

Chapter One provides a brief history of the development of victim compensation programs, notes the major rationales presented for the programs, and describes the extent of program activity in the United States. The major findings and conclusions of the study are summarized. Chapter Two provides a discussion of state and federal legislative efforts to develop victim compensation statutes. The origins of the bills and political issues involved in their passage are discussed.

Chapters Three, Four, and Five present detailed information regarding the major characteristics of American victim compensation programs including program structure and organization; program policies for eligibility and coverage; and program procedures for claims processing. Each of these chapters also reviews key issues and identifies promising alternative practices.

Chapter Six examines the issues involved in program costs and funding and summarizes the major problems faced by programs in locating adequate sources of funding. Exhibits in Chapters Three through Six outline major program characteristics, and Appendix A presents more detailed summaries of the policies and procedures used by existing programs. Chapter Seven describes existing efforts to coordinate victim compensation services with other victim support programs. Strategies for enhancing service coordination are noted.

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CHAPTER 1

THE EMERGENCE AND STATUS OF VICTIM COMPENSATION PROGRAMS

In a wide variety of societies throughout history, restitution has been a central principle of criminal law. Failure to make restitution could result in retributory punishment of the offender by the victim or the victim's kin group. Over time, as the power of governments increased, the state sought to obtain the sole power of retribution in order to reduce the violence associated with citizens "taking the law into their own hands." Professor Marvin Wolfgang has noted in this regard,

"Gradually the social group began to take charge of punishment, and wrongs came to be regarded as injuries to the group or to the state. The king claimed a part of this [restitution] payment or an additional payment for the participation of the state in the trial and for the injury done to the state by the disturbance of the peace. About the twelfth century the victim's share began to decrease greatly . . . until finally the king took the entire payment. . . . Thus, the right of the victim to receive compensation directly from the one who caused him personal harm in an assault was transferred to the collective society where it remains to this day."²

As criminal law evolved, the historic choice between individual restitution or revenge was taken out of the hands of the persons involved in the offense.

During the past two decades, governments around the world have begun to re-examine the wisdom of these changes in criminal law that took place over

¹ See H. Edelhertz and G. Geis, Public Compensation to Victims of Crime (New York: Praeger, 1974). A variety of excellent reviews of the topic of crime victim compensation have been published, including the Edelhertz and Geis book; D. Carrow, Crime Victim Compensation: Program Model (Washington, D.C.: U.S. Government Printing Office, 1980); and W. Hoelzel, "A Survey of 27 Victim Compensation Programs," 63 Judicature 10 (1980).

² See M. Wolfgang, "Victim Compensation in Crimes of Personal Violence," 50 Minnesota Law Review 223 (1965) at 228.

eight centuries ago. No government wishes to return to a system in which private revenge is a legitimate way of resolving conflicts, but great concern has been expressed at the elimination of victims' opportunities to be compensated for harms they endure. Restitution practices were originally founded on the simple notion of "justice"--the concept that wrongs should be made right. Support for compensation to victims continues to be a powerful concept as evidenced by Gallup poll findings that the vast majority of American citizens feel victims should be compensated for harms inflicted upon them.³

Many nations have recently responded to this concern for justice by enacting victim compensation statutes. These laws provide a means for victims of crime to receive funds from the government for payment of medical expenses, compensation for lost wages, and in the case of deceased victims, aid to their dependents. The government payment of victims' expenses distinguishes these victim compensation programs from restitution programs which involve offender payments to victims. The first such victim compensation programs were implemented in New Zealand and England in 1964. Over sixty jurisdictions around the world have now developed similar legislation, including 36 American states plus the District of Columbia and the Virgin Islands; numerous Canadian provinces; such European nations as France, Germany, the Netherlands, and Sweden; Far Eastern nations such as Japan and Singapore; as well as Fiji, Barbados, Dominica, and some Australian states.

This chapter provides a brief review of the historical development of victim compensation mechanisms, notes variations in the rationales presented in support of the programs, discusses the extent of the development of such programs in the United States, and summarizes the major findings and conclusions arising from this study of American victim compensation programs.

1.1 Brief History of the Concept's Development

Margery Fry, a British magistrate and legal reformer, is credited by many scholars as the person most responsible for stimulating Western legal systems to consider the redevelopment of compensation mechanisms lost during the evolution of Western law. Ms. Fry noted: "Have we not neglected overmuch the customs of our earlier ancestors in the matter of restitution? . . . We have seen that in primitive societies this idea of 'making up' for a wrong done has wide currency. Let us once more look into the ways of earlier men, which may still hold some wisdom for us."⁴

³Gallup Political Index, "Compensation for Crime Victims," Report No. 5, American Institute of Public Opinion, October 1965, p. 21.

⁴M. Fry, Arms of the Law (London: Victor Gollanez, 1951), p. 124.

Ms. Fry initially urged the development of mechanisms for direct restitution of offenders, but she became concerned about the practical difficulties of successfully implementing restitution practices in modern society. Major problems include the low proportion of offenders actually arrested and charged for offenses, the "impecunious" state of many offenders often making actual restitution very improbable, and administrative difficulties in establishing the programs. Such problems were not as prevalent in earlier societies, since victims often knew the offenders, communities were small, and offenders or their relatives could be compelled to make restitution. Due to the problems with restitution by offenders, Ms. Fry advocated governmental compensation of victims in an article in The Observer in 1957.⁵ In the article, Ms. Fry suggested that such compensation would be a form of insurance provided by society; all taxpayers would contribute to the compensation fund, since all taxpayers are exposed to the risk of crime. She argued that particularly since the government forbids the citizenry "going armed in self-defense," it should take responsibility for its failure to protect its citizens from acts of crime by compensating them for such occurrences.⁶ Ms. Fry's article provides an intriguing case study of how, on occasion, one person's commitment to a social reform can "make a difference." The article was widely read and debated, and the governments of New Zealand and Great Britain took steps to investigate the promise of Ms. Fry's proposal.

The New Zealand Ministry of Justice studied the concept of victim compensation and presented legislation to the Parliament in 1963. The bill was enacted into law and empowered a three-person panel to investigate claims and award compensation payments to victims of crimes that resulted in physical injuries. Victims could be compensated for medical expenses and losses of wages within specified limits. It was not necessary for the offender to have been arrested for compensation to be made. If the offender were arrested, the government reserved the right to seek restitution funds from the offender and also left the victim free to bring a civil suit against the offender, with the provision that any amounts recovered through such suits would be deducted from the governmental compensation award. In practice, such suits were rare, however, due to the high costs of bringing litigation and the low probability of the offender having funds to pay the victim, even if the victim won the lawsuit.

The victim compensation law was very favorably received in New Zealand. One observer noted, "As to the desirability of the measure, there has been no

⁵ M. Fry, "Justice for Victims," The Observer, London (July 7, 1957); reprinted in 8 Journal of Public Law 192 (1959).

⁶ Ibid. at 193.

disagreement, and there is likely to be none. Indeed, such a chorus of ap-
probation has gone up that one wonders why nothing was done long ago."⁷

In Britain, Margery Fry's article was widely discussed and endorsed. Beginning in 1959, members of Parliament introduced legislation to develop a national victim compensation program. By late 1964 a nonstatutory experimental program was established, and six persons were appointed to a Criminal Injuries Compensation Board. The members were empowered to make awards to victims of crimes of violence and their dependents if the victim was deceased. A variety of restrictions was established by Parliament; for example, offenses committed by family members living together were excluded from compensation, as were automobile offenses. The British government indicated the tentative nature of many of the program policies by noting: "There being virtually no previous experience anywhere in the world to draw upon, the Government readily accepts that there is scope for argument both on the principles and on the details of any compensation scheme."⁸ The program was well received in Britain, and in the first 18 months of operation over 2,000 applications for compensation were received.

A wide variety of rationales was offered for the development of victim compensation programs in New Zealand, Britain and elsewhere. Margery Fry suggested that the state has an obligation to provide its citizens compensation in those cases where it fails to protect them.⁹ This view has been rejected, as far as is known, by all governments enacting victim compensation legislation due to the fear of citizens continually enlarging their "right" to safety and well-being to the point that it would bankrupt the treasury. Potential common law legal foundations for the "right" theory of victim compensation are based upon analogies to tort law (the state is a tortfeasor for failing to prevent criminal activity) and analogies to contract law (the citizen agreed to restrict his use of physical force and weapons in return for the protection of the state).¹⁰ These rationales are typically rejected as verbal gymnastics. Rupert Cross presented a relatively persuasive response to the various legal rationales:

⁷ J. Cameron, "Compensation for Victims of Crime: The New Zealand Experiment," 12 Journal of Public Law 367 (1963). Cameron provided one of the first detailed assessments of the New Zealand statute.

⁸ Quoted in G. Geis, "State Compensation to Victims of Violent Crime," Appendix B of Task Force Report: Crime and Its Impact--An Assessment, by the President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: U.S. Government Printing Office, 1967).

⁹ M. Fry, note 5 at 192.

¹⁰ D. Miers, "Victim Compensation as a Labeling Process," 5 Victimology 3 (1980) at 3.

"I am content to do without theoretical justifications After all, these are questions of public welfare, and they should be determined by public opinion. . . [not] tortuous lines of reasoning. . . . If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great. The hardship in these cases is undoubtedly widely recognized."¹¹

Miers expressed similar reticence to accept the rationales based in legal theory and noted that: "Although they continue to be canvassed in the literature, they do not thereby acquire increased credibility."¹²

The rationale that victim compensation is a simple humanitarian response to a compelling human need, as voiced by Cross, has been the most commonly discussed underpinning for victim compensation legislation. For example, Senator Ralph Yarborough noted regarding his proposed federal legislation: "Our modern industrial democracy accepts the idea of compensating needy members of a particular class." And with regard to crime victims, he noted: "The failure to recognize the special claims of this group seems to be a gross oversight."¹³ Considerable disagreement exists regarding whether all victims of criminal injury should receive this humanitarian assistance, essentially using the "insurance" analogy that all citizens share the same risks of crime victimization and can pool the risk through a governmental program, or whether only financially needy victims should receive the assistance. The latter approach operates under a "welfare theory" rather than an "insurance theory."

Numerous other rationales for and against victim compensation legislation have been stated. Some of them contradict one another, as in the case of hypothesized rationales regarding the impact of the programs on crime. Some individuals have argued that the programs will encourage crime by making victims less cautious (since they know they will be compensated), criminals more reckless (since their consciences will not be bothered by their victims enduring unreimbursed expenses), and policymakers less likely to enact crime prevention programs because they will not be spurred on by the chorus of complaints of victims (who now will be happily compensated for their losses). In contrast, some others have suggested that victim compensation programs

¹¹ R. Cross, "Compensating Victims of Violence," 49 The Listener 815 (1963) at 815.

¹² D. Miers, note 10 at 3.

¹³ R.S. Yarborough, "S.2155 of the Eighty-Ninth Congress--The Criminal Injuries Compensation Act," 50 Minnesota Law Review (1965) at 255.

will help reduce crime by demonstrating even more clearly to criminals our moral repulsion at their acts through our payments to victims, and will bring to light the hidden costs of crime through the treasury expenditures, thus encouraging legislators to enact more effective crime prevention measures and thereby reduce the compensation drain on state funds. In addition, it is suggested that victim compensation will improve the overall functioning of the criminal justice system, by promoting victim cooperation with law enforcement agencies. Some observers have also pointed to potential psychological benefits of victim compensation legislation. For example, Cameron noted, with regard to the New Zealand law, that:

"The advantages of the act are twofold. There is the material benefit from the awards of compensation that may be made by the tribunal, and in addition there is the psychological effect on the community produced by the very fact that there is such a scheme in existence. While this aspect is, of course, impossible to measure, it may well be of the greater importance."¹⁴

The state and federal legislative debates regarding victim compensation bills (discussed in Chapter 2) have in some cases included passionate appeals for the appropriateness of given rationales. Supporters of the bills have also been known to combine many different rationales in intriguing ways to increase the persuasiveness of their argument.

1.2 Program Development in the United States

In the United States, interest in victim compensation legislation grew rapidly in the mid-1960s. Federal legislation was proposed in 1964 by Senator Ralph Yarborough of Texas, and in 1965 California became the first state to develop a victim compensation program. Commenting on the development of victim compensation legislation in America, Professor Geis noted that:

"The emergence of the idea of victim compensation in the United States has been marked by a rather extraordinary range of legislative enactments and attempts at such enactments. Some states have gone their way along singularly unique paths, in efforts inaugurated and impelled primarily by one or two persons; other states, usually the larger and more metropolitan ones, have undertaken legislative inquiry into victim compensation and often elicited views quite different from any put forward in either New Zealand or Great Britain."¹⁵

¹⁴ J. Cameron, note 7 at 375.

¹⁵ Quoted in G. Geis, note 8 at 167.

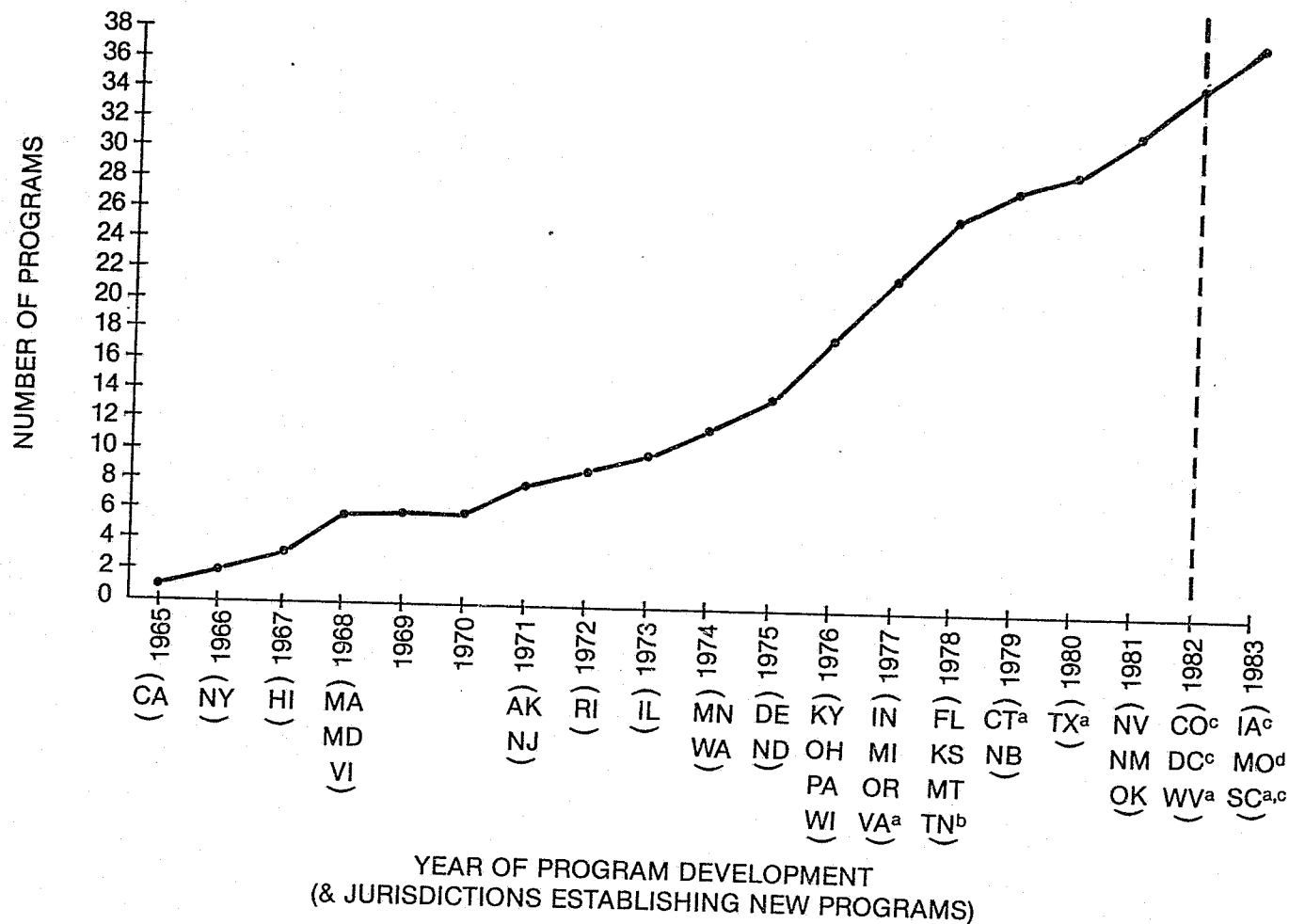
Since the development of the California program in 1965, victim compensation programs have spread rapidly across the nation. Exhibit 1.1 presents a graphic summary of the trend in program development from 1965 to 1982. The number of programs in operation are noted on the left side of the graph, and the years that programs were initiated are noted along the bottom of the graph. The growth in the number of states having programs has been impressive, and the later 1970s were particularly active years for program development.

Exhibit 1.2 presents a graphic summary of the extent of crime victim compensation program development in the United States. The diagonal lines indicate states in which programs are currently in operation, and the dashed lines indicate states which are currently implementing programs. Exhibit 1.3 provides a listing of the states having operational programs, those now implementing programs, those in which legislation is under consideration, and those that do not have programs. Detailed information on the characteristics of the 33 operational programs is included in Appendix A. The five jurisdictions that are listed as currently implementing programs passed crime victim compensation legislation in 1981 and 1982 and are now accruing funds for program operations and developing claims processing procedures. The major characteristics and distinctive features of these statutes are summarized in Appendix B.

The pattern of growth of programs across the nation is intriguing. California developed the country's first crime victim compensation program in 1965, and was followed by New York in 1966, Hawaii in 1967, Maryland and Massachusetts in 1968, and New Jersey in 1971. States that have developed programs tend to have relatively large populations, relatively high crime rates, and relatively high per capita state taxes. With a few exceptions, the jurisdictions that have not developed programs tend to have either low populations (e.g., Wyoming [ranked 50th in population], Vermont [49th], South Dakota [45th], Idaho [43rd], New Hampshire [42nd], Maine [38th], Utah [36th], and Arizona [33rd]), or low per capita state taxes (the U.S. average per capita state tax is \$569; many states without programs fall below the average, e.g., New Hampshire [\$297], South Dakota [\$356], Arkansas [\$456], Alabama [\$463], Georgia [\$478], and Mississippi [\$492]).

Excluding Puerto Rico from consideration due to its unique characteristics, only two of the fourteen jurisdictions that do not have programs do not follow the pattern of having very low populations or very low per capita state taxes or both. North Carolina is twelfth in population and has per capita taxes of \$519, and Louisiana is twentieth in population and has per capita taxes of \$557. Victim compensation legislation is currently actively being considered in one of these two states, Louisiana. Louisiana actually passed victim compensation legislation in 1972, but it never funded the program and repealed the legislation. The North Carolina legislature considered a victim compensation bill in 1979. The bill never emerged from committee

EXHIBIT 1.1 Trend in Program Development



^aThis date represents the effective date of the program, though in Virginia, Connecticut, Texas, West Virginia and South Carolina, funds were established some period of time (6 months to one year) prior to the actual onset of claims processing and award payment.

^bTennessee originally passed legislation in 1976, but the statutes were amended in 1977 to make the effective date July 1, 1978.

^cFour jurisdictions—South Carolina, Iowa, District of Columbia and Colorado—have just passed legislation and are in the process of setting up programs.

^dThe Missouri program is being established in 3 phases:
 1) Assessment and collection of criminal penalties for Crime Victims' Compensation Fund, effective September 28, 1981;
 2) Eligibility of claimants effective July 1, 1982; and
 3) Claims processing and award payment effective January 1, 1983.

EXHIBIT 1.2

PATTERN OF PROGRAM IMPLEMENTATION IN THE UNITED STATES

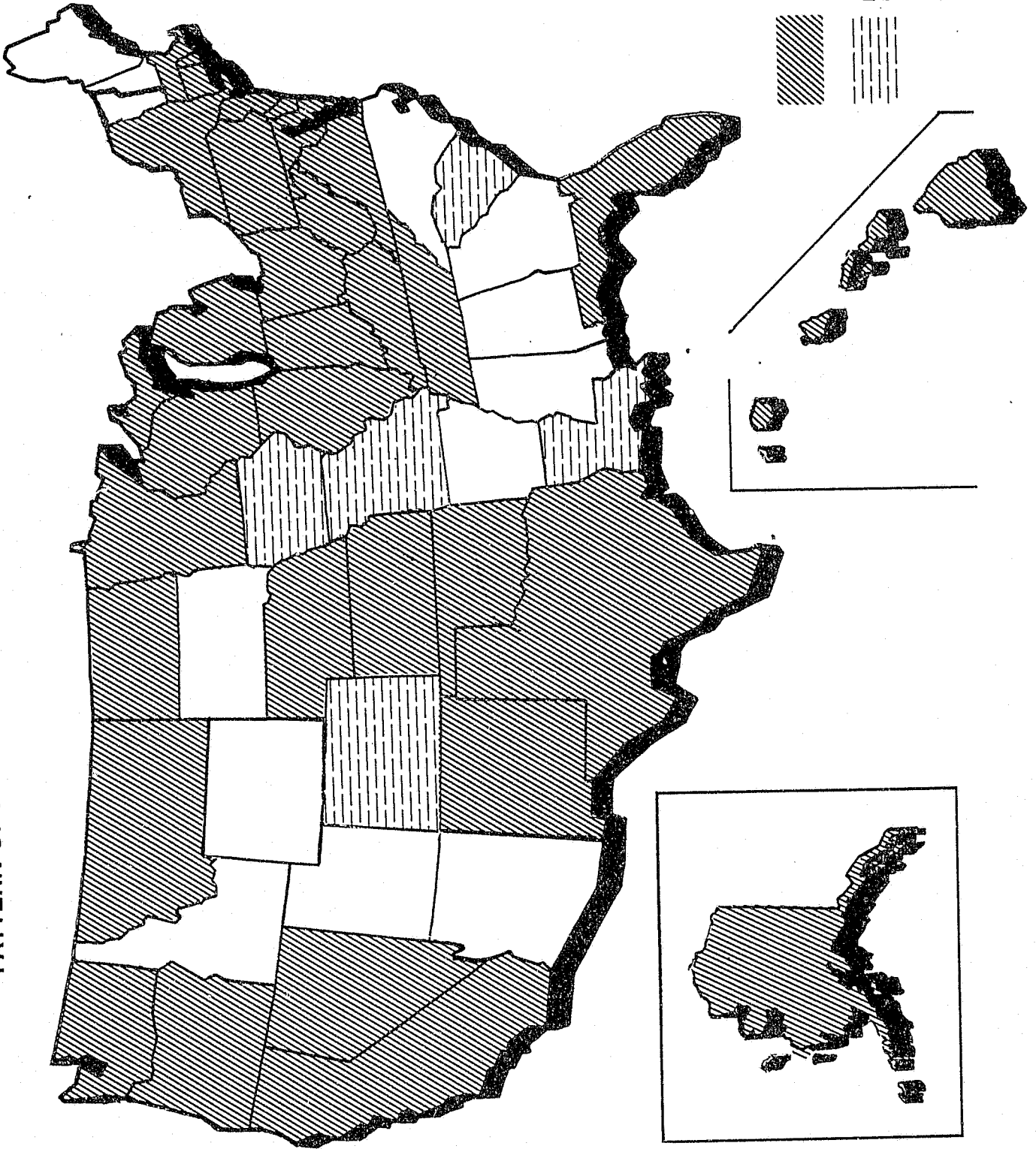


EXHIBIT 1.3: Victim Compensation Program Locations in the United States

States Having Operational Programs

(1) Alaska	(17) Nevada
(2) California	(18) New Jersey
(3) Connecticut	(19) New Mexico
(4) Delaware	(20) New York
(5) Florida	(21) North Dakota
(6) Hawaii	(22) Ohio
(7) Illinois	(23) Oklahoma
(8) Indiana	(24) Oregon
(9) Kansas	(25) Pennsylvania
(10) Kentucky	(26) Rhode Island
(11) Maryland	(27) Tennessee
(12) Massachusetts	(28) Texas
(13) Michigan	(29) Virgin Islands
(14) Minnesota	(30) Virginia
(15) Montana	(31) Washington*
(16) Nebraska	(32) West Virginia
	(33) Wisconsin

States In Which Programs Are Being Implemented

(1) Colorado	(4) Missouri
(2) District of Columbia	(5) South Carolina
(3) Iowa	(6) Louisiana

States That Do Not Have Programs

(1) Alabama	(8) New Hampshire
(2) Arizona	(9) North Carolina
(3) Arkansas	(10) Puerto Rico
(4) Georgia**	(11) South Dakota
(5) Idaho	(12) Utah
(6) Maine	(13) Vermont
(7) Mississippi	(14) Wyoming

*The Washington program was refunded by the state legislature on 3/18/82; it had been temporarily closed due to a reduction in its appropriation.

**Georgia has a statute that provides for compensation to "Good Samaritans."

NOTE: 53 jurisdictions are included in this table: the fifty states, the District of Columbia, the Virgin Islands and Puerto Rico.

consideration, however, due to concerns with funding the program. An additional common characteristic of many of the states that have not developed victim compensation programs is relatively low crime rates, and these rates are particularly correlated with the low population sizes of many of these states.

Clearly, such factors as low population size and low per capita state tax rates are only two among many possible factors influencing the decision of whether or not to develop a victim compensation program. It is striking, however, that 12 of the 14 states which do not have programs (excluding Puerto Rico from the analysis) have one or both of these characteristics. It is useful to examine closely existing programs in states that share these features, since such programs might be viewed as particularly relevant models for replication by similar states without programs. Relevant low population states having programs include North Dakota, Nevada, and Montana. States with relatively low per capita state taxes that have victim compensation programs include Missouri, Tennessee, Ohio, and Florida.

In considering the growth of victim compensation programs across the country, it is interesting to note that the six states developing new programs, or considering victim compensation, are part of or border on the regions of lowest program activity, i.e., the Rockies and the South. These states may be helpful in encouraging their neighboring states to adopt victim compensation programs, since they often share many characteristics with those states that have not developed programs.

Five of the fifteen jurisdictions that do not have victim compensation programs have never had legislative proposals to develop such programs, according to our telephone survey. (These jurisdictions are Alabama, Idaho, Maine, Mississippi, and Puerto Rico.) The remaining ten jurisdictions have had legislative proposals dealing with victim compensation that have failed to pass in earlier legislative sessions.

Subsequent chapters of this report provide a detailed accounting of the characteristics of existing victim compensation programs in the United States and note the advantages and disadvantages of varying program policies and procedures.

1.3 Findings and Conclusions

Victim compensation programs have spread rapidly in recent years, and a wide variety of types of programs have been developed across the nation. Major issues in the field include differences in program rationales, means to

assess program achievements, program structure and organization, eligibility and coverage policies, procedures, costs and funding mechanisms, coordination with other victim services, and potential impacts upon victims. Each issue is reviewed briefly in turn.

Program Rationales

Victim compensation programs have been developed for a variety of reasons. The major rationales for programs include views that citizens have a right to be compensated if the state fails to protect them (based upon legal tort theory and contract theory analogs), beliefs that programs are an appropriate humanitarian response by government to compelling human needs (including both "insurance theories" that suggest all aggrieved citizens should receive assistance and "welfare theories" aimed only at the poverty stricken), and rationales based upon potential byproducts of victim compensation such as improved citizen cooperation with law enforcement, greater visibility of crime's costs and consequent increased incentives for crime prevention, and the like.

Very few, if any, of the state victim compensation statutes reflect a pure manifestation of a single, highly articulated rationale for program development. Most of the bills are promoted with appeals to combinations of rationales, and sometimes virtually all of the potential rationales can be found woven somewhere into a single legislative debate. As a consequence, it is typically not clear once a program has been enacted exactly how broad its mandate really is. Legislative sponsors in some jurisdictions clearly reject, on the record, the idea that the state has a legal obligation to compensate all victims, and in some debates the insurance theory is soundly rejected in favor of the welfare model. Generally, however, the precise goals of the programs are left somewhat vague, with varying rationales co-existing on the record, all in support of the same legislation, even though the rationales may be inherently incompatible (e.g. insurance theories and welfare theories).

Such ambiguities are not uncommon in legislation and are, in part, a natural response to the need to form coalitions in support of a bill. Furthermore, in the case of victim compensation legislation, concern regarding the potential growth in program costs that could arise from a clear and broad rationale has likely made the stating of such a rationale less attractive. Cost containment procedures incorporated in legislation (e.g., various eligibility requirements and benefit restrictions) often have an ad hoc quality to them. Typically, these restrictions could not be derived from the broad principles used to justify the program, but they are often necessary to achieve passage of the legislation. While many legislators are attracted to bills assisting victims, they tend to be cautious in designing programs and do not wish to sign a blank check for such assistance.

The ambiguities in the rationales offered for victim compensation legislation have led a number of observers to note that typical program rationales could support much broader forms of assistance than are presently provided.¹⁶ Professor Mueller suggests that the outer limit of such assistance could involve compensation for all losses attributable to crime, assistance that could require approximately seven percent of the American gross national product according to Mueller's calculations.¹⁷ A more typical view of program outer limits is the position that assistance should be available to all innocent persons injured by crimes, without potential disqualifications based upon such factors as links to the offender, financial condition, and related restrictions.

Assessing Program Achievements

The lack of precision in the stated goals of victim compensation programs can make assessment of their achievements very difficult. If program achievements are compared to the potential goals deriving from broad theoretical rationales, their performance is not satisfactory. Programs are low in visibility in most jurisdictions, and only a small fraction of eligible victims of crime are aware of the programs and apply for assistance. Some persons who are aware of programs choose not to apply due to the complex filing procedures and the need in some jurisdictions to provide detailed accounts of personal finances. Furthermore, many of those who do apply for assistance are rejected due to program restrictions. Some of these restrictions are considered appropriate by virtually all observers (e.g., the requirement that the victim be innocent and not the cause of the victimization), while others are often opposed (e.g., the rejection of applications because the victims are related to the offender even though they may otherwise be innocent victims).

On the other hand, if program achievements are compared to the far more modest goals often inherent in their structure and policies, many programs appear to be quite successful. The common reductions in scope imposed at the outset on many programs include:

¹⁶R. Hofrichter, Victim Compensation and the Elderly: Policy and Administrative Issues, published by the Select Committee on Aging, U.S. House of Representatives, 96th Congress, 1st Session (Washington, D.C.: U.S. Government Printing Office, 1979). The study was conducted by Mr. Hofrichter for the Criminal Justice and the Elderly Program, Legal Research and Services for the Elderly of the National Council of Senior Citizens. See also G. Mueller, "Compensation for Victims of Crime: Thought Before Action," 50 Minnesota Law Review (1965) at 213.

¹⁷Mueller, ibid at 218.

- limited capacities to advertise their services (or actual prohibitions against advertising in some cases);
- detailed restrictions on victim eligibility depending upon the nature of the crime, the relationship to the offender, financial means, filing deadline adherence, collateral source payments, contributory misconduct, and the like; and
- limitations on the types and amounts of benefits payable to victims.

When judged within the bounds of these inherent restrictions many programs have performed very well. They have served increasing numbers of victims over time, increased their total award payments even in times of budgetary cutbacks, operated with low administrative costs compared to their overall budget and yet maintained strict cost accountability. Further, they have sought to respond sensitively to the needs of victims. Such achievements are chronicled throughout the report in discussions of program operations and funding.

In short, whether one views the programs as successes or failures depends mainly upon one's view of the legitimate goals of victim compensation mechanisms. Persons praising current program operations point to the typical annual report graphs demonstrating increases in program caseloads, budgets, and staff size. Critics of the programs may agree that many of the graph lines are trending upward but stress that the gap between the actual levels of performance and needed levels of performance are enormous. They essentially use much larger graph paper and suggest that the programs have barely left the bottom of the chart in their achievements and have far to go before being judged adequate.

This complex disagreement regarding legitimate program aims makes it very difficult to answer the question, "how are the programs doing?" If policymakers stress limited goals of programs in light of legislative restrictions, then assertions of success in many programs are probably accurate. If policymakers instead state their support for broad rationales for their programs (such as humanitarian assistance to all injured victims) and then do not provide the means to attain such goals, but in fact hobble their achievement through myriad eligibility restrictions and underfunding, assertions of program success are less credible. Critics charge that such actions suggest an interest by some in developing "paper" programs that provide compelling campaign speech material without fulfilling the stated goals of the programs. Such mismatches between rhetoric and program structures are considered triumphs in the elevation of form over substance in political action.

Since victim compensation programs are ultimately the product of the political arena, proponents of broad rationales for programs need to convince legislators of the merits of the rationales and to stimulate active public support in favor of broadening victim compensation program coverage. At present, existing programs represent compromises between the broad theoretical rationales offered for them by some and more restricted visions of proper program aims. Proponents of broad coverage typically find through the course of legislative action that program structures and policies evolve in subtle and complex ways, and the final program features ultimately reflect whatever the political market will bear. In many states passage of a victim compensation bill in virtually any form is a notable achievement, the result of very substantial work by the bill's sponsors and supporters. Persons advocating broad program coverage typically feel that the passage of even highly limited victim compensation legislation in a state is worthwhile. Such programs provide a foundation upon which a more comprehensive program can later be built.

Program Structure and Organization

Victim compensation programs can be developed in a variety of ways. Program sponsorship varies considerably across the nation. Worker's compensation departments are the single most prevalent program sponsors (8 programs) followed by the courts (7 programs), and departments of public safety (5 programs). A variety of additional agencies serve as sponsors (e.g., departments of social services, governor's executive offices, etc.).

In some programs, the staff members are fully integrated into existing agencies and in other cases are quite independent from the sponsoring agency. A review of the various models of program sponsorship and affiliation suggests that no one model is clearly more advantageous than any other, although certain court-based programs, and especially those adjudicating claims in general trial courts, appear to confront special problems.

A number of aspects of program structures and organization warrant close attention in coming years. These emerging issues include:

- (1) The Question of Decentralization of Program Operation. Colorado is currently implementing legislation that will result in the state having the first totally decentralized victim compensation program. Each judicial district will collect funds for victim compensation and distribute them to appropriate victims of crime. Similar proposals have been made in recent years in Florida and California. Major advantages cited for decentralized program operation include the elimination of inequities across regions of a state in amounts of payments contributed to the fund versus amounts

collected from the fund, potentially speedier claims verification and investigation, and potentially improved coordination with local victim/witness services. Possible disadvantages include variations in the availability of funds for victim payments across localities, probable inconsistencies in award decisions across jurisdictions, and the problem of duplicating program administrative costs in the various state jurisdictions. It is too early to determine whether decentralized victim compensation services can, in fact, be effective, and the Colorado experiment bears close watching. The likelihood of considerable disparities across localities in claims decision-making and high administrative costs should certainly make states very cautious about adopting such a model, and successful operation of such a mechanism in one or more states should occur prior to any widespread replication of the approach.

(2) Program Staffing. It is difficult to determine optimal program staffing arrangements in the absence of highly detailed research on the effectiveness of different approaches. Our study suggests that the development of an autonomous core program staff responsible for the three major functions of victim compensation programs (administration, investigation, and decision-making) is preferable to the dispersion of such functions across a number of agencies. The major problems faced by court-based programs that disperse these functions across two or more agencies are noted in Chapter Three.

Program Eligibility and Benefits Policies

The most common eligibility restrictions deal with residency requirements, the role of contributory misconduct, requirements related to the relationship of the victim and the offender, the nature of compensable crimes, financial hardship requirements, rules regarding crime reporting and cooperation with law enforcement officials, and filing deadlines.

All victim compensation programs restrict the types of financial losses that are compensable. Typically programs are authorized to reimburse victims for medical and/or funeral expenses incurred as a result of a crime, and also to compensate for lost wages or loss of support to the dependents of a deceased victim. Almost all programs provide reimbursements for counseling expenses incurred as the result of a victimization incident. In most cases, these are paid as an additional medical expense, though in some cases a special clause is included in the statute. In a few states, such as in Massachusetts and Virginia, counseling costs are only recoverable in cases of sexual assault. The size of awards programs are authorized to provide varies considerably, and Exhibit 1.4 presents a summary of maximum award policies and average awards provided to victims.

Major emerging issues regarding eligibility and benefits policies include:

EXHIBIT 1.4: Program Awards Policies and Case Processing Time

PROGRAMS	MAX. AWARD	AVERAGE AWARD	AVERAGE PROCESSING TIME						EMER. AWARDS	MAX.	EMERGENCY AWARD PROCESSING TIME
			UNDER 1 mo.	1-3 mos.	4-6 mos.	7-9 mos.	10-12 mos.	OVER 1 yr.			
Alaska	\$25,000*	3,500		X					yes	1,500	3-5 days min
California	23,000	2,275				X			yes	1,000	60 days
Connecticut	10,000	2,200		X					yes	500	1 day
Delaware	10,000	3,000				X			yes	none	
Florida	10,000	2,900			X				yes	500	30 days
Hawaii	10,000	1,100				X			no		
Illinois	15,000	2,928			X				no	500	
Indiana	10,000	3,000				X			yes	none	1-2 weeks
Kansas	10,000	2,086		X					yes	500	2 weeks
Kentucky	15,000	2,500			X				yes	1,000	
Maryland	45,000	6,376					X		no		
Massachusetts	10,000	3,546			X				yes	500	
Michigan	15,000	1,445		X							Has discontinued payment of emergency awards due to budget cuts and limited staff.
Minnesota	25,000	1,973 (claim)						X	yes	none	Pays only lost wages on an emergency basis. No such payments made last year.
Montana	25,000	1,514	X						no		

*\$40,000 multiple dependents

EXHIBIT 1.4: Program Awards Policies and Case Processing Time (continued)

PROGRAMS	MAX. AWARD	AVERAGE AWARD	AVERAGE PROCESSING TIME						EMER. AWARDS	EMERGENCY AWARD MAX.	EMERGENCY AWARD PROCESSING TIME
			UNDER 1 mo.	1-3 mos.	4-6 mos.	7-9 mos.	10-12 mos.	OVER 1 yr.			
Nebraska	\$5,000	1,900		X					yes	500	2-3 weeks
Nevada	5,000								no		
New Jersey	10,000	3,000						X	yes	1,500	
New Mexico	12,500	1,050							no		
New York	*	1,948			X				yes	1,500	
North Dakota	25,000	1,500-2,000		X					yes	1,000	
Ohio	25,000	4,900					X		yes	none	---
Oklahoma	10,000	2,300 claim 1,487 award		X					yes	500	1 wk.
Oregon	23,000	1,700		X					yes	1,000	1-4 wks.
Pennsylvania	25,000	2,600					X		yes	1,000	several mos.
Rhode Island	25,000	12,000							no		
Tennessee	10,000	3,500**			X				yes	500	4-6 mos.
Texas	50,000	2,856		X					yes	1,500	1-5 days
Virgin Islands	25,000	3,696							no		
Virginia	10,000	2,940		X				X	yes	1,000	1 month
Washington	15,000	2,088		X					no		
W. Virginia	20,000	---						X	no		
Wisconsin	10,000	2,600			X				yes	500	1-2 days

*\$20,000 loss of earnings or support; \$15,000 funeral.

**includes attorneys' fees.

(1) The Appropriateness of Relative and Household Exclusions. A policy of excluding compensation for relatives of the offender and persons living in the same household as the offender was adopted in the original New Zealand statute and widely replicated in American programs. Senator Yarborough questioned the appropriateness of such a blanket exclusion at the time programs were first being developed in the United States.¹⁹ Since that time many observers have noted the problems with such policies. A number of states are allowing compensation to such formerly excluded classes of victims if the awards do not result in the "unjust enrichment" of the offender. Such reforms can enable programs to avoid the considerable injustices that often occur in the administration of blanket relative and household exclusions.

(2) The Proper Role of Financial Means Tests. A number of policymakers have strongly opposed the use of financial means tests by victim compensation programs. One-third of the programs currently in operation require that victims suffer substantial financial hardship before they are eligible for compensation. Efforts to enforce these provisions, however, vary widely. Policymakers need to consider carefully their underlying rationale for program development in implementing such provisions. The use of a means test implies a "welfare" rationale for victim compensation; the absence of such a requirement implies other rationales (e.g., an insurance model, torts and contracts models, etc.). A number of states are considering eliminating the means test due to the high costs of investigations regarding financial hardship, the gross inequities that can occur in denying benefits to victims who have been diligent in saving money (especially when those victims are the elderly on fixed incomes), and the chilling effect that such means tests can have on the willingness of victims, even those experiencing severe financial hardship, to apply for compensation.

(3) Minimum Loss Policies. Considerable controversy has occurred in recent years regarding the appropriateness of minimum loss policies. The majority of programs (58%) have adopted such requirements, and the minimum loss required is typically \$100 or two continuous weeks of lost earnings. Such policies are adopted to reduce administrative costs and case backlogs. Opponents of these policies argue that they discriminate against certain classes of victims (e.g., rape victims, the elderly and the disabled). Some states have begun to exempt such victims from the minimum loss provisions. Other states (e.g., Illinois, Kentucky, New York, and Wisconsin) are seeking to eliminate the minimum loss requirement altogether. Such elimination may have a variety of beneficial effects on programs, including increased program awareness and support. Garofalo and McDermott (1979) have investigated the costs of eliminating minimum loss requirements and suggest that programs could serve many more victims with only a 12 percent increase in program

¹⁹ R.S. Yarborough, "S.2155 of the Eighty-Ninth Congress--The Criminal Injuries Compensation Act," 50 Minnesota Law Review (1965) at 255.

costs if the requirements were eliminated.²⁰ Programs should consider eliminating or limiting minimum loss policies.

(4) The Adequacy of Emergency Award Procedures. Emergency award procedures are often very ineffective in America's victim compensation programs. Programs should advertise the availability of emergency awards, expedite their processing, and, if possible, develop a capability within the program to draft checks for such payments in those cases where the claim appears meritorious and a need exists for rapid assistance. Such reforms are not likely to be very costly, and just as in many court cases "justice delayed is justice denied," payments delayed often become virtual denials of the benefits of victim compensation. During extended delays victims are required to suffer pressure from creditors while they are also suffering from their victimization. A payment one year after the victimization may be better than nothing, but often not a great deal better. Improved emergency award procedures should become a high priority of victim compensation programs. In many cases legislatures have provided programs with the means to cut the red tape entangling emergency award requests; programs need to fully implement these emergency award mechanisms. Exhibit 1.4 indicates states having emergency award procedures, cites maximum allowable payments where such restrictions exist, and notes average emergency award processing time.

(5) Reciprocal Compensation Agreements Among States. Fifteen state victim compensation programs have developed reciprocal agreements with other states, and these states will compensate the others' residents when victimized within their jurisdiction. Such agreements seem very appropriate in a mobile society such as the United States and eliminate unfortunate instances in which victims are ineligible for compensation simply because they are not victimized within their home state. Such reciprocal agreements should be strongly considered by all victim compensation programs.

(6) Property Loss Provisions. One controversial type of loss that is not typically covered by victim compensation programs is property loss. Only Hawaii and California consider this a recoverable loss, and then only for so-called Good Samaritans. There are two main reasons for this exclusion: 1) the belief that loss of property is less devastating than physical injury; and 2) the fear that the costs of such compensation would be astronomical, due to the large proportion of crime in our nation that involves damage to or theft of personal property.

²⁰ See J. Garofalo and M. McDermott, "National Victim Compensation: Its Cost and Coverage," 1 Law and Policy Quarterly (1979) at 439. See also J. Garofalo and L. Sutton, Compensating Victims of Violent Crime: Potential Costs and Coverage of a National Program (Washington, D.C.: U.S. Government Printing Office, 1977).

In many states, even the costs of replacing eyeglasses, hearing aids and other prosthetic devices are not covered under the victim compensation statutes. For many individuals, especially the elderly, such losses are devastating and often impossible to handle on a poverty-level or fixed income.

Close to two-thirds of existing program statutes include a provision allowing recovery of "other reasonable expenses." This category of losses is sometimes used to allow for reimbursement of the costs of replacing eyeglasses, hearing aids and other prosthetics. In addition, this provision has been cited in the payment for transportation, ambulance services, child care, relocation costs for rape victims, and a variety of other expenses incurred as the result of criminally injurious conduct. Including such a flexible provision in the statutes allows the program to exercise greater discretion in providing for the needs of crime victims, and such flexibility should be encouraged.

Program Procedures

Chapter Five presents a summary of major program procedures, including those dealing with public awareness, claims application, claims verification, case processing time, award payment and appeals. A number of emerging issues regarding claims processing require attention, including:

(1) The Lack of Public Awareness of Victim Compensation. The various techniques for making victims aware of the availability of victim compensation services include general advertisements and notification of victims by law enforcement personnel, medical providers, and victim/witness assistance programs. Many programs are not widely advertised due to a concern that sufficient funds are not available to pay all eligible victims in the state. This lack of public awareness of programs in many states is perhaps the most critical issue for victim compensation programs.

The hesitancy of legislators and program administrators to encourage the filing of legitimate claims that may not be paid due to lack of funds is understandable. But this hesitancy strikes at the heart of the victim compensation enterprise and raises the question of whether states are willing to back up the high-sounding rationales for programs with adequate financing. The failure to announce the availability of certain other forms of relief (e.g., vaccine during an epidemic) would be considered a scandal. The failure to make victim compensation broadly available is also viewed as a scandal by proponents of such programs. States should review their current policies and funding mechanisms and seek to close the gap between program rationales and actual program operations. Innovative funding sources outside of general revenues may enable states to fulfill the broad goals presented in typical victim compensation legislation.

(2) Expediting Claims Processing. Victim compensation programs often experience considerable delays in case processing. Average claims processing times are summarized in Exhibit 1.4. Such delays inevitably lead to dissatisfaction on the part of victims and reduce the value of the payment to victims since they were required to endure an extended period of uncertainty regarding payment and, perhaps, strong pressure from creditors. Chapter Five provides a review of structural, policy-related and/or procedural factors that can contribute to delays in case processing. Suggestions to expedite claims processing include the use of abbreviated procedures in certain types of cases (e.g., small claims and funeral expense requests), revised case investigation procedures, and more rapid drafting of checks once the claim has been awarded. Such improvements may be helpful in reducing the delays experienced by many programs.

Program Costs and Funding

Victim compensation programs receive funding from a variety of sources. Thirty-nine percent of existing programs are funded solely through general revenues, 36 percent are funded solely through fines and penalties mechanisms, and 24 percent through combinations of general revenues and fines and penalties. Program costs for payments to victims and for administrative expenses are summarized in Exhibit 1.5, with programs categorized as small, medium, or large in terms of total budget. Exhibit 1.4 presents a summary of average awards given by programs.

A number of issues regarding funding mechanisms require attention, including:

(1) The Propriety of Fines and Penalties Mechanisms. Sixty percent of current state victim compensation programs are funded solely or in part through revenues from fines and penalties. Major forms of such mechanisms include fixed penalties, proportional surcharges, and discretionary penalties. A number of critics have suggested that fines and penalties are an inappropriate approach for funding victim compensation programs. These critics feel that such mechanisms violate citizens' rights to equal application of the laws and require convicted offenders to pay for programs that they have no greater obligation to support than any other citizens. Such reasoning has led to court challenges of such mechanisms in Florida. The court upheld the appropriateness of such a funding approach, but additional challenges may be anticipated across the country. The technique of fining traffic offenders to pay for victims of violent offenses is particularly controversial. Further court action may clarify the proper role of such mechanisms, and programs should be prepared to argue in favor of such funding if necessary.

(2) Techniques for Collecting Fines and Penalties Revenue. A variety of approaches to encourage the collection of fines and penalties revenue have been

EXHIBIT 1.5: Program Costs

<u>Program</u> <u>Small Programs: (a)</u>	<u>Total Program</u> <u>Costs</u>	<u>Total Benefits</u> <u>Paid</u>	<u>Total Administrative</u> <u>Costs</u>	<u>% of Total</u> <u>Program Costs</u>
Nebraska	99,686	57,686	42,000	46%
North Dakota	135,145	88,373	46,772	35%
Virgin Islands	137,967	121,967	16,000	12%
Kansas	235,025	173,142	61,883	26%
Rhode Island	249,792	238,430	(b)	(b)
Montana	321,559	271,023	50,536	16%
Alaska	339,300	237,100	102,000	30%
Delaware	382,154	241,804	140,350	57%
Kentucky	410,533	410,533	(b)	(b)
Virginia	485,467	430,687	54,775	11%
Hawaii	509,931	432,513	77,418	15%
Oregon	623,000	519,000	104,000	17%
Minnesota	647,064	573,059	73,995	11%
Connecticut	719,650	632,000	87,650	12%
Tennessee	801,452	801,452	(b)	(b)
Massachusetts	907,679	907,679	(b)	(b)
<u>Medium Programs: (a)</u>				
Pennsylvania	1,068,000	816,000	252,000	24%
Texas	1,252,068	988,182	263,886	21%
Wisconsin	1,400,000	1,200,000	200,000	14%
Michigan	1,980,800	1,822,605	158,195	9%
Florida	2,180,000	1,800,000	380,000	11%
Maryland	2,197,753	1,415,472	782,281	36%
Illinois	2,310,900	2,078,000	232,900	10%
New Jersey	2,353,996	1,953,996	400,000	17%
Washington	2,628,634	2,378,634	250,000	10%
<u>Large Programs: (a)</u>				
New York	6,832,279	5,750,549	1,081,730	16%
Ohio	9,188,519	7,654,240	1,531,279	17%
California	17,075,579	15,270,141	1,805,438	11%

(a) For purposes of this chart, a small program is defined as one with total costs of less than \$1 million in 1981, a medium program as one with total costs from \$1 million to \$5 million; and a large program as one with total costs exceeding \$5 million.

(b) Because of the structure of these programs, administrative costs specific to victim compensation were not available.

(c) Only 28 jurisdictions are included because annual cost data were unavailable in Indiana, Nevada, New Mexico, Oklahoma, and West Virginia.

developed. One of the most promising new approaches is the use of a court monitor in New Jersey to audit court dockets and determine if the courts are, in fact, levying the appropriate fines. In New Jersey, the Administrative Office of the Courts supports the victim compensation program and assists it in ensuring that courts comply with the mandated penalty assessments. Other states that face problems in collecting fines and penalties may wish to consider a similar approach. The support of a strong, centralized judicial authority appears to be needed to make such a monitoring system effective.

(3) Possible Additional Funding Sources Other Than Fines and Penalties and General Revenues. A variety of possible funding mechanisms exist other than fines and penalties and general revenues. Major examples include restitution payments, civil suits brought against the offender, civil suits brought against third parties, property forfeiture revenues, and "Son-of-Sam" provisions to acquire profits from offenders' royalties resulting from commercial publication of the facts of the crime. None of these mechanisms appears to be a particularly promising source of revenues for victim compensation programs, but programs may wish to consider the development of such mechanisms for obtaining limited supplementary funds for program support.

Coordination with Additional Victim Support Services

Many options exist for coordinating the services of victim compensation program with those of other victim support agencies such as victim/witness assistance programs, crisis service programs, and victim hotlines. Possible approaches to link the programs include the sharing of information regarding referrals, the training of personnel in other programs to assist in victim compensation case screening, the development of statewide coordinating agencies, and the like.

The coordination of victim services is likely to be easier in theory than in practice. As in virtually every service area with multiple providers, victim compensation and victim/witness assistance programs do not always cooperate and sometimes feel in competition. Personnel affiliated with both types of programs tend to have somewhat different philosophical orientations towards victims and to believe strongly that their service is of particularly great value to victims. Such commitment is valuable and perhaps necessary if people are to perform well and provide services vigorously. This commitment inevitably leads to "turf" problems in an era of shrinking resources, however. Conscious efforts need to be made to overcome the "turf" problems currently in existence and to persuade programs that they can benefit both one another and victims through increased cooperation. The development of collaborative enterprises such as victim hotlines, which simultaneously provide referrals to both types of programs, may help to overcome some resistance to increased coordination. Adequate levels of funding for both victim

compensation and victim/witness assistance programs by state legislatures would greatly enhance program cooperation, and such funding can be coupled with statutory requirements of collaboration akin to those provisions that are in operation in California, Wisconsin, Nebraska, and elsewhere. American crime victims have myriad, complex problems, and a coordinated effort among various service providers is needed to address the full range of economic, psychological, and related problems that victims experience.

Program Impacts Upon Victims

Very little information is available regarding the impact of victim compensation programs upon victims. Recent limited research studies suggest that contact with victim compensation programs does not clearly improve victims' attitudes toward the criminal justice system. Such an outcome is hoped for by some program proponents, since programs wish to encourage improved cooperation with justice system agencies.

No detailed information is available regarding the impact of programs on victims' economic or psychological well-being. Information is needed regarding the impact of specific program eligibility policies and procedures on victims. Victim compensation applicants rejected due to a technicality certainly may feel victimized once again, and the force of an official agency stating that they are not worthy of assistance (e.g., because they are related to the offender) could be very distressing. Even persons receiving compensation can legitimately feel angered or diminished if they were treated brusquely, had their finances and related circumstances investigated insensitively, experienced extensive delays in case processing, or received only a fraction of their requested claim for reasons they feel are unjust. A program offending or distressing a large number of innocent victims through overly complex procedures, rejections due to factors considered "mere technicalities" by the average citizen, and similar practices could result in a net harm to victims' sense of well-being rather than an improvement. The virtually total lack of information on this topic is striking, particularly in light of the relatively large amount of money spent yearly on victim compensation administration and awards. Research on such issues is badly needed if legislatures are to refine program policies with the concrete needs of victims in mind.

At present many state legislatures are likely to resist such research expenditures, due to an understandable concern with the value of "just another study." But the vacuum of information on this issue makes research on victim impact not just "another" study, but virtually the "first" such study. Opposition to research that is redundant, arcane, or otherwise seriously flawed is laudable; it is more difficult to praise the championing of what amounts to ignorance. In a critical area of public policy, ignorance can

potentially be far more expensive than research. Perhaps some states can commission relatively modest studies and encourage social science graduate students to conduct them as part of their doctoral dissertation research. Such an approach might successfully drive down both the costs of research and the costs of ignorance.

1.4 Summary

Victim compensation programs have spread rapidly across the United States and have also been developed in many nations around the world. Such programs have gained broad support, and further growth in the number of programs and the size of existing programs appears likely. Programs have assisted a large number of innocent victims and are likely to continue this valuable service.

Some likely program trends include increased flexibility in eligibility criteria (including those dealing with relative and household exclusions, financial means tests, and minimum losses) and increased use of fines and penalties mechanisms for funding rather than general revenues. Major problems faced by programs include improving public awareness, broadening eligibility requirements, expediting claims processing and improving emergency award procedures.

Most of the problems experienced by victim compensation programs have their roots in a lack of funding, and steps should be taken to provide sufficient funds to programs so that they can begin to fulfill their promise of compensation to all eligible innocent victims. Federal legislation to assist programs has been proposed repeatedly during the past two decades, and merits careful consideration as one possible means of helping programs meet their obligations to victims. Given the very tight limitations on the federal budget, sources of victim compensation funding other than general revenues (e.g., federal fines and penalties and forfeiture revenues) warrant particular consideration. Chapter Two presents a detailed discussion of the previous Congressional efforts to pass victim compensation legislation and notes the major barriers such legislation has faced.

Victim compensation mechanisms have become widely accepted in the past two decades. Programs have been developed in states across the nation due to the dedication of hundreds of legislators and other citizens. The major task in the coming decades will be to expand the scope of existing programs, insure their financial stability, and seek to provide consistently expeditious and effective assistance to victims. A federal legislator noted years ago that, "It ill becomes this great Nation to ignore the innocent victim of crime." Concerted efforts in statehouses, victim compensation programs, and elsewhere are helping to dispel the legacy of neglect, and if recent history is a reliable indicator, such compassionate responses to the compelling claims of crime victims will continue to increase.

CHAPTER 2

VICTIM COMPENSATION LEGISLATION

Victim compensation legislation has been debated in statehouses across the nation during the past seventeen years, and the majority of states have enacted such legislation. Similar legislation also has been repeatedly considered by the United States Congress. The legislative debates on the topic often involve intriguing mixtures of abstract academic theory, concrete tales of problems with the justice system, and hard-headed debates regarding appropriate uses of the public treasury. The finished products of the debates are detailed specifications of program policies and procedures. Program characteristics typically are established only after heated arguments regarding competing values, and are often deceptively bland when presented in the formal statutory language.

This chapter provides a discussion of the state and federal efforts to develop victim compensation legislation and chronicles some of the major barriers faced by proponents of such bills. In one sense, this entire document provides a status report on the outcome of the state legislative debates since the characteristics and policies of most programs are statutorily mandated. As a result, the discussion of state legislation in this section is limited to a brief summary of typical origins of state legislation, political issues confronted in efforts to pass the bills, and a review of promising strategies for developing state victim compensation bills. Actual program policies and procedures mandated in the state bills are described in subsequent chapters.

The review of federal legislative efforts in this chapter includes a discussion of the history of such bills, their major variations, problems faced in the efforts to pass them, and options for the development of such legislation.

2.1 State Legislative Efforts

As was noted in the preceding chapter, New Zealand and England implemented victim compensation programs in 1964. A number of American state legislatures passed victim compensation bills soon thereafter.

2.1.1 The Origins of State Legislation

California was the first state to pass victim compensation legislation in the United States. The efforts of Superior Court Judge Francis McCarty of San Francisco have been credited as the major stimulus for the legislation. He had been angered by the plight of a middle-aged woman whose case he heard. The woman had been robbed and beaten and incurred over \$1,000 in medical expenses that she had to pay out of her own pocket. The judge wrote a letter to a state legislator requesting that legislation be developed to provide assistance to persons such as the injured woman, and a bill was subsequently enacted in 1965.

Almost immediately, however, the California bill received sharp criticism. In 1965, Professor Robert Childres noted regarding the California law, "The program is the worst enacted anywhere, and is also worse than any other proposal I have seen."¹ Professor Gilbert Geis characterized the bill as "both laconic and inordinately vague." Even Judge McCarty described the legislation as "very weak" though he defended it as "better than no law."² A central complaint regarding the California program was that it would be administered by the state's Department of Social Welfare and provide awards only to persons meeting very low income guidelines. The initial California bill was also very vague on its provisions for collection of funds and lacked fundamental policies such as mandatory reporting of the crime to the police within a given period. Professor Childres concluded that, "The California statute is an unfortunate one, and it seems highly unlikely that the welfare department will be able to mold it into a decent program."³ He was correct, and the program has been transferred from the Welfare Department to the State Board of Control.

The origin of the California legislation from the concern of one individual over the suffering of a single victim is not atypical. In fact, as was noted in Chapter One, the initial impetus for the New Zealand and British victim compensation programs is typically traced back to the efforts of Ms. Margery

¹ R. Childres, "Compensation for Criminally Inflicted Personal Injury," 50 Minnesota Law Review 271 (1965) at 279. Childres was a supporter of the general concept of victim compensation but opposed the specific California bill.

² In a letter to Geis dated March 3, 1966 and cited in G. Geis, "State Compensation to Victims of Violent Crime," in Appendix B of the Task Force Report: Crime and its Impact--An Assessment, by The President's Commission on Law Enforcement and Administration of Justice (Washington, D.C.: U.S. Government Printing Office, 1967).

³ R. Childres, note 1 at 281.

Fry, an English magistrate and reformer. Ms. Fry was moved by the case of a victim of violence to write an article calling for the development of victim compensation mechanisms. The article received considerable attention in Britain, New Zealand and elsewhere, and historians of this field have noted repeatedly that the article was the primary stimulus for the initial legislative proposals. Interestingly, the wellspring of her proposal (and others) in the plight of a single victim has caused concern to at least one observer in the field. In 1965, Professor Gerhard Mueller wrote, "If Margery Fry is at the root of all current proposals for victim compensation schemes, and she is, then it was a single episode involving a man blinded as a result of an assault in 1951 which prompted her first proposals for a vast governmental crime insurance scheme. It would seem that any tampering with so delicate yet formidable machinery as that of the administration of criminal justice would require a broader base than a single episode."⁴

Nevertheless, diverse and often capricious factors have served as the stimulus for initial efforts to develop legislation in many states. Professor Geis commented in this regard, "Political, pragmatic and idiosyncratic variations all have gone into the cauldron that contains the current mixture of compensation programs and recommendations for such programs. . . . In Oregon, introduction of legislation was the outcome of a chance conversation between a State assemblywoman and a friend."⁵

Interviews during the site visits for the current study revealed the diverse stimuli for the development of specific state bills. For example, in Montana the researcher who provided much of the critical information for that state's legislative debates was introduced to the field by a friend at a poker game. The friend was a lobbyist for the Montana Catholic Conference, and together they were highly influential in promoting the legislation. In Tennessee, the initial stimulus for the legislation was a speech on victim compensation mechanisms presented at a Tennessee university. A professor at the university was impressed by the concept, and, when he later became a state legislator, he drafted a victim compensation bill and successfully managed it to passage. (The speech was presented by Professor Geis.) Once the machinery of legislation is engaged, careful studies and thoughtful debates on program characteristics have often occurred, but these systematic efforts are often stimulated by highly idiosyncratic factors in the individual states.

⁴G. Mueller, "Compensation for Victims of Crime: Thought and After Action," 50 Minnesota Law Review 213 (1965) at 217.

⁵G. Geis, note 2 at 173.

2.1.2 Major Issues in State Legislative Debates

A variety of questions has arisen repeatedly in state legislative debates on victim compensation bills. They include:

- Where should the program be placed in the state's bureaucracy, and what powers should it be granted?
- How should the program be funded?
- Should the program operate on a welfare philosophy so that compensation depends upon financial need?
- How should eligibility criteria be structured? E.g., should family members be excluded from compensation?
- What types of benefits should be paid? E.g., should property loss or pain and suffering be compensated?
- Should offenders be required to make restitution to the victim compensation fund?
- Should the program be widely advertised?

These issues involve the basic characteristics of the programs, and the choice of specific policies is often based upon the legislator's vision of the proper relationship of the state to its citizenry. For example, heated debates have occurred regarding whether victim compensation programs should be paid for out of general revenues (essentially as an insurance measure), out of fines paid by criminals (as a form of reparation with no general taxpayer responsibility for compensating victims at all), or whether the state should reject the notion of such assistance altogether.

The remainder of this volume illustrates legislators' answers to these fundamental questions by describing the types of program policies that were chosen across the nation. The apparent advantages and disadvantages of various choices are noted throughout the text.

2.1.3 Strategies for Developing State Victim Compensation Legislation

Every state government has unique rules, structures, and practices. In addition, the balance of power among factions fluctuates continually in any state legislature. The great diversity among American state legislatures militates against the development of firm guidelines for the drafting and passage

of victim compensation bills. A few suggestions might be useful, however. Clearly every legislature considering the development of such a statute will want to review the experience of other states having such programs. Relevant literature for such a review is listed in the text and bibliography of this report. States may wish to study the Uniform Crime Victims Reparations Act developed by the National Conference of Commissioners on Uniform State Laws. The Act was approved by the American Bar Association's House of Delegates in 1974 and provides interesting guidance in legislative drafting. Existing program statutes should clearly be reviewed for insight into how similar states have resolved victim compensation issues.

The task of actually managing the legislation would involve the application of skills similar to those that talented legislators use in managing many types of bills. For example, having a highly respected sponsor and developing a diverse and respected group of cosponsors for the legislation is obviously desirable. The concept of victim compensation typically has not become a highly partisan issue, and an effort should be made to keep the bill as non-partisan as possible. Support for the legislation from the governor's office has often been instrumental in assisting the passage of victim compensation legislation, and some governors have included such proposals in major speeches, such as their state-of-the-state addresses.

In the current fiscal climate, program funding will inevitably be a major issue, if not the issue. Chapter Six of this report provides a review of major funding sources used by victim compensation programs across the country, notes the advantages and disadvantages of the various approaches to funding, and should be useful to legislators planning funding mechanisms for a victim compensation program. Given fiscal restrictions, sources of funding other than general revenues, such as fines and penalties mechanisms, should be given careful consideration.

2.2 Federal Legislative Efforts

During the past seventeen years, dozens of victim compensation bills have been considered by the United States Congress. The list of sponsors of these bills over the years reads like a Who's Who of American politics and includes such diverse and influential legislators as Hubert Humphrey, Strom Thurmond, Mike Mansfield, John Eastland, Edward Kennedy, and Peter Rodino. The first victim compensation proposal was introduced in June 1965 by Senator Ralph Yarborough of Texas. Eight similar bills were introduced in the House of Representatives in 1965 and 1966 during the 89th Congress, and in some cases the bills were identical to Senator Yarborough's legislation.

Victim compensation bills have been introduced in each subsequent session of Congress since 1965. The Senate first passed such legislation in 1972. The

House of Representatives passed victim compensation legislation for the first time in 1977, and after Senate passage of a similar bill in 1978, a conference committee was developed to devise a common bill. On October 14, 1978--late in the night on the last day of the legislative session--the House rejected the compromise bill produced by the conference committee. No victim compensation bills have come that close to being enacted into law since 1978. Bills have continued to be introduced, however, and in 1982 measures were introduced by Senator Heinz, Representative Rodino, and Representative Russo.

The odyssey of victim compensation legislation through the federal legislative process has been intriguing. The inherently appealing nature of the proposal and the political power of its sponsors make its repeated failure particularly striking. In a President's Crime Commission Task Force report in 1967, Professor Gilbert Geis noted the intrinsic appeal of victim compensation schemes by saying, "Opposing it is rather like attempting to put together forceful and compelling arguments against compassion, mercy, and decency."⁶ He noted in the same context, however, that such proposals do require an intensive and sober appraisal before wholehearted endorsement. The Congress has sought to provide such an appraisal, and the debates on victim compensation legislation have explored many of their potential implications for the justice system, victims, and the United States Treasury. The legislation has received widely diverse assessments. Some have suggested victim compensation is quite simply a necessary service in a civilized society; others have disparagingly referred to the program as "Department of Justice Food Stamps." This section of the report traces the evolution of federal victim compensation legislation during the past seventeen years, indicates major variations that have occurred in the proposals, reviews the key issues arising in legislative debates that appear to have led to rejection of the bills, and discusses selected options for the development of federal victim compensation legislation.

2.2.1 The Origins of Federal Proposals

Victim compensation programs were implemented in New Zealand and in England in 1964, and the concept quickly came to the attention of American policymakers. Supreme Court Justice Arthur Goldberg was a forceful early supporter of the concept, and the articles and speeches by the Justice in support of victim compensation received widespread attention in 1964. Senator Ralph Yarborough of Texas read articles in the press on the topic in 1964, and he reported that the "proposals for compensating victims of crime revived my interest in the anomaly of our concern for criminals and victims, an interest originally formed when I sat on the criminal bench." He subsequently

⁶G. Geis, note 4 at 172.

presented a speech to the Texas Plaintiff's Attorneys Association in July 1964 advocating victim compensation legislation, and in June 1965 he introduced S. 2155, The Criminal Injuries Compensation Act.

The Yarborough bill was modeled after the New Zealand statute but adapted to American conditions. The bill applied only to the District of Columbia and other specified areas of federal jurisdiction such as the "Special maritime and territorial jurisdiction of the United States." Specifically, Senator Yarborough described this jurisdiction to include "American ships on the high seas and international waters, lands reserved or acquired for the use of the United States and under the exclusive or concurrent jurisdiction of the Federal Government, . . . and American aircraft over the high seas or international waters (p. 13534-S)." The bill would have established a Federal Violent Crimes Compensation Commission made up of three persons appointed by the President for eight-year terms. The Commission would review all claims and provide funds for actual losses experienced by victims or by their dependents in the case of deceased victims. The awards would be limited to \$25,000, and the Commission's determination would be considered final.

Many elements of the bill, such as certain victim eligibility requirements, were drawn directly from the New Zealand statute. Interestingly, Senator Yarborough noted in a 1965 article that he was dissatisfied with one of these provisions--the exclusion from eligibility of persons who are relatives or members of the same household as the offender. He noted that the provision was taken from the New Zealand law "perhaps too uncritically," and suggested that the exclusion should perhaps be eliminated or modified. Professor Robert Childres indicated similar disagreement with the provision in a 1965 article and suggested that, "It is at least questionable whether such a sweeping exclusion should⁸ become law before its desirability or necessity is established in practice."

This issue illustrates a problem inherent in many of the federal proposals (and state legislation as well). Some of the initial provisions of the New Zealand and British statutes have been routinely replicated in American statutes as if they were of proven value rather than having been tentative policy choices made by the developers of the foreign bills. One of the major trends in revising state victim compensation statutes in recent years is the effort to provide greater flexibility in the application of eligibility criteria--a need envisioned by Senator Yarborough shortly after he introduced the Criminal Injuries Compensation Act seventeen years ago.

⁷ R. Yarborough, "S.2155 of the Eighty-Ninth Congress--The Criminal Injuries Compensation Act," 50 Minnesota Law Review 255 (1965) at 262.

⁸ R. Childres, note 2 at 276.

The contours of later Congressional debates on victim compensation legislation were already visible in the early responses to Senator Yarborough's bill. Professor Gerhard Mueller of New York University Law School wrote in 1965 that the costs of victim compensation legislation could become immense. He asserted that the victim compensation programs would not be limited to personal injury for long but would expand to cover costs associated with property crimes as well. These additional costs, he alleged, would cause victim compensation programs to expend roughly twenty billion dollars per year (in 1957 dollars, the closest year for which he had an estimate of the annual cost of crime based upon F.B.I. figures). Professor Mueller concluded that such programs would therefore need to expend approximately "seven percent of the gross national product."⁹ No later budget estimates for victim compensation legislation have approached the daunting heights of Professor Mueller's calculation, but substantial disagreement has occurred regarding the likely costs attached to a national program, and Professor Mueller's concern foreshadowed the central fiscal argument in many of the Congressional debates discussed later in this section. Concerns regarding the appropriateness of the federal government funding state victim compensation programs were also voiced early in our national consideration of this field. In justifying the limitation of his bill only to federal jurisdiction, Senator Yarborough stated, "Although there may be merit in the argument for a nationwide plan, practical considerations urge a small scale experiment. Also, a great deal of valuable experience may be gained from the various plans which may be adopted by the states if the entire field is not effectively preempted by federal action."¹⁰

2.2.2 Major Variations in Federal Bills

Federal victim compensation legislation has varied on a wide range of dimensions, including offense jurisdiction, eligibility criteria, policies regarding benefits, funding mechanisms, and administrative apparatus. Perhaps the most fundamental issue on which the bills vary is that of jurisdiction. Some bills, such as the Yarborough proposal, focus exclusively on federal jurisdiction; others seek to provide federal grants for state victim compensation programs; and still others provide coverage for both federal and state victim compensation mechanisms. The bills that have been most recently introduced in Congress vary greatly on the question of jurisdiction, and the issues involved in this variation will be discussed. Exhibit 2.1 provides a summary of the major variations that have occurred in the federal bills. Other major differences among bills will be noted where relevant.

⁹G. Mueller, note 3 at 219 (emphasis added).

¹⁰R. Yarborough, note 6 at 258.

EXHIBIT 2.1: Major Variations in Federal Victim Compensation Bills

1. Federal Offenses Only

- 1) S.2433 introduced by Sen. Heinz in 1982 and covering "general federal jurisdiction" minus interstate commerce-related offenses
- 2) S.2155 introduced by Sen. Yarborough in 1965 and covering "special federal jurisdiction" and the District of Columbia
- 3) S.1 introduced by Sen. Kennedy in 1977 and covering "general federal jurisdiction"

2. State Grants Only

- 1) H.R.11818 introduced by Rep. Green in 1965

3. State Grants with 100% Federal Reimbursement of State Awards to Specified Federal Crime Victims

- 1) H.R.6448 introduced by Rep. Rodino in 1982 and covering "exclusive federal jurisdiction"

4. Separate State Grant and Federal Programs in a Single Bill

- 1) H.R.6057 introduced by Rep. Russo in 1982 and covering "special federal jurisdiction," the District of Columbia, and Indian lands

5. Virtual Total Support of Federal and State Programs

- 1) S.2856 introduced by Sen. Hartke in 1972

Victim Compensation for Federal Crimes

Bills focusing on the development of victim compensation mechanisms for federal jurisdiction have defined "federal jurisdiction" in several ways. Jones notes that some bills have included the District of Columbia and "special federal jurisdiction" as their area of coverage. Special federal jurisdiction "covers assaultive crimes committed in maritime, aircraft, territorial, extra-territorial and any other areas under the special jurisdiction of the federal government."¹¹ The Yarborough bill had such coverage. In comparison, other bills, such as the Criminal Code Reform Act of 1977, apply to "general federal jurisdiction." This involves a combination of "special federal jurisdiction" and also "assaultive crimes against federal officers or officials, and assaultive crimes committed in connection with a federal offense such as bank robbery or interstate kidnapping." A third variant of federal jurisdiction appears in Representative Rodino's victim compensation bills. Those bills provide for grants to state victim compensation programs and would typically provide support for fifty percent of expenditures for awards to state victims and one hundred percent of expenditures for awards to victims of crimes occurring in "exclusive federal jurisdiction." Such crimes "are committed in a state but can be prosecuted only by the Federal government." Bank robberies, for example, would presumably be excluded from this category, since states have concurrent jurisdiction with the federal government over such offenses. But crimes occurring on territories over which there is "exclusive" federal jurisdiction would be covered. Thomas Hutchison of the House Judiciary Committee staff has noted that the determination of whether a crime has occurred under "exclusive federal jurisdiction" is complex, and it is often difficult to tell whether concurrent or exclusive jurisdiction exists for a given piece of federal land unless one actually reviews the initial deed (or treaty, in the case of Indian lands). The General Services Administration has attempted, unsuccessfully, to develop a directory of lands over which the federal government has "exclusive federal jurisdiction."

A fourth form of federal jurisdiction is included in S. 2433, introduced by Senator Heinz on April 22, 1982. The bill is designed to provide compensation to victims of offenses "involving violence or the threat of violence over which Federal jurisdiction exists." The bill notes that it does not apply to offenses "over which there is Federal jurisdiction only because the offense affects, delays, or obstructs interstate or foreign commerce . . . unless an indictment or information charging such an offense is filed in a court of the United States." The latter clause is included to avoid the filing of cases that are routinely considered to be state or local crimes, e.g., the robbery of a store. Stores are involved in interstate commerce so that a federal crime could conceivably be charged, but such crimes are

¹¹E. Jones, "Victim Compensation Legislation," U.S. Department of Justice Internal Memorandum, 1977.

routinely prosecuted by the local district attorney, not by the U.S. Attorney's Office for the region. Presumably, the Heinz bill covers "general federal jurisdiction" as defined earlier, with the exception of the cases addressed by the interstate commerce caveat noted above.

It is difficult to determine the number of victims that would apply for compensation under any of the preceding definitions of federal jurisdiction (general, special, exclusive, or general minus interstate commerce offenses). The Congressional Budget Office has estimated that the most restrictive definition, i.e., exclusive federal jurisdiction, would result in very low expenditures. They estimated that the number of likely applicants nationwide would range from approximately 52 to 93 per year during the program's first five years of operation, and that awards would be unlikely to exceed \$500,000 per year. Administrative costs, however, were estimated at approximately \$200,000 per year. Knowledge that the number of awards was likely to be small, particularly relative to administrative costs, led the House Judiciary Committee to propose that such awards be processed by state victim compensation programs and reimbursed one-hundred percent by the federal government. Detailed reliable costs for the other forms of federal jurisdiction noted above are not available. Costs would vary greatly depending upon the level of public awareness of the program's availability, eligibility restrictions, and related issues.

The Heinz bill, S. 2433, would establish a Victim Compensation Fund at the U.S. Treasury, and the fund would receive money from fines levied on all persons convicted of federal offenses. The fines would be ten dollars for each misdemeanor and twenty-five dollars for each felony or an additional ten percent surcharge on all federal fines paid to the court, whichever is greater. This fund would be the sole source of money for the victim compensation program. This approach to funding the program would avoid the need to seek funds from general revenues, a difficult task in the present fiscal climate, and would have the added benefit of having offenders contribute to the well-being of federal victims. (The complex issues involved in the use of varying sources of funding are discussed in Chapter Six of this report.)

The Heinz bill would create a United States Victim Compensation Board within the U.S. Department of Justice to administer the act. The Board would be comprised of "not more than three" members to be appointed by the Attorney General. The Board would review claims in light of a variety of statutory requirements and would be empowered to grant awards not to exceed \$50,000.

Representative Russo introduced a bill in April 1982 to establish both a federal victim compensation program and a state grant program, described in the following section. The federal program would be operated by a Victims Compensation Commission to be located in the Department of Justice. The Commission would be made up of three members, "at least one of whom shall

be learned in the law." The Commissioners would be appointed by the President, with the advice and consent of the Senate, and would process claims. Representative Russo's bill has similar jurisdictional coverage to Senator Yarborough's original bill (i.e., the District of Columbia and special federal jurisdiction), but also includes crimes occurring "within the 'Indian country' within the meaning of Section 1151 of Title 18 of the United States Code."

State Grant Proposals

A number of the federal victim compensation bills have proposed to provide grants to assist states fund their programs. The first such proposal was developed by Representative Edith Green in 1965 (H.R. 11818, 89th Congress, 1st Session) shortly after Senator Yarborough introduced his bill. Representative Russo introduced legislation for state grants as part of the 1982 bill noted above (H.R. 6057). The program would have been administered by the Law Enforcement Assistance Administration and would have covered fifty percent of state program costs for payments to victims. The state programs would have been required to have "compensation provisions substantially similar to those" specified for the federal program also described in the act. The Administrator of the Law Enforcement Assistance Administration would have been empowered to determine if the program's policies regarding victim eligibility, benefits, and the like were "substantially similar" to those specified in the federal bill. This stipulation provides some flexibility in program structures across the nation and avoids the federal government dictating program policies in detail.

The proportion of federal support for state programs has varied in the bills that have been proposed. Early bills developed by McClellan and by Mansfield specified the federal share to be 75 percent, while a 1972 bill sponsored by Vance Hartke would have raised the federal share to 90 percent. The Rodino bills have typically indicated that the federal government would pay 50 percent of state program costs for payments to victims. In 1977, an amendment to reduce the 50 percent federal share to 25 percent was adopted during House floor debate of the Rodino bill, and the Senate also adopted a 25 percent share the following year. As noted earlier, that bill was subsequently rejected by the House following a House-Senate conference. A number of other modifications to the bill were also made during the 1978 conference. The House bill had called for a maximum award per claim of \$25,000, while the Senate had set the maximum at \$50,000. The conference committee compromised at \$35,000. The conference committee raised the three-year total authorization for the program from \$90 million to \$120 million and deleted a "Son of Sam" provision added earlier to the House bill through an amendment offered by Representative Caldwell Butler. The amendment provided a means of insuring that royalties for books written by criminals about their crimes are added to the victim compensation fund. Due to questions about its

constitutionality, the Senate had asked that the amendment be deleted and that its appropriateness be studied further.

The Russo bill to support state programs through grants proposes a novel source of funds for development of a "Crime Victims Compensation Trust Fund." The bill would amend the Internal Revenue Code of 1954 "to provide that the excise tax on handguns will be transferred" to the victims trust fund.

Combined State and Federal Victim Compensation

The Rodino bills, as noted, have been designed to provide support for both state and federal victim compensation. State programs would receive federal support for 50 percent of their costs for awards to victims and would be reimbursed 100 percent for costs of awards to victims of crimes that occurred under "exclusive" federal jurisdiction. Earlier bills sponsored by Mansfield and by Hartke had provisions to provide both state grants and support for crimes covered by "general" federal jurisdiction. The Russo bill (H.R. 6057) proposed within a single piece of legislation grants for state programs and a centralized Victims Compensation Commission for federal crimes. This approach requires the addition of administrative expenses avoided in the Rodino bill by having the states handle the processing of "exclusive" federal jurisdiction cases on a 100 percent reimbursement basis. The Russo bill proposes to handle a broader range of federal cases than the Rodino bill, including those arising under "special federal jurisdiction," and presumably requires centralized administrative mechanisms for that purpose. It is unclear how any states could be asked to process some of the cases covered by Russo's bill, such as those crimes occurring outside U.S. territory in planes and on ships. The Rodino bill presumably will not add an undue burden to local programs, given the limited number of cases arising under exclusive federal jurisdiction.

In short, virtually every combination of federal legislation conceivable has been proposed for the support of state and federal victim compensation programs, including bills that (1) fund only federal offenses (with varying definitions of federal jurisdiction), (2) fund only state programs through grants, (3) fund state programs through grants plus provide 100 percent reimbursement to the programs for awards to federal offense victims, (4) establish separate state grant and federal victim compensation mechanisms within a single piece of legislation, and (5) provide virtually total support to both state and federal programs (the Hartke bill noted above), essentially creating a nationwide, federally-funded system. Interestingly, the three bills introduced to the Congress in 1982 represent three different approaches, with the Heinz bill being of the first type listed above, the Rodino bill being of the third type, and the Russo bill taking the fourth approach listed. The bills vary on numerous dimensions other than

jurisdiction, but jurisdiction is particularly important, due to its cost implications and underlying philosophic bases.

2.2.3 Major Issues Arising in Legislative Debates

A wide variety of arguments has been advanced in favor of victim compensation legislation, including the need for humane aid to persons who have suffered unjustly, the obligation of society to compensate persons it has failed to protect, the need to increase the willingness of victims to report crimes and participate in justice system processing of their cases, responsiveness to strong popular support for the concept as evidenced in public opinion polls, and the like. The major rationales for victim compensation programs have been reviewed in Chapter One of this report. As was noted earlier, from a humanistic standpoint, victim compensation appears to be a particularly desirable service.

Victim compensation legislation has had numerous highly committed and influential supporters, but has also had its share of equally committed and influential opponents. The major arguments offered in opposition to federal victim compensation legislation are summarized in this section of the report. Some apply only to bills advocating state grant programs, while others apply to both grant programs and programs to provide victim compensation for only federal offenses. The different targets of critiques will be noted where appropriate. The major critiques of the legislative efforts include: (1) cost concerns; (2) the view that there is no governmental role for victim compensation; (3) the view that there is no federal role for state grant programs; and (4) the notion that victim compensation programs will reduce our efforts at crime prevention. Each critique will be discussed in turn.

Cost Concerns

The most important single issue that has been debated with regard to federal victim compensation legislation is the concern with program costs. These concerns arose simultaneously with the first proposals for such programs in the United States, and in 1965 Professor Mueller suggested that the programs might expand to require approximately seven percent of the gross national product. No program has provided the services envisioned by Professor Mueller--total compensation for property losses as well as personal injuries--but we have gained much information since 1965 regarding the likely costs of victim compensation programs.

One major source of information is the experience of existing programs. The 36 existing programs operate on combined budgets of approximately 44 million

dollars. These costs will rise somewhat as the newly developed programs become fully operational. The programs serve the states that account for the overwhelming majority of crime in America (including most states with large urban areas). The addition of the remaining states that do not have programs will be expected to contribute proportionately fewer claims and have lower expenses than those already having programs.

The existing programs serve only a small proportion of persons eligible for victim compensation, however, and numerous efforts have been made to estimate the costs of victim compensation nationwide if all eligible victims were awarded compensation for their losses. Garofalo and McDermott (1979) conducted a very detailed analysis of likely national costs based in part on data collected from the National Crime Survey.¹² The research includes estimates of the number of eligible victimizations, net medical expenses likely to require payment, and the value of work days lost. Garofalo and McDermott developed twelve different victim compensation program models based upon varying levels of restrictiveness in program eligibility criteria and policies. The total national costs of the program models range from \$276 million per year for the least restrictive model (that would serve approximately 589,000 victims nationwide) to \$194 million per year for the most restrictive model (that would serve approximately 157,000 victims nationwide). Earlier, Garofalo and Sutton (1977) had used different assumptions and estimation procedures to calculate the costs of the least restrictive program approach in 1977 and arrived at an estimate of \$261 million, increasing one's confidence in the 1979 figures. Given these estimates, a bill providing a 25 percent share of state program expenses would cost the federal government approximately \$48.5 million per year for the most restrictive eligibility criteria and \$69 million per year for the least restrictive criteria, assuming every eligible case received an award.

The Congressional Budget Office conducted a cost analysis of the Rodino bill in 1979 to estimate actual expenses for a federal grant program that would provide 25 percent support for state program award expenses. The Office computed that actual outlays for the federal government in the first five years of the program's operation would be \$8, 13, 16, 17 and 18 million respectively. The Congressional Budget Office assumed that the federal program would increase the number of programs nationwide and the proportion of victims applying for grants. The bill included authorization levels for the first three years of operation of the program at \$15, 25 and 35 million respectively--levels that considerably outstrip the projected actual outlays.

The actual outlays anticipated for the 1979 proposed program over the first three years of operation would consequently be \$37 million (8+13+16). In

¹²J. Garafalo and M. McDermott, "National Victim Compensation: Its Cost and Coverage," 1 Law and Policy Quarterly 439 (1979).

the preceding Congress, the Congressional Budget Office had estimated that the actual federal costs of operating a program with a 50 percent federal share of state costs for the first three years of operation would be \$22, 29, and 35 million respectively for a total of \$86 million; since the federal share was reduced to 25 percent due to an amendment during the floor debate, actual anticipated outlays for the program using the Congressional Budget Office's estimates for the 1977 bill would need to be cut in half to \$43 million. Despite these estimates and the reduced federal share (from 50% to 25%), the 1978 conference committee increased rather than decreased the bill's authorization level for the first three years of operation to \$30, 40 and 50 million per year, respectively, for a total of \$120 million. The authorization level was thus three times larger than the anticipated costs over the three-year period. During the House floor debate on the conference report the costs of the bill were consistently discussed by opponents in terms of the large \$120 million authorization, a fact that did not assist proponents of the legislation.

Given current total state expenditures of approximately \$44 million per year, the immediate federal costs for a 25 percent federal share would be approximately \$11 million per year, with increases for additional programs and higher proportions of victims filing, requiring commensurate increases in estimated costs per year. The conference committee authorization levels assume that state costs could be as high as \$120 million in the first year of federal program operation (triple current expenses), \$160 million in the second year of operation (four times current expenses), and \$200 million in the third year of operation (five times current expenses). The states would need to increase their outlays from \$44 million to \$150 million in three years in order to obtain the potential \$50 million in federal assistance. It is difficult to envision the states raising their program budgets so substantially in the foreseeable future, much less in the next three years, given the highly limited availability of general revenue funds and the inherent difficulties in raising extremely large sums of money with fines and penalties mechanisms. These practical constraints on the possible federal costs for victim compensation assistance did not play a prominent role in the House floor debate on the conference report.

In addition to the Congressional Budget Office estimates, several other cost calculations were available to the Congress during the critical debate on victim compensation legislation in 1978. Edward Jones, a staff member of the Justice Department's Office for Improvements in the Administration of Justice, suggested that the victim compensation legislation would cost approximately \$22.2 million for the first year of operation with a 50 percent federal share. That estimate would need to be halved to adjust for the 25 percent federal share adopted in the legislation. In the tradition of Professor Mueller, Professor Roger Meiners testified to the House Judiciary Committee that the likely cost of victim compensation nationwide would be \$1 billion after implementation of a federal program providing a 50 percent share of program expenses. The federal expense would, therefore, be \$500 million per year.

Professor Meiners' estimate assumes that 100,000 victims per year would receive average awards of \$4,000 each for a total cost of \$400 million. This figure was increased by 10 percent for administrative costs to \$440 million, and then raised to \$500 million to account for increases in crime rates and hospitalization costs. The \$500 million figure was then doubled to account for a "subsidy effect" for a total of \$1 billion. Meiners explains the "subsidy effect" as follows: "Once the impact of a 50 percent subsidy is taken into account, the states would be found to engage in more compensation than they would have without federal assistance. Assuming a constant level of demand on the part of the legislators for compensation, the program would double in size, which would mean national compensation expenditures of about \$1 billion annually, of which the federal government would be responsible for about \$500 million." This estimate would require the states to increase their expenses from the present level of \$44 million per year to \$500 million per year, an over tenfold increase requiring the states to raise an additional \$456 million for victim compensation (partly to cover the high level of claims projected by Meiners and partly to cover the subsidy effect). The actual mechanisms underlying these projections are difficult to envision.

Edward Jones of the Justice Department conducted an analysis of Meiners' estimates and concluded that Meiners (1) includes unreported crimes in his estimate which would not be covered by existing programs, (2) estimates that the proportion of victims receiving awards would be twice as high as is common, (3) estimates that the average award will be considerably larger than normal, and (4) then doubles all estimates based upon the "subsidy effect." It is unclear whether the effect requires that the crime rate double to accommodate it or that the proportion of persons receiving awards will double, otherwise states will seek to double their expenditures in vain. The assumption of a "constant level of demand" on the part of legislators for victim compensation appears particularly doubtful given the many competing demands on the state treasuries. Presumably, the reduction of the federal share to 25 percent would have a striking impact on the subsidy effect if it were to occur to any degree at all. The Meiners' projection differs by many orders of magnitude from any of the other estimates and appears to rest on a pyramid of highly dubious assumptions.

The preceding discussion illustrates the difficulty of developing reliable estimates of the costs of a federal victim compensation grant program. The Congressional Budget Office figures appear to be quite reasonable, however, in light of program experience. Opponents of the legislation during the House floor debate on the conference report argued strongly that the program would result in tremendously high costs. The strong level of concern regarding the bill's potential costs is illustrated by Representative Wiggins' comment that, "We are already up to \$120 million in authorization for three years, and I predict with great confidence that this will become the food stamp program of the Department of Justice; that it will become the Snail Darter that brings the Department of Justice to a standstill."

The Question of a Governmental Role

Nine Congressmen joined in a dissenting statement attached to the House Judiciary Committee report on the 1977 Rodino bill. In the report, they asserted among other points that government has no necessary role in the compensation of victims. They noted that "government is not per se the insurer of each citizen's physical integrity." They argued that victims of accidents deserve government support as much as victims of crimes, and that compensation only to crime victims is "illogical, arbitrary, and unfair." Persons disagreeing with this viewpoint argue that government is continually selecting out various classes of victims for aid (e.g., victims of natural disasters), and furthermore assert that the argument has a hollow ring, since the majority of the states have asserted that there is such a governmental role by adopting victim compensation programs.

The Question of a Federal Role

The persons joining in the dissenting opinion on the House report assert that there is no clear federal role for supporting state victim compensation programs because "the federal government has no responsibility for the enforcement of a state's criminal laws." The issue of the federal role was raised repeatedly in Congressional hearings and during floor debates. Representative Drinan noted in floor debate that he felt there is a federal role for victim compensation and that he could not distinguish between it and many other federal functions. He noted, "Why, for example, is it a federal function to furnish money for highway construction but not for crime victim programs? Indeed, highways built largely with federal funds have, in some instances, provided a ready avenue of escape from crimes committed in one state to refuge in another." Representative Hyde argued that he supported the victim compensation legislation due to the fact that "the federal government provides assistance to purely state criminals, not only by way of constitutional protection of their trial rights, but also in the form of positive action aimed at improving their housing and facilitating their rehabilitation." He concluded, "I feel that criminal victims deserve as much."

The Impact of Victim Compensation on Crime Prevention

A number of observers have argued that victim compensation programs may have adverse effects by leading people to accept crime as a given and not seeking to work to prevent it. The argument suggests that individuals will not be as alert to protect themselves from crime and also that government will feel less pressure to work for crime prevention. The reduction in the number of victims complaining about their plight will exacerbate this problem, according to some persons supporting the argument.

Representative Ichord combined a number of the major arguments in opposition to victim compensation legislation in his comments during the House floor debate on the bill in September 1977 and effectively summarized the opposition. He stated, "At the risk of sounding hard-hearted, Mr. Chairman, I just cannot believe that this absurd piece of legislation on the Federal level is brought to us for a vote. The Government's duty is to promote lawfulness, pursue and punish criminals and prevent crime. Instead H.R. 7010 proposes more bureaucracy, more strains on State budgets as well as our own budget, and an interminable compensation program whose costs we do not know."

2.2.4 Options for the Development of Federal Victim Compensation Legislation

Federal legislation dealing with victim compensation can have a wide variety of goals. Bills for federal jurisdiction programs can aim to serve the citizens covered by their eligibility criteria and also provide a model program for state consideration and replication. Bills designed to support state grants can aim to aid states currently operating programs by helping them share the financial burden, can stimulate the development of programs in states lacking programs, and can encourage states to adopt certain provisions considered desirable by the federal government. Such provisions could include improved citizen public awareness programs, more flexible eligibility requirements, enhanced links between victim compensation programs and victim/witness assistance programs and the like. The use of "strings attached" to the federal victim compensation to encourage adoption of federally favored program elements is problematic, however, since such strings can inhibit experimentation with programs across the nation. Senator Wallop offered an amendment to the Senate bill in 1978 that required programs to be in "substantial compliance" with the ten criteria for program components and policies included in the bill. Such an approach leaves the states flexibility to experiment, while urging the adoption of specific program elements viewed as desirable.

Once the major goals of federal legislation are decided upon, policymakers must determine the best way to pursue passage of the legislation. If a program addressing solely federal jurisdiction is desired, then direct actions to support passage should be taken. If proponents would like to develop programs serving both federal and state programs, then decisions are required about whether the combined package should be pursued in one step, or whether a separate federal jurisdiction program should be promoted first with a state grant program proposal to follow later. Federal jurisdiction legislation faces fewer of the fundamental objections noted above (high costs, no federal role for state grants) and might be more readily enacted into law than a state grant program. It is possible, of course, that passage of such a bill might actually reduce the breadth of support for state grants in that some legislators may endorse a bill for joint federal and state victim compensation program support because they are primarily interested in the passage of a federal jurisdiction program.

The seventeen-year effort to develop federal victim compensation legislation indicates that the task of passing such a bill is far from easy. Some of the most talented legislative draftsmen of a generation have been involved with these bills at one time or another. Current proponents of such legislation will need to address carefully the arguments of critics of the bills (particularly the divergent funding projections), develop widespread support for the concept of victim compensation, and clearly demonstrate the wisdom of a federal role in compensating victims. Alternative sources of funding other than general revenues will need to be explored, including fines and penalties (as in the case of the Heinz bill) and perhaps funding from forfeitures of property by persons convicted of federal crimes.

CHAPTER 3

PROGRAM STRUCTURE AND ORGANIZATION

The structure and organization of victim compensation programs determine, in part, the complexity and formality of the procedural requirements victims confront in applying for compensation. These requirements, in turn, are likely to affect victims' perception of the fairness of the process and their ultimate satisfaction with its results. In addition, the different forms of program structure and organization may result in varying levels of administrative efficiency and have differing cost implications.

All victim compensation programs must perform three major functions:

- 1) General administration--including rule-making, budget monitoring, data maintenance and reporting, staff training and supervision, public education, and maintaining contacts with the necessary law enforcement agencies and service providers in the community;
- 2) Claims investigation--including gathering relevant documentation, checking collateral sources and verifying the validity of claims;
- 3) Decision-making--including determining the eligibility of an applicant, assessing contributory misconduct, making award/denial decisions and determining the level of benefit to be paid.

A wide variety of structures has been established in existing programs for the performance of these functions.

This chapter reviews the major variations in victim compensation program structure and organization and addresses such topics as differences in levels of project centralization, program sponsorship, staff organization, and related matters. In each case, the critical questions of victim impact and the cost efficiency of a particular structure are raised.

3.1 The Issue of Centralization vs Decentralization of Services

The overwhelming majority of victim compensation programs are organized and funded on a statewide basis with a centralized administrative, investigative, and decision-making component. In some cases, the investigative function may be conducted in branch offices or through arrangements with other agencies, but the information is then relayed to the central office and claims are determined by a central authority. The exception is court-based programs that adjudicate claims in general trial courts, which typically have little or no centralization of function in a state agency. Such programs are discussed in Section 3.2.

Only one state has developed a totally decentralized program. Legislation became effective in Colorado on July 1, 1982 which establishes separate victim compensation boards in each of the state's judicial districts, to be administered by the local district attorneys' offices. Colorado policymakers argue that there are several potential advantages to this regional structure. First, they expect that victims will be served more quickly, since verification and investigation can presumably be accomplished with greater speed in the local jurisdiction. Second, proponents argue that victims will be served more fully, since compensation can be coordinated with the provision of a wide range of victim assistance services that can be made available on a local basis. Third, supporters of decentralization believe the approach will provide a more equitable apportionment of funding responsibility across the various regions of a state, especially since fines and penalties on criminal convictions are the source of funding in the new Colorado system. The rationale for such a structure is that it eliminates the possibility of districts making funding contributions disproportionate to their population size and crime rates, relative to other districts in the state.

Concern with uneven contributions by counties to a statewide program resulted in a similar, but unsuccessful, proposal for a decentralized program in Florida. In Florida the largest proportion of benefits was being paid to residents of Dade County, which is the largest county in the state, including the high-crime city of Miami. However, the courts in counties one-third the size of Dade were collecting three times as many fines in support of the program. This situation had arisen because several judges in Dade County were not assessing the mandated fines on convicted criminals in their courts. As one might suspect, the proposal for decentralization came from a legislator from one of the smaller counties that was shouldering a disproportionate share of the burden of funding the statewide program.

A decentralized structure for program administration and funding can pose a variety of problems, however. For example, counties with low crime rates, low conviction rates and/or relatively poor residents might not be able to generate enough funds to compensate even those few crime victims in their

locale, victims who would be compensated in any other jurisdiction. In addition, the potential for inconsistency across the state in deciding claims would seem to be great, since that process involves considerable discretion. An even more convincing argument against decentralization is the cost of duplicating the structures to perform the three main functions and the facilities to support them in every county or judicial district in a state. It is too soon, however, to pass judgment on the relative advantages and disadvantages of a decentralized program. It may be that in certain states, as seems to have been the case in Colorado, a decentralized, regionally-based program is the only politically feasible alternative to no program at all. A centralized program was initially proposed and rejected in Colorado.

The remainder of this chapter reviews forms of program sponsorship and affiliation, general staff organization issues, and options for structuring program decision-making authority. General descriptive information regarding the 33 programs actually processing claims as of this writing, including the citations for the programs' statutory authority and their effective dates, can be found in Appendix A, Table I: "Program Structure and Organization."

3.2 Forms of Sponsorship

A basic decision to be made in establishing a victim compensation program is where to place it within the existing state bureaucracy. In part, this decision tends to be based on the underlying rationale for the program. Varying rationales for victim compensation programs were discussed in Chapter One, and include the following:

- 1) a torts theory of the obligation of the state to protect its citizens and to compensate them when it fails to do so;
- 2) a welfare theory of the humanitarian duty of a civilized nation to make reparations to victimized citizens;
- 3) an insurance theory of taxpayers as consumers in a shared risk agreement; or
- 4) a theory of compensation as a mechanism of crime prevention and criminal justice system improvement.¹

Subscription to one of these theories may influence policymakers to place the program respectively in the courts, a social services agency, a worker's compensation division, or a department of public safety. However, many

¹Deborah M. Carrow, Crime Victim Compensation: Program Model (Washington, D.C.: U.S. Government Printing Office, 1980).

additional factors influence program placement. For example, the availability of relevant mechanisms in existing agencies (such as the investigative and claims payment mechanisms in a worker's compensation agency or informal hearing processes established in agencies handling claims against the state) may determine the program's affiliation. A particular sponsoring agency may be chosen because it provides the program with access to critical information, such as police and prosecution reports, more easily obtainable through affiliation with a department of public safety. The decision ultimately will be determined to some extent by political considerations, such as the willingness of a particular agency to incorporate responsibility for victim compensation into its existing structure, or the need to associate the new program with a well-respected agency for purposes of establishing credibility.

Exhibit 3.1 on the following page presents a summary of the various categories of sponsoring agencies. Almost a quarter of the existing programs are housed in a worker's compensation or industrial safety board. Another twenty percent are affiliated with the courts or judiciary. Remaining programs are divided among departments of public safety or protection, criminal justice administration departments, social services or welfare agencies, departments of management or budget, governor's or executive offices and "other" affiliations. Only one program presently in operation, that in New Mexico, reports that it is not under the auspices of an existing element of the state bureaucracy. The following sections briefly outline the advantages and disadvantages associated with each of the following major forms of sponsorship: 1) worker's compensation board affiliation; 2) court affiliation; and 3) department of public safety affiliation. Later sections provide additional information on the pros and cons of the different forms of sponsorship, and Carrow (1980) provides a very useful discussion of these issues.

Worker's Compensation Board Affiliation

There is an intuitive appeal for many policymakers to the placement of a victim compensation program under the auspices of an existing worker's compensation department. Such agencies typically are equipped with staff experienced in the investigation of insurance claims and boards or administrators that are skilled in the procedures for deciding such claims. More importantly, worker's compensation boards already have established schedules of benefits for payment of claims involving medical expenses and loss of earnings. In addition, many departments have regional offices or contacts that would facilitate victims' access to the program. Some potential drawbacks of affiliation with a worker's compensation board include the formal, often legalistic, nature of the decision-making process, the adversarial orientation of the investigators, and the bureaucratic rigidity of the benefit payment schedules. Characteristics of programs with worker's compensation affiliations vary widely, especially with regard to the organization of staff responsible for victim claims. Whether staff are separate or integrated into

EXHIBIT 3.1: Program Sponsorship and Affiliation

CATEGORY OF SPONSORING AGENCY	STATES	(TOTAL N = 33) N	PER-CENT
Worker's Compensation or Industrial Safety Board	Florida	8	24
	Indiana		
	Montana		
	North Dakota		
Courts/Judiciary	Delaware ^a	7	21
	Illinois ^b		
	Massachusetts ^b		
	Ohio ^b		
Department of Public Safety or Protection	Alaska	5	15
	Kentucky		
	Maryland ^a		
	Minnesota ^a		
	New Jersey ^a		
Criminal Justice Administration/ Department of Justice	Kansas ^a	4	12
	Nebraska		
	Oklahoma ^e		
	Wisconsin		
Social Services or Welfare Agency	Hawaii	2	6
	Virgin Islands		
Department of Management or Budget	Connecticut	2	6
	Michigan ^a		
Governor's Executive Offices	New York ^a	2	6
	Pennsylvania		
Other	Nevada (State Bd. of Examiners)	2	6
	California ^e (State Bd. of Control)		
No Affiliation	New Mexico ^a	1	3

^a Functionally independent (N = 8; 24%).

^b Multiple affiliations -- Courts (N = 4; 12%).

^c Multiple affiliations -- Courts and Administrative agency; Attorney General provides investigation (N = 1; 3%).

^d Multiple affiliations -- Attorney General provides investigation and Court of Claims makes decisions; but legislature must approve all claims before payment (N = 1; 3%).

^e Some investigative component provided by victim/witness assistance programs (N = 2; 6%).

^{b,c,d,e} Total number of programs with multiple agency affiliations is 6, or 18% of total programs.

the parent agency tends to be more significant than the fact of affiliation with a worker's compensation department in determining the structures of the program which are relevant to the impact on victims and the cost efficiency of its procedures.

Court Affiliation

The second most common form of sponsorship, and the most consistently criticized, is the judicial model. Concern centers on two issues: 1) the appropriateness of quasi-adversarial court proceedings in dealing with innocent victims of crime and 2) the impact of decentralizing the three essential program functions (administration, investigation, and decision-making) on program effectiveness, efficiency and accountability. It is important to note, however, that several very different types of court affiliations exist:

- 1) Administrative Office of the State Courts. The Delaware program is affiliated with this office for budgetary purposes only, and is essentially a centralized, statewide, independent program. The problems discussed herein are not relevant to such a program.

- 2) Court of Claims. Programs in Illinois, Ohio and West Virginia are affiliated with this court of specialized jurisdiction, for administrative and decision-making purposes. In each of these programs investigation is provided by the Attorney General's Office and all original determinations are made without a hearing. Thus, courts of claims programs have some centralization of authority, but also are characterized by dispersion of program functions and staff among several agencies. Some of the problems discussed in this section occur in these specialized court programs, but they do not share all of the problems.

- 3) General Trial Court. The most heavily criticized type of court-based program is that using quasi-adversarial procedures, whereby all claims are adjudicated in general trial court. The term "quasi-adversarial" is used to note that the programs employ the trappings of adversarial procedures, though the extent to which the state opposes the victim in such proceedings can vary greatly in different courts. This type of program exists in Massachusetts, Rhode Island and Tennessee. In Massachusetts, no agency has administrative responsibility for the program, investigation is provided by the Attorney General's Office and claims are decided in District Court hearings. Rhode Island has no centralized administrative function, no apparent investigation is conducted, and claims are adjudicated in Superior Court, with the Attorney General representing the state's interest. In Tennessee, the Board of Claims has limited administrative authority over the program, and investigation is conducted by the Attorney General, who also represents

the state's interest in Circuit Court hearings to determine claims. Concerns about court-based programs are aimed largely at this type of quasi-adversarial judicial model.

Proponents of the court model argue that the courts are well-suited for investigations and determinations based on fact, that the courts can offer the types of structures and skills necessary for deciding claims and maintaining proper records, and that they have a tradition of protecting the rights of the petitioner.² However, critics suggest that the courts are often less than satisfactorily sensitive to the problems experienced by victims, and a staff member in one Attorney General's office candidly indicated that the office did not consider itself an advocate of victims' interests. Furthermore, in the course of gathering data for this research study, it was typically the court-based programs that were unable to provide even the most rudimentary cost and caseload information, raising questions about the accountability of such programs. Opponents of the court model suggest that the formality of the procedures and surroundings in court, especially general trial court, are often prohibitively intimidating. Other drawbacks of court-based systems include decentralization of responsibility for the three functions of a victim compensation program, sometimes the total lack of any administrative component, and the absence of consistency in decisions on adjudicated claims. Furthermore, decentralization of functions and the standard backlogs of cases in our nation's courts usually result in considerable delay in deciding claims and paying benefits, a very serious outcome from the perspective of the crime victim who has applied for compensation.

Thus, there is apparent cause for concern that some court-based programs, especially those adjudicating claims in general trial court, are poorly administered, provide significant disincentives to application by potential claimants, and cause undue delay in payments of benefits to eligible victims. However, an individual instrumental in the establishment of the court-based program in Tennessee stated in an interview that the political climate in the legislature was such that a judicial program was the only model that would have been approved in that state. He went on to say that, though the program was not perfect, it was better than nothing. This raises a question that has yet to be satisfactorily researched, that is, whether in fact "anything is better than nothing" with regard to victim compensation programs, or whether the drawbacks of some program structures and procedures can potentially alienate victims to such an extent that on balance they outweigh any benefits that might accrue.

²Ibid., pp. 76-81.

Department of Public Safety Affiliation

The decision to house a victim compensation program in a department of public safety may be the result, in some instances, of policymakers' philosophical orientation, indicating a belief that the state has some obligation to protect its citizens from harm and that compensation of crime victims is an extension of that obligation. On a more practical level, it may be perceived that affiliation with such an agency will provide the compensation program with valuable access to other elements of the criminal justice system, enabling it to gather information necessary for the validation of a claim with greater speed and accuracy. Potential drawbacks to affiliation with a department of public safety are similar to those which might be encountered in any administrative agency, summarized in Hofrichter's warning that some agencies "may be hampered by principles, procedures and work habits, ill-suited to the requirements of victim compensation."³

Previous attempts to distinguish between types of program structure and organization have centered on the distinction between affiliation with "new" and "existing" agencies. However, the vast majority of operating programs are affiliated in some fashion with an existing governmental agency and in only one case has a totally new agency been created within the state bureaucracy. A more useful way of making this distinction may be to measure the level of autonomy of the personnel responsible, within any given structure, for the administrative, investigative and decision-making functions of a crime victim compensation program. This distinction and the related issue of dispersion of responsibility for major program functions through multiple agencies, identified in the preceding discussion of court-based programs, are examined in the following sections.

3.3 Staff Organization

The question of how program staff responsible for handling claims are organized is central to any examination of the structure of victim compensation programs. The following discussion outlines the relative advantages and disadvantages of programs where claims are handled by a staff separate from those handling other responsibilities of the sponsoring agency, and programs where claims are handled by staff integrated into the overall functioning of

³R. Hofrichter, Victim Compensation and the Elderly: Policy and Administrative Issues, published by the Select Committee on Aging, U.S. House of Representatives, 96th Congress, 1st Session (Washington, D.C.: U.S. Government Printing Office, January 1980), p. 13.

the agency. In some measure, staff organization will be determined by the anticipated number of claims, i.e., a program expecting a large number of claims might be more inclined to establish a separate core staff, whereas a program expecting a smaller workload might lean towards an integrated staff.

Variations in types of sponsorship do not determine whether a separate staff or integrated staff approach is used. For instance, there are examples of each type of staff organization within the programs sponsored by worker's compensation agencies. In Florida, there is a core staff of 15 individuals responsible solely for handling victim compensation claims. In Montana, on the other hand, victim compensation is just one of the many responsibilities of an integrated worker's compensation staff. The Texas program, affiliated with the industrial accident board, is a unique example of a dispersed program staff, with administrative and decision-making authority housed in an administrative agency and investigative responsibility lodged with the attorney general's office.

Still, certain relationships are apparent between the type of agency and the level of staff autonomy. For example, three of the five programs affiliated with a department of public safety report that they are "functionally independent," or that the staff responsible for all three functions of administration, investigation and decision-making for victim compensation are separated from other public safety staff and responsibilities. This represents the extreme on a continuum of levels of possible independence. Also, three-quarters of the programs with multiple affiliations and, thus, dispersion of program functions, are court-based programs. For the purpose of this discussion, some sharing of administrative responsibility with the sponsoring agency is less significant than the lack of independence of the investigative and, especially, the decision-making functions of program staff.

3.3.1 Separate Staff

The most significant advantage to creating a core staff solely responsible for handling victim compensation claims from intake to disposition is that it allows for specialization and for the development of expertise in the field. This, in turn, can provide for greater efficiency in claims processing and increased effectiveness in assisting crime victims. In programs with a sufficient number of employees and a high caseload, differentiating between information gatherers and analysts responsible for deciding claims, as is done in the California program, is reported to increase the efficiency of claims processing and to provide necessary objectivity in determining eligibility and benefit levels. The greater the independence of the program within its sponsoring agency, the more significant will be the additional advantages of administrative flexibility, uniformity, centralized control of

the awarding of payments, and informality of procedures.⁴ Also, a core staff provides for greater accountability. As Carrow explains, "Program expenditures may be clearly determined; responsibility for program success is clearly vested in a specific set of individuals; and reporting responsibilities can be easily defined."⁵

One of the major potential disadvantages of creating a separate staff for victim compensation is that very often it requires hiring additional employees, which has obvious cost implications. Furthermore, there may be resistance to the creation of an additional bureaucracy within a bureaucracy. Finally, if new staff are hired (and even if they are not) there will probably be a start-up period required during which working relationships are developed with law enforcement agencies and service providers with whom coordination is necessary for the smooth operation of the victim compensation program.

3.3.2 Integrated Staff

A significant advantage resulting from integrating victim compensation functions into an existing structure is the potential for cost containment by using existing personnel, drawing on experience with similar issues, and employing established procedures. There may be less external resistance to the program because it does not create an additional bureaucracy. These factors, combined with the potential ability to tap existing networks of contacts within the criminal justice system and/or service sectors, may provide for greater efficiency at an earlier stage in program operations. However, it is also possible that there will be greater internal resistance to establishment of the program from staff who are disgruntled with the increased workload. In some instances, it might be necessary to hire additional staff, which could offset the savings realized by integrating the staff's responsibilities. Further, the existence of any such savings is hard to assess, because of the difficulty of accounting reliably for the amount of time spent on victim compensation, where it is only one of many responsibilities. More importantly, victim compensation may be perceived as a low priority relative to other duties, resulting in inefficient claims processing and poor quality of services provided to victims. Thus, except in cases where caseload is too small to warrant a full-time core staff, there are many disadvantages to using existing personnel to serve as part-time staff of a victim compensation program.

⁴J. Brooks, "Compensating Victims of Crime: The Recommendations of Program Administrators," 7 Law and Society Review (Spring 1973) at 448. Cited in Carrow, note 1 at 70.

⁵Carrow, note 1 at 71.

3.3.3 Dispersed Staff

Nearly twenty percent of the existing victim compensation programs are affiliated with separate agencies or entities for the provision of one or more of the major program functions. For the most part, as noted earlier, this sharing of staff from more than one agency occurs in court-affiliated programs, where investigation is provided by the attorney general's or district attorney's office, while administration and decision-making are the responsibility of the court of claims or a general trial court. Exceptions to this rule include the Texas program in which the attorney general performs the investigative function for the industrial safety board, and the West Virginia program in which no claim decision is final until approved by the state legislature. In a few programs, e.g., California and Oklahoma, some claims verification is provided by local victim/witness assistance programs.⁶

The obvious rationale for dispersing the administrative, investigative, and decision-making functions is to provide for greater efficiency through using the expertise of other actors within the system, and to develop an inexpensive program. There is some evidence that use of outside personnel to conduct investigation and claims verification does increase the speed with which program personnel can process and determine claims. However, the experiences of programs in Tennessee and Illinois indicate that dispersion of functions and staff often creates overlapping authority, causes confusion as to the roles and responsibilities of the various agencies and can result in delays due to general difficulties in communication. Delays are particularly prevalent in West Virginia, where the legislature and the Court of Claims share decision-making authority.

Because many of the programs with multiple affiliations and dispersed functions are court-based, it is difficult to determine which element of their organizational structure causes the problems identified above. Clearly, caution should be exercised in implementing a program structure of multiple affiliations to avoid any confusion over where authority for a particular function lies and to reduce the likelihood of substantial delays in processing claims.

3.4 Organization of Decision-Making Process

The decision-making function of victim compensation programs is perhaps the most important element of all programs. There are essentially two

⁶The advantages of coordination between victim compensation and other victim services are examined in greater detail in Chapter Seven.

options for organizing the operation of claim decision-making: 1) vesting the authority in a board or commission or 2) making it the responsibility of the program administrator.

More than three-quarters of the existing programs use a board or commission for deciding claims. The number of commissioners typically ranges from three to five. The most significant advantage of this organizational scheme is the possibility of providing a well-informed and well-reasoned determination of claims through the judgments of individuals from various areas of expertise. Members could be chosen from legal, medical, insurance and/or victim advocate backgrounds. In some jurisdictions a single commissioner is assigned claims and makes the final determination, while in others all determinations are made by the full board. Full-board review is more time-consuming, but may be fairer because it represents a consensus decision. On the other hand, single-commissioner review expedites the processing of claims in jurisdictions with a large caseload, and is advantageous because it provides a natural avenue for appeals of contested cases to the full board (minus the member who made the initial decision).

Caution must be exercised in establishing a board or commission to guard against potential abuses of the position. In most cases, members are appointed by the governor and care should be taken to insure that appointees will be concerned and conscientious in the fulfillment of their duties. Though most programs pay commissioners only per diems and expenses, in programs in which a salary is paid the potential for the position to be used as a political favor is great and such an outcome should be carefully avoided.

Determination of the eligibility of claimants and the level of benefits to be awarded is made by the program administrator in less than one-quarter of all victim compensation programs. This particular option may be somewhat less costly than establishment of a commission and may provide for a more speedy processing of claims in jurisdictions with caseloads small enough to be manageable by one person.

The experience of one program provides an interesting case study with regard to the advantages and disadvantages of each of these structures. The program was originally organized on the commission model. It is reported that the three commissioners were political appointees with very separate agendas and competing aims; concern for the plight of victims of violent crimes was evidently not their foremost preoccupation. Personality conflicts and power struggles among the three commissioners escalated to the point where it is

⁷See Appendix A, Table I: "Program Structures and Organization" for a breakdown of the states employing each of these decision-making options.

reported (somewhat apocryphally) that on a vote regarding whether or not to buy pencils, one would vote for, one against, and one would abstain. These difficulties came out in the press, embarrassing the governor. Finally, in 1980, when the commissioners countermanded an order of the governor, he abolished the commission and placed the program under the auspices of the Worker's Compensation Division of the Department of Labor and Employment Security.

While this one experience does not necessarily reflect on the merit of the commission model, it does point out one of its potential pitfalls. Clearly, where commissioners are used, they should be carefully chosen to be compatible and dedicated to the goal of providing rapid, equitable compensation to crime victims. The present director of the program described above was executive director for a time under the commission structure, and reports that the program administrators had more control over decision-making as a commission than as a part of worker's compensation. Overall, however, there would seem to be little other than political exigency and program preference to recommend one decision-making model over the other.

3.5 Conclusion

The structure and organization of a victim compensation program is significant for the effect it has on the cost, efficiency, and equity (from the victim's point of view) of program operations. These operations consist of the three major functions of administration, investigation, and decisionmaking. Most existing programs organize these functions on a statewide level, though recently a regionally-based program has been established in Colorado, while other jurisdictions have debated the utility of such an organizational scheme. Sponsorship by worker's compensation divisions or industrial safety boards represents the largest percentage (24 percent) of program placement in the state bureaucracy. A review of the various models of program sponsorship and affiliation suggests that no one model clearly is more advantageous than any other; however, there is general agreement that court-based programs, especially those adjudicating claims in general trial court, have serious drawbacks. What appears to be more relevant to the cost and quality of program operations than program sponsorship is the level of autonomy of those staff members responsible for the handling of claims, and the degree of centralization of the three program functions. Where caseloads are large enough and the political climate allows, it seems preferable to establish a centralized, core staff solely responsible for victim compensation. Dispersion of responsibility for the investigative function may increase efficiency of claims processing if carefully structured. However, it seems inadvisable for multiple agencies to share decision-making authority, or to disperse administrative responsibilities to any significant degree. No clear preference is indicated for organizing program decision-making authority;

policymakers can apparently choose between the more prevalent establishment of a board or commission or giving the responsibility to the program administrator on the basis of political or demographic conditions without significant compromise of either cost or quality of program operations.

CHAPTER 4

PROGRAM POLICIES

Victim compensation program philosophies expounded in legislative debates and political speeches often emphasize the humanitarian concern of the state in responding to crime victims' needs and the criminal justice system improvements that are likely to result from increased victim involvement. Hofrichter notes that:

"Legislatures, seemingly, have supported the concept of victim compensation as a politically popular gesture that would both demonstrate an interest in the victim of crime and influence public cooperation with law enforcement. However, at the same time, they have failed to appropriate adequate budgets to ensure accessibility and eligibility for the large number of injured victims."

As a matter of practical reality, therefore, all victim compensation programs establish policies that strictly limit both the classes of victims eligible for compensation and the levels of benefits available to them. This chapter reviews the eligibility criteria and benefits policies that define and limit the application of the theory of victim compensation. The main objectives of these program policies are:

- to define the beneficiaries of compensation;
- to minimize the possibility of fraud against the state;
- to promote victim cooperation with the criminal justice system; and
- to contain costs.²

¹ R. Hofrichter, Victim Compensation and the Elderly: Policy and Administrative Issues, published by the Select Committee on Aging, U.S. House of Representatives, 96th Congress, 1st Session (Washington, D.C.: U.S. Government Printing Office, January 1980), p.8. (Emphasis in original)

² D. Carrow, Crime Victim Compensation: Program Model (Washington, D.C.: U.S. Government Printing Office, 1980).

The following sections outline the significant eligibility criteria that are used by existing programs to define the beneficiaries of compensation, and identify the system objectives they are intended to accomplish. In the course of this review, ways in which policies change as a result of experience are also examined and, where appropriate, recommendations are made for institution of particularly desirable guidelines or abolishment of particularly undesirable ones. General descriptive information regarding these criteria are included in Appendix A, Table II: "Coverage and Eligibility." Second, the major benefits policies that limit compensation available to individual claimants are discussed. For the most part these policies are aimed at containing the costs of the program, so the extent to which that objective is accomplished will be explored. Again, observable trends in changing benefits policies will be identified, and recommendations will be made where possible. Descriptive information on these policies can be found in Appendix A, Table III: "Benefits."

To the extent possible, this report attempts to distinguish between articulated policies and the procedures established for their implementation, though there is a certain amount of natural and unavoidable overlap. Much of this overlap arises out of the considerable discretion that programs exercise in interpreting victim compensation statutes, resulting in policy being established in an ongoing process. Hofrichter warns that:

"Most programs lack written guidelines for interpreting the statutes, apart from very general regulations written pursuant to the law. Thus, policies on any given point of law . . . emerge on a case-by-case basis, if they are established at all--the potential for inconsistent rulings, creating non-policies, is sizable. Because of the propensity of most programs to be zealous in the protection of the taxpayer's money, they may often resist decisions favorable to claimants in borderline cases where information is insufficient or uncertainty exists about the validity of a claim."³

This chapter, finally, attempts to sketch the impact of these policies on the victims themselves. The compromises made between cost containment and fulfillment of victims' needs are considered in each case.

³Hofrichter, as excerpted in David T. Austern, et al., Compensating Victims of Crime: Participants Handbook (Washington, D.C.: University Research Corporation, 1979), p. 95.

4.1 Eligibility Criteria

4.1.1 Eligible Persons

The primary eligibility criteria established by victim compensation programs is the definition of persons eligible for benefits. All programs, naturally, include persons injured or killed as the direct result of a crime. In some cases, "injury" is broadly construed by a program to include any touching or contact. The overwhelming majority of programs (85 percent) also will compensate an individual who is injured or killed in the course of attempting to come to the aid of a crime victim, or to apprehend someone suspected of committing a crime. In some cases the statutes include a special section to extend coverage to these so-called Good Samaritans, while in other statutes the provision is inherent in the definition of a victim. In all jurisdictions, dependents of a deceased victim also are eligible for compensation, though the definition of a dependent differs in stringency across programs. In close to 60 percent of the programs an individual, usually a relative, assuming the expenses for a crime victim may file a claim for reparations. In some cases a third party may only be compensated for expenses incurred as the result of the death of a victim. A final criterion for eligibility concerns the question of the residency of a victim.

Approximately 20 percent of existing programs will compensate only those victims who can establish that they are residents of the state in which the crime occurred. The California program policies represent the extreme with regard to requiring residency, as they require that both the victim and claimant (where they are different) must be residents. This has led, in at least one case, to the unfortunate rejection of the claim of a woman from Pennsylvania who paid for the funeral of her daughter who was murdered while living in California. Very few programs will compensate residents who are victimized regardless of where the crime was committed. A minority of programs will make reparations to anyone victimized within their state's boundaries, regardless of the state of their residency. Especially in states that attract large tourist populations or that depend on revenue generated from large conventions, such a provision may be important for public relations, though in some states large seasonal fluctuations in population are often the express reason for limiting compensation only to residents. A trend that has been gaining popularity in the last few years is the signing of reciprocal agreements between states, whereby each agrees to compensate the others' residents when victimized within their respective jurisdictions. Approximately 45 percent of the programs have entered into such agreements with other states and the numbers are growing.

4.1.2 Ineligible Persons

Having identified persons considered eligible for compensation, the next major criteria that a program will apply is the definition of those classes of persons considered ineligible. Naturally, the offender or any individual engaged in criminal activity at the time of victimization are excluded from the pool of eligible applicants. The most controversial class of individuals typically excluded from potential compensation are relatives of the offender, persons living in the same household as the offender, and/or persons engaged in a continuing (sexual) relationship with the offender. Three basic assumptions underlie this type of policy:

1. that victims related to or residing with the offender are not innocent, i.e., that they contribute significantly to their own victimization;
2. that the relationship enhances the potential for collusion and attempts to defraud the state; and
3. that the offender may benefit directly or indirectly from the award to the victim.

The first of these assumptions is unenlightened, ignoring the painful realities of the prevalence of family violence in modern society. The second assumption is unreasonable, for it is doubtful that individuals would risk the possibility of criminal prosecution (since reporting of the incident to the police is another eligibility requirement), or be willing to endure actual physical injury to recoup only out-of-pocket expenses and lost wages. The last assumption can be circumvented by developing policies that insure that only the victim can obtain the compensation funds.

Several alternatives to policies of summary denial in cases of relation or common residence have recently been instituted around the country. One of these is simply to add a clause to the statute allowing the program to waive the provision "in the interest of justice." This allows a program to compensate, for instance, small children left orphaned as a result of their father murdering their mother--a claim that otherwise would have to be denied. Another possibility is to allow for compensation in situations where the victim separates from the offender and cooperates in the prosecution, as is the case now in Illinois, Virginia and Minnesota. A third and interesting way of circumventing this rule and thus providing aid to needy victims of familial violence is to allow for payment of expenses only to a service provider, as in Hawaii and Michigan. At least this helps to keep victims from going into serious debt as the result of a violent incident. Perhaps the most far-reaching way of ensuring that worthy victims will not be denied on a technicality, that is being used by many states, is to establish a policy that proscribes only those awards that would unjustly benefit the

offender, rather than unconditionally disqualifying certain arbitrary classes of victims.

In addition, there are often policies excluding other special classes of victims. Most states, for instance, do not compensate police officers or firemen who are injured in the course of their work. This is a perfectly reasonable exclusion, as these individuals would already be covered by worker's compensation. Anticipating numerous claims against the state as a result of the tragic prison riots in 1980, New Mexico amended its statutes to make incarcerated persons ineligible for crime victim reparation. Similar legislation has been enacted in Washington and Pennsylvania. In Ohio, persons with a history of involvement in organized crime are ineligible, a change which was made as the result of a highly-publicized case in which the wife of an organized crime figure filed a claim upon the death of her husband in the explosion of a car-bomb. Another special exclusion that has been proposed in Ohio involves the checking of a victim/applicant's record, and would allow the program to deny a claim if the record showed involvement in a crime in the last ten years. A few other programs may check a victim's social history. These special exclusion policies represent an extension of the concept of contributory misconduct. Another unique policy exists in Nebraska, where victims may sometimes be denied because they are unemployed, presumably because they could not have suffered any loss of earnings.

While the exclusions of incarcerated individuals and organized crime figures may be defensible, the invasion of privacy involved in investigating either a victim's criminal or social history, and the discrimination against one of the most disadvantaged classes in American society, the unemployed, are more troublesome. Policies such as these should be reviewed in terms of the effect they have on victims applying for compensation; indeed, the question that should be asked is, do these policies add insult to injury and contribute to a second victimization of persons who have already endured physical violence?

4.1.3 Compensable Crimes

Victims' eligibility for compensation is also determined in part by the type of crime in which they were injured. Most states' statutes (76 percent) include a general provision with a broad definition of conduct that constitutes a compensable crime. Many statutes are similar, if not identical to the following provision included in the Uniform Crime Victims Reparations Act:

"(e) Criminally injurious conduct means conduct that (1) occurs or is attempted in this State, (2) poses a substantial threat of personal injury or death, and (3) is punishable by fine, imprisonment, or death, or would be so

punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State."⁴

The remaining programs (24 percent) set forth a list of specific crimes or classes of crimes that are compensable. Such lists generally include violent, victim-related crimes. Because it is often difficult to identify all crimes with the potential for causing injury, this particular policy approach may, through lack of foresight, result in the denial of the claims of worthy victims. Though conviction of the offender serves as proof that the crime occurred, in no state is conviction or even apprehension of a criminal required to establish that a crime did take place.

Approximately 90 percent of existing programs also exclude motor vehicle accidents from compensable crimes using language similar to the following, also from the Uniform Crime Victims Reparations Act:

"Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death."⁵

Several programs have recognized that victims of certain classes of motor vehicle infractions suffer significant hardship and have altered their policies to allow for compensation to victims of reckless driving violations, specifically hit-and-run and driving under the influence. Such policies have been established in California, Oregon, West Virginia, and similar proposals have been offered in Illinois and New Mexico.

4.1.4 Recoverable Losses

Besides limiting the types of crimes for which coverage is available, all victim compensation programs also restrict the types of financial losses that are compensable. Typically, programs are authorized to compensate victims for:

- medical expenses;
- lost wages;

⁴ American Bar Association Section of Criminal Justice, Victim/Witness Legislation: Considerations for Policymakers (Washington, D.C.: American Bar Association Section of Criminal Justice, 1981), p. 7.

⁵ Ibid.

- funeral expenses; and
- loss of support to the dependents of a deceased victim.

Naturally, these expenses must have been incurred as the direct result of a crime, and in most states the victim must have suffered bodily injury. More than 60 percent of the programs also make reparations for the costs of rehabilitation, and close to 30 percent provide disability payments. Almost all programs provide reimbursements for counseling expenses incurred as the result of a victimization incident. In most cases, these are paid as an additional medical expense, though in some cases a special clause is included in the statute. In a few states, such as in Massachusetts and Virginia, counseling costs are only recoverable in cases of sexual assault. In California, a victim need not have suffered actual physical injury to be eligible for payment of the costs of psychological counseling. Also, the Florida statute mandating that psychiatric care be compensable only in cases of bodily injury is presently being challenged in district court. Another 30 percent of the existing programs will provide funds for replacement services, such as when a homemaker is incapacitated and someone must be hired to provide the services that he or she would normally have performed.

Less than 20 percent of the programs presently provide compensation for pain and suffering; those that do include Delaware, Hawaii, Rhode Island, the Virgin Islands, West Virginia, and Tennessee (in cases of sexual assault only). The Ohio program is considering amending its statute to allow for such payments. In many instances payments for pain and suffering are considered contradictory to a program's purpose of helping victims get back on their feet again, by aiding them in the payment of actual expenses and providing them with compensation for lost revenue as a result of a criminal incident. Programs that do not allow the payment of pain and suffering fear the increased potential for fraud. Because it is difficult to establish the victimization incident as the actual cause of mental anguish, and because determinations must be made on a case-by-case basis rather than according to a formula, some argue that the processing of claims for such payments is prohibitively difficult. Other programs do not provide payments for pain and suffering as a matter of policy, largely because of concerns for the cost implications of such payments, both for increased benefits and the increased administrative requirements.

It is difficult to assess the actual impact of pain and suffering payments on program costs. The information available from those few states that make such payments, however, provides some insight into this question. In the state of Hawaii, 51 percent of the total awards made in 1981 were attributable to payments for pain and suffering.⁶ Actual payments ranged from \$25

⁶State of Hawaii, Criminal Injuries Compensation Commission, Annual Report 1981, p. 3.

to \$5,000, with the majority of awards under \$1,000.⁷ In the Virgin Islands virtually every award, other than for homicides, includes some compensation for pain and suffering. The largest award for pain and suffering alone in the Virgin Islands in 1981 was \$500.⁸ The Delaware program, which compensates victims for "extreme mental suffering," reports that these payments constitute less than 10 percent of its total awards and that the maximum award for non-rape cases is \$300.⁹ In several programs there is a maximum limit on the pain and suffering award, which reduces both the administrative costs of deciding the awards and the financial impact of the amount of benefits actually paid out.

Those programs that do pay for pain and suffering do so out of recognition of the fact that the whole person suffers as a result of being a victim of a violent crime, and that there are often serious and lasting emotional effects from such an incident. These programs, then, attempt to make reparations for the full range of effects of crime and to "make the victim whole" again. While programs which compensate for pain and suffering admit that processing the claims is difficult, they believe that the added benefit which accrues to the victims whose total needs are recognized and compensated for is well worth the extra effort.

Short of payment for pain and suffering, a few programs will compensate victims for "nervous shock," generally in cases of sexual assault. These jurisdictions include North Dakota, Oregon and Wisconsin. Each of these programs, and Virginia, also will compensate a victim of sexual assault for the costs of any resulting pregnancy.

Close to two-thirds of existing program statutes include a provision allowing recovery of "other reasonable expenses." This category is sometimes used to permit reimbursement of the costs of replacing eyeglasses, hearing aids and other prosthetics. In addition, this provision has been cited in the payment for transportation, ambulance services, child care, relocation costs for rape victims and a variety of other expenses incurred as the result of criminally injurious conduct. Including such a flexible provision in the statute allows the program to exercise greater discretion in providing for the needs of crime victims.

⁷ Ibid., Appendix A: "1981 Awards."

⁸ Virgin Islands, Criminal Victims Compensation Commission, Summary of Decision: October 1, 1980 to September 30, 1981, pp. 3-5.

⁹ Hofrichter, note 1 at 16.

One type of loss that is generally not covered by victim compensation programs is property loss. Only Hawaii and California consider property loss recoverable, and then only for so-called Good Samaritans. There are two main reasons for this exclusion: 1) the belief that loss of property is less devastating than physical injury; and 2) the fear that the costs of such compensation would be astronomical, due to the large proportion of crime that involves damage to or theft of personal property. The first objection to payments for property loss may not be true in all situations. One program administrator interviewed suggested that for some elderly or disabled victims certain types of property loss can cause severe hardship, offering the example of a bed-ridden senior citizen whose television is stolen. Such individuals often do not have the necessary assets to afford the cost of a new television, and their lives might be seriously disrupted by the set's absence.

In many states, the costs of replacing eyeglasses, hearing aids and other prosthetic devices are not covered under the victim compensation statutes. For some individuals, again especially the elderly, such losses are devastating and often impossible to handle on a poverty-level or fixed income. While reparations for these devices are allowable in some states under medical or "other reasonable expense" categories, policy definitions can sometimes lead to fine distinctions approaching the ridiculous. For instance, under some policies the cost of replacing broken eyeglasses can be covered if the victim was punched in the face while wearing the glasses, but cannot be covered if the glasses were broken when they were knocked out of the victim's pocket and stepped on during the course of a violent incident.

Such policy limitations are in direct contradiction to the mandate of programs to aid needy victims. In recognition of this fact, a few programs are moving to alter their statutes to allow for compensation for limited property loss. Massachusetts has made such a proposal, and Ohio is attempting to add a provision that would allow for compensation of elderly persons for loss or damage to essential property. Such statutory provisions could specify maximum allowable awards of several hundred dollars and stipulate that only the loss or damage to essential property be recoverable, which would help control costs and address the concern about astronomical expenses which leads to categorically excluding property loss from recoverable losses under victim compensation. Most importantly, a policy for payment of essential property loss would provide for the pressing needs of a class of crime victims, often the elderly or poverty-stricken, presently excluded from any hope of compensation.

4.1.5 Financial Needs Test

An additional and controversial hurdle that must be jumped in many states in establishing eligibility for reparations is the financial needs test.

One-third of the programs presently operating require that victims prove financial hardship before their claim will be considered for compensation. Means tests vary in both stringency and formality. In some programs serious financial hardship must be proven; in others, such as California, victims must have more than \$30,000 in liquid assets (broadly defined) before they would be denied on this basis. Some states have written guidelines for determining financial hardship; others, such as Florida, have no formal criteria but decide the issue on a case-by-case basis. Some programs, such as Connecticut, rarely enforce their financial needs test. Others, however, deny a significant number of claims on this basis. In 1981, for example, 22 percent of the claims denied in Maryland were attributed to "no serious financial hardship,"¹⁰ and 15 percent of all claims rejected in Texas were due to a finding of "no financial stress."¹¹

The main purpose of including a financial needs test in the eligibility criteria is to contain costs by reducing the number of awards. There is little evidence, however, that this savings is actually realized, because programs with such requirements expend considerable administrative costs in gathering the necessary documentation and making the determinations of financial need. Hofrichter comments:

"The New York Board estimated some years ago that its costs might increase 10 percent if the need[s test] were eliminated. What does cost a substantial amount of staff time and program resources are the complex administrative screening investigations into victims' financial affairs creating unnecessary delay and backlogs."¹²

In addition to perceived savings through reduction in number of awards, another benefit claimed for financial needs tests is to allow the allocation of limited resources to the most needy victims. While this argument may have some merit, the policy may also have a negative impact on victims that outweighs the potential benefit. For one thing, eligible victims with incorrect information regarding the nature of the test may self-screen and not apply to the program. Those that do apply may be unable or unwilling to provide the required personal information. And the needs test may not, in fact, screen out only the less needy. It may, in effect, discriminate against "frugal individuals that have saved their money . . . in favor of others who

¹⁰ State of Maryland, Criminal Injuries Compensation Board Twelfth Annual Report, 1981, p. 3.

¹¹ State of Texas Industrial Accident Board, Annual Report of the Crime Victims Compensation Act for the Fiscal Year Ending August 31, 1981, p. 4.

¹² Hofrichter, note 1 at 27. (Emphasis in original)

have earned more money but squandered it."¹³ While the Nebraska program is now considering establishment of a financial needs test, several programs that presently have such a policy are moving to abolish it. Abolishment of this eligibility criterion is clearly what Hofrichter recommends:

"If the goal of a victim compensation program is to meet the needs of victims, particularly during a time of loss and trauma, then resources must be used exploring ways to minimize loss. The 'serious financial hardship' requirement of some states, devised to limit costs and insure that those most in need receive awards actually denies many needy claimants, causes them unnecessary trauma, and violates their privacy."¹⁴

4.1.6 Contributory Misconduct

Over half the programs reported that in addition to determining financial need, the assessment of whether and to what extent victims' conduct contributes to their victimization is one of the most difficult aspects of determining eligibility for compensation. The intention of all victim compensation programs is to make reparations to innocent victims of violent crimes. Unfortunately, the situations in which many crimes occur involve alcohol, drugs and questionable behavior on the part of the victim. A large number of claims in a wide range of programs are reported to arise out of bar fights. In addition, a large proportion of claims seems to result from assault situations, where provocation is clearly more likely than, for example, in rape cases. One program administrator interviewed went so far as to state that he did not believe that victims involved in assault situations are innocent; that such victims involve themselves in "occasions of crime" and thereby contribute at least 10 percent to their own victimization through poor judgment. Thus, it was his feeling that the program was not serving the truly innocent victims of crime--little old ladies who are assaulted--that it was intended to compensate. While this view is extreme, it gives evidence of the frustration that program administrators feel with the ambiguity of the contribution assessment process.

Almost one-third of the existing programs deny a claim outright when there is evidence of contributory misconduct. In Wisconsin, which operates with such a policy, 33 percent of claims denied in 1980 were because "conduct contributed to injury," the single largest percentage of claims denied for any

¹³ Notes, "Pending Crime Victim Compensation in Iowa: An Analysis," p. 846. Cited in Carrow, note 2 at 55.

¹⁴ Hofrichter, note 1 at 27. (Emphasis in original)

reason.¹⁵ Those programs which do not deny the claim outright attempt to determine to what extent the victim contributed and then reduce the award accordingly. Unfortunately, there is no formula by which this assessment can be made, and procedures vary widely among programs. In Florida, four individuals make independent estimates and a final figure is reached through successive negotiation as the claim moves through the processing hierarchy. In another program, the administrator had developed for his own use a set of guidelines of percentages of reduction corresponding to levels of provocation, but was unwilling to release a copy because of the highly arbitrary nature of the criteria. The high level of discretion involved in determining contributory negligence or misconduct suggests that there may be a correspondingly high level of inconsistency in these decisions. This is not to suggest that such determinations should not be made; it would seem to be more fair to be somewhat inconsistent in the percentage reduction for contribution in a sample of cases, than to deny outright any claim with evidence of provocation. It is interesting to note, however, that denial rates are as high in several programs that reduce or deny claims based on an assessment of the level of contribution as in those programs that deny outright. The Maryland program, which determines a level of contributory misconduct, and the North Dakota program, which denies outright, for example, denied claims in 1981 at rates of 36 percent¹⁶ and 30 percent,¹⁷ respectively, for contribution.

4.1.7 Report to and Cooperation With Law Enforcement

Two important eligibility criteria deal not with characteristics of the victim or the crime, but with technical requirements that the victim must fulfill once the incident has occurred. These are 1) the need to report the crime to the appropriate law enforcement agency within a specified period of time after its occurrence, and 2) the need to cooperate with all law enforcement agencies in investigation and prosecution. There are several purposes for these requirements, the first of which is to reduce the possibility of fraud by insuring that a crime occurred and that the victim is not culpable. The merit of the reporting requirement has already been mentioned with regard to reducing the possibility of family collusion in defrauding the state through staging a violent incident between relatives. The requirement for cooperation with law enforcement is an additional measure to insure that the

¹⁵ Wisconsin Department of Justice, 1980 Annual Report: Crime Victim Compensation Program, p. 7.

¹⁶ State of Maryland, Criminal Injuries Compensation Board Twelfth Annual Report, 1981, p. 3.

¹⁷ State of Texas Industrial Accident Board, Annual Report of the Crime Victims Compensation Act for the Fiscal Year Ending August 31, 1981, p. 4.

reported crime did in fact occur. The second goal of these requirements is to increase the participation of victims in the criminal justice system and thereby to improve its administration. Ninety percent of all cases handled by law enforcement are said to depend upon citizen participation. The goal of involving more victims in the criminal justice process seems to be an important one, though there is little evidence to support the contention that the provision of victim compensation in itself accomplishes that goal. Even if it does not, the statement of that objective and the establishment of policies aimed at achieving it may serve to garner essential support for the victim compensation program in the criminal justice community.

The required time period for reporting an incident of criminal victimization to the police varies widely--from 24 hours in the Virgin Islands to three months in New Jersey. California sets no time limit. In most cases, the time limit is extendable where good cause is shown, e.g., the victim was hospitalized for an extensive period. In Nebraska and Pennsylvania, hospitals are required to report to the police any victims of violent crimes treated in their emergency rooms, and in these states this is sufficient to fulfill the victim's reporting requirement. In some cases, however, especially with elderly victims fearing reprisal, it is possible to imagine innocent victims who will be unwilling to report the crime to the police. Though there are no data on the frequency of this problem, programs need to exercise care and sensitivity in determining why a report was not made in order to avoid denying the claim of an otherwise eligible victim on a technicality. The relatively high rate of denials on this basis suggests that some programs may not be making such an effort at the present time. For instance, 10 percent of the claims denied in Wisconsin in 1980 were "not reported to police within 5 days."¹⁸

The extent of cooperation with criminal justice agencies required varies according to the program and the specific crime involved. Typically, a victim is expected to aid in identification of the suspect through reviewing photographs and line-ups. In addition, if an arrest is made, the victim may be required to appear as a witness for the prosecution. Though such cases are rare (because of low arrest rates), this role can involve ongoing participation by the victim/witness in a judicial process that may continue for years. For some victims, especially of rape, this can be a difficult and painful experience. An extension of the cooperation requirement is the policy in several states that victims of family violence must prosecute the offender in order to qualify for compensation.

¹⁸Wisconsin Department of Justice, 1980 Annual Report: Crime Victim Compensation Program, p. 7.

4.1.8 Program Filing Deadline

The final technical requirement that a victim must fulfill in order to be eligible for crime victim reparations is to meet the filing deadline of the compensation program. This requirement is essentially a cost containment measure--a way of effectively reducing the number of awards--that has little or no bearing on the worthiness of the claim. The deadline varies from three months in several jurisdictions to two years in others. While in most cases the deadline is extendable for good cause up to a particular time limit, a small number of applicants are regularly denied on this basis. For the most part, it is a reasonable requirement that claims be filed early enough that the facts of the case can be properly investigated. However, in jurisdictions where public awareness of the program is minimal, the program may be denying otherwise eligible victims for this reason and thereby penalizing them for its own failure to educate the public about the availability of compensation.

4.2 Benefits Policies

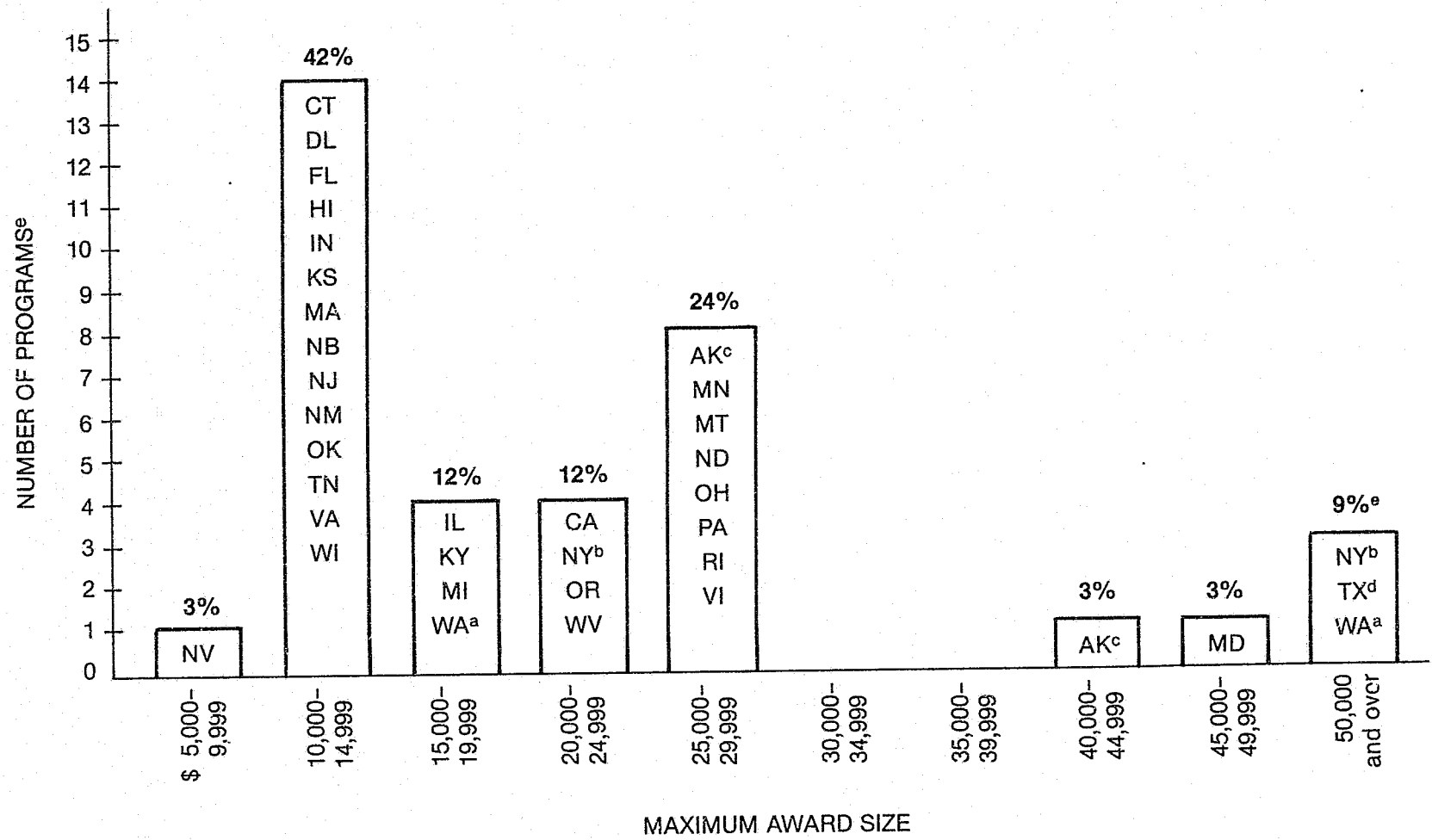
The preceding sections have outlined the basic criteria which delineate the classes of crime victims eligible for compensation under most state statutes. The balance of this chapter will review the program policies that define and limit the benefits available to eligible claimants. The primary purpose of establishing benefits policies is cost containment. While this is an important objective, the policies for accomplishing it sometimes conflict with the primary goal of providing aid to crime victims.

4.2.1 Maximum Awards

All victim compensation programs establish limits on the amount of compensation that can be received by an individual claimant. Exhibit 4.1 on the following page illustrates the range of maximums for programs currently in operation. The table shows that 42 percent of all programs' maximums are between \$10,000 and \$15,000; 90 percent fall in the range from \$10,000 to \$30,000. The state of Nevada presently has the lowest maximum, \$5,000, though legislation just passed in Colorado establishes a maximum there of only \$1,500. The highest maximum allowed is in Texas, at \$50,000. (In 1981 the program in Ohio reduced its maximum award from \$50,000 to \$25,000 in an attempt to control costs.) Two states, New York and Texas, exempt awards for medical expenses from their established maximums. In Alaska, an additional maximum is designated for cases which involve multiple dependents of a deceased victim. Several states (California, Oregon and Washington) have established a schedule of ceilings for different types of recoverable losses,

EXHIBIT 4.1 MAXIMUM AWARDS

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^aWashington imposes no limit on medical expenses, but pays up to a maximum of \$15,000 for all other expenses.

^bNew York has a \$20,000 limit on lost earnings or support, but also has no maximum allowable award for medical expenses.

^cAlaska has a general maximum of \$25,000, but allows up to \$40,000 in cases where there are multiple dependents.

^dTexas has the highest maximum allowable in the U.S.: \$50,000.

^eTotals are inflated due to double-counting of AK, NY, and WA.

up to an overall maximum.¹⁹ Most states also impose a ceiling on allowable funeral expenses, ranging from \$500 to \$2,500.

In some programs, awards for lost wages are paid on the basis of a weekly or monthly maximum; these include the Michigan, Montana, Nevada, Oklahoma, Oregon and Virginia programs. In some cases, these periodic payments are made according to a formula, which may be based on a proportion (usually two-thirds of the victim's full wages or the average wage for the state. The benefits of this policy of periodic payment are twofold: 1) it provides that the amount of compensation awarded is not expended too quickly or used for personal enrichment; and 2) it allows for periodic review of the victim's financial status and offers the opportunity to stop payments and realize savings in cases where that status improves significantly. The major drawback to this type of benefits payment is that the limits are often extremely low, such as \$100 per week in Michigan, which may cause a hardship to victims whose weekly expenses exceed that amount and who have few other resources.

In contrast to the change in benefits in Ohio noted above, many programs have increased their maximum awards in recent years in order to meet more fully the needs of crime victims. Though there are little definitive data, it appears that the number of claims approaching the upper limits of programs' maximums is not overwhelming. Some program administrators report that less than 10 percent of their total claims reach or exceed their established maximum. This suggests that in states with relatively low benefit levels the maximums might be increased to include those few victims with catastrophic or long-term needs without unduly burdening the program's coffers.

In part, the trend towards raising program maximums is the result of inflation and, especially, the escalation of medical costs. With the rapid increase in medical costs, an ever larger proportion of each award goes to medical providers and an ever smaller proportion to the victims. This situation has caused one critical observer to suggest that the victim compensation act in his state should be retitled the "Hospital Relief Act." To try to contain medical costs, the program in New York employs a medical fee specialist to review cases and identify unreasonable bills; also this program will be adopting a medical fee schedule. An even more intriguing policy has been instituted in Florida, New Jersey and New Mexico to address this problem. These programs negotiate with hospitals and establish reduced fees that will be accepted as payment in full. The programs report that hospitals are usually willing to negotiate, because they realize that otherwise they may not be paid at all, since the compensation program is the payor of last resort after all collateral source payments have been made. Program staff approaching hospital officials are generally careful to remind them of the

¹⁹ See Appendix A, Table III: "Benefits," fns. 1, 20, and 28 for the actual schedules of allowable awards.

Hill-Burton Act, which requires hospitals receiving federal funds to provide a certain level of services free on an annual basis. In some states, programs negotiate fees reduced to the level of the program maximum, so that at least the victim's liability is taken care of in total. In these states, negotiation is the policy only in cases where the total bill exceeds the maximum allowable benefit. In other programs, staff seek to reduce fees to the point where it is possible to ensure that the victims also will receive some direct compensation. The Florida program attempts to negotiate all bills in excess of \$1,000 and their goal is to reduce fees 60-80 percent. One hospital has made it known to the program that they will typically accept 80 percent; sometimes, program staff report, hospitals will accept as little as 30 percent. In one case, a program staff member was successful in convincing a hospital to accept only \$3,000 as payment in full for a \$25,000 bill.

4.2.2 Minimum Loss Requirements

In addition to setting maximum benefit levels, 58 percent of the programs also set minimum loss requirements. The purpose of these requirements is to contain program costs by:

- cutting administrative costs;
- saving time; and
- limiting workload and backlog.²⁰

The minimum losses required are typically \$100 out-of-pocket-loss or loss of earnings for two continuous weeks. They range, however, from as low as \$25 (in Delaware) to as high as \$200 (in Illinois). Legislation recently passed in South Carolina (effective January 1, 1983) establishes a \$300 minimum loss requirement. Sources involved in this legislative effort report that at one point the proposed requirement was as high as \$500.

Experience has taught that the minimum loss requirement often discriminates against certain classes of victims, especially rape victims, the elderly, and the disabled. Thus, several programs have amended, or are in the process of amending, their statutes to exempt these classes of victims from the minimum loss requirement. Exemptions for rape victims are presently being proposed in Kansas and Massachusetts. Elderly and fixed-income exemptions are proposed in Massachusetts, New Jersey and Oregon, and have already been established in Pennsylvania.

²⁰ Carrow, note 2 at 49.

Other states, recognizing the potentially discriminatory nature of this policy, are moving to eliminate it. Proposals for eliminating minimum loss requirements are pending in Illinois, Kentucky, and Wisconsin, and legislation to that effect passed in New York in 1982. The Minnesota program was recently unsuccessful in its bid to eliminate the minimum loss requirement. These efforts also reflect the growing realization that elimination may result in important benefits, such as:

- increased information regarding the extent of the crime problem, through the inclusion of a wider range of victims in the data base;
- increased awareness of the program, through raising the number of benefit recipients; and
- increased support for the program among recipients, through reducing the number of innocent victims arbitrarily denied on technical grounds.²¹

The suggestion that the financial costs of eliminating minimum loss requirements may not be very high lends support to these already good reasons for elimination. For example, Garafalo and McDermott estimate that the costs of a national crime victim compensation program would increase by only 12 percent if all minimum loss criteria were eliminated.²² In addition, administrative costs could be reduced by abbreviating the investigation of small claims, as is being done in a pilot test in California.

4.2.3 Deductibles

Almost 20 percent of programs have deductible policies similar to those used in insurance policies. These range from \$100 to \$250 across jurisdictions. The advantages and disadvantages of making victims liable for a specified minimum amount of their loss are similar to those discussed above relative to minimum loss requirements. The discriminatory effect of a deductible, however, is even more serious because it results in the exclusion from compensation of victims at the low end of the income scale, precisely those individuals to whom payment of expenses of \$100 or \$200 may represent a serious financial hardship.

²¹ Ibid. at 50.

²² Ibid. at 51.

4.2.4 Collateral Source Deductions

All victim compensation programs reduce the level of benefits paid to victims by deducting any payments that they receive from other sources. According to the Uniform Crime Victims Reparations Act:

"(d) Collateral source means a source of benefits or advantages for economic loss otherwise reparable under this Act which the victim or claimant has received, or which is readily available to him, from:

(1) the offender;

(2) the government of the United States or any agency thereof, a state or any of its political subdivisions, or any instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this Act;

(3) Social Security, Medicare, and Medicaid;

(4) state required temporary non-occupational disability insurance;

(5) work[er's] compensation;

(6) wage continuation programs of any employer;

(7) proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct; or

(8) a contract providing prepaid hospital and other health care services, or benefits from disability."²³

The purpose of the policy of deducting collateral sources is to prevent double recovery, insuring that crime victims do not enrich themselves at the expense of the state and other, more needy, victims. Programs should take care in structuring the procedures for carrying out this policy to process claims accurately and fairly.

²³ American Bar Association Section of Criminal Justice, Victim/Witness Legislation: Considerations for Policymakers (Washington, D.C.: American Bar Association Section of Criminal Justice, 1981), p. 7.

There are two possible methods for deducting collateral sources: 1) to deduct the amount from the determined award; or 2) to deduct the amount from the gross expenses, arriving at a net loss figure from which a final award can be determined. Consider the following example:

An individual is attacked in the parking lot when leaving work. The victim is robbed and severely beaten, requiring surgery and several days in the hospital. The hospital bills alone amount to \$20,000. The victim has personal insurance amounting to \$10,000 and applies to the state victim compensation program to recover the rest of the expenses. The program's maximum allowable award is \$10,000.

In determining the level of benefit payable to this particular victim, the program can either:

Option 1: deduct the amount of the victim's collateral source payments (\$10,000) from the amount determined payable by the program (in this case the maximum award of \$10,000) and arrive at a \$0 level of benefit, still leaving the victim with a \$10,000 liability; or

Option 2: deduct the amount of the victim's collateral source payments (\$10,000) from the victim's total expenses (\$20,000), and arrive at a net loss figure of \$10,000, which would be payable in full by the program, leaving the victim with a total liability of \$0.

Deductions according to the first option were the subject of a Hawaii Supreme Court ruling in 1981 where:

"The Court held that 'The State's limitation would impose a narrow interpretation of the law by automatically denying an award where a victim received more than \$10,000 in benefits without regard to the gross economic loss plus pain and suffering.' The State's interpretation would have the effect of denying awards to persons who have suffered great economic loss, but who have received collateral benefits in excess of \$10,000, while compensating claimants who have suffered small economic losses but who have received less than \$10,000 in collateral benefits."²⁴

²⁴State of Hawaii, Criminal Injuries Compensation Commission, Annual Report 1981, p. 5.

Clearly, the second of these two options--deducting the collateral source payments from the victim's gross expenses--provides the most equitable benefit to the victim.

4.2.4 Emergency Awards

For many elderly or poor crime victims, the need for financial assistance is immediate. Compensation typically awarded several months after the incident is not fully satisfactory in meeting their pressing financial needs or reducing the trauma associated with these debts. In recognition of this problem, almost three-quarters of the existing program statutes include provisions for the payment of emergency awards. Exhibit 4.2 on the following page lists states with emergency award payment policies. In most cases, statutes also establish maximum benefits payable on an emergency basis, ranging from \$500 to \$1,500. Several states with \$1,500 maximums stipulate that the amount be payable in increments of \$500, as needed. In all jurisdictions the amount of any emergency award is subtracted from the final award or, if the final award determined is less than the emergency award already paid to the victim, the statutes include provisions for reimbursement of the difference to the program.

The criteria for determining eligibility for emergency awards vary widely from program to program. All require some minimum determination of the victim's eligibility for a final award. In some cases victims must certify that they will suffer serious financial hardship in the near future, such as impending eviction or inability to buy groceries, before they will be provided emergency funds. In other cases, the program simply accepts the victim's statement that immediate assistance is required.

Unfortunately, emergency award policies are often ineffective in practice. It is reported by the staff that in some programs victims are not notified of the availability of emergency payments. This practice results from a fear that all victims, not only those whose needs are pressing, will try to apply and that this influx will seriously overburden the staff making determinations of eligibility. In other cases, programs have not developed procedures to expedite the processing of applications for emergency benefits. The Tennessee program is a prime example of this failure. In this program, all claims are filed in numerical order as they arrive and are then processed in that same order. Emergency awards take their place in line after all other pending claims and are processed no differently. Obviously, this procedure can result in serious delays of payment to victims, rendering the emergency award policy ineffective. The Pennsylvania program also reports that emergency awards take several months to process and that they do not thus truly represent emergency aid to the victim. The last column in Exhibit 4.2 lists the processing times reported by several programs with emergency

EXHIBIT 4.2: Emergency Awards

STATE	MAXIMUMS					PROCESSING TIME
	. NONE .	. 500 .	. 1000 .	. 1500 .		
Alaska				X		3-5 days minimum
California			X			60 days
Connecticut		X				one day
Delaware	X					---
Florida		X				30 days
Indiana		X				1-2 weeks
Kansas	X					2 weeks
Kentucky		X				---
Maryland			X			---
Michigan			X ^a			--- ^a
Minnesota		X ^b				--- ^b
Nebraska		X				2-3 weeks
New Jersey				X		---
New Mexico	X					---
New York				X		1-2 days
North Dakota			X			---
Ohio	X					---
Oklahoma		X				one week
Oregon			X			1-4 weeks
Pennsylvania			X			several months
Tennessee		X				4-6 months
Texas				X		1-5 days
Virginia			X			1 month
Wisconsin		X				1-2 days
N = 24 73%	N=5 21%	N=9 36%	N=6 25%	N=4 17%		
(of total programs)	(of programs offering emergency awards)					

^a Michigan has discontinued payment of emergency awards due to budget cuts and limited staff.

^b Minnesota pays only lost wages on an emergency basis. However, no such payment has been made in the last year.

award policies, ranging from one to two days in Wisconsin to four to six months in Tennessee. Even if a program does establish procedures for expediting emergency claims, an additional problem may be encountered in the processes required for generating a check to the victim. In some states warrants for payment of benefits to victims must be audited internally before a check can be issued by the comptroller's or treasurer's office. This process may cause delays of weeks or months in payment to victims. One suggested solution is the establishment of a revolving fund, essentially a checking account, which the program itself can draw on to generate emergency checks for needy victims in just a few days, as is done in Montana.

There is a significant need on the part of many eligible victims for emergency assistance in meeting the costs of victimization. For elderly and low income individuals, the immediate burden can be distressing emotionally and devastating financially. Provision of emergency awards by victim compensation programs is an important way of meeting the needs of these classes of victims. It is not enough, though, merely to pass an amendment to the statute allowing for such payments. It is necessary to inform claimants of the availability of emergency awards, and to establish procedures to insure that applications for emergency assistance are processed and paid without undue delay.

4.2.6 Supplemental Awards

In addition to the original award made to a claimant, most programs also provide for supplemental awards. Often there are time limits within which supplemental applications can be made, and, of course, the total award cannot exceed the maximum allowable amount. The following policy is typical:

"After an application has been filed, a reparations claim may be reopened by filing a supplemental reparations application within five years after an initial award is granted or denied because the claimant's economic loss is covered by another source. Supplemental awards may be granted as additional economic loss occurs or collateral sources become unavailable."²⁵

²⁵ State of Ohio, Ohio Crime Victim Reparations Report, September 29, 1976 to December 31, 1978, p. 2.

4.2.7 Attorney's Fees

In defining what type of benefits are payable to crime victims, the question of payment of attorney's fees is often an issue. Over 80 percent of the programs will pay attorney's fees. Those that will not include Florida, New Mexico, Oklahoma, Oregon, Virginia and Washington. As illustrated in Exhibit 4.3 on the following page, most states that allow for payment also include a statutory limitation on the fees for attorneys, ranging from five to fifteen percent of the award. One-third of the programs paying attorney's fees only stipulate that the fees must be "reasonable." In all cases attorneys are prohibited from extracting additional fees from the victim; some provisions even attach criminal penalties for such attempts. A critical distinction made in payment of attorney's fees is whether the amount is paid out of the award to the victim--effectively reducing the benefit received by the victim--or are paid in addition to the award, as is done in just over half of the programs.

Opinions vary regarding the advisability and utility of attorney involvement in the crime victim compensation process. Proponents argue that many (or most) claimants need an attorney to interpret the often complex applications and proceedings. They also point out that applications prepared with the help of an attorney will be more complete and that the necessary documentation of a claim is more likely to be provided. Opponents argue that the involvement of attorneys unnecessarily complicates what should be an informal and cooperative process, making it unduly formal and adversarial in nature. Some programs encourage attorney involvement, such as in Maryland where attorneys are involved in 90 percent of all claims. Other programs allow for payment of fees, but stress in their dealings with victims that an attorney is not necessary to guarantee that they will be dealt with fairly. The practice of subtracting attorney's fees from a victim's award may operate as a subtle disincentive for victims to retain their services. The limitations on the amounts payable to a typical ten or fifteen percent of the award also serve as a disincentive for the attorneys; with average awards of around \$3,000 nationwide, no attorney is going to make much of a profit from handling victim compensation claims. Ultimately, whether or not attorneys become involved in the compensation process depends upon the nature of the program and the complexity of its procedures, rather than the pro- or anti-legal bias of the program administrators. Certain types of programs, particularly those adjudicating claims in general trial court, may require an attorney's involvement, whereas more informal procedures would not. Also, attorneys may be more useful at some points in the application process than others, e.g., a victim appealing a claims decision will more often require legal advice than a victim making an initial application.

The experience in the Florida program highlights some of the problems inherent both in payment and non-payment of attorney's fees. Until 1980, attorneys in the state of Florida were eligible for "reasonable" compensation for

EXHIBIT 4.3: Attorney's Fees

JURISDICTION	MAXIMUM	PAID OUT OF AWARD	PAID IN ADDITION TO AWARD
Alaska	25% of first \$1,000, 15% of next \$9,000		X
California	10%, not to exceed \$500	X	
Connecticut	15% of award	X	
Delaware	15% or \$1,000, whichever is less		X
Hawaii	15% of award over \$1,000	X	
Illinois	Reasonable amount, for rep- resentation at hearing only	X	
Indiana	15% of award \leq \$5,000, 10% of award $>$ \$5,000		X
Kansas	Reasonable fee commensurate with services rendered (usually \$30/hr.)		X
Kentucky	15% of award	X	
Maryland	Reasonable		Not specified in statute
Massachusetts	15% of award	X	
Michigan	15% generally; 25% in cases of judicial review	X	
Minnesota	Limited	X	
Montana	5% of award	X	
Nebraska	5% of award		X
Nevada	10% of award		X
New Jersey	15% of award		X
New York	Reasonable	X	
North Dakota	Reasonable		X
Ohio	Reasonable		X
Pennsylvania	15% of award, payable at a rate of \$50/hr.		X
Rhode Island	Reasonable		X
Tennessee	15% of award up to \$1,500		X
Texas	Reasonable		X
Virgin Islands	2% of award $<$ \$1,000 5% of award $>$ \$1,000		Not specified in statute
West Virginia	Reasonable		X
Wisconsin	10% of award	X	
N = 27 or 82% (of established programs)	<u>NON-PAYING STATES:</u> Florida New Mexico Oklahoma Oregon Virginia Washington N = 6 or 18%	N = 11 or 41% of states paying attor- ney's fees	N = 14 or 52% of states paying attor- ney's fees
2 programs (7%) do not speci- fy in their statutes whether attorney's fees will be paid out of or in addition to the award to the claimant			

services rendered in aiding a victim applying for compensation. At that time, however, payment of legal fees was eliminated because it became evident that attorneys were being paid more than the claimants themselves. Attorneys characteristically appealed all denied claims, regardless of merit, because they knew that these appeals would be heard by a deputy commissioner of the Worker's Compensation Division, of which the victim compensation program is a bureau. Deputy commissioners, lawyers themselves, ruled on victim compensation issues as if they were worker's compensation claims and typically awarded large fees to victims' counsel. Naturally, these practices increased the program's administrative costs. Flagrant abuses of the system were also uncovered, such as one attorney who charged a victim \$700 in addition to the \$1,000 that had already been paid by the program. This combination of factors led the program to propose elimination of the fees. There reportedly was no discussion of establishing limits to legal payments, perhaps because the Worker's Compensation Division itself had eliminated payments in 1979. It is interesting to note that elimination of attorney fee payment has not necessarily reduced attorney involvement in the victim compensation process in Florida, as many victims still retain counsel on a flat fee basis. Though administrative costs are probably lower, the program is no longer able to exert any authority to limit the amounts charged to victims by their attorneys.

4.3 Conclusion

Regardless of the magnanimous intent of victim compensation programs, practical reality necessitates that they define and limit the classes of crime victims eligible for compensation and the benefits available to individual claimants. Cost containment is a major consideration in establishing these policies, because state legislatures are often unwilling to provide the funding necessary to make reparations to the broad range of crime victims that results from the violence of modern society. Other objectives of eligibility criteria and benefits policies promulgated in state statutes are to minimize fraud and promote improvements in the criminal justice system through increased victim involvement. In addition, policies are interpreted and amended on a case-by-case basis through the considerable discretion afforded to administrators of victim compensation programs. Hofrichter notes that, while the justification for victim compensation:

"implies a broad and ambitious goal for state victim compensation programs, their primary objective in actual operation has been fairly narrow. . . . There are significant additional restrictions, even among these seemingly eligible claimants, regarding how much they may receive. In effect, the theory behind victim compensation could support a more generous level of financial assistance to a

far larger class of victims than most programs now recognize as deserving."²⁶

This chapter has identified several policy areas where revisions can be made 1) to increase the number of victims served and the level of benefits they receive, and 2) to reduce the number of apparently arbitrary and discriminatory denials--all with only modest cost implications.

Among the major eligibility criteria, the exclusion of relatives of and persons living in the same household as offenders is one policy that is being amended in many programs to provide greater flexibility. An increased number of needy victims, especially of family violence, can be helped if programs have the discretion to compensate in one of the following innovative ways:

- by applying a statute allowing payments "in the interests of justice;"
- by setting forth conditions, i.e., that the victim separate from and prosecute the offender;
- by making payments directly to the service provider for expenses only;
- by stipulating that only awards "unjustly benefitting or enriching" the offender should be disallowed.

In addition, residency requirements that exclude out-of-state victims are increasingly being revised through the signing of reciprocal agreements between states to cover each other's residents. Such agreements make especially good sense in a society as mobile as that of the United States.

While there are good arguments against compensation for property loss in general, the foregoing analysis suggests that loss or damage of essential property can work a serious hardship on some victims. Especially in the case of elderly and/or disabled victims, the costs of replacing eyeglasses, hearing aids and other items upon which victims are dependent, can be prohibitive. Compensation programs should seriously consider including essential property loss in their definitions of recoverable losses.

In one-third of operating programs financial needs tests are applied to ensure that only the most needy victims receive compensation. Means tests are attractive to legislators and administrators because they establish objective

²⁶ Hofrichter, note 1 at 7.

criteria for the apportionment of limited funds and contain costs through limiting the number of awards. However, opponents of such tests argue that the administrative costs of investigating victims' financial situations negate any savings that might be realized; that the information required may be perceived as an invasion of victims' privacy; and, that the tests may, in effect, discriminate against frugal individuals to the benefit of spend-thrifts. As a result of these objections, several programs are moving to abolish the policy of requiring that victims must prove financial need.

Astronomical increases in the costs of medical care in recent years have led to an ever greater proportion of awards going to medical providers, and an ever smaller proportion going to victims. Programs in Florida, New Jersey and New Mexico have begun to address this problem by negotiating with hospitals to establish reduced fees that will be accepted as payment in full. Staff in these states view their role as ensuring that, at a minimum, eligible victims will be relieved of all medical liability and that, if at all possible, they will also receive some direct compensation. Adoption of medical fee schedules, as in New York, is another approach to containing medical costs.

The trend towards raising maximum allowable benefits is also a result of the escalation of medical costs and of inflation in general. The data suggest that raising benefit levels can significantly benefit those few victims with catastrophic or long-term needs without creating a large burden on program funds. Additionally, allowing exceptions to or eliminating minimum loss requirements can reduce their discriminatory effect on certain classes of victims, especially rape victims, the elderly and the disabled. These modifications can also result in benefits to the program by increasing awareness and support, and to the criminal justice system by increasing information regarding the extent of the crime problem. Again, available data suggest that minimum loss requirements can be eliminated or amended to exclude certain classes of victims without resulting in an unmanageable increase in program costs.

Many eligible victims need emergency assistance in meeting the costs of victimization. Provision of immediate relief, in the form of emergency awards, is an important way of meeting this need. Nearly three-quarters of operating programs have provisions allowing for emergency awards. However, in many cases, there are significant problems with lack of public awareness of their availability and the absence of procedures for expeditious payment. All programs should consider making emergency assistance available to especially needy victims. In addition, they should ensure that claimants are informed of the availability of emergency awards, and that claims are processed and paid rapidly.

The following chapter examines the procedures which victim compensation programs use in implementing the policies defined above, and the constant interplay between these two elements of program operations continues to be considered in the analysis. The intent of the program in establishing certain procedures and the practical effect that they have on the victim applying for compensation are the major focus of the discussion.

CHAPTER 5

PROGRAM PROCEDURES FOR CLAIMS PROCESSING

Preceding chapters have examined victim compensation program philosophies, structures, and policies for eligibility and coverage. Throughout these discussions, the ways in which these aspects of program operations interact to define and limit the availability of compensation have been analyzed. This chapter reviews program procedures and illustrates how each of the program characteristics--theory, structure, and policy--is reflected in the procedures employed to process claims. Because programs exercise considerable discretion in designing and applying these procedures, they can serve either to expand or further restrict the eligible class of victims and the level of benefits available. Hofrichter notes that:

"While most program administrators aspire to administer claims equitably, an ambivalence about compensation, stemming from a desire to meet victim needs and simultaneously to protect the public purse, drastically limits the number of claimants applying, the number of claimants benefitted, and the size of claims awarded. Thus, some programs passively discourage applications and in many ways impede the ones they do receive."

"Some requirements imposed by statute or regulation lead to cumbersome, unrealistic and unfair policies and procedures, measured by delay resulting from lengthy investigations and processing time".¹

This chapter reviews the major aspects of program operations established to perform the program functions of administration, investigation and decision-making, including:

¹ R. Hofrichter, Victim Compensation and the Elderly: Policy and Administrative Issues, published by the Select Committee on Aging, U.S. House of Representatives, 96th Congress, 1st session (Washington, D.C.: U.S. Government Printing Office, January 1980), p.8.

- 1) procedures employed to notify the public of the availability of compensation;
- 2) the application process;
- 3) claims information gathering;
- 4) verification and investigation;
- 5) the claims review process; and
- 6) procedures for appeal.

In addition, the chapter provides comparative information on the number of claims actually processed by victim compensation programs in 1981, noting in particular the percentage of those claims that resulted in awards to victims. Major techniques for expediting claims processing and reducing delay are reviewed. Descriptive information on individual programs' procedures is included in Appendix A, Table IV (A and B): "Program Procedures." For caseload data, refer to Appendix A, Table VI: "Program Caseload."

5.1 Public Awareness

A victim compensation program has little value if the public which it is designed to serve is unaware of its existence. Thus, one of the most important administrative functions of a program is to notify the public of the availability of compensation. Public service announcements and radio and television talk shows are common techniques used by programs to reach the general public. Many programs report, however, that people often do not pay attention to such general advertisements in the absence of an immediate need for compensation and out of a desire to believe that they will never be victimized. Several program administrators have suggested that it is not particularly advisable to engage in expensive commercial advertising, but advocate the use of free public service advertising, recognizing its limitations.

The most effective means of reaching eligible needy victims is a targeted notification scheme, in addition to limited general advertisement of the program. In this way, those agencies and individuals that come into contact with crime victims are charged with the responsibility of notifying them of the existence of the compensation program and their potential eligibility. Such agencies and individuals include law enforcement officers, hospitals, district attorneys' offices, victim/witness assistance programs, crisis intervention centers, rape crisis centers, social services agencies, senior citizen groups, and others. Information can be provided to victims by these organizations in a variety of ways, including the use of:

- wallet-size cards outlining basic eligibility requirements and providing the address and phone number of the program to contact for further information;
- brochures supplying similar, but more detailed, information;
- posters; and
- actual application forms.

Attempts to provide information to these organizations must go beyond merely letting them know that the program exists. Persons in such organizations should be informed in detail regarding eligibility and coverage policies so that they can make appropriate referrals to the program. They should also receive information regarding claims processing procedures, so that they can aid victims, where necessary, in making their applications and gathering the required documentation of their claims. Such information can be provided at conferences and seminars held by relevant organizations, and may encourage increased cooperation between victim compensation programs and referral agencies. Commonly used procedures for eliciting referrals from major sources of victim notification are noted below and recurrent problems in promoting public awareness are discussed.

5.1.1 Notification of Victims by Law Enforcement

One-third of all programs' statutes include a so-called "reverse Miranda"² provision, mandating that law enforcement officers notify victims of the compensation program. In other states, such notification is recommended, but is optional rather than required by law. States employing reverse-Miranda provisions, however, have experienced mixed results. The California program reported that its claims increased 197 percent as a result of notification by law enforcement, New Jersey reported a 35 percent increase, there was no reported change in the volume of claims in Montana, and applications were said to decrease in Ohio.

In most cases, police and other law enforcement agencies are provided with the wallet-sized cards. Some police officers report that it is difficult to fulfill this notification requirement adequately at the scene of a crime because a victim may be confused, in shock, or suffering from physical injury.

²Miranda warnings are constitutionally-required notices to suspected offenders that they are entitled to defense counsel, and that nothing they say can be held against them unless they waive that right.

Some officers apparently feel that this additional requirement is onerous, in light of the responsibilities with which they are already charged. Some programs report limited success (measured in terms of increased numbers of applications for compensation) as a result of distributing these cards to police officers. Other programs report that this does result in increased claims volumes, but that the proportion of valid claims decreases. To alleviate these problems, some law enforcement agencies have designated a liaison officer who compiles a list of potentially eligible crime victims from police reports and notifies them of the compensation program either by phone or letter. This officer can then also be available to respond to victim inquiries and to aid victims in the application process.

5.1.2 Notification by Hospitals

Many programs report that the most effective means of providing victims with information about the availability of compensation is through hospitals. Law enforcement personnel often do not become involved with a crime victim until long after the incident, if at all. An injured victim, on the other hand, normally goes to a hospital emergency room to be treated. As a result, posting notices and making brochures and applications available through hospitals may enable a program to reach a large number of eligible victims. Further, hospitals have a vested interest in informing victims of the availability of compensation, since the program is often the only way that they will receive payment for their services. In some states, notification by hospitals is mandated in the program's statutes. In Pennsylvania and Nebraska, hospitals also must notify law enforcement officials of any crime victims they have treated. As noted earlier, in these states this fulfills the requirement that the crime be reported to the police. In many cases, hospitals also designate a particular staff person as a victim compensation liaison to provide more detailed information to the victim about the compensation program, and to provide the program with more rapid and complete responses to their requests for documentation of victims' medical expenses.

5.1.3 Notification by Victim/Witness Assistance Programs

Victim/witness assistance programs represent another type of organization that often comes into contact with crime victims. These programs are oriented toward aiding the victim in a variety of ways, from legal advocacy to identifying appropriate social services. Because these programs are organized on a local basis, they are notably accessible to victims and can offer personal contact in informing victims of their potential eligibility and aiding them in the application process. The major issues involved in coordination between victim compensation and victim/witness assistance programs are discussed in detail in Chapter Seven.

5.1.4 Senior Citizen Notification

Notifying senior citizens of the availability of compensation presents some special problems, often requiring personalized outreach efforts. Because of the reduced sight and hearing capacities, isolation from the general community, and limited mobility of elderly persons, conventional public awareness activities are often not sufficient to guarantee that they are adequately informed of the program's existence. Because senior citizens are often the target of crime and are, for many reasons, sometimes reluctant to report criminal incidents of which they are the victim, some states (including New Jersey and New York) have instituted special outreach programs. These efforts include speaking at senior citizen centers, posting notices in senior citizen housing and making personal visits to individual elderly victims to aid them in filling out and documenting their claims for compensation. In addition, these programs usually expedite senior citizens' claims so that payment is provided quickly, since many of the elderly are on limited fixed incomes.

5.1.5 General Problems in Public Awareness

Comparisons of violent crime statistics (which themselves represent only that proportion of incidents that is reported, sometimes as little as one-fifth) and numbers of claims filed for compensation indicate that compensation programs are grossly underutilized.³ This is due, in part, to the lack of public awareness of the availability of the service. In many states, programs lack the funding and staff to support the notification activities noted above and the public becomes aware of the program only through word-of-mouth. More important, the lack of adequate funds and personnel causes some programs to avoid increased publicity and the accompanying increase in claims. While this attitude may be understandable from an administrative point of view, it is clearly undesirable from the victim's perspective.

5.2 The Application Process

Once victims have been made aware of the compensation program, they must apply for compensation. Initial contacts with victims are usually by telephone, after which an application form is sent out, to be returned by mail. Various approaches are used to screen applicants for initial compliance with the statutory definitions of eligibility. In some states, victims may be screened during the initial contact. In Maryland, for example, 2,000 inquiries were received in 1981, but only 705 resulted in formal application to

³ Hofrichter, note 1 at 28.

the program. In other states, claims may be screened out as ineligible after they have been formally filed. In New York, for example, 9,323 applications were received in 1981 but only 8,573 were accepted and investigated. The applications that are screened out may be reported in statistics as inquiries, dismissals, disallowed claims, or denials, depending upon the jurisdiction. In a few states, such as Minnesota and Illinois, screening is accomplished through a two-step application process. An initial screening application form is used to collect basic information regarding the incident and the financial losses incurred. If the case is judged appropriate, a second form is filled out by the victim which provides more detailed information regarding the claim.

Several programs employ procedures that act as passive disincentives to application. One such method is the charging of application fees, employed largely by court-based programs. These fees typically range from \$5 to \$10, unless an affidavit of indigency is filed. The rationale for charging such fees is that they will discourage the filing of fraudulent claims. As an example of a more invidious type of passive discouragement, one program administrator reports that its application form is "so voluminous that it acts as a screening device--claimants determine their own eligibility."

Many victims advocates have persuasively argued that the victim compensation application process should be as simple as possible and geared towards the needs of the victims. The use of complex application forms as a screening device is rejected. Application forms should instead be as short as possible, clearly worded, and in everyday English. All required information should be collected on one form if at all possible, including financial data and consent and subrogation agreements. In addition, forms should be printed in foreign languages where appropriate (e.g., in Texas the application is printed in Spanish as well as English). Programs vary in their attitudes regarding appropriate levels of staff contact with victims. Some feel that they should bother victims as little as possible, so as to avoid making them feel victimized all over again, and such programs avoid contact (e.g., the California and Indiana programs). Others believe that it is important to have as much contact as possible so that victims do not feel they are being dealt with impersonally (e.g., the Florida and Oregon programs).

When an application has been received and accepted, the programs generally acknowledge its receipt either by letter or by phone, depending upon their available resources and philosophy regarding victim contact. At this point the claims information gathering process begins.

5.3 Claims Information Gathering and Verification

When a claim has passed the minimum eligibility requirements it is necessary to document and verify the information regarding the crime and the victim's losses. To verify claims, programs typically require that the following information be made available:

- police reports (to prove that a crime occurred and was reported);
- medical or funeral bills (to prove expenses);
- employer's report (to document lost wages);
- tax forms (to demonstrate lost revenue if self-employed);
- prosecutor's report (to indicate cooperation);
- witnesses' reports (to determine contribution);
- insurance information (to identify collateral sources).

All of this information may not necessarily be required for each claim. The burden of gathering documentation may be placed either on the victim or on program staff. In any case, the program collects a significant portion of the information because victims may be unaware of how to obtain it. In some cases, costs associated with gathering information, such as police reports, are waived for the compensation program but not for the individual victim. In several states, victim/witness assistance programs assist in the documentation of a claim. Such efforts are discussed in Chapter Seven. Victim/witness programs are excellently suited for such tasks because they are in personal contact with the victim and usually are located closer to the sources of information than the victim compensation program staff. In addition to the required verification, investigators must determine that there was no contributory misconduct on the part of the victim, that there is no relationship to the offender, that there are not unreported collateral sources, and that financial information is complete.

Claims information gathering and verification often requires a considerable amount of time. Programs consistently indicate that information providers usually are very slow in responding to requests for documentation. Medical personnel are reported to be frequently delinquent in submitting their bills, and law enforcement agencies are routinely slow in providing complete reports. In some cases this delay is exacerbated by procedures established by programs that prohibit staff from continuing to verify certain portions of the claim while other portions have not yet been fully documented.

Many programs report that a large number of claims are abandoned during the verification stage of processing. Programs note that their requests for further information from victims are often not answered, and that they are unable to contact victims. These statements are generally made in defense of statistics that show high denial rates. While this is undoubtedly the case, the question that remains to be answered is, why do such a large proportion of victims abandon their claims? Is there something in how they are treated by programs, e.g., the extensive requirements for information of a personal nature, the lack of personalized attention, or the delay in processing that is causing victims to give up on receiving compensation? Or is it the case, as has been suggested, that those claims were fraudulent or unworthy for some reason and claimants were unaware that they would be so carefully investigated? Detailed research is needed on reasons why claims are abandoned before processing is completed.

5.4 Review and Hearings Procedures

Once the investigation of a claim has been completed, the decision-making process begins. The types of program personnel responsible for claims review and decision-making differ from program to program, depending upon the program structure. Usually an investigator will make a recommendation for denial or award, including a suggested level of benefit. This recommendation will then be reviewed by the program administrator. In some cases, such as in New Jersey, victims are notified of the recommendation before a decision is finalized to allow them to present additional evidence in support of their claim. If the program has a board or commission, the administrator will pass the claim along to it for a final determination. If there is no board, the administrator will decide the claim.

In cases where questions still remain about the claim after it has been investigated, it may be determined that a hearing is required to decide the case. In California, questions about contributory misconduct or the level of monetary loss are generally resolved at a hearing. Hearing officers may simply be the commissioners or program administrator, or they may be designated from some other agency. In Alaska, volunteer hearing officers are used. The victim may choose whether or not to be present at the hearing. The California program reports that the board will usually be more liberal if the victim appears, except in those cases where the victim is what is regarded as a "professional claimant." Hearings are generally held in various locations in a state to make it more convenient for victims to appear if they so desire. Whether or not victims do appear, they should be provided with detailed information regarding the reason for requesting the hearing, so that they can submit additional information to address the specific issues being reviewed.

Once a final decision is reached by a program, the victim is notified by letter of that decision. If the decision is to deny the claim, the letter often only cites the section of the statute relevant to the denial decision. Investigative and determination reports are typically supplied to the victim only when specifically requested. In some such cases, such information might serve to mitigate somewhat the negative effects upon crime victims of being informed that their claims for compensation are not valid.

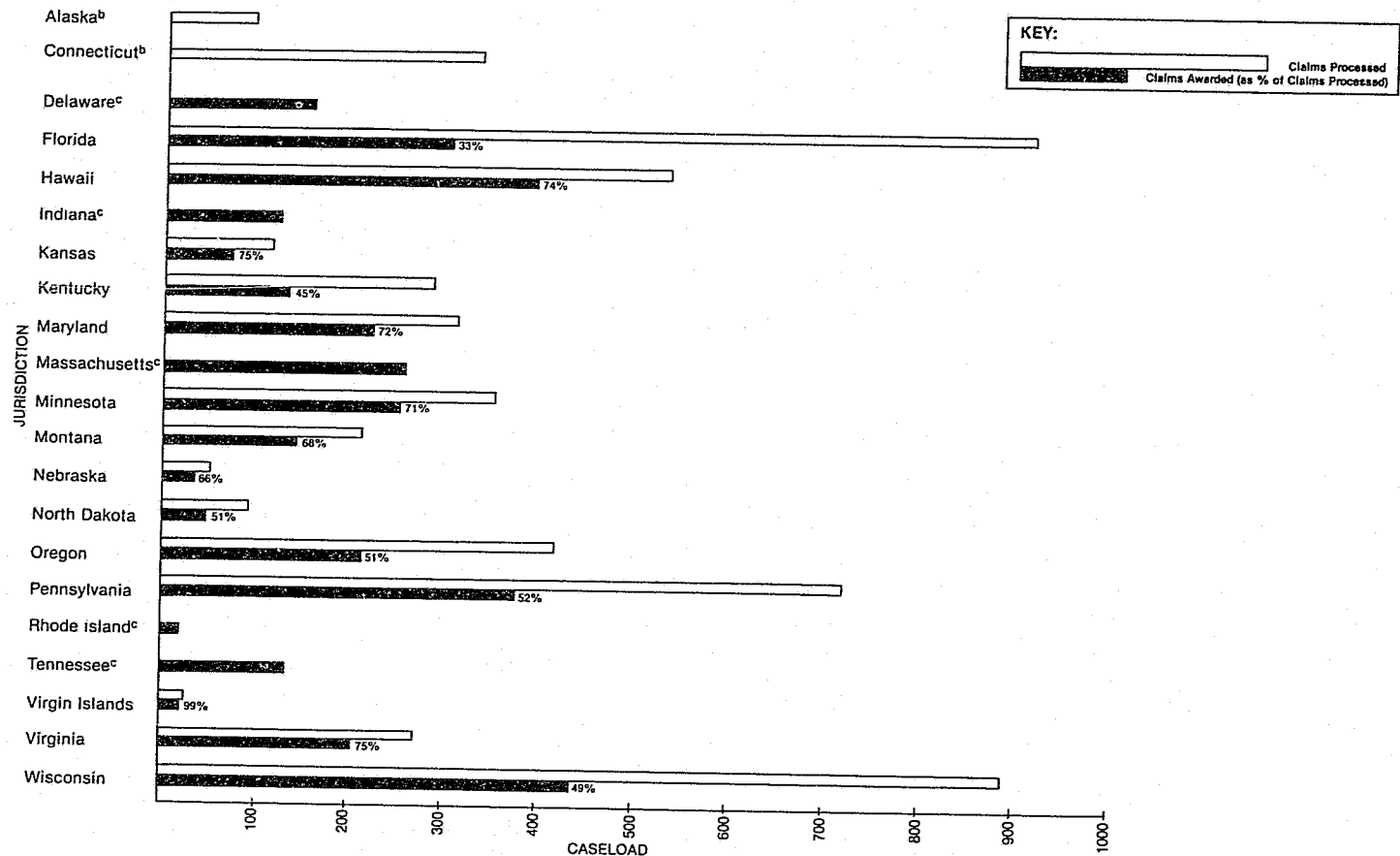
5.5 Appeals Procedures

If a victim is dissatisfied with the disposition of a claim, either because it was denied or reduced to a lower benefit level, most programs allow for at least one appeal of that decision. Typically, the first level of appeal available to a dissatisfied claimant is reconsideration by the deciding authority, whether that was a commission or an administrator. In several states only reconsideration is allowed on appeal. In this case, the review will generally be conducted under oath at a formal hearing. If a single commissioner makes the initial determination of a claim, it may be appealed to the full commission. In many states there are additional avenues of appeal available to the victim, if he or she is still dissatisfied after reconsideration. Where claims are decided by a program administrator, victims may appeal to a higher authority within the agency structure. In two-thirds of existing programs, judicial review is available as a last recourse. Three programs--New Mexico, Rhode Island and Tennessee--have no provision for appeal in their statutes. The procedures for appeal vary widely from state to state; for information on the individual states' provisions refer to Appendix A, Table IV-A: "Program Procedures."

5.6 Claims Processed

Exhibits 5.1A, B and C on the following pages illustrate the number of claims processed by each of the programs in 1981 for which data were available. Information is also provided in these exhibits regarding the percentage of decisions that result in awards to victims. For the purpose of this exhibit, "claims processed" is defined as the sum of awards and denials in a given year. This figure is used, rather than the number of applications received by the program, for two reasons. The first of these is that the number of applications reported by programs may represent very different statistics, because of the various methods of screening and counting applications mentioned earlier. The second reason is that many applications received by a program are not fully processed during the year in which they are received, and are recorded as claims pending. Presentation of awards as a percentage of applications in a given year would result in a distorted estimate of the actual proportion awarded. The claims processed figure also represents a more accurate measure of program output in a year's time.

EXHIBIT 5.1A 1981 CASELOAD – SMALL PROGRAMS^a



100

NOTES

^aFor the purpose of this table, a small program is defined as one which processed less than 1000 claims in 1981. "Claims Processed" are defined throughout as all claims decided in a year's time—whether awarded, denied, disallowed, dismissed or withdrawn—as reported by program personnel. Only 29 programs are reported in this series of tables because annual caseload data are not yet available from programs in Nevada, New Mexico, Oklahoma, and West Virginia.

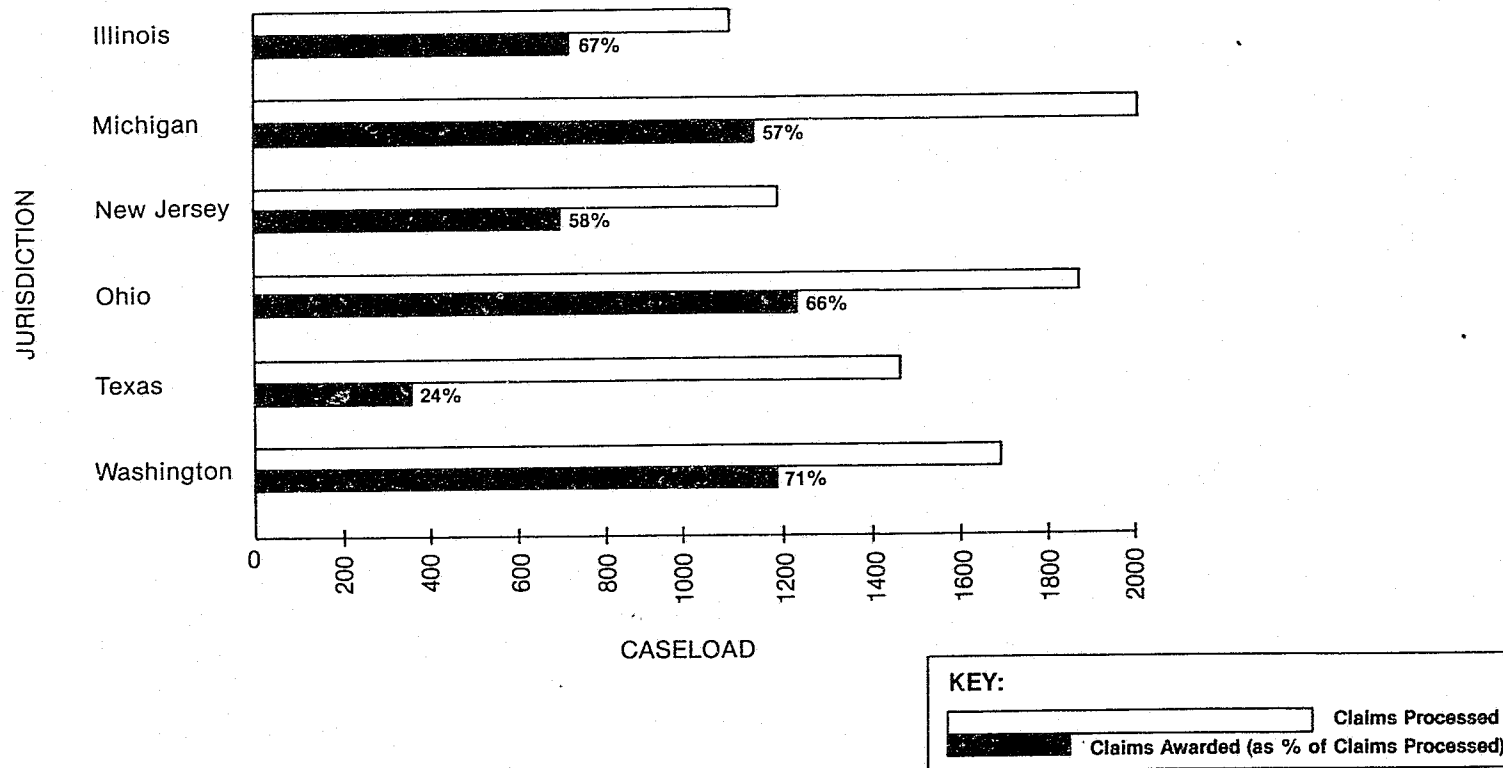
^bPrograms in Alaska and Connecticut reported only the number of claims heard, which is used here as the equivalent of claims processed. Neither program was able to break that figure down into awards and denials.

^cIn Delaware, Indiana, Massachusetts, Rhode Island, and Tennessee only the number of claims awarded was available.

^dFor the purpose of this table, medium programs are defined as processing between 1000 and 5000 claims annually.

^eFor the purpose of this table, a large program is defined as one processing a total of more than 5000 claims on an annual basis.

**EXHIBIT 5.1B
1981 CASELOAD – MEDIUM PROGRAMS^d**



101

NOTES

^aFor the purpose of this table, a small program is defined as one which processed less than 1000 claims in 1981. "Claims Processed" are defined throughout as all claims decided in a year's time—whether awarded, denied, disallowed, dismissed or withdrawn—as reported by program personnel. Only 29 programs are reported in this series of tables because annual caseload data are not yet available from programs in Nevada, New Mexico, Oklahoma, and West Virginia.

^bPrograms in Alaska and Connecticut reported only the number of claims heard, which is used here as the equivalent of claims processed. Neither program was able to break that figure down into awards and denials.

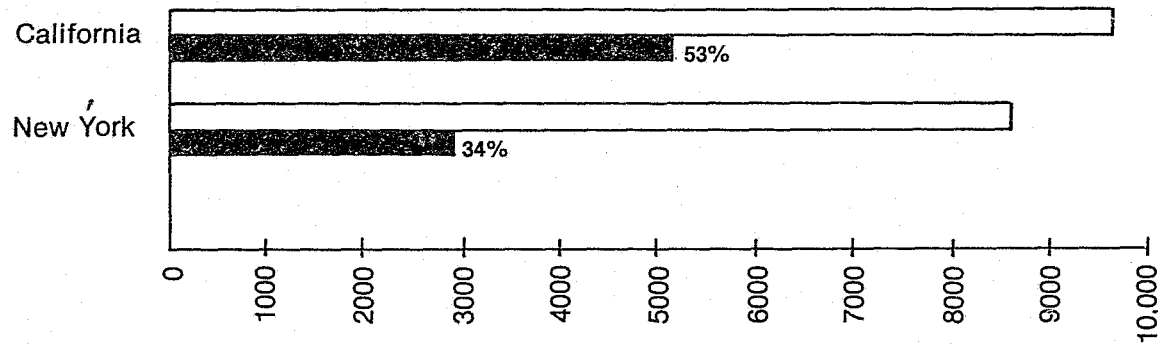
^cIn Delaware, Indiana, Massachusetts, Rhode Island, and Tennessee only the number of claims awarded was available.

^dFor the purpose of this table, medium programs are defined as processing between 1000 and 5000 claims annually.

^eFor the purpose of this table, a large program is defined as one processing a total of more than 5000 claims on an annual basis.

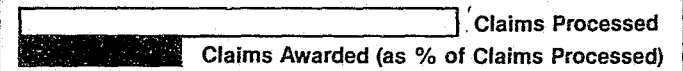
**EXHIBIT 5.1C
1981 CASELOAD – LARGE PROGRAMS^a**

JURISDICTION



CASELOAD

KEY:



NOTES

^aFor the purpose of this table, a small program is defined as one which processed less than 1000 claims in 1981. "Claims Processed" are defined throughout as all claims decided in a year's time – whether awarded, denied, disallowed, dismissed or withdrawn – as reported by program personnel. Only 29 programs are reported in this series of tables because annual caseload data are not yet available from programs in Nevada, New Mexico, Oklahoma, and West Virginia.

^bPrograms in Alaska and Connecticut reported only the number of claims heard, which is used here as the equivalent of claims processed. Neither program was able to break that figure down into awards and denials.

^cIn Delaware, Indiana, Massachusetts, Rhode Island, and Tennessee only the number of claims awarded was available.

^dFor the purpose of this table, medium programs are defined as processing between 1000 and 5000 claims annually.

^eFor the purpose of this table, a large program is defined as one processing a total of more than 5000 claims on an annual basis.

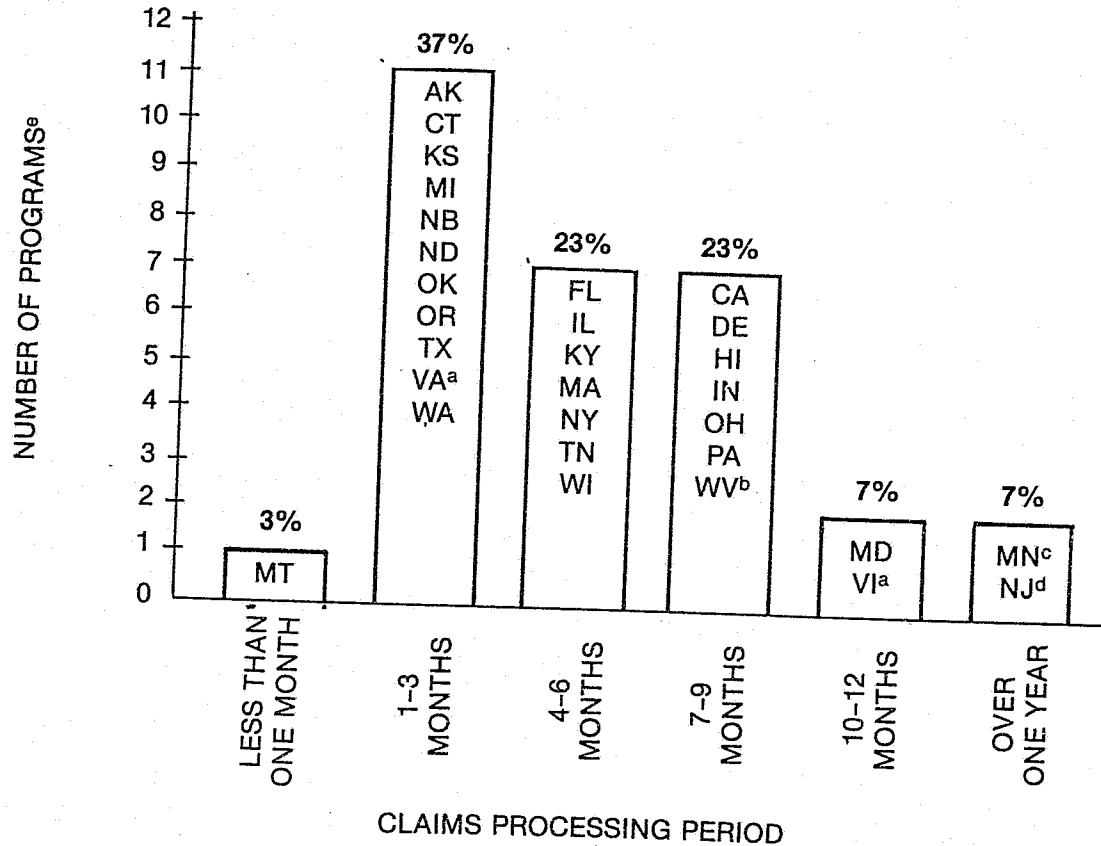
As noted earlier in this chapter, claims which are disallowed in the early screening process are counted as denials in some states and are simply not included in the statistics recorded in other states. Such variations in practices cause inevitable inconsistencies across the award rates presented in the exhibit. Nonetheless, it is interesting to note the wide variance in awards made by the various programs as a percentage of claims processed (as defined here). It ranges from 24 percent in Texas to 99 percent in the Virgin Islands. The average award rate in the United States is 60 percent. There are too many factors affecting these rates to identify the particular policies and procedures that correlate with low award rates. One can conjecture, however, that in programs having high rejection rates the public may be inadequately informed of the program's eligibility and benefit policies, resulting in a large number of inappropriate applications. In other cases, a program's strict adherence to reporting and application time period requirements may result in increased denial rates. The program's approach to handling cases with evidence of contributory misconduct may also significantly affect the denial and award rates. In addition, those programs with strict financial need criteria may deny a larger number of claims than others. As discussed in Chapter One, there is not enough information available at the present time to evaluate the effects, on balance, of high denial rates on public perception of and victim satisfaction with victim compensation programs.

5.7 Techniques for Expediting Claims Processing

One of the major reasons for victim dissatisfaction with compensation programs that has been identified is the delay in processing victims' claims for compensation. Exhibit 5.2 on the following page illustrates average claims processing times for programs across the country. Forty percent of the programs report that they process claims in an average of three months or less. Thirty-seven percent of the programs report that case processing time exceeds seven months, and seven percent of programs require more than one year to process claims to disposition. For many claimants, as was pointed out earlier in the discussion of emergency awards, a delay of several months for compensation can result in financial and emotional hardship. Thus, it is important to identify the major causes of delay and techniques for expediting the payment process.

Delay in program operations may be the result of a combination of structural, policy-related and/or procedural factors. For example, structures which provide a split decision-making process, such as in West Virginia where the legislature must approve all claim decisions, can cause considerable delay in payment to the victim, and should be avoided. Some programs report that separating the staff performing the investigative function from those responsible for administration and decision-making also causes delay. Other programs, especially those that use the services of victim/witness assistance

EXHIBIT 5.2 AVERAGE CLAIMS PROCESSING TIME



^aAn additional 2-3 weeks is required in Virginia to process checks. In the Virgin Islands, check processing adds a month to the time the victim waits for compensation.

^bAfter the West Virginia program processes a claim, the claimant must wait up to 9 months for legislative approval of the award (legislature meets annually for 3 months).

^cMinnesota reports an average claims processing time of 13 months.

^dNew Jersey reports a backlog pending from 2-4 years ago. New cases can take anywhere from 6 months to 2 years to process.

^eTotal is less than 33 because average processing time figures are unavailable for Nevada, New Mexico, and Rhode Island.

programs in gathering and verifying necessary documentation, report that this organization improves claim processing efficiency. Any separation of function should be carefully considered and constructed. In addition, the discussion of court-based programs in Chapter Three points out that claims adjudicated in general trial court are potentially subject to significant delays as a result of the serious problems with backlog in our nation's courts.

Specific program policies may often significantly increase the time required to process a claim, particularly as they influence investigation procedures. For example, policies requiring the determination of financial need, assessment of contributory misconduct, and investigation of collateral sources are among the most time-consuming aspects of the investigation process. Though careful investigation of these issues is required in many cases, some program staff have suggested that the investigation process can be abbreviated. In California, staff reported that when the attorney general's office was conducting investigations the level of work was unnecessarily comprehensive. Staff of the attorney general's office were trained to look into complex legal matters and did not alter their procedures for victim compensation claims. Since assuming the responsibility for investigation, the program has reduced the amount of verification needed for a claim. It attempts to obtain necessary information the fastest way possible consonant with accuracy. Because one of the most time-consuming aspects of gathering and verifying documentation of a claim is waiting for responses to requests for information, some programs have decided to accept officially information provided over the phone. Though some information sources, such as law enforcement agencies, may be reluctant to provide detailed claims information over the phone, documenting claims in this fashion can save time. In addition, allowing investigation reports to be handwritten can also reduce processing time.

Certain types of claims, such as small claims or claims for funeral costs, are particularly well-suited for abbreviated investigation. The California program is presently conducting a cost-efficiency study for abbreviating the verification of small claims. The impetus for this effort was the realization that the program was spending the same amount of administrative time and money on \$500 claims as on \$25,000 claims and that, therefore, fewer claims overall were being processed. In this pilot project, an experienced group of claims specialists verified a set of 200 claims in less than 10 percent of the time that it would normally have taken. A sample of 30 of these cases then received full review to determine if the outcome of the investigation would differ significantly. The results of this experiment are not yet available, but the preliminary indications are that the abbreviated procedures will be equally as efficient for the investigation of small claims, and will save time and money for the program.

Finally, an additional source of delay in many states is the amount of time it takes to process a check for payment to a victim. In some instances this

process can occupy as long as several months due to the necessity for internal audit of the warrant for payment, sometimes by several agencies in the state bureaucracy. In states where check processing requires more than a few weeks, programs may want to investigate the possibility of establishing the internal capacity to write checks. The administrative costs of the program may be increased through the addition of this responsibility, but the benefit of a more expeditious payment of benefits to eligible and needy victims may be substantial.

5.8 Conclusion

This chapter has reviewed the major aspects of claims processing conducted by victim compensation programs. These include: promoting public awareness of the program, applying for compensation, gathering and verifying claims documentation, reviewing and deciding claims, and appealing claims decisions. The various procedures employed for accomplishing each of these tasks have been reviewed. Information on the outcome of the claims processing procedures--the actual number of claims decided in 1981 and the percentage of awards--is also provided. Finally, the major methods for expediting claims processing have been discussed. The following chapter examines the costs of providing victim compensation and presents a review of the issues involved in funding these programs.

CHAPTER 6

PROGRAM COSTS AND FUNDING

Financial issues--how much a program costs and how it will receive its funding--are obviously critical concerns of any governmental social program. These concerns are particularly salient for victim compensation programs due to a variety of inherent qualities of the programs.

First, the programs' service is financial in nature. The main product of victim compensation programs is not an activity such as job training, housing assistance, and the like; victim compensation programs produce financial payments to victims. This fact results in the programs having relatively large expenditures for the number of people served, and requires that the programs have highly detailed systems for screening cases and accounting for funds. There are upper limits to the possibilities for fraudulent requests for services provided by many governmental agencies. Presumably no one would seek an unlimited amount of counseling or training services. Such limits are less likely when the program service involves providing money.

Second, victim compensation programs experience particular difficulty in predicting how many claims will, in fact, be made for their funds. The level of crime in general is difficult to predict, and the numbers of victimized persons meeting the often complex eligibility criteria of specific programs is even more difficult to estimate. These uncertainties have led to widely divergent predictions of program costs within specific states and nationwide. These diverse fiscal projections have understandably made legislators nervous about the potential drain on the public treasury that could be caused by the programs.

Third, as a result of the difficulties in predicting expenditures, legislatures typically have been very conservative in designing victim compensation programs and have specified numerous eligibility restrictions in order to insure that they would not be faced with runaway expenses. These restrictions often do not necessarily follow from the program's rationale, and

Austern et al. have noted that, "Frequently, those strict eligibility criteria have been antithetical to the announced purposes of the program."¹ A corollary to this concern is the practice in many states of providing very limited publicity regarding their victim compensation programs. As a result, these programs are typically very low in public visibility, and only a fraction of eligible claimants, in fact, file for victim compensation awards. This low proportion of eligible claimants filing has led critics to charge that some efforts are primarily "paper" programs designed to provide promising campaign speech material for persons enacting them, while not offering adequate help due to underfunding.

And fourth, the relatively novel nature of the program's service, financial assistance to victims of crime, has raised the question of who should pay for it. Some argue that the society at large is responsible (e.g., the insurance theory discussed in Chapter One); others contend that criminals should pay for the programs since they caused the harm (numerous disagreements occur regarding which criminals, if any, are liable for payments), and still others assert that, regrettably, the victim should pay for the costs of the victimization because such compensation is simply not a proper responsibility of government.

These "fiscal realities" of victim compensation programs shape much of their policies, procedures, and ultimately their impact. The present chapter reviews these fiscal realities and discusses program costs, and major funding sources. Both administrative costs and expenditures for payments to victims are surveyed. Information is provided on the administrative costs per claim and per award as well as total costs. Funding sources reviewed include various forms of fines and penalties assessed against offenders at the time of conviction or while on probation or parole; general revenues; restitution; civil suits; and related mechanisms. Many complex issues arise in determining appropriate funding sources and in actually implementing collection of the funds once the source is chosen. Numerous programs have seen fines and penalties mechanisms enacted into law and then found that such laws are not "self-implementing," but require extensive further efforts before the justice system actually collects the mandated assessments.

6.1 Program Costs

The two major categories of program costs for victim compensation programs are for payments to victims and administrative costs to screen, investigate,

¹ D. Austern et al., "Crime Victim Compensation Programs: The Issue of Costs," 5 Victimology 68 (1980) at 71.

and process claims for payments. Exhibit 6.1 presents a summary of these costs for the existing victim compensation programs. The program costs are grouped into eight categories of cost ranges. Six groups are less than one million dollars. The remaining categories are 1 - 5 million dollars and over 5 million dollars. As would be expected, some of the newest programs fall into the lowest categories for costs of payments to victims (e.g., New Mexico expended only \$7,427 for such payments). The Virgin Islands program had the lowest measurable administrative costs of any program (\$16,000). The administrative costs of programs operated by the courts often are not measurable because the functions are performed by persons already on the state's payroll (for example, district attorneys who conduct case screening and investigation in such states and judges who decide the merits of the claims). The administrative costs of such programs are not included in Exhibit 6.1. The table also provides a summary of total costs for the various programs, again rank ordered and subdivided into the eight cost categories. The New Mexico program reported the lowest total costs, and the California program had the highest total costs, as can be observed from the table. Exhibit 1.5 in Chapter One provides an additional summary of program costs, and programs are grouped into three categories of program size.

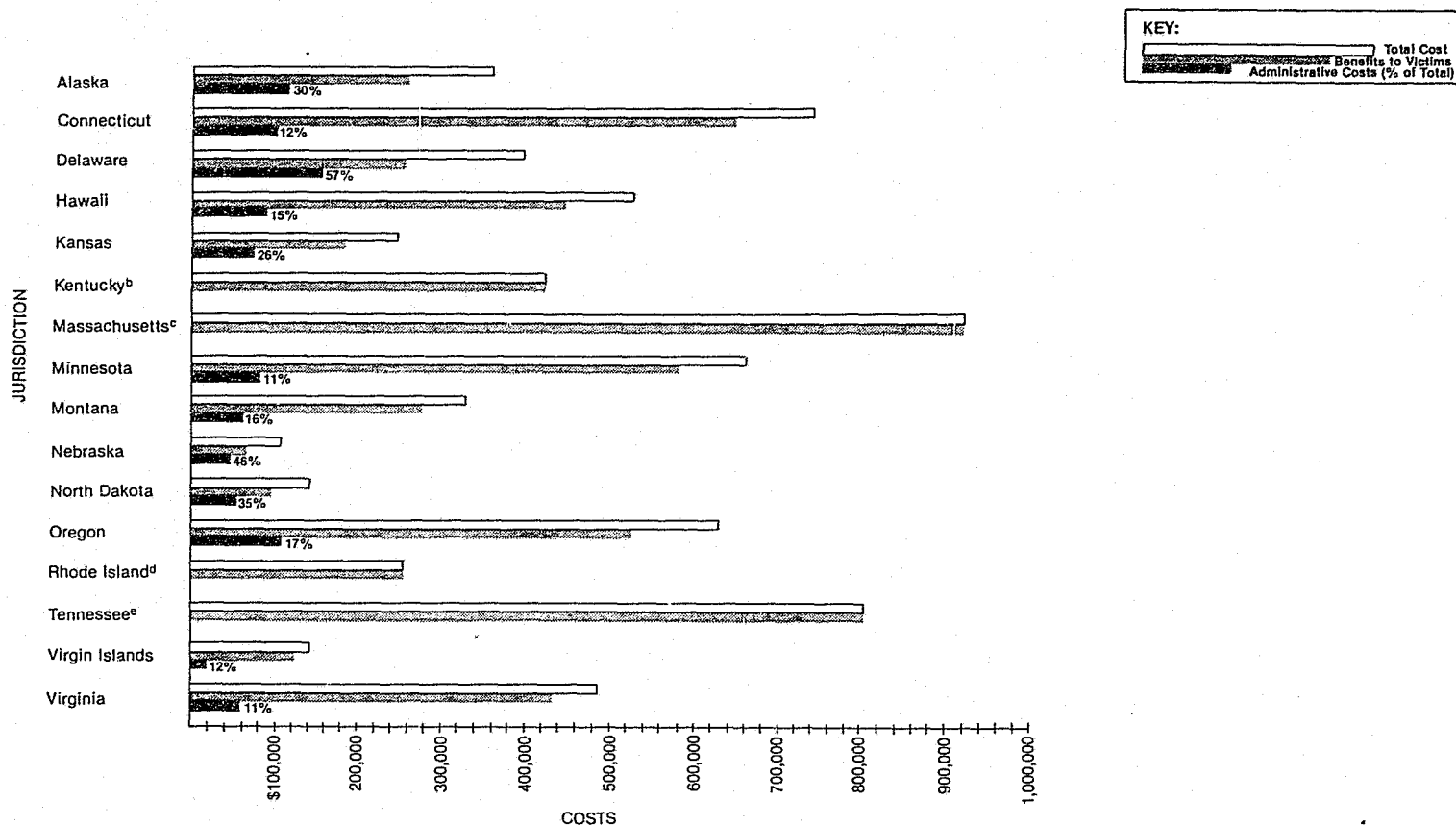
Exhibits 6.2A, 6.2B and 6.2C provide a graphic presentation of the administrative, benefit payment, and total costs of the various existing state programs. The first figure includes such costs for all programs having total costs of less than one million dollars; the second figure includes programs ranging from one to five million dollars in costs and the third figure presents data for programs with expenses exceeding five million dollars. In each case the proportion of total funds devoted to administrative functions is noted above the administrative costs column in the figures. The figures omit several new programs (Nevada, New Mexico, Oklahoma, and West Virginia) that have not been in operation long enough to develop a reliable cost estimate. The Indiana program is omitted because it is only now becoming fully operational after a long period of dormancy. The programs that were recently enacted and are accruing funds prior to beginning operation (Colorado, Missouri, Iowa, and the District of Columbia) are, of course, also not included in these graphs.

Review of Exhibit 6.2A, the summary of the program costs of relatively small programs, indicates the wide variations in proportions of funds expended on program administration, and suggests that such expenses increase proportionately when overall costs are low and programs are relatively new. For example, the highest proportionate administrative costs for small programs occurred for the Nebraska program (42 percent). This program was developed relatively recently and has total expenses of \$99,686 per year, \$42,000 of which are devoted to administrative functions. In contrast, the Virginia and Minnesota program administrative costs make up only 11 percent of their overall budgets. The total costs of the Virginia and Minnesota programs are \$485,462 and \$647,084 respectively. Administrative cost figures are not presented for Kentucky, Massachusetts, Rhode Island, and Tennessee because

EXHIBIT 6.1: Program Costs

RANGE OF COSTS	COST CATEGORY	TOTAL PAYMENTS TO VICTIMS	TOTAL ADMINISTRATIVE COSTS	TOTAL COSTS
Less than \$20,000		NM (\$ 7,427) ^a OK (14,968) ^b	VI (\$ 16,000)	NM (\$ 7,427)
\$21,000 to \$100,000		NB (57,686)	NB (42,000)	OK (81,634)
		ND (88,373)	ND (46,772)	NB (99,686)
			MT (50,536)	
			VA (54,775)	
			KS (61,883)	
			OK (66,666)	
			MN (73,995)	
			HI (77,418)	
\$100,001 to \$300,000		VI (121,967)	AK (102,000)	ND (135,145)
		KS (173,142)	OR (104,000)	VI (137,967)
		AK (237,100)	DE (140,350)	KS (235,025)
		RI (238,430)	MI (158,195)	RI (249,792)
		DE (241,804)	WI (200,000)	
		MT (271,023)	IL (232,900)	
			WA (250,000)	
			PA (252,000)	
			TX (263,886)	
	\$300,001 to \$500,000		KY (410,533)	FL (380,000)
		VA (430,687)	NJ (400,000)	AK (339,300)
		HI (432,513)		DE (382,154)
				KY (410,533)
				VA (485,467)
\$500,001 to \$700,000		OR (500,000)		HI (509,931)
		MN (573,059)		OR (623,000)
		CT (632,000)		MN (647,064)
\$700,001 to \$1,000,000 (Small programs - up to \$1 million)		TN (801,452)	MD (782,281)	CT (719,650)
		PA (816,000)		TN (801,452)
		MA (907,679)		MA (907,679)
		TX (988,182)		
\$1,000,001 to \$5,000,000 (Medium programs - \$1M to \$5M)		WI (1,200,000)	NY (1,081,730)	PA (1,068,000)
		(1,415,472)	OH (1,531,279)	TX (1,252,068)
		(1,800,000)	CA (1,805,438)	WI (1,400,000)
		MI (1,822,605)		MI (1,980,800)
		NJ (1,953,996)		FL (2,180,000)
		IL (2,078,000)		MD (2,197,753)
		WA (2,378,634)		IL (2,310,900)
				NJ (2,353,996)
			WA (2,628,634)	
Over \$5,000,000 (Large programs)		NY (5,750,549)		NY (6,832,279)
		OH (7,654,240)		OH (9,188,519)
		CA (15,270,141)		CA (17,075,579)

**EXHIBIT 6.2A
1981 COSTS — SMALL PROGRAMS^a**



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^aFor the purpose of this table, a small program is defined as one with total costs of less than \$1 million in 1981.

^bBecause the crime victim compensation board in Kentucky is also the Board of Claims, it is impossible to separate out the administrative costs of Victim Compensation alone. Thus, total costs of the program, as reported herein, are equal to total payments to victims.

^cNo "program" per se exists in Massachusetts, but, simply, investigation is provided by the staff of the attorney general's office to inform the court in adjudicating claims. Because these services are not allocated a separate staff or budget, administrative costs cannot be determined. Thus, total costs here are equal to payments to victims.

^dRhode Island has a claims process similar to Massachusetts (see Note C, supra). Administrative costs under this procedure are paid out of the attorney general's office and are not monitored separately, so total costs reported in this table are equal to total payments to victims.

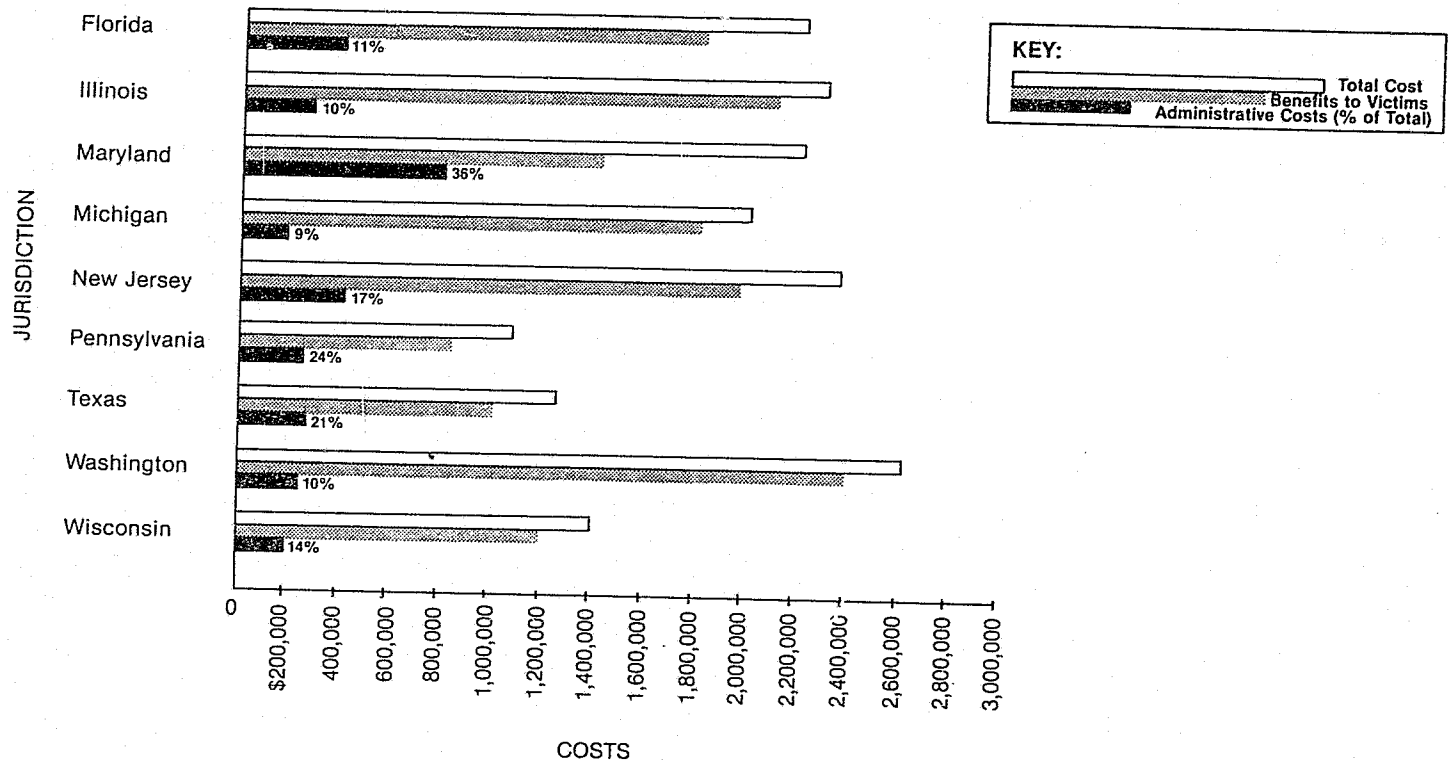
^eThe victim compensation process in Tennessee is similar to Massachusetts and Rhode Island (see Note C and D, supra). Administrative costs are contained in the board of claims budget and cannot be separated out. Thus, total costs reported herein are equal to total payments to victims.

^fFor the purpose of this table, a medium program is defined as one with total costs ranging from \$1 million to \$5 million in 1981.

^gFor the purpose of this table, a large program is defined as one with total costs exceeding \$5 million in 1981.

^hOnly 28 jurisdictions are included in this series of tables because annual cost data were unavailable in Indiana, Nevada, New Mexico, Oklahoma, and West Virginia.

**EXHIBIT 6.2B
1981 COSTS - MEDIUM PROGRAMS^f**



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^aFor the purpose of this table, a small program is defined as one with total costs of less than \$1 million in 1981.

^bBecause the crime victim compensation board in Kentucky is also the Board of Claims, it is impossible to separate out the administrative costs of Victim Compensation alone. Thus, total costs of the program, as reported herein, are equal to total payments to victims.

^cNo "program" per se exists in Massachusetts, but, simply, investigation is provided by the staff of the attorney general's office to inform the court in adjudicating claims. Because these services are not allocated a separate staff or budget, administrative costs cannot be determined. Thus, total costs here are equal to payments to victims.

^dRhode Island has a claims process similar to Massachusetts (see Note C, supra). Administrative costs under this procedure are paid out of the attorney general's office and are not monitored separately, so total costs reported in this table are equal to total payments to victims.

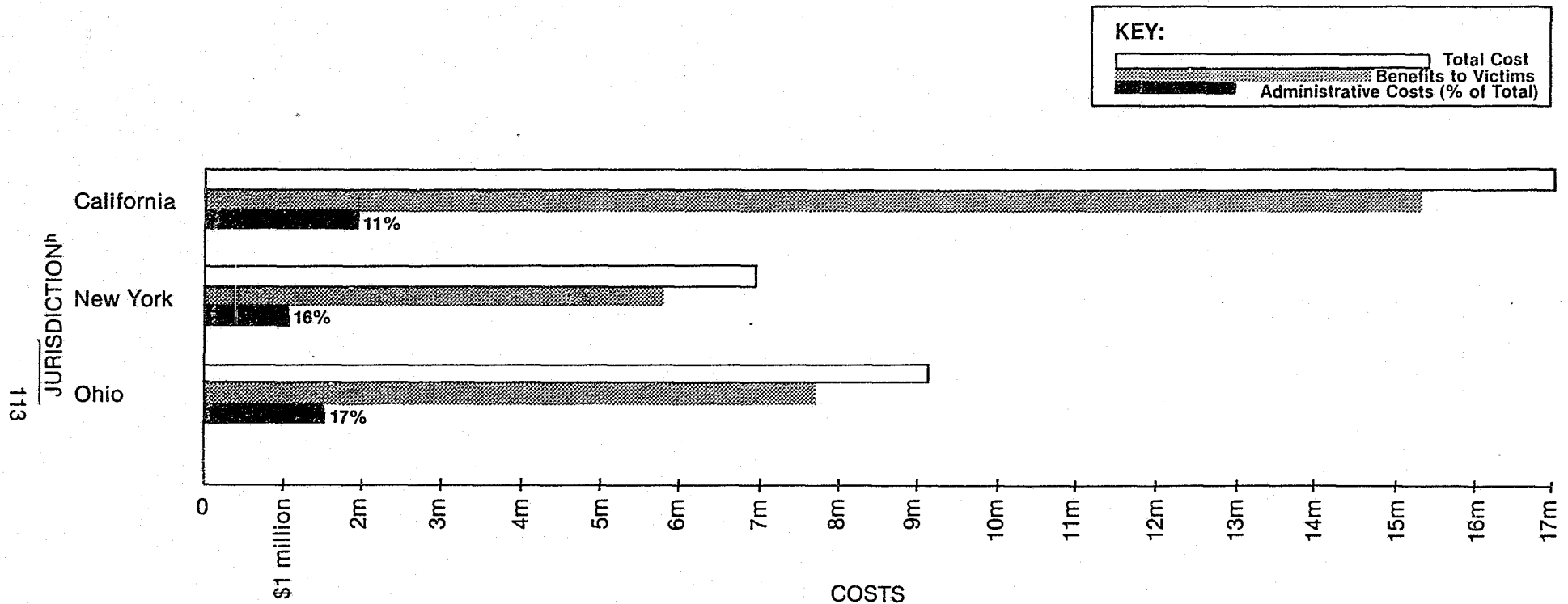
^eThe victim compensation process in Tennessee is similar to Massachusetts and Rhode Island (see Note C and D, supra). Administrative costs are contained in the board of claims budget and cannot be separated out. Thus, total costs reported herein are equal to total payments to victims.

^fFor the purpose of this table, a medium program is defined as one with total costs ranging from \$1 million to \$5 million in 1981.

^gFor the purpose of this table, a large program is defined as one with total costs exceeding \$5 million in 1981.

^hOnly 28 jurisdictions are included in this series of tables because annual cost data were unavailable in Indiana, Nevada, New Mexico, Oklahoma, and West Virginia.

**EXHIBIT 6.2C
1981 COSTS — LARGE PROGRAMS^g**



^aFor the purpose of this table, a small program is defined as one with total costs of less than \$1 million in 1981.

^bBecause the crime victim compensation board in Kentucky is also the Board of Claims, it is impossible to separate out the administrative costs of Victim Compensation alone. Thus, total costs of the program, as reported herein, are equal to total payments to victims.

^cNo "program" per se exists in Massachusetts, but, simply, investigation is provided by the staff of the attorney general's office to inform the court in adjudicating claims. Because these services are not allocated a separate staff or budget, administrative costs cannot be determined. Thus, total costs here are equal to payments to victims.

^dRhode Island has a claims process similar to Massachusetts (see Note C, supra). Administrative costs under this procedure are paid out of the attorney general's office and are not monitored separately, so total costs reported in this table are equal to total payments to victims.

^eThe victim compensation process in Tennessee is similar to Massachusetts and Rhode Island (see Note C and D, supra). Administrative costs are contained in the board of claims budget and cannot be separated out. Thus, total costs reported herein are equal to total payments to victims.

^fFor the purpose of this table, a medium program is defined as one with total costs ranging from \$1 million to \$5 million in 1981.

^gFor the purpose of this table, a large program is defined as one with total costs exceeding \$5 million in 1981.

^hOnly 28 jurisdictions are included in this series of tables because annual cost data were unavailable in Indiana, Nevada, New Mexico, Oklahoma, and West Virginia.

the programs are operated by the courts using existing personnel, and reliable estimates of relevant costs are not possible.

Exhibit 6.2B summarizes the costs of medium-sized programs ranging from one to five million dollars in total costs. The economies of scale for administrative expenses continue to be apparent, and the Illinois and Washington program administrative expenses make up 10 percent of their total budgets while the Michigan program administrative expenses are only 9 percent. Exhibit 6.2C presents the costs of the three largest programs in the nation. The total costs of these three programs are 17 million, 9.2 million, and 6.8 million dollars respectively for California, Ohio, and New York and their proportion of administrative expenses are 11 percent, 17 percent, and 16 percent. These proportions are low but not as low as some of those noted earlier, and may be due to the extra functions taken on by the nation's largest programs, including extensive linkages with victim/witness assistance programs in their state (and actual coordination of the statewide network of such programs by the New York program).

Variations across programs in administrative costs can be due to a large variety of factors, including workload increases caused by variations in mandated policies (such as the requirement in some programs to assess financial hardship), variations in routine operating practices (e.g., differing levels of thoroughness in claims investigation), variations in pay scales for staff, the conduct of additional related functions in some programs (such as the training of victim/witness personnel, operation of a victims hotline, and the like), and simply the general efficiency of operations. The individual contributions of these factors are very difficult to identify and nothing short of intensive management audits and workload studies would enable one to determine in detail the precise reasons for variations in ratios of administrative costs to total program costs. Even such studies would probably find it very difficult to account for the myriad complex local factors naturally leading to variations in administrative expenses.

Regardless of the causes for administrative expense variations across the nation, their impact upon costs per claim processed and costs per award can be examined. Exhibit 6.3 presents a summary of program administrative costs (excluding the programs noted earlier) and also notes the numbers of claims processed and claims awarded by the programs. "Claims processed" are defined as the combined total of claims awarded and claims denied. Based upon these figures, estimates are provided of the average costs per claim processed and the average costs per claim awarded for each of the programs. The costs for claim processing range from a low of \$79 per claim in Michigan to a high of \$2,548 in Maryland. The "Claims Processed" column does not include all "inquiries" to the project or all cases receiving some level of investigation, but only cases fully completing the review process and being either awarded or denied. The reason for this narrow definition is the great variation that occurs in the number of cases initially received by different projects. Some programs receive many cases that have already been prescreened to an extent,

EXHIBIT 6.3: Administrative Cost Per Claim

JURISDICTION	ADMINISTRATIVE COSTS	NO. OF CLAIMS PROCESSED	NO. OF CLAIMS AWARDED	COST/CLAIM	COST/AWARD
Alaska	\$ 102,200	93	---	\$1,099	\$ ---
California	1,805,438	9,642	5,151	187	351
Connecticut	87,650	333	---	263	---
Delaware	140,350	---	155	---	905
Florida	380,000	913	301	416	1,262
Hawaii	77,418	533	393	145	197
Illinois	232,900	1,067	710	218	328
Indiana	---	---	---	---	---
Kansas	61,883	110	83	563	746
Kentucky	---	---	---	---	---
Maryland	782,281	307	222	2,548	3,523
Massachusetts	---	---	---	---	---
Michigan	158,195	1,994	1,131	79	140
Minnesota	73,995	354	253	209	292
Montana	50,536	209	143	242	353
Nebraska	42,000	53	35	792	1,200
Nevada	---	---	---	---	---
New Jersey	400,000	1,189	691	336	579
New Mexico	---	---	---	---	---
New York	1,081,730	8,622	2,952	125	366
North Dakota	46,772	89	45	526	1,039
Ohio	1,531,279	1,873	1,236	818	1,239
Oklahoma	---	---	---	---	---
Oregon	104,000	416	212	250	491
Pennsylvania	252,000	721	375	350	672
Rhode Island	---	---	---	---	---
Tennessee	---	---	---	---	---
Texas	263,866	1,459	346	181	763
Virgin Islands	16,000	25	23	640	696
Virginia	54,775	270	202	203	271
Washington	250,000	1,683	1,189	149	210
West Virginia	---	---	---	---	---
Wisconsin	200,000	888	437	275	458

while others primarily receive cases with little or no prescreening. Such variations in practice would result in substantial distortions if estimated costs per application received were calculated. Much of the initial claim filing process is an invisible one, even to programs. Decisions are made at law enforcement agencies, hospitals, and elsewhere regarding whether to encourage a person to file a claim with the victim compensation program in light of the local personnel's understanding of the eligibility criteria. Presumably, a state program with well-informed referral personnel at law enforcement agencies, hospitals, victim/witness assistance programs and the like would receive fewer inappropriate claim applications than a state with very inadequate referral agency prescreening of cases.

Other states having relatively low administrative costs per case processed as calculated above include New York (\$125), Hawaii (\$145), and Washington (\$149). The percent of applicants receiving benefits in these states is 33 percent, not available, and 52 percent. Other states having relatively high administrative costs per case processed include Alaska (\$1,099), Ohio (\$818), and Nebraska (\$792). The proportions of applicants receiving benefits in these states are 75 percent, 66 percent, and not available, respectively. The higher proportion of cases awarded in the relatively high cost per claim case suggests that more prescreening occurs in those states than in the states with the relatively low administrative costs per case.

The average costs per award also vary considerably across programs. Such costs are very important since a program's primary service is the payment of such awards to victims. A program could conceivably have very impressive costs per case processed figures by handling a great many cases, yet if only a few of these claims were approved for award the service to victims in the state could be negligible (presuming a moderate number of deserving victims meeting eligibility requirements did, in fact, exist in the state). The administrative costs per award range from a high of \$3,523 in Maryland to a low of \$140 in Michigan. Maryland provided awards for 222 claims in fiscal year 1981 and experienced administrative costs of \$782,281 (36 percent of its total costs). Michigan paid awards to 1,131 victims in fiscal year 1981 and had an administrative budget of \$158,195 (9 percent of its total costs). Maryland estimates that it provides benefits to 75 percent of claim applicants; Michigan estimates that 50 percent of applicants receive awards, and in fiscal year 1981 Maryland received 705 applicants in comparison to 1,448 in Michigan. Estimated proportions receiving awards are provided because these figures cannot be calculated readily from fiscal year data since cases often require considerable time to process, and during each fiscal year some are carried over from the preceding year and some cases are left pending at the end of the fiscal year.

Other states having relatively high administrative costs per award include Florida (\$1,262), Ohio (\$1,239), and Nebraska (\$1,200). States having relatively low administrative costs per award include Hawaii (\$197), Washington (\$210), Virginia (\$271), and Minnesota (\$292). As in the case of overall

administrative costs, the reasons for variations in costs per award are obviously numerous and difficult to determine with precision for specific programs. Such costs have been demonstrated to decrease generally as a proportion of total program expenses as programs grow older, and the additional costs of payments to victims increasingly offset the fixed costs of administration as a program becomes fully operational.²

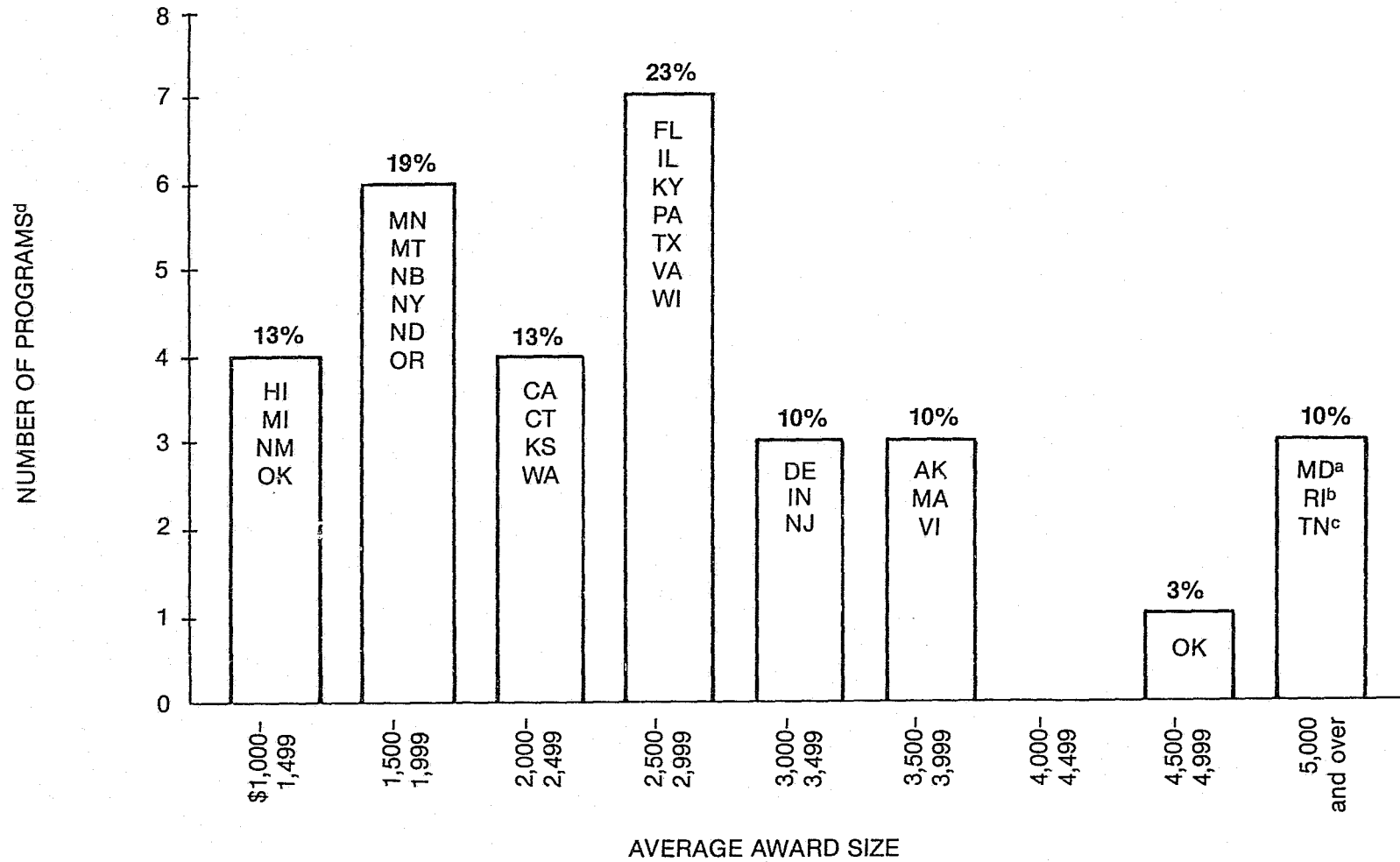
Exhibits 6.1 and 6.2A, 6.2B and 6.2C all present summaries of program expenditures for payments to victims. California paid the largest amount in awards (\$15,270,141), and the newly developed New Mexico program paid the smallest total amount (\$7,427). The Nebraska program had the smallest total award budget for an established program (\$57,686) followed by North Dakota (\$88,373). The range of average sizes of awards is presented in Exhibit 6.4. Three programs paid average awards in excess of \$5,000--Maryland (\$6,376), Rhode Island (\$12,448), and Tennessee (\$8,500). Four programs provided average awards in the lowest range (from \$1,000 to \$1,499) including Hawaii, Michigan, New Mexico, and Oklahoma. Interestingly, the states in Exhibit 6.4 having the lowest average awards overlap considerably with the states having the lowest administrative costs per award listed in Exhibit 6.3. Such programs handle larger caseloads than they would otherwise be able to because of the relatively small size of their awards, and these larger caseloads in turn reduce unit costs by distributing the fixed administrative costs over a larger group of cases. Some of the programs with the largest administrative costs per case (e.g., Maryland) also provide the largest average awards.

Victim compensation awards provide payment for both personal injury and death-related expenses and these categories in turn can be subdivided. For example, the New York program expended 65 percent of its \$5.7 million in award funds during the 1980-1981 fiscal year on personal injury-related expenses and 35 percent on death-related expenses. Sixty-one percent of personal injury-related costs were devoted to medical expenses and 39 percent to payments for lost earnings. In cases involving the death of a victim, 64 percent of costs were expended on support payments to survivors of the victim, 35 percent to funeral expenses, and less than one percent to medical expenses. Similar patterns are observed in numerous states.

Section 2.2.3 of Chapter Two provides a detailed discussion of the complexities of estimating what total costs would be for payments to victims if all eligible claimants filed cases. At present, only a small percentage of such victims file with available victim compensation programs. The figures reported in this chapter for actual payments to victims are the product of a complex group of factors, including program eligibility requirements, benefit policies, variations in program public visibility, per capita taxes, the availability of funds, and the administrative ability of programs to

²D. Carrow, Crime Victim Compensation: Program Model (Washington, D.C.: U.S. Government Printing Office, 1980).

EXHIBIT 6.4
AVERAGE AWARDS



^aMaryland reports an average award of \$6,376.

^bRhode Island has the highest average award at \$12,548.

^cTennessee reports an average award of \$8,500, which includes payments of attorney's fees.

^dOnly a total of 31 programs are reported here, because average award figures are unavailable in West Virginia and Nevada.

process claims expeditiously and to make awards. Carrow sought to determine the most important factors associated with the size of total victim compensation program expenditures. A regression equation was constructed for data on eighteen states, and the variables included were, "per capita state budget, maximum limits, minimum limits, victim notification procedures, and crime rates." Carrow reported that per capita state budget was by far the most important factor and "accounted for three quarters of the total variation in victim compensation benefit expenditures." The only other variable to provide significant results was the maximum limit on compensation, and its effects were not substantial.³

The matrices in Appendix A provide additional detailed information on the specific patterns of costs in the existing victim compensation programs. The range of variation in program administrative expenses and award payments is considerable befitting the great variation in program structures and policies and the comparable variations in state governmental practices and fiscal operations across America.

6.2 Program Funding Sources

Victim compensation programs receive their funding from a variety of sources, and some of these sources have interesting implications for program rationales and philosophies. The major types of program funding sources are summarized in Exhibit 6.5, and include general revenues, criminal fines and penalties, and combinations of the two types of funding sources. As can be seen from the table, 13 programs (39 percent of those listed) receive their funding solely from general revenues; 12 programs (36 percent) are funded solely through fines and penalties, and 8 programs (24 percent) are funded through a combination of general revenues and fines and penalties. Thirteen of the twenty programs using fines and penalties mechanisms include criminal traffic offenses among the crimes from which funds are collected. Those states applying fines and penalties to traffic offenses are listed separately in Exhibit 6.5 and comprise 65 percent of the programs receiving funding through fines and penalties assessments.

This section of the report provides a summary of the prevalent approaches to funding programs and notes some of the problems experienced by programs in implementing the various approaches. Topics covered include the various forms of fines and penalties mechanisms, general revenues, restitution, civil suits, and various additional funding mechanisms.

³ Ibid. at 161.

EXHIBIT 6.5: Funding Sources

SOURCE	STATES	N	PERCENT
General Revenues (only)	Alaska		
	Hawaii		
	Illinois		
	Kansas		
	Massachusetts		
	Michigan		
	Nebraska		
	New Mexico		
	New York		
	North Dakota		
	Oregon		
	Virgin Islands		
	Wisconsin		13
Criminal Fines and Penalties (only)	California		
	Connecticut		
	Delaware		
	Florida		
	Montana		
	Nevada		
	Pennsylvania		
	Rhode Island		
	Tennessee		
	Texas		
	Virginia		
West Virginia		12	36%
Combination of General Revenues and Fines and Penalties	Indiana		
	Kentucky		
	Maryland		
	Minnesota		
	New Jersey		
	Ohio		
	Oklahoma		
	Washington		8
Criminal Traffic Offenses Included in Fines and Penalties	California		
	Connecticut		
	Delaware		
	Florida		
	Kentucky		
	Minnesota		
	Montana		
	Ohio		
	Rhode Island		
	Tennessee		
	Texas		
	Washington		
	West Virginia		13

6.2.1 Fines and Penalties Funding Mechanisms

A variety of approaches have been used to collect funds for victim compensation programs through fines and penalties assessments. These approaches have grown rapidly in recent years so that now 61 percent of the programs are funded solely or in part through revenues from fines and penalties. The inherent attractiveness of such an approach is clear in an era of fiscal cut-backs, state budgetary crises, and extremely strong competing claims on state treasuries. Proponents of the use of fines and penalties assessments for the support of victim compensation programs argue that such payments are a fitting way for criminals to pay back part of their debt for violating society's laws. Supporters of such mechanisms also speak of the "poetic justice" of criminals paying for the costs incurred by victims.

Others question the propriety of such fines and penalties. For example, Thorvaldson and Krasnick have noted that the "apparent justice of diverting fine revenue may be not so much poetry as doggerel verse. We must reject the idea on grounds of principle as a violation of both the principle of equitable justice which holds that a wrongdoer can be held to account only for the harm he causes and the principle of equal justice before the law." They argue further, "While an offender might agree that he is responsible for the harm he himself causes, he might well ask by what sense of equal justice it was that he was being held accountable (even in an indirect way) any more than any other citizen for the harm other offenders caused."⁴ Thorvaldson and Krasnick are not opposed to direct restitution by offenders to their victims but they oppose the notion that the class of persons labeled "offenders" (however defined) has a responsibility to the class of persons labeled "victims." At least, in the case of violent criminals, many observers would view Thorvaldson and Krasnick's critique as unconvincing and would hope that offenders would have as delicate sensibilities in their treatment of their victims as Thorvaldson and Krasnick impute to them in their speculations regarding offender ruminations on the nature of justice. The Florida victim compensation program was legally challenged on constitutional grounds with an argument comparable to Thorvaldson and Krasnick's. The lower court hearing the case agreed that the program's five percent surcharge on offenders violated notions of equal justice, but the appeals court overturned the lower court's ruling and asserted (as quoted in Thorvaldson and Krasnick) that ". . . the five percent surcharge . . . may quite properly be considered as a form of punishment for the offense." Punishment in the form of punitive measure is valid unless so "excessive" or "harsh" as to be "plainly and undoubtedly in excess of any reasonable requirements for redressing the wrong."⁵

⁴S. Thorvaldson and M. Krasnick, "On Recovering Compensation Funds from Offenders," 5 Victimology 18 (1980) at 21.

⁵Ibid. at 22.

Thorvaldson and Krasnick's critique of fines and penalties funding mechanisms for victim compensation programs is thoughtful and certainly falls well within the category of issues on which reasonable persons can differ. The majority of American victim compensation programs have adopted such methods for supporting all or part of their program expenses, however, and these programs are generally strongly committed to the notion that such funding mechanisms are not only expedient in a time of shrinking public resources but also just in the most fundamental sense of the term.

Fines and penalties assessments come in a variety of forms and occur at varying times in the course of case processing. Most programs using such assessments have them applied at the time an offender is convicted. One approach is to assess convicted offenders with fixed penalties. In Connecticut, for example, a \$15 fine for the victim compensation fund is assessed for certain motor vehicle and drunk driving convictions, and a \$20 fine is assessed for all felony convictions. In Indiana, a \$15 fine is assessed on all class A misdemeanors and all felonies but no traffic violations are subjected to fines for the victim compensation program. Traffic offenses are particularly vulnerable to the Thorvaldson and Krasnick critique since the drivers typically were not involved in traditional crimes, and traffic victims are typically not eligible for compensation. Some states that have rejected fining traffic offenders for victim compensation have supported this position on the grounds of fairness, and because of political expediency (the fines would simply affect too many of the legislators' primary supporters in their district). Persons supporting the collection of fines from traffic offenders argue on the grounds that such persons have violated important laws, particularly in the instance of such offenses as reckless driving, drunk driving, speeding, and hit and run, and that they owe a debt to society's victims for their irresponsible behavior that could have resulted in a victimization. They also support the fines on a far less lofty plane stating pragmatically that most traffic offenders are middle-class persons who have the money to pay the fines and can be compelled to do so under the threat of having their driver's license suspended. Such traffic fine revenues are the major source of program support in a number of states (e.g., Florida). The propriety of the Florida program's collection of fines from traffic offenders was challenged recently by the Attorney General of Florida, who argued that funds could be collected only from criminals involved in acts that resulted in physical injury or death of victims, the same classes of offenses that are compensated by the program. Minor changes in the wording of the Florida statute have been made in response to the Attorney General's critique and the Attorney General has withdrawn his objection to the collection of fines from traffic offenders and others not involved in injurious crimes. As far as is known, other states have not experienced the types of challenges that the Florida program has regarding the propriety of its specific fines and penalties mechanism.

A second approach for collecting fines and penalties at the time of conviction is to assess a proportional surcharge upon other fines assessed against

the offender. For example, in Delaware, a 10 percent surcharge is applied to all fines, penalties, and forfeitures, and legislation is pending in that state to increase the proportion to 15 percent to raise program revenues. The Florida program combines the fixed penalty approach, by assessing \$10 additional court costs on offenders, with the proportional charge approach, by also assessing a 5 percent surcharge on all criminal penalties (the program cannot place a surcharge on civil traffic penalties, but can on criminal traffic offenses). An advantage of the proportional approach was noted in the Florida appeals court case sustaining the propriety of the program's fund collection mechanism. The court noted that, "the five percent surcharge in the statute is reasonable and uniformly proportionate to the gravity of the offense and therefore constitutionally sound." Thorvaldson and Krasnick disagree with the court's view and note that fines have so many diverse goals that they are not necessarily proportionate to the seriousness of an offense.⁶

Montana applies an 18 percent surcharge on certain traffic offense convictions processed by the Montana Highway Patrol. The state previously collected a 6 percent surcharge on all traffic offenses including those processed in city and county courts. The local jurisdictions strongly resisted the collection of such monies since they traditionally retained all fines, and then further resented the imposition of the task by the state government in Helena. The victim compensation program was preparing to sue selected municipalities for payment when a compromise was reached changing the funding source to Highway Patrol processed offenses. The fines from such offenses had traditionally gone to the state treasury and consequently did not threaten the cities or counties, and the Highway Patrol was supportive of the compromise. The revenues owed to the state program from the localities were paid to the victim compensation program as part of the negotiated settlement. The problem faced by Montana indicates the potentially complex nature of implementing what seems to be a relatively simple fund collection mechanism.

Montana is not the only state to have had trouble in collecting fines and penalties revenues. Many of the states have experienced substantial problems in obtaining either fixed penalties or proportional surcharges due to resistance by the courts in collecting the funds, lack of awareness by the courts of the mandated collection procedures, and similar problems. For example, in Tennessee during the first year of operation of the program (the program began July 1, 1975) the program collected only \$1,000 statewide. The legislator who had sponsored the bill was diligent in monitoring the progress (or lack thereof) of the fund and proceeded to travel around the state informing clerks of court of their statutory responsibility to collect the \$21 fee per conviction (\$1 was kept by the local court and the remaining \$20 sent to Nashville for the victim compensation fund). Tennessee has 95 individual counties and no centralized Administrative Office of the Courts which makes standardization of such a collection mechanism a challenge. The

⁶ Ibid. at 23.

legislator finally threatened to bring mandamus suits against various clerks to encourage their fulfillment of the statutory requirement to collect the fines, and after persistent efforts on his part, the collection procedure now appears to be working in much of the state.

The New Jersey program has developed an innovative means of insuring adequate collection of its fines. The Chief Justice of the Supreme Court is a strong supporter of the program and has empowered the program to study collection practices in individual courts and make recommendations for improvements. The program has employed a full-time court monitor who travels to the various courts of the state and audits the court's docket books to determine if the appropriate fine revenues have been submitted to the victim compensation program. The New Jersey program receives such checks directly rather than having them routed through the state's finance department as is the case in most jurisdictions. The replication of such a court monitoring system might be worth considering in states where there is a powerful centralized authority in the court system who can provide support for collection improvements recommended by the program's court monitor.

In recognition of the problems in implementing effective collection mechanisms for fines and penalties, many states that have recently enacted victim compensation legislation have allowed for a lag time between enactment of the bills and the time initial claims are awarded. In some cases the bills cover only offenses occurring after the lag time is over. For example, the Iowa statute states that "This Act takes effect July 1, 1982. However, payments for reparation . . . shall only be made to victims of criminal acts which are committed on or after January 1, 1983." Some states provide programs with general revenue funds to begin operations with a clause indicating that these funds will later be paid back to the state general fund with monies accrued from the collection of fines and penalties.

As might be expected, in many states statutes have been amended to increase program revenues by expanding the range of offenses to which fines and penalties apply (e.g., adding motor vehicle offenses, misdemeanors, juvenile offenses, etc.), and the size of penalty assessments have also been increased in some states. The nature of these changes typically reflect a variety of factors, including the characteristics of the state's criminal code (which can allow for certain expansions in coverage) and the willingness of the state legislature to apply sanctions of a given size.

In addition to the collection of funds from offenders at the time of conviction, a number of states have sought to develop ways to secure funds from offenders after conviction. For example, Indiana has mandated a 10 percent assessment of the salaries of prisoners on work release for payment into the victim compensation fund. In Tennessee, the Board of Paroles has the authority to order payments to the fund from an offender's income, not to exceed

10 percent. Typically, the authorized proportional assessments of salaries are not made, but persons on work release are routinely assessed \$5 per month that is transmitted to the victim compensation fund. The New Jersey program reports that it has received permission to debit accounts of prisoners at Rahway Prison to collect unpaid fines owed to the victim compensation fund.

A number of programs are considering additional approaches to post-conviction fund collection from offenders. The Thorvaldson and Krasnick equity critique has been raised by some observers in objection to such collections, particularly if the offender has already paid the mandated fine or surcharge and is then asked to put further monies into the victim compensation fund during work release or parole. Such assessments are considered by some to be unjust and in excess of what is expected of others, such as those not placed on work release. These critics also argue that it is unwise to diminish the salaries of persons on work release very much, since the whole point of the practice is to encourage prisoners to adopt a straight way of life. If wages are diminished considerably, crime may appear to pay well in comparison.

Some states have additional provisions for discretionary collection of fine monies from offenders. For example, California authorizes judges to collect additional assessments at their discretion from \$10 to \$10,000 for deposit in the victim compensation fund. Delaware and Oklahoma have similar provisions, but these mechanisms are rarely used.

6.2.2 General Revenues

Program support through general revenues is far more straightforward than payment through fines and penalties. The need for complex collection procedures is circumvented. But general revenues are difficult to obtain in the present fiscal climate, and programs receiving such revenues must compete for their funds in the legislature on a yearly or biennial basis. This competition can be difficult, and increases the attractiveness of a fines and penalties mechanism which might be difficult to implement at the outset, but is independent of the routine state budgetary system and can provide a relatively stable source of support once implemented. Thirty-nine percent of existing programs are currently funded solely with general revenues and 24 percent through a combination of general revenues and fines and penalties. The use of general revenue funding is clearly most in keeping with the theory that victim compensation programs should operate as an insurance mechanism to which all taxpayers contribute. Some have argued that general revenue funding is desirable because it helps to make some of the invisible costs of crime more visible to the taxpayer and might in turn lead the taxpayer to press for more effective crime prevention efforts. The relevance of the various theoretical rationales to funding sources has been noted in Chapter One

of this report; general revenue funding is strongly supported philosophically by some proponents of victim compensation programs.

6.2.3 Additional Funding Mechanisms

A variety of additional potential funding mechanisms exist for victim compensation programs. The shortcomings of restitution payments by offenders to victims have been reviewed in Chapter One of this report. Programs typically collect very little money through restitution. Similarly, Chapter One provides a discussion of the problems with receiving funding through civil suits and then subrogation whereby the program is reimbursed for its payment to the victim out of the victim's civil court award. Such suits are very rare, and writers in this field repeatedly label the average offender with that legal term of derision, "a judgment proof tortfeasor." The offenders, quite simply, are not sufficiently financially solvent to be a promising target of a lawsuit (a fact that prompts some critics to suggest that we need a better class of criminals).

Another potential source of funding is lawsuits against third parties who showed negligence in protecting the victim. The Oregon statute allows for such a form of collection, and it is possible that some hotels or other establishments may become targets of such suits for the purpose of raising funds. Such suits are not likely to be very common, however, for victim compensation program support. Revenues from property forfeiture by criminals could also be donated to the victim compensation fund, and some legislative aides have suggested that a federal victim compensation fund could be established from such monies collected in the federal justice system. A number of states have included "Son-of-Sam" provisions which mandate that royalties criminals would otherwise receive for works describing their crimes be deposited in the victim compensation fund. Such statutes have been said to have grave constitutional problems, as was noted in Chapter Two, and it is difficult to foresee large sums of money being generated by such a source in any event. The Connecticut program has sought to insure that it receives the interest of its victim compensation fund monies rather than having the interest revert to the state's general fund. Such a mechanism may assist programs in adding some revenues to their fund.

Despite the variety of alternative funding sources noted above, none of them appears to be a promising alternative to the current major funding mechanisms--general revenues or fines and penalties. Programs have shown considerable ingenuity in their efforts to seek new and reliable sources of funding. Many programs have experienced problems with insufficient funds to cover their expenses, and some programs, such as the one in Tennessee, operate with a waiting list of closed cases approved for awards. The Tennessee program reports that it is consistently six months behind in paying closed claims,

and it needs to wait for funds to accrue in the victim compensation fund before payments can be made. Other programs receiving general revenues run out of compensation payment funds prior to the end of the fiscal year, and need to carry closed and approved cases over into the subsequent fiscal year. Programs receiving general revenues at times receive supplemental appropriations to cover such needs. But new or expanded sources of funding are needed by many programs to help avoid such shortfalls.

In summary, program costs and funding is a highly complex matter involving questions of justice and appropriateness in consideration of potential funding sources and requiring ingenuity in fashioning reliable fund collection mechanisms. Program costs vary widely and reflect variations in numerous local conditions.

CHAPTER 7

COORDINATION WITH OTHER VICTIM SUPPORT SERVICES

Victims of crime in America have received increasing attention in recent years, and a variety of programs in addition to compensation mechanisms have been developed to aid victims. The most common such additional programs are victim/witness assistance projects, victim hotlines, and various counseling and crisis assistance programs (such as rape crisis centers) often targeted on specific types of victims.

Victim/witness assistance projects have been developed in local jurisdictions across the nation in response to the diverse needs of victims. These programs:

- assist and support victims in negotiating the complex pathways of the justice system;
- keep them apprised of the status of their case;
- provide assistance, if needed, for appearing at court hearings; and
- provide and/or link victims to a wide range of other relevant services, from emergency shelter and security repairs to counseling and training.

Such programs are sponsored by many types of agencies including prosecutors' offices, the courts, and non-profit organizations. Victim hotlines have been established in a number of states to provide victims with centralized referral services to relevant agencies. The hotlines can typically be phoned 24 hours per day, and victims are provided with information and contacts for needed services. The victim crisis centers and counseling programs provide short- and long-term counseling, shelter services (especially for victims of domestic violence), and related forms of assistance.

The various types of programs noted above address different aspects of a victim's need for help. Victim compensation programs are empowered to provide assistance for victims' economic problems (medical expenses, lost wages),

crisis and counseling centers primarily address the psychological components of victimization, hotlines provide victims with information to link them to services, and victim/witness assistance programs help meet a range of victims' needs including assistance in confronting the complexities of the justice system. In many jurisdictions, victim assistance projects actively seek to link victims to services from other agencies as well. The combined services of all of the programs are needed to meet the problems of victims, and from the perspective of the individual victim the division of labor across programs may seem artificial. For example, a victim's psychological adjustment or recovery may be hampered by severe economic problems (that could be met by a victim compensation program) or by frustration with perceived injustices encountered in the justice system (that a victim/witness assistance program could help mitigate).

Some leaders in the victim compensation field have strongly urged greater coordination among existing services. For example, Ronald Zweibel, the President of the National Association of Victim Compensation Boards, noted in a speech in 1982 that the time had come for victim compensation programs and victim/witness assistance programs to work together closely for the benefit of victims. Mr. Zweibel directs the New York state victim compensation program, which has already developed such coordination mechanisms. The victim compensation program in New York state provides funds for competitive grant awards to victim/witness assistance programs throughout the state and works actively to coordinate their efforts.

This chapter reviews the approaches in use across the United States to coordinate service delivery to victims of crime and focuses upon linkages between the two major forms of victim services: victim compensation and victim/witness assistance programs. Major options include:

- centralized funding and coordination of both victim compensation and victim/witness assistance programs by a single agency;
- centralized certification of victim/witness assistance programs by a statewide victim compensation agency;
- collaboration between separate statewide victim compensation and victim/witness assistance programs;
- collaboration by a statewide victim compensation program with decentralized, local victim/witness assistance projects; and
- decentralization of both victim compensation and victim/witness assistance services with combined operation of both services in local jurisdictions.

Each approach is discussed in turn, and examples are provided of jurisdictions using or planning such forms of coordination. Major barriers to such coordination of services are noted at the close of the chapter, and possible strategies for enhancing cooperation are reviewed.

7.1 Centralized Funding and Coordination of Both Victim Compensation and Victim/Witness Assistance

New York state has developed a centralized approach to the funding and operation of both victim compensation and victim/witness assistance programs. In 1981 legislation was passed empowering the state's victim compensation board to provide grants to victim/witness assistance programs throughout the state. The program has established guidelines and held a grant competition in which a variety of programs, varying in sponsorship and types of services, were funded. The New York state victim compensation program also held a statewide conference on the topic of victim services and is actively seeking to improve communication and cooperation among the array of victim service providers within the state. The program has a broad mandate for victim advocacy within the state, and program staff have provided policy assistance on the topic to the governor's office and the legislature, including drafting legislation for a victims' bill of rights to provide a wide variety of increased protections for victims. Several other states are also proposing or implementing such comprehensive legislation. Ronald Zweibel, chairman of the New York Crime Victims Board, has noted that the statewide mandate and operation typical of victim compensation programs makes them promising candidates for the added responsibility of statewide coordination of victim assistance efforts. Because individual victim/witness assistance programs usually are operated by city and county agencies rather than by centralized statewide organizations, they are less well-situated for such statewide functions, Zweibel contends.

The Hawaii victim compensation program has also begun to fund victim/witness assistance efforts. In 1980, the program provided \$20,000 for the establishment of a victim/witness project. That project sponsors a range of victim services, and victim/witness assistance counselors often accompany victims to victim compensation hearings.

The development of a centralized funding and coordination mechanism within the state victim compensation program requires broad support in the state legislature and confidence in the ability of the existing victim compensation agency to take on the additional tasks.

7.2 Centralized Certification of Victim/Witness Programs

In Wisconsin, the executive director of the victim compensation program is empowered to review and approve the counties' plans for the provision of victim/witness services. When the plans are approved, the counties can be reimbursed from state funds for ninety percent of the costs of their victim/witness services. The executive director of the victim compensation program also regularly reviews and evaluates the service delivery achievements of the local victim/witness assistance programs.

In Washington state, counties must apply to the Department of Labor and Industries for approval of their victim/witness assistance programs. This Department also operates the state's victim compensation program. If program applications are approved by the Department, the counties may retain twenty percent of penalty assessments for use by local prosecutors in operating victim/witness assistance efforts. The economic incentive is similar to that in Wisconsin, and can provide a strong stimulus for standardization of local services. One requirement Washington programs must meet for approval is to provide services to help victims of violent crime to prepare and present their claims for victim compensation. The provision insures coordination of services between the two types of programs, and relieves the victim compensation programs of some of the burden associated with initial claims processing.

In Nebraska, the Commission on Law Enforcement and Criminal Justice has the statutory authority to review and approve victim/witness assistance programs in the state. Approved programs are then eligible to receive state funds. In order to be approved, programs must meet a variety of requirements, among them, Article 18 of the Nebraska statute on "Crime Victims and Witnesses" which stipulates that victim/witness assistance programs must provide "assistance in preparing claims for submission to the Nebraska Crime Victims Reparations Board," and must arrange for "verification of medical benefits and assistance" in such applications for victim compensation. In short, the statute mandates coordination between victim compensation and victim/witness assistance programs and, again, provides economic incentives for cooperation. The Nebraska Commission on Law Enforcement and Criminal Justice also reviews the performance of victim/witness assistance programs in the state to insure that they are fulfilling their statutory obligations.

As in the case of establishing a centralized funding and coordination mechanism, state legislation is required for the development of certification authority. The certification mechanism can be operated directly by the victim compensation director, as in Wisconsin, or by personnel of other agencies. In the Wisconsin case, the certification authority results in the victim compensation program's authority being quite similar to the centralized grant funding and coordination mechanism in New York. In both cases, the

victim compensation programs influence the availability of funding for victim/witness programs and specify or enforce basic program service requirements. The major difference is that the New York program provides funds directly through grants and fully controls the granting process, while the Wisconsin program certifies local programs which then are entitled to receive assistance from the state treasury. In cases in which someone other than the victim compensation director controls certification, increased coordination between victim compensation and victim/witness assistance programs is still encouraged due to the common statutory requirements that victim/witness assistance programs aid in case filing and processing of victim compensation claims.

7.3 Collaboration Between Separate Statewide Victim Compensation Programs and Victim/Witness Assistance Agencies

In California, the victim compensation program collaborates in a variety of efforts with the statewide victim/witness assistance program operated by the Office of Criminal Justice Planning. The two statewide agencies are both funded from the Victims Indemnity Fund. The local victim/witness assistance programs, in turn, receive state funds from the Office of Criminal Justice Planning and are mandated to work closely with the victim compensation program. They are required to provide forty percent of all claims processed by the victim compensation program. To encourage attainment of this goal, the victim compensation program has conducted intensive training sessions for the staffs of local victim/witness assistance programs in victim compensation claims filing and verification procedures. Some victim/witness assistance programs prepare fully verified victim compensation claims for the compensation program. The victim compensation program is saved considerable effort in claims verification by this assistance, and the procedure enables victims to receive financial compensation more rapidly. On a statewide basis, the victim/witness assistance programs have provided forty percent of claims applications for victim compensation, and have exceeded this goal set by the legislature in many jurisdictions.

Victim/witness assistance programs have also assisted the victim compensation program by informing their local courts regarding the penalty assessment requirements for the indemnity fund, and these programs have in some cases monitored local court adherence to the statutorily-mandated penalty requirement. The victim compensation program director and the statewide coordinator for victim/witness assistance programs have sought to maximize collaboration between the two agencies.

The New Jersey victim compensation program has developed a statewide victims hotline to provide information regarding relevant services and to increase coordination with victim/witness assistance programs. Referral forms are

filled in by the person answering calls on the hotline, and the forms are provided to both the victim compensation program and to personnel of the victim/witness assistance programs. Such joint referrals can facilitate cooperation between the programs, and such notification enables victim/witness assistance staff to help victims in filing for compensation. The initial plan for such a hotline was developed by advocates of victim/witness services. They lacked the funds to establish such a hotline, and the victim compensation program offered to provide the funds and to staff the hotline operation. Such hotlines have been developed in other states as well, and New York state has devised a means to link victims to service providers immediately during their phone call by making conference call connections with relevant organizations.

7.4 Collaboration by a Statewide Victim Compensation Program with Local Victim/Witness Programs

In states lacking a statewide victim/assistance coordinating office, victim compensation programs can still actively collaborate with local victim/witness assistance programs. Forms of collaboration can be similar to those noted above in the discussion of cooperation between statewide agencies and can include training in claims processing and verification, victim hotlines, and the like. Such collaboration is somewhat more difficult in the absence of a statewide victim/assistance coordinating agency because each of the victim/witness programs in the state will need to be dealt with individually. The benefits of developing cooperative relationships with the local programs can be great, however, especially if the local programs are willing to assist in initial claims screening. The local programs will have less incentive for such cooperation if they do not receive state funds "with strings attached" as is the case with the various centralized state funding and certification mechanisms discussed in the preceding three sections. The local programs are likely to recognize the benefits to victims of such coordination and cooperation even in the absence of statutorily-mandated requirements for cooperation in claims processing.

In Oklahoma, victim compensation claims verification is provided by victim/witness coordinators in 18 judicial districts. The state funds such coordinators in district attorneys' offices, and the local assistance in claims processing is valuable. Such a system can be pointed to as an example in states lacking such state funding of local victim/witness assistance programs both to encourage eventual state funding and also to illustrate the benefits of local victim claims processing, even if no state funds are provided to local victim/witness programs. Local victim compensation claims processing is potentially more rapid and is also likely to be reassuring to victims because they can deal directly with a victim/witness program staff member during the victim compensation claims filing process.

7.5 Combined Operation of Victim Compensation and Victim/Witness Assistance at the Local Level in Decentralized Systems

Colorado is the only state to have developed a decentralized victim compensation program with funding and award decisions being made at the county level instead of the statewide level. The program was implemented in 1982. The program is described in Chapter Three, and such a decentralized approach can encourage the combined operation of victim compensation and victim/witness assistance at the local level. The Colorado experiment should be watched closely for its accomplishments in this regard.

In Florida, some policymakers have encouraged the development of county-based victim compensation mechanisms due to the concern that the statewide program does not provide equity across counties. Some counties provide a disproportionate share of the fines and penalties revenue for the program. The local program services would be coordinated by the Criminal Justice Bureau, the agency that currently operates victim/witness services. In California, similar recommendations have been made by some policymakers who seek to have victim compensation mechanisms appended to each local victim/witness assistance program. The arguments in favor of such an approach include speed of case processing, increased access to information to investigate and verify claims, and integration of services to provide assistance to victims. One argument offered in opposition to such a plan focuses upon concerns with potential inequities in decision-making in a decentralized system. Existing centralized state programs can apply guidelines and criteria quite evenhandedly across claims and can seek to maximize equity in decision-making. Other arguments against decentralization include concerns that overall administrative costs of providing compensation will rise dramatically, and that funding will be disproportionately distributed among jurisdictions, resulting in inequitable payments of benefits to victims across the state.

7.6 Conclusion

The development of coordinated victim services seems clearly desirable. Hofrichter has highlighted this need by noting:

"The victim compensation movement should . . . promote the extension of personal services to victims of traumatic, violent crime, both because the compensation programs cannot reach their intended clientele otherwise and because the whole person must be served . . . Only by linking compensation programs to service in this way and removing unnecessary impediments to learning about and receiving

benefits can these victim compensation programs realize their true potential."

This chapter has briefly reviewed a variety of approaches now being tried to enhance such coordination.

However desirable, coordination of services is likely to be easier in theory than in practice. As in virtually every service area with multiple providers, victim compensation and victim/witness assistance programs do not always cooperate and sometimes feel in competition. Personnel affiliated with both types of programs tend to have somewhat different philosophical orientations towards victims and to believe strongly that their service is of particularly great value to victims. Such commitment is valuable and perhaps necessary if people are to perform well and vigorously in providing services. However, it inevitably leads to "turf" problems in an era of shrinking resources. In some states, for example, proponents of victim/witness assistance programs have urged that a portion of the victim compensation program budget (in one proposal, one-third of the compensation budget) be given instead to victim/witness assistance programs to support their services. Such proposals understandably make victim compensation policymakers nervous. They typically assert that the proposals are "fine as long as there is enough money in the victims fund to go around, but . . ."

A conscious effort will be needed to overcome the "turf" problems. A number of states provide excellent models of the benefits of cooperation and of coordinated services, among them California and Wisconsin. Development of collaborative enterprises, such as victim hotlines which can simultaneously provide referrals to both types of programs, may help to overcome some resistance to increased coordination. Adequate levels of funding for both victim compensation and victim/witness assistance programs would greatly enhance program cooperation. When such funding is provided by the state legislature, it can be coupled with statutory requirements for collaboration akin to the provisions discussed above that are in operation in California, Wisconsin, Nebraska, New York and elsewhere. American crime victims face myriad, complex problems, and a coordinated effort among various service providers is essential to address the full range of their needs.

¹R. Hofrichter, Victim Compensation and the Elderly: Policy and Administrative Issues (Washington, D.C. U.S. Government Printing Office, 1979), p. 5.

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Appendix A

Matrices Summarizing Victim Compensation Program Characteristics

VICTIM COMPENSATION PROGRAMS¹

Table I
Program Structure and Organization

State	Program Name	Statutory Authority	Effective Date	Sponsoring Agency	No. of Changes in Sponsorship	Staff		Commiss- ioners	
						FT	PT	Yes	No
Alaska	Violent Crimes Compensation Board	Alaska Stat., Secs. 18.67.010 to 18.67.180	July 1, 1971 (Amended 1974, 1979)	Department of Public Safety	1	2	0	X	
California	Victim Indemnification Program	Calif. Govt. Code Ann., Secs.13959-74	1965 (Amended 1967, 1974, 1978, 1979, 1981)	State Board of Control	2	66	0	X	
Connecticut	Criminal Injuries Compensation Board	Conn. Stats., Secs.54-201 to 54-217	June 30, 1978 (Fund) April 1979 (Program) (Amended 1979)	Independent - Affiliated w/the Office of Policy & Management	0	10	7	X	
Delaware	Violent Crimes Compensation Board	Del. Code Ann., Title 11 Secs.9001 to 9017 (Supp. 1974)	Jan. 1, 1975	Administrative Office of the Courts (budgetary only)	0	5	0	X	
Florida	Bureau of Crimes Compensation	Florida Stat., Chapter 960 Secs.960.01 to 960.25	Jan. 1, 1978 (Amended 1979,1980)	Division of Workers' Compensation, Dept. of Labor & Employment Security	1	15 ²	1		X
Hawaii	Criminal Injuries Compensation Commission	Hawaii Rev. Stats., Secs. 351-1 to 351-70	June 6, 1967 (Amended 1970,1972,1973, 1974, 1975,1981)	Department of Social Services and Housing	0	2	0	X	
Illinois	Crime Victims Compensation Board	Ill. Stat. Ann., CH. 70, Secs.71 to 90	Oct. 1, 1973 (Amended substantially Sept. 22, 1979,1980)	Court of Claims and Attorney General's Office	0	12 ³	0	X	

Table I - Program Structure and Organization (continued)

State	Program Name	Statutory Authority	Effective Date	Sponsoring Agency	No. of Changes in Sponsorship	Staff		Commissioners	
						FT	PT	Yes	No
Indiana	Violent Crimes Compensation Division	Indiana Code, Secs. 16-7-3.6-1 to 16-7-3.6-20	Oct. 1, 1977 (Amended effective July 1, 1982)	Industrial Board	1	3	2	X	
Kansas	Crime Victims Reparation Board	Kansas Stat. Ann., Art. 73, Secs.74-7301 to 74-7318	July 1, 1978 (Amendments pending)	Criminal Justice Administration--Functionally Independent	0	3	0	X	
Kentucky	Crime Victims Compensation Board	Ken. Rev. Stats., Secs. 346.010 to 346.190	June 16, 1976 (Amended 1978, 1980)	Department of Public Protection	1	3	3	X	
Maryland	Criminal Injuries Compensation Board	Ann. Code of Md., Article 26A, Secs.1-17	July 1, 1968 (Amended 1969,1970,1971,1972, 1973,1974,1975,1976, 1977,1978,1979,1981)	Independent - Affiliated with Secretary of Public Safety	1	7	0	X	
Massachusetts	Compensation of Victims of Violent Crime Act 4	Mass. Gen. Laws Ann., Ch. 258A, Secs.1-8	July 1, 1968 (Amended 1982)	Attorney General; Courts	0	2	20		X
Michigan	Crime Victims Compensation Board	Mich. Stat. Ann., Sec. 3.372(1) et. seq.	Oct. 1, 1977	Independent--Affiliated w/the Dept. of Management & Budget	0	5	1	X	
Minnesota	Crime Victims Reparations Board	Minn. Stat. Ann. Secs. 299B.01 to 299B.17 & Sec. 609.101	July 1, 1974 (Amended 1981)	Dept. of Public Safety (Budgetary & Administrative purposes)	0	2	0	X	
Montana	Crime Victims Compensation Unit	Mt. Codes Ann., Title 53, Ch. 9, Secs.101 to 133	Jan. 1, 1978--Benefits (Amended 1979 & 1981)	Workers' Compensation, Dept. of Labor	0	1	1		X

Table I - Program Structure and Organization (continued)

State	Program Name	Statutory Authority	Effective Date	Sponsoring Agency	No. of Changes in Sponsorship	Staff		Commis- sioners	
						FT	PT	Yes	No
Nebraska	Crime Victims Reparation Board	Neb. Rev. Stat., Art. 18, Secs. 81-1801 to 81-1842	Jan. 1, 1979	Nebraska Commission on Law Enforcement & Criminal Justice	1	1	1	X	
Nevada	Victims of Crime	N.R.S., Secs.217-010 to 217.270, as amended by Assembly Bill 447 (1981); Secs.178.518, 179A.090, 232.213	Sept. 1, 1981 ⁵	State Board of Examiners	0	-	-	X	
New Jersey	Violent Crimes Compensation Board	N.J. Stat. Ann., Secs. 52:4B-1 to -21	Oct. 4, 1971 (signi- ficantly amended 1980)	Department of Law & Public Safety--Func- tionally Independent	0	32 ⁶	0	X	
New Mexico	Crime Victims Reparation Board	N.M. Laws of 1981, Ch. 325, Secs. 1-26	April 9, 1981 ⁷	Independent	0	2	0	X	
New York ⁸	Crime Victims Board	N.Y. Exec. Law Ann., Secs. 620-635, Art. 22 (2nd)	Aug. 1, 1966 (Amended 1979)	Independent-- Governor's Office	0	75 ⁹	0	X	
North Dakota	Crime Victims Reparations	N.D. U.C.C.C., Ch. 65-13, Secs.01 to 20; Ch. 92-01-02, Secs.01 to 11	July 1, 1975 (Amended)	Workmen's Compensation	0	0	3	X	
Ohio	Victims of Crime Division	Ohio Rev. Code, Secs.2743.51 to 2743.72, 2743.121, 2743. 191, & 2743.20	Sept. 19, 1976 (Amended 1977, 1978, 1980, 1981)	Court of Claims & Attorney General ¹⁰	0	22	5	X	
Oklahoma	Crime Victims Compensation Board	Ok. Title 21, Secs. 142.1 to 142.18	Oct. 19, 1981	District Attorney's Training Coordination Council	0	2	0	X	

Table I - Program Structure and Organization (continued)

State	Program Name	Statutory Authority	Effective Date	Sponsoring Agency	No. of Changes in Sponsorship	Staff		Commissioners	
						FT	PT	Yes	No
Oregon	Crime Victims Compensation	Oregon Rev. Stats., Secs. 147.005 to -.055, 147.105 to -.165, 147.205 to -.255, 147.305 to -.365	1977	Workers' Compensation Board	1	3	1 ¹¹		X
Pennsylvania	Crime Victims Compensation Board	Pa. Stat. Ann., Title 71, Secs.180-7 to 180-7.15; Title 37, Secs.191.1 to 191.15	Oct. 25, 1976 (Amended 1979)	Executive Offices	1	7	1	X	
Rhode Island	Criminal Injuries Compensation	R.I. Gen. Laws Ann., Secs. 12-25-1 to 12-25-14	1972 (Significantly amended 1978) ¹²	Superior Court ¹³	0	0	3		X
Tennessee	Criminal Injuries Compensation	Tenn. Code Ann., Ch. 13, Secs.29-13-101 to -208; Secs.40-3207	Original legislation passed 1976; amended 1977 to make effective date July 1, 1978 (Also amended 1978, 1980, 1981)	State Board of Claims ¹⁴	0	2	0	X	
Texas	Crime Victim Compensation Division	Texas Laws, Art. 8309-1, V.T.C.S.	Sept. 1, 1979 (Fund) Jan. 1, 1980(Program)	Industrial Accident Board	0	4 ¹⁵			X
Virgin Islands	Criminal Victims Compensation Commission	V.I. Code Ann., Ch. 7, Title 34, Secs.151 to 153, 156 to 158, 161 to 166, 169; Ch. 21, Sec.375a	July 1, 1968 (Amended 1978 & 1982)	Dept. of Social Welfare	0	1	2	X	
Virginia	Division of Crime Victims Compensation	VA Code, Ch. 21.1, Secs. 19.2-368.1 to -368.18	July 1, 1976 (Fund) July 1, 1977(Program) (Amended 1981; other legislation pending)	Workmen's Compensation Industrial Commission of Virginia	0	3	0	X	

Table I – Program Structure and Organization (continued)

State	Program Name	Statutory Authority	Effective Date	Sponsoring Agency	No. of Changes in Sponsorship	Staff		Commissioners	
						FT	PT	Yes	No
Washington	Crime Victim Compensation Program	Wa. Rev. Code Ann., Ch. 7.68, as amended by S.S.H.B. 828 (1982)	July 1, 1974 (Amended 1977, 1981, 1982) ¹⁶	Dept. of Labor & Industries	0	3	0		X
West Virginia	Crime Victims Reparations Division	W.Va. Code, Ch.14, Art. 2A, Secs. 14-2A-1 to -27	July 1, 1981 (Fund) Jan. 1, 1982 (Program) ¹⁷	Court of Claims	0	1	18	X ¹⁹	
Wisconsin	Crime Victims Compensation Program	Wisc. Stat. Ann., Ch. 949, Secs. 949.001 to 949.18	June 9, 1976 (Amended 1977, 1979, 1981)	Dept. of Justice	1	5	1		X

Table I - Program Structure and Organization (continued)

Notes

¹ Though the state of Georgia has traditionally been included in listings of Victim Compensation Programs we are not including it here, at the suggestion of the Georgia State Claims Advisory Board. Georgia Code Ann. Secs. 47-518 to 47-526 (effective July 1, 1967) authorizes the Board to compensate "Innocent persons who sustain injury or property damage or are killed in attempting to prevent the commission of crime against the person of another or in aiding law enforcement officers at their request." However, the Board has reviewed and paid only one such claim in the 15 years since that authority was established.

² The Florida program has two field offices, one in Miami and one in St. Petersburg, in addition to the main office in Tallahassee.

³ Staff reported here are affiliated with the Illinois Attorney General's office. In addition, the Court of Claims has two or three staff persons working full time on victim compensation.

⁴ Massachusetts has no victim compensation "program" per se. Instead, a victim must file a petition in District Court, usually by mail. The claim is investigated by staff of the Attorney General's office, which makes a recommendation as to the level of benefit, if any. The claim is then adjudicated in court. Many judges in Massachusetts routinely require hearings with victim present; others may simply approve or disapprove a claim based on the Attorney General's recommendation. The Attorney General's staff view themselves as "administrators, not advocates." Rhode Island and Tennessee have similar provisions; see fns. 13 and 14, infra.

⁵ Recent legislation in Nevada changed the program structure, broadening eligibility guidelines from providing compensation only to good samaritans to covering all victims physically injured or killed as a direct result of a criminal act. The state Board of Examiners is presently developing procedural rules and regulations and has not yet determined the staff configuration.

⁶ The New Jersey program is in the process of increasing its staff. This figure includes eight new positions that are presently being filled.

Table I — Program Structure and Organization (continued)

Notes (continued)

⁷New Mexico's statute includes a sunset clause: the program will end in July of 1985 if no further legislation is passed continuing it.

⁸In New York legislation was passed in 1979 designating the responsibility to advocate for the crime victim to the victim compensation program, thus giving them the responsibility for sponsoring victim/witness service providers. In 1980, the program was appropriated \$1.5 million for the victim advocacy element of the program.

⁹The New York State program has a main office in Albany and six branch offices in New York City, Harlem, Buffalo, Syracuse, Nassau County, and Suffolk County.

¹⁰The Ohio Attorney General's office handles all investigation, but those personnel are not included in the reported staff.

¹¹New clerical position in Oregon program that will be filled this year.

¹²The original legislation for Rhode Island passed in 1972, provided that the act would be effective 120 days after enactment of federal victim compensation legislation. In 1978, an amendment was passed making the act effective May 9, 1978, providing that the fund had reached \$100,000.

¹³As in Massachusetts and Tennessee (see Notes 4 supra and 14 infra, respectively), victims in Rhode Island obtain benefits through an adversary process. Claimants must file a petition in Superior Court; the state is represented by the Attorney General; only bench trials are allowed and all decisions are final with no recourse for appeal.

¹⁴In Tennessee victims must make their claim in circuit court in an adversary process. The District Attorney defends on behalf of the state and the victim must also be represented by legal counsel. The court decides on eligibility and the level of benefit and then sends the order to the Board of Claims, which reviews it to make sure that it complies with the statute. The Board presently has no statutory authority to deny claims and a proposal is being debated to provide that authority. (See also Notes 3 and 13, supra.)

Table I -- Program Structure and Organization (continued)

Notes (continued)

- ¹⁵This figure does not include five claim verifiers in the Texas Attorney General's office.
- ¹⁶In 1981 the Washington legislature amended the legislation such that victims would be no longer eligible for compensation if injured after July 1, 1981, and appropriated a reduced amount of monies to cover final claims. However, second substitute House Bill 828 just passed March 18, 1982, reinstating the program. This bill was signed by the Governor on March 27, 1982. The revenue collection sections became effective immediately, and the benefit payment sections became effective January 1; 1983.
- ¹⁷West Virginia's enabling legislation includes a sunset clause naming July 1, 1987 as the end of the program unless continuing legislation is passed. (See also Note 7 supra.)
- ¹⁸The West Virginia program has just begun to process claims, having opened January 1, 1982. Because claims are verified in the Attorney General's office, most of the claims received to date are in their hands. Thus, the Board of Claims has yet to designate a staff with full time responsibility for victim compensation.
- ¹⁹West Virginia is still in the process of assembling a three-person victim compensation commission.

Table II
Coverage and Eligibility

State	Definition of Victim						Persons Eligible for Benefits		Compensable Crimes			Losses Recoverable										Persons Ineligible			Financial Need Consideration		Changes Planned or Proposed			
	Person Injured Directly	Intervenor/Apprehendor	Residents	Reciprocal Agreements	Non-Residents (All)		Injured Party	Dependents of Deceased Victim	Third Party	Assuming Expenses	General Provision	Specific Crimes List	Motor Vehicle Excluded (Unless Intent)	Reckless MV	Medical Expenses	Counseling	Disability	Rehabilitation	Loss of Earnings	Loss of Future Earnings/Support	Funeral (Max.)	Replacement Services	Pain & Suffering	Other Reasonable Expenses	Relative of Offender	Cont. Relationship		Same Household	Yes	No
					Non-Residents (All)	Injured Party																							Yes	No
Alaska	X	X	X	X	X	X	X	X			X	X		X	X	X	X	X	X	X	X			X	X	X	X		X	<ul style="list-style-type: none"> Aggravated assault added to compensable crimes. Bill pending to eliminate relative or same household exclusion.
California	X	X ¹	X			X	X	X ²	X				X	X	X		X	X	X		X (2275)							X		<ul style="list-style-type: none"> Reimbursement for psychological counseling allowed even where no bodily injury. Would like to eliminate financial hardship test.
Connecticut	X	X	X	X		X	X ³		X			X		X	X	X	X	X	X	X	X (1500)	X	X	X	X	X	X	X ⁴		<ul style="list-style-type: none"> Bill pending to allow for more discretion in determining eligibility of the relatives of offenders.
Delaware	X		X	X	X	X	X	X		X		X		X	X	X	X	X	X	X	X		X					X		None
Florida	X	X	X			X	X		X			X		X	X	X	X	X	X	X	X (1000)	X		X	X	X	X		<ul style="list-style-type: none"> Dependent child of deceased victim related to or residing in same household as offender eligible. Other restrictions due to relation or residence are being removed. Provisions for paying for psychiatric care only in cases of bodily injury presently being challenged in district court. 	

Table II - Coverage and Eligibility (continued)

State	Definition of Victim								Persons Eligible for Benefits		Compensable Crimes			Losses Recoverable										Persons Ineligible			Financial Need Consideration		Changes Planned or Proposed
	Person Injured Directly	Intervenor/Apprehendor	Residents	Reciprocal Agreements	Non-Residents (All)	Injured Party	Dependents of Deceased Victim	Third Party Assuming Expenses	General Provision	Specific Crimes List	Motor Vehicle Excluded (Unless Intent)	Reckless MV	Medical Expenses	Counseling	Disability	Rehabilitation	Loss of Earnings	Loss of Future Earnings/Support	Funeral (Max.)	Replacement Services	Pain & Suffering	Other Reasonable Expenses	Relative of Offender	Cont. Relationship	Same Household	Yes	No		
Hawaii	X	X ⁵	X		X	X	X	X ⁶	X	X		X	X			X	X	X	X	X	X	X					X		<ul style="list-style-type: none"> • Unsuccessful attempt in 1982 to remove pain & suffering provision except for rape victims. • Unsuccessful attempt in 1982 to broaden relative eligibility. • Victim definition has been clarified to exclude police officers on duty. • Added motor vehicle exclusion in 1975.
Illinois	X	X	X	X	X	X	X	X		X		X	X	X	X	X		X (2000)									X		<ul style="list-style-type: none"> • Amended law to include persons related to and/or living in same household as offender (except in cases of death), provided that the victim moves away and prosecutes offender. • Secretary of State proposing to include reckless homicide.
Indiana	X ⁷	X	X		X	X	X	X				X	X	X		X		X			X	X ⁸				X		<ul style="list-style-type: none"> • Expanded eligibility criteria to include all victims, resident or non-resident. 	
Kansas	X	X	X		X	X	X	X ⁹	X		X	X	X	X	X	X	X	X (750)	X		X	X ¹⁰		X	X	X		<ul style="list-style-type: none"> • Would like to broaden the eligibility of relatives * of the offender. 	
Kentucky	X	X	X	X		X	X	X		X		X	X		X	X	X (2500)					X	X	X	X	X		<ul style="list-style-type: none"> • Altered residency requirements so that they will now cover citizens of other states that will compensate Kentucky citizens. • Proposal in Senate to eliminate family exclusion. 	

Table II - Coverage and Eligibility (continued)

State	Definition of Victim						Persons Eligible for Benefits			Compensable Crimes			Losses Recoverable							Persons Ineligible			Financial Need Consideration		Changes Planned or Proposed									
	Person Injured Directly	Intervenor/Apprehendor	Residents	Reciprocal Agreements	Non-Residents (All)	Injured Party	Dependents of Deceased Victim	Third Party Assuming Expenses	General Provision	Specific Crimes List	Motor Vehicle Excluded (Unless Intent)	Reckless MV	Medical Expenses	Counseling	Disability	Rehabilitation	Loss of Earnings	Loss of Future Earnings/Support	Funeral (Max.)	Replacement Services	Pain & Suffering	Other Reasonable Expenses	Relative of Offender	Con. Relationship		Same Household	Yes	No						
																											Yes	No						
Maryland	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	None
Massachusetts	X	X	X		X	X	X	X	X	X	X	X	X ¹¹			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Proposing to provide compensation for loss of personal property.
Michigan	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	None
Minnesota	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	None
Montana	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	None
Nebraska ¹⁵	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Presently proposing the establishment of a financial hardship test.
Nevada	X		X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Program changed as of Sept. 1, 1981 from offering compensation just to good samaritans to covering all victims.
New Jersey	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Requested amendment to give board discretionary authority to pay benefits when victim & offender related.
New Mexico	X		X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	Hoping to include hit & runs & DWIs as crimes to which the act applies.

Table II – Coverage and Eligibility (continued)

State	Definition of Victim										Persons Eligible for Benefits		Compensable Crimes		Losses Recoverable										Persons Ineligible		Financial Need Consideration		Changes Planned or Proposed		
	Person Injured Directly	Intervenor/Apprehension	Residents	Reciprocal Agreements	Non-Residents (All)	Injured Party	Dependents of Deceased Victim	Third Party	Assuming Expenses	General Provision	Specific Crimes List	Motor Vehicle Excluded (Unless Intent)	Reckless MV	Medical Expenses	Counseling	Disability	Rehabilitation	Loss of Earnings	Loss of Future Earnings/Support	Funeral (Max.)	Replacement Services	Pain & Suffering	Other Reasonable Expenses	Relative of Offender	Cont. Relationship	Same Household	Yes	No			
																											Yes	No			
New York	X		X	X	X	X	X		X		X		X			X	X	X		X (1500)					X	X	X	X			<ul style="list-style-type: none"> • Coverage for good samaritans has been proposed for several years and became law in 1982. • Presently proposing that financial means test be eliminated or modified. • Should change the relative/same household exclusion so awards can be made if the abuser will not benefit.
North Dakota	X	X	X	X	X	X	X		X		X		X		X	X	X	X	X	X (500)	X	X ¹⁸		X		X ¹⁹	X		None		
Ohio	X	X	X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X (500)	X			X		X ²⁰	X		<ul style="list-style-type: none"> • Alter residency requirement to include only those residents of other states which permit Ohio residents to recover awards or reparations. • Proposed a provision that would allow for compensation of elderly persons for loss or damage to essential property, loss of ability to function & pain & suffering. 		
Oklahoma	X	X	X		X	X	X	X	X		X		X	X	X	X	X	X	X	X (750)	X	X					X ²¹	X		None	
Oregon	X	X	X	X		X	X		X			X	X	X	X	X	X	X	X	X (1000)		X ²²		X		X	X ²³		<ul style="list-style-type: none"> • There was an unsuccessful attempt in 1981 to include substitute services under losses recoverable and to compensate victims of domestic violence. 		

Table II - Coverage and Eligibility (continued)

State	Definition of Victim					Persons Eligible for Benefits		Compensable Crimes		Losses Recoverable										Persons Ineligible		Financial Need Consideration		Changes Planned or Proposed				
	Person Injured Directly	Intervenor/Apprihender	Residents	Reciprocal Agreements	Non-Residents (All)	Injured Party	Dependents of Deceased Victim	Third Party Assuming Expenses	General Provision	Specific Crimes List	Motor Vehicle Excluded (Unless Intent)	Reckless MV	Medical Expenses	Counseling	Disability	Rehabilitation	Loss of Earnings	Loss of Future Earnings/Support	Funeral (Max.)	Replacement Services	Pain & Suffering	Other Reasonable Expenses	Relative of Offender		Cont. Relationship	Same Household	Yes	No
Pennsylvania	X	X	X	X	X	X		X		X		X	X		X	X	X		X			X	X				X	<ul style="list-style-type: none"> • Planning total exclusion for persons confined in penal institutions. • Believe that any third party assuming costs of funeral should be eligible for compensation.
Rhode Island	X		X		X	X			X	X		X	X			X	X		X		X	X ²⁴					X	None
Tennessee	X	X	X		X	X	X	X		X		X	X			X	X		X		X ²⁵		X				X	None
Texas	X	X	X		X	X ²⁶	X	X				X	X	X		X	X		X		X ²⁷		X	X			X	None
Virgin Islands	X	X	X		X	X	X	X		X		X	X		X	X		X		X	X	X	X	X			X	None
Virginia	X	X	X	X		X	X	X		X		X	X ²⁸		X	X		X		X					X			<ul style="list-style-type: none"> • Passed a reciprocal agreement requirement regarding compensation to residents of other states. • Legislation pending to eliminate family member ineligibility, providing the victim prosecutes.
Washington	X	X	X		X	X	X	X		X		X	X	X	X	X	X		X				X	X ²⁹			X	<ul style="list-style-type: none"> • No proposals pending but feels that victims of domestic violence & reckless motor vehicle offenses should be eligible for compensation.
West Virginia	X	X	X		X	X	X	X				X	X	X	X	X	X		X		X	X	X	X ²⁰			X	None

Table II – Coverage and Eligibility (continued)

State	Definition of Victim							Persons Eligible for Benefits		Compensable Crimes		Losses Recoverable										Persons Ineligible		Financial Need Consideration		Changes Planned or Proposed		
	Person Injured Directly	Intervenor/Apprehendor	Residents	Reciprocal Agreements	Non-Residents (All)	Injured Party	Dependents of Deceased Victim	Third Party Assuming Expenses	General Provision	Specific Crimes List	Motor Vehicle Excluded (Unless Intent)	Reckless MV	Medical Expenses	Counseling	Disability	Rehabilitation	Loss of Earnings	Loss of Future Earnings/Support	Funeral (Max.)	Replacement Services	Pain & Suffering	Other Reasonable Expenses	Relative of Offender	Cont. Relationship	Same Household		Yes	No
Wisconsin	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X ³⁰	X ³¹	X	X	X ³²		X	<ul style="list-style-type: none"> • Authorized waiver of family relationship requirement if such a waiver would be in the interests of justice. • Entering into reciprocity agreements w/other states. • Eliminated financial need criteria. 	

Table II - Coverage and Eligibility (continued)

Notes

- ¹ Private citizens in California acting to prevent the commission of a crime against another or apprehending criminals are eligible (along with their surviving dependents) for a maximum of \$10,000 in benefits.
- ² Private individuals assuming expenses are eligible for benefits in California only in the case of the death of the victim.
- ³ Connecticut compensates dependents of a victim who is killed and, in addition, dependents of a person suffering loss of income as a direct result of a crime.
- ⁴ Connecticut has a provision for considering financial need in determining eligibility, but report that no one is ever denied an award as a result of this provision.
- ⁵ Special provisions for payment of good samaritans in Hawaii includes preliminary loss resulting from property damage.
- ⁶ Third parties eligible for benefits in Hawaii include any person responsible for the maintenance of the victim who has suffered pecuniary loss and a parent of an adult victim, or an adult son or daughter of a deceased victim, who have incurred medical, funeral or burial expenses. In addition, relatives of the offender, and persons living in the same household or carrying on a continuing relationship with the offender are eligible for compensation, though only for out-of-pocket medical expenses.
- ⁷ Indiana also pays compensation in the case of law enforcement officers or firemen injured or killed performing official duties. Also "bodily injury" is construed, in practice, as meaning any touching.
- ⁸ In Indiana the spouse of the offender is ineligible for compensation. There is, however, a separate fund for spouse abuse victims in the state.
- ⁹ Kansas also considers any authorized person acting on behalf of either a victim, dependent, third person eligible to file a claim.
- ¹⁰ Under Kansas statutes, any award that would unjustly benefit the offender or an accomplice is proscribed. (See also notes 14, 20, 21, 14 and 32 infra.)

Table II – Coverage and Eligibility (continued)

Notes (continued)

- ¹¹Massachusetts pays for counseling in the case of rape victims only.
- ¹²A victim residing with the accused is ineligible to receive an award in Michigan; however, the victim's actual out-of-pocket expenses may be paid directly to a medical care provider.
- ¹³In Minnesota, the relative ineligibility clause can be waived in the following circumstances: (1) in the case of a spouse if there is a formal or permanent separation and the victim prosecutes the offender; (2) incest cases; (3) cases involving mental derangement.
- ¹⁴Montana statutes allow flexibility with regard to relative and same household exclusions, as long as an award does not unjustly benefit the offender or an accomplice. (See also notes 2, supra, and 20, 21, 24, and 32 infra.)
- ¹⁵Nebraska has two unique eligibility provisions: (1) claims are sometimes denied if a victim is unemployed; and (2) the victim's prior social history can be taken into consideration in determining awards.
- ¹⁶Other losses covered in Nebraska include costs for transportation and ambulance services.
- ¹⁷Persons confined in correctional facilities are specifically excluded from compensation in New Mexico. (This provision is as a result of the tragic prison riots in 1980.)
- ¹⁸Losses recoverable in North Dakota include nervous shock (as distinguished from pain and suffering) and pregnancy. (See also notes 22, 28, and 31 infra.)
- ¹⁹These ineligibility criteria can be waived if the interests of justice would be served. North Dakota also excludes inmates in correctional facilities from eligibility for compensation.
- ²⁰No claim shall be paid in Ohio or West Virginia if the award would unjustly benefit the offender or accomplice. (See also notes 10 and 14 supra, and 21, 14, and 32 infra.) Ineligibility criteria can be waived in the interests of justice in Ohio.

Table II – Coverage and Eligibility (continued)

Notes (continued)

- 21Oklahoma does not specifically exclude relatives, etc., but provides that a victim is eligible if compensation would not benefit the offender. (See also notes 10, 14 and 20 supra, 24 and 32 infra.)
- 22Compensable losses in Oregon include those arising from nervous shock and pregnancy. (See also notes 18 supra, 28 and 31 infra.)
- 23Though Oregon has no specific financial need provision, there is a \$250 deductible required except in cases of extreme hardship.
- 24Rhode Island specifies only victims living with offender as spouse at time of injury or death as ineligible. Also included is an unjust enrichment clause. (See also notes 10, 14, 10 and 21 supra, and 32 infra.)
- 25Pain and suffering is awarded only to victims of sexually related crimes in Tennessee.
- 26Also eligible for benefits in Texas are a surviving spouse and a posthumous child.
- 27Texas also compensates for losses incurred in caring for minor children.
- 28Costs of counseling are recoverable in Virginia only in cases of rape or sexual assault. Costs of pregnancy are also recoverable in cases of forcible rape (but not in statutory rape). (See also notes 18 and 22 supra, and 31 infra.)
- 29Washington also excludes victims who are residents of penal institutions or Dept. of Social and Health Services facilities from eligibility for compensation.
- 30Wisconsin compensates only for homemaker replacement services.
- 31Wisconsin also compensates for losses incurred due to pregnancy and mental or nervous shock. (See also notes 18, 22, and 28 supra.)
- 32Wisconsin statutes provide that no award shall be made which would unjustly benefit the offender. (See also notes 10, 14, 20, 21, and 24 supra.)

Table III
Benefits

State	Maximum Award	Minimum Loss	Deductible	Attorneys' Fees			Collateral Source Deduction		Emergency Awards			Contributory Misconduct			Changes in Benefits
				No	Yes	Specific Provisions	Yes	No	No	Yes	Max.	Reduce	Deny	Both	
Alaska	\$25,000 (40,000-- multiple dependents)	None	None		X	25% of first \$1000 15% of next \$9000	X			X	\$1500	X	X		None
California	\$23,000 ¹	\$100 ²	None		X	10% of award, not to exceed \$500	X			X	\$1000			X	<ul style="list-style-type: none"> Maximum benefit increased in 1974 from \$5,000 to \$23,000. Level of emergency award raised in 1981 from \$500 to \$1000.
Connecticut	\$10,000	\$100	\$100		X	o 15% of award max. o Paid out of award	X			X	\$500			X	<ul style="list-style-type: none"> Emergency award established. Considering the possibility of raising the \$10,000 max. benefit.
Delaware	\$10,000	\$25	None			15% of award or \$1000 (whichever is less).	X			X	None			X	<ul style="list-style-type: none"> The Board is in favor of raising the ceiling on awards from \$10,000 to \$15,000 in the near future.
Florida	\$10,000 ³	None	None	X			X ⁴			X	\$500			X	<ul style="list-style-type: none"> Payment of attorneys' fees was abolished in 1980. Proposal pending to pay rape victims for the cost of examination up to a max. of \$150.
Hawaii	\$10,000	None	None		X	15% of award maximum, if award is \$1000 or more	X		X					X ⁵	<ul style="list-style-type: none"> Unsuccessful attempt in 1982 to establish a \$100 minimum loss requirement. Unsuccessful attempt in 1982 to give commission broad discretionary power in determining impact of contributory misconduct on award.
Illinois	\$15,000 ⁶	\$200	\$200		X	Hearing officer determines rea- sonable amount	X		X					X	<ul style="list-style-type: none"> Monthly maximum (see note 6) raised in 1979 from \$500 to \$750. Attorney General on record as proposing elimination of \$200 minimum & deductible requirements.

Table III - Benefits (continued)

State	Maximum Award	Minimum Loss	Deductible	Attorneys' Fees			Collateral Source Deduction		Emergency Awards			Contributory Misconduct			Changes in Benefits
				No	Yes	Specific Provisions	Yes	No	No	Yes	Max.	Reduce	Deny	Both	
Indiana	\$10,000	\$100	None		X	<ul style="list-style-type: none"> • 15% of award < \$5000 • 10% of award > \$5000 • Paid on top of award 	X			X	\$500		X		None
Kansas	\$10,000	\$100			X	\$30/hr.	X			X	None		X		<ul style="list-style-type: none"> • Bill pending to exempt rape victims & attempted rape victims from \$100 minimum loss requirement.
Kentucky	\$15,000 ⁷	\$100 or 2 continuous weeks' earnings loss	None		X	Up to 15% of award	X			X	\$500		X		<ul style="list-style-type: none"> • Contemplating elimination of the \$100 minimum loss requirement.
Maryland	\$45,000 ⁸	\$100 or 2 continuous weeks' earnings or support loss	None		X	Reasonable	X			X	\$1000			X	None
Massachusetts	\$10,000	\$100 or 2 continuous weeks' loss of earnings or support	\$100		X	Up to 15% of award Paid out of award	X		X					X	<ul style="list-style-type: none"> • Proposal pending to eliminate \$100 deductible for rape victims. • Also proposing that victims on Social Security not have to prove loss of earnings or \$100 minimum out-of-pocket loss. (See also Note 2 infra.)
Michigan	\$15,000 ⁹	\$100 or 2 continuous weeks' loss of earnings or support ¹⁰	None		X	Paid out of award	X			X	\$500 ¹¹			X	None
Minnesota	\$25,000	None	\$100		X	<ul style="list-style-type: none"> • Limited • Paid out of award 	X			X ¹²	—			X	<ul style="list-style-type: none"> • Attempted to get \$100 minimum eliminated, but the legislature did not pass the bill.

Table III - Benefits (continued)

State	Maximum Award	Minimum Loss	Deductible	Attorneys' Fees		Collateral Source Deduction		Emergency Awards			Contributory Misconduct			Changes in Benefits	
				No	Yes	Specific Provisions	Yes	No	No	Yes	Max.	Reduce	Deny		Both
Montana	\$25,000 ¹³	One week's wage loss	None		X	Maximum of 5% of award	X		X			X			<ul style="list-style-type: none"> • Until 1979 the program denied any claim that showed evidence of contributory misconduct. Due to change in statutes, they now calculate the % of contribution and reduce accordingly.
Nebraska	\$10,000	None	None	X		<ul style="list-style-type: none"> • 5% of total award • On top of award 	X		X		\$500		X		<ul style="list-style-type: none"> • Presently pay full amt. of net lost wages, but are contemplating going to a worker's comp. model (paying a % up to a weekly max.). • Also are contemplating paying only for the reasonable costs of a semi-private hospital room.
Nevada	\$5,000 ¹⁴	\$100	None	X		Max. 10% of award	X		X			--	--	-- ¹⁵	None
New Jersey	\$10,000	\$100 or 2 continuous weeks lost earnings	None	X		<ul style="list-style-type: none"> • Up to Max. of 15% of an award • Paid on top of award 	X		X		\$1500 ¹⁶		X		<ul style="list-style-type: none"> • Proposed an increase of the max. to \$25,000, but it was vetoed by governor. • Contemplating eliminating min. loss requirements for elderly citizens (over 60). (See also Note 2 infra.)
New Mexico	\$12,500	None	None	X			X		X ¹⁷			X			None
New York	\$20,000 loss of earnings or support \$1,500 funeral	None	None	X		• Paid out of award	X		X		\$1500 ¹⁸		X		<ul style="list-style-type: none"> • Min. loss requirement eliminated. • Raised max., and are proposing to raise it again to \$50,000.
North Dakota	\$25,000	\$100	None	X		<ul style="list-style-type: none"> • Reasonable • On top of award 	X		X		\$1000		X		None
Ohio	\$25,000	None	None	X		Reasonable	X		X		None		X		<ul style="list-style-type: none"> • Bill pending to increase funeral benefits to \$1250 (from \$500). • Reduced maximum benefit from \$50,000 to \$25,000 in 1981.

Table III - Benefits (continued)

State	Maximum Award	Minimum Loss	Deductible	Attorneys' Fees			Collateral Source Deduction		Emergency Awards			Contributory Misconduct			Changes in Benefits	
				No	Yes	Specific Provisions	Yes	No	No	Yes	Max.	Reduce	Deny	Both		
Oklahoma	\$10,000 ¹⁹	None	None	X			X			X	\$500			X	None	
Oregon	\$23,000 ²⁰	\$250	\$250	X			X		X		\$1000		X		<ul style="list-style-type: none"> • Would like to see \$250 min. loss & deductible lowered or eliminated in the case of elderly victims. (See also Note 2 infra.) • Unsuccessful attempt in 1981 to remove \$250 min. loss requirement. • Also unsuccessful in 1981 in bid to increase funeral costs from \$1000 to \$1500. 	
Pennsylvania	\$25,000	\$100 or 2 continuous weeks earnings loss	None		X	\$50/hr. up to 15% of award	X		X ²¹		\$1000	X ²²			<ul style="list-style-type: none"> • Proposing to increase max. benefits to \$15,000 for loss of earnings, \$20,000 for loss of support, up to \$30,000 total. • In 1979 eliminated min. loss requirement for elderly citizens of 60 & older. (See also Note 2 infra.) • Also eliminated provision for collateral source deductions in cases of dismemberment or loss of an eye. 	
Rhode Island	\$25,000	None	None		X	<ul style="list-style-type: none"> • Paid on top of award • Reasonable 	X		X				-	-	- ²³	None
Tennessee	\$10,000	\$100 or 2 continuous weeks earnings loss.	None		X	<ul style="list-style-type: none"> • 15% of award up to \$1500 • Paid on top of award 	X		X		\$500 ²⁴		-	-	- ²⁵	<ul style="list-style-type: none"> • Maximum benefit for pain & suffering was reduced in 1981 from \$10,000 to \$2500.

Table III – Benefits (continued)

State	Maximum Award	Minimum Loss	Deductible	Attorneys' Fees			Collateral Source Deduction		Emergency Awards			Contributory Misconduct			Changes in Benefits	
				No	Yes	Specific Provisions	Yes	No	No	Yes	Max.	Reduce	Deny	Both		
Texas	\$50,000	None	None		X	<ul style="list-style-type: none"> Based on time & expenses Paid on top of award 	X			X	\$1500			X	None	
Virgin Islands	\$25,000 ²⁶	None	None		X	<ul style="list-style-type: none"> 2% of award <\$1000 5% of award >\$1000 	X			X ²⁷				X	Effective Feb. 4, 1982 the following maxima were increased: <ul style="list-style-type: none"> Max. total award raised from \$15,000 to \$25,000 (program opposed this change). Max benefit to a surviving spouse was raised from \$10,000 to \$20,000; surviving dependents are now entitled to up to \$5000. Maximum allowable burial expenses were raised from \$1500 to \$2500. Maximum benefit for pain & suffering raised from \$500 to \$1000. 	
Virginia	\$10,500	\$100	\$100	X			X			X	\$1000			X	<ul style="list-style-type: none"> Presently pay 2/3 of gross earnings loss up to \$231/week; will increase to \$253/week in July 1982. As of July 1, 1981, victims of 65 years and older are exempt from the \$100 deductible. (See also Note 2 infra.) Bill pending to increase funeral benefits from \$1000 to \$1500. 	
Washington	\$15,000 ²⁸ (other than medical)	\$200 ²⁹	None	X			X			X				X	<ul style="list-style-type: none"> See Note 28 for the schedule of benefits as stipulated in most recent amendment 	
West Virginia	\$20,000	None	None		X	<ul style="list-style-type: none"> Court determines Paid on top of award. 	X			X			-	-	X	None
Wisconsin	\$10,000	None	None		X	<ul style="list-style-type: none"> Reasonable, up to 10% of award. Paid out of award 	X			X	\$500			X	<ul style="list-style-type: none"> As of July 30, 1981 the program eliminated a \$200 minimum loss requirement. 	

Table III -- Benefits (continued)

Notes

- ¹California statutes provide for the following maximum payments:
- \$10,000--medical (including \$2,275 for funeral)
 - \$10,000--wage loss or support
 - \$3,000--rehabilitation
- ²Elderly citizens in California are exempt from the minimum loss requirement. This is also the case in Michigan (see Note 10, infra), Pennsylvania and Virginia (see Table, "Changes"). Similar provisions are being proposed in Massachusetts, New Jersey and Oregon (see Table).
- ³Florida pays 66-2/3% on loss of earnings, similar to workers' compensation.
- ⁴In Florida, monies received from collateral sources are taken into consideration when determining whether or not the claimant is suffering from financial hardship.
- ⁵Hawaii applies a test of comparative negligence in determining the extent of provocation. The victims must have contributed at least 50% to their injury before compensation can be denied.
- ⁶Illinois compensates for wage loss up to a maximum of \$750/month.
- ⁷Kentucky will compensate victims up to a weekly maximum of \$150 for loss of earnings or support.
- ⁸Awards in Maryland are made in accordance with the schedule of benefits for workers' compensation. Thus, the stated maximum may be exceeded in cases of continuing total disability.
- ⁹Michigan compensates victims' loss of earnings up to a maximum of \$100/week.
- ¹⁰In Michigan, retirees for age or disability are exempt from the minimum loss requirement. (See also Note 2 supra.)
- ¹¹Because of budget cuts and limited staff resources Michigan has discontinued its policy of paying emergency awards.

Table III -- Benefits (continued)

Notes (continued)

- 12 Minnesota will pay only lost wages on an emergency basis. However, any such payment is rare, as none has been paid in over a year.
- 13 Montana will compensate claimants for loss of earnings or support 2/3 of the victim's gross income up to \$125/week.
- 14 Nevada compensates victims for loss of earnings up to \$150/week.
- 15 Nevada statutes allow for consideration of "provocation, consent or any other behavior of the victim which directly or indirectly contributed to his injury or death..." but does not stipulate the impact that consideration may have on an award.
- 16 New Jersey makes emergency awards in increments of \$500 up to the max. of \$1500. (See also Note 18, infra.)
- 17 New Mexico statutes do not specifically authorize emergency awards, but stipulate that "any order. . . may be made on such terms as the commission deems appropriate," indicating that such awards would be possible.
- 18 New York can make emergency awards in increments of \$500 up to a maximum of \$1500. (See also Note 16, supra.)
- 19 Oklahoma compensates victims for work loss, replacement services loss, dependents' economic loss and dependents replacement service loss up to a maximum of \$200/week.
- 20 Oregon compensates victims for loss of earnings up to \$200/week. The statute also imposes the following ceilings:
- Hospital expenses--\$10,000
 - Loss of earnings--\$10,000
 - Rehabilitation--\$3,000
 - Counseling--\$1,000
 - Burial expenses--\$1,000
 - Loss of support--\$10,000

Table III -- Benefits (continued)

Notes (continued)

- 21 Processing of emergency awards in Pennsylvania takes several months; thus they do not truly represent emergency aid to the victim.
- 22 As is true in most states, Pennsylvania will deny a claim if the victim was engaged in a criminal activity at the time of injury or death. However, in cases of contributory misconduct the program reports that they generally will reduce a claim.
- 23 Rhode Island statutes indicate that the court may consider any circumstances it determines to be relevant in reviewing a claim, "including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or apprehend an offender."
- 24 Because persons in Tennessee applying for emergency funds still have to "line up" in court, the monies do not really constitute emergency aid.
- 25 District attorneys in Tennessee reportedly have little incentive to defend the state's interest and thus rarely offer the argument that the victims contributed to their injury or death.
- 26 Victims in the Virgin Islands are compensated for 2/3 of their loss of earnings or earning power.
- 27 In the Virgin Islands emergency awards are available to victims through the Department of Health.
- 28 Washington imposes no maximum allowable on medical benefits. Benefits are determined by applicable provisions of state industrial insurance program, up to maxima set out in the new statute as follows:
- Burial expenses--\$500 max. (reduced from \$1000)
 - Pension (death and disability)--\$10,000 max.
 - Rehabilitation--\$5000 max.
 - Loss of support (unemployed victim)--\$3750/dependent up to max. of \$7500.
- 29 Sexual assault victims in Washington are excluded from minimum loss requirements with regard to medical expenses, but must still establish a minimum loss for other than medical benefits.

Table IV (A)
Program Procedures

State	Public Awareness					Time Period Required— Report to Law Enforcement	Cooperation with Law Enforcement	Filing Deadline w/Program	Claims Procedures								Staff Verification	Processing Time	Appeals Procedures					
	Medical Personnel (Mandatory/Optional)	Law Enforcement (Mandatory/Optional)	District Attorneys	Victim/Witness Advocates	Mass Media				Yes	No	Preliminary Claim	Application Form	Medical/Burial Receipts	Law Enforcement Report	District Attorneys Report	Employer's Report			Collateral Sources	Financial Information/ Income Tax Returns	Victim Record/History	Time Period	Number Levels of Appeal	Reviewing Body
Alaska	O	M	X	X	X	5 days	X	2 years	X	X	X	X	X	X	X		Administrator	3 mos. min.	30 days	2	<ul style="list-style-type: none"> Hearing officer reviews & board redetermines Superior Court 			
California	M	M	X	X	X	None	X	1 year	X	X	X	X	X	X	X		Claims Specialists; some victim/witness assistants	8-10 months average	30 days (personal delivery) 60 days (mail delivery)	2	<ul style="list-style-type: none"> Re-hearing Petition for writ of mandate 			
Connecticut	M	M	X	X	X	5 days	X ¹	2 years	X	X	X	X	X	X			Investigator	60 days for simple claim	None	1	<ul style="list-style-type: none"> Appeal to full Board—under oath 			
Delaware	O	O	X	X	X	Prompt	X	1 year	X	X	X	X	X				Investigator	8-10 months average	30 days	1	<ul style="list-style-type: none"> Superior Court 			
Florida	O	O	X	X		72 hours	X	1 year (2 years w/ good cause)	X	X	X	X	X	X			Field assistant (initial screening by compliance officer)	4 months	None	3	<ul style="list-style-type: none"> Reconsideration by Bureau Chief Deputy Commissioner of Workers' Compensation District Court 			
Hawaii	O	O	X			48-72 hours without undue delay	X	18 months	X	X	X	X	X	X			Administrator	8-10 months	None (30 days)	2	<ul style="list-style-type: none"> Commission reconsiders Supreme Court (sole ground that commission exceeded authority) 			

Table IV (A) - Program Procedures (continued)

State	Public Awareness					Time Period Required - Report to Law Enforcement	Cooperation with Law Enforcement	Filing Deadline w/Program	Claims Procedures								Staff Verification	Processing Time	Time Period	Appeals Procedures			
	Medical Personnel (Mandatory/Optional)	Law Enforcement (Mandatory/Optional)	District Attorneys	Victim/Witness Advocates	Mass Media				Yes	No	Information Required									Number of Appeal	Reviewing Body		
											Preliminary Claim	Application Form	Medical/Burial Receipts	Law Enforcement Report	District Attorneys Report	Employer's Report						Collateral Sources	Financial Information/Income Tax Returns
Illinois	M	M	X	X	X	72 hours	X	<ul style="list-style-type: none"> 6 mos. to file w/AG 1 yr. to file w/ Court of Claims 	X	X	X	X	X	X			Investigator (AG's office)	6-7 months average	30 days	1	<ul style="list-style-type: none"> Hearing before Court of Claims 		
Indiana		O	X	X	X	48 hours	X	90 days (w/ possible 1 yr. extension)		X	X	X	X	X	X			Investigator	At least 6 mos. in the past (see "Changes," Table IV-B)	30 days	4	<ul style="list-style-type: none"> If claims counselor determines ineligibility at initial stage--may file request for reconsideration Hearing before Director or Exec. Director of Industrial Board Full hearing before Industrial Board Court of Appeals 	
Kansas	O	O	X	X	X	72 hours	X	One year	X	X	X	X	X	X	X			Secretary compiles info; investigator prepares financial worksheet	40 days	None	3	<ul style="list-style-type: none"> Formal hearing in front of Board w/ court reporter Attorney General Judicial Review 	
Kentucky	O	O	X		X	48 hours	X	1 year		X	X	X	X	X		X	Investigator	3-6 months	30 days	2	<ul style="list-style-type: none"> Full Board review Circuit Court 		
Maryland		O	X	X	X	48 hours	X	180 days		X	X	X	X	X	X		Investigator	10 months	30 days	2	<ul style="list-style-type: none"> Full Board review Circuit Court 		

Table IV (A) - Program Procedures (continued)

State	Public Awareness					Time Period Required - Report to Law Enforcement		Filing Deadline w/Program	Claims Procedures								Appeals Procedures					
	Medical Personnel (Mandatory/Optional)	Law Enforcement (Mandatory/Optional)	District Attorneys	Victim/Witness Advocates	Mass Media	Yes	No		Preliminary Claim	Application Form	Medical/Burial Receipts	Law Enforcement Report	District Attorneys Report	Employer's Report	Collateral Sources	Financial Information/Income Tax Returns	Victim Record/History	Staff Verification	Processing Time	Time Period	Number Levels of Appeal	Reviewing Body
								Cooperation with Law Enforcement														
Massachusetts	O		X				X	1 yr. after crime or 90 days after death of victim	X	X	X		X	X				Attorney General's staff	3-6 months	15 days	2	<ul style="list-style-type: none"> Appellate div. of District Court (as to matters of law only) Supreme Judicial Court
Michigan	O	G	X	X	X		X	One year	X	X			X	X	X			Claims Analyst	4-6 weeks	30 days	3	<ul style="list-style-type: none"> Full Board review Evidentiary hearing before Board District Court
Minnesota	O	M	X				X	1 year	X	X	X	X	X	X	X			Executive Director & Secretary	13 months (+ 2-3 mos. for check to go out)	30 days	3	<ul style="list-style-type: none"> Review by full Board State hearings examiner advises Board District Court
Montana	O	O	X				X	1 year	X	X	X		X	X	X			Investigator	3 weeks	Not Available	3	<ul style="list-style-type: none"> Hearing w/quasi-judicial authority Workers' compensation Court Supreme Court
Nebraska	O	O	X	X	X		X	2 years	X	X	X		X	X		X		Staff Assistant	2 mos. avg.	30 days	2	<ul style="list-style-type: none"> Request for reconsideration by Board District Court
Nevada		O					X	1 year	X	X	X		X	X	X	X		Contract Compensation Officer	Not Applicable	15 days	1	<ul style="list-style-type: none"> Board of Examiners
New Jersey	M	M	X	X			X	2 years	X	X	X		X	X					6 mos.-2 yrs (new cases) 2-4 yrs. (backlog)	45 days	3	<ul style="list-style-type: none"> Request hearing w/ Board based on Investigator's report Appellate Court Supreme Court

Table IV (A) - Program Procedures (continued)

State	Public Awareness					Claims Procedures											Appeals Procedures				
	Medical Personnel (Mandatory/Optional)	Law Enforcement (Mandatory/Optional)	District Attorneys	Victim/Witness Advocates	Mass Media	Time Period Required - Report to Law Enforcement	Cooperation with Law Enforcement Yes/No	Filing Deadline w/Program	Information Required								Staff Verification	Processing Time	Time Period	Number Levels of Appeal	Reviewing Body
									Preliminary Claim	Application Form	Medical/Burial Receipts	Law Enforcement Report	District Attorneys Report	Employer's Report	Collateral Sources	Financial Information/ Income Tax Returns					
New Mexico		O		X	X	30 days	X	1 year	X	X	X	X	X	X	X		Investigator	Not yet Available		No provision in statute	
New York	M	M	X	X	X	1 week	X	1 year (Extension for good cause up to 2 yrs.)	X	X	X	X	X	X	X	X	Claims Examiners & Investigators	3-6 months	30 days 4 months	2	<ul style="list-style-type: none"> • Full Board review • Judicial review pursuant to Art. 78 of Civil Practice Law & Rules
North Dakota	O	O	X		X	72 hours	X	1 year	X	X	X		X	X		Legal counsel	6 weeks to 2 months	15 days 30 days	2	<ul style="list-style-type: none"> • Reconsideration by Board • District Court 	
Ohio		M	M	X		72 hours	X	1 year	X	X	X	X	X	X	X	X	Attorney General's Office	6 months (injury) 1 year (death)	10 days 30 days	2	<ul style="list-style-type: none"> • 3-commissioner panel review • Court of claims • May make request for reconsideration at any point in the process
Oklahoma	O	O	X	X	X	72 hours	X	1 year	X	X	X		X	X	X	Administrator; v/w coordinators in 18 districts	45 days	30 days	2	<ul style="list-style-type: none"> • Formal hearing before board • File petition in District Court 	
Oregon	O	M				72 hours	X	6 mos. (extension for good cause up to 1 yr.)	X	X	X	X	X	X		Claims coordinator	1-2 months	60 days	2	<ul style="list-style-type: none"> • Request for reconsideration by Director • Workers' Compensation Board 	

Table IV (A) — Program Procedures (continued)

State	Public Awareness					Time Period Required— Report to Law Enforcement	Cooperation with Law Enforcement	Filing Deadline w/Program	Claims Procedures										Appeals Procedures				
	Medical Personnel (Mandatory/Optional)	Law Enforcement (Mandatory/Optional)	District Attorneys	Victim/Witness Advocates	Mass Media				Information Required										Staff Verification	Processing Time	Time Period	Number Levels of Appeal	Reviewing Body
									Preliminary Claim	Application Form	Medical/Burial Receipts	Law Enforcement Report	District Attorneys Report	Employer's Report	Collateral Sources	Financial Information/Income Tax Returns	Victim Record/History						
Pennsylvania	O	M	X	X	X	72 hours	X	1 year	X	X	X	X	X	X	X	X	Claim verifier	6 months to one year	20 days 30 days	2	<ul style="list-style-type: none"> • Hearing before Board • Commonwealth Court 		
Rhode Island		Word of Mouth				10 days	X	2 years	Not specified in statute										—	Not available	No provision		
Tennessee		Word of Mouth				48 hours	X	1 year	X	X	X		X				District AG	6 months	No provision				
Texas	O	M	X	X	X	72 hours	X	180 days	X	X	X	X	X	X			Attorney General	3-4 months	Reasonable	2	<ul style="list-style-type: none"> • May have informal consultation if victim disagrees w/program recommendation • District Court 		
Virgin Islands			X	X		24 hours	X	2 yrs. (but Exec. Secy. must be notified w/in 30 days that application will be filed)	X	X	X	X	X				Administrative Officer	8-12 months (1 month to process checks)	—	3	<ul style="list-style-type: none"> • Informal Board Meeting • Official hearing w/ Commission • Court 		

Table IV (A) — Program Procedures (continued)

State	Public Awareness					Time Period Required — Report to Law Enforcement	Cooperation with Law Enforcement Yes No	Filing Deadline w/Program	Claims Procedures								Staff Verification	Processing Time	Time Period	Appeals Procedures		
	Medical Personnel (Mandatory/Optional)	Law Enforcement (Mandatory/Optional)	District Attorneys	Victim/Witness Advocates	Mass Media				Preliminary Claim	Application Form	Medical/Burial Receipts	Law Enforcement Report	District Attorneys Report	Employer's Report	Collateral Sources	Financial Information/ Income Tax Returns				Victim Record/History	Number Levels of Appeal	Reviewing Body
Virginia	O	O	X	X	X	48 hours	X	180 days	X	X	X	X	X	X	X	X	Secretary & Director	3 months (+ 2-3 wks. for check to go out)	20 days 30 days	2	<ul style="list-style-type: none"> ● Full Commission ● Supreme Court 	
Washington	O			X		72 hours	X	1 year		X	X	X		X	X		Investigators from Workers' Compensation	4-6 weeks at peak staffing	60 days 60 days	2	<ul style="list-style-type: none"> ● Reconsideration by claims adjustor ● Board of Industrial Insurance 	
West Virginia		M	X		X	72 hours	X	2 years		X	X	X		X	X		Attorney General's office	6-9 months, then wait for legis- lative ap- proval	45 days 21 days	3	<ul style="list-style-type: none"> ● Judge or Commis- sioner decides ● Claimant or AG may request hearing ● Court of Claims hearing ● Court of Claims re-hearing 	
Wisconsin	O	M	X	X	X	5 days	X	2 years		X	X	X		X	X		Claims spe- cialist	4-5 months average	30 days	2	<ul style="list-style-type: none"> ● Administrative appeal —Attorney General appoints two exami- ners from outside victim comp. agency. ● Circuit Court 	

Table IV (B)
Program Procedures

State	Payment Procedures						Links with Victim/Witness Programs			Distinctive Features	Changes in Program Procedures
	Method of Payment			Payment to Vendors			Yes	No	NA		
	Lump Sum	Installments	Both	Check to Victim	Direct to Vendors	Joint Checks					
Alaska	X					X	X			<ul style="list-style-type: none"> • Quarterly Board Meeting. • Full Board Review. • Program puts minimum burden on victim in collecting information. 	<ul style="list-style-type: none"> • Would like to be able to pay provider directly.
California			X	X		X	X			<ul style="list-style-type: none"> • Development of claims specialists in Board of Control minimizes costs. • Also 2-tier division into information gatherers and professionals increases cost-efficiency. 	<ul style="list-style-type: none"> • From 1967 to 1978 the Attorney General's office conducted all investigation of claims for the Board of Control. • Some local v/w programs have been trained in claims verification to reduce processing time. • Cost efficiency studies under way.
Connecticut	X			X			X			<ul style="list-style-type: none"> • Victim/witness advocates in Attorney General's office contact all law enforcement agencies, hospitals, and courthouses on a regular basis. • Special short form for law enforcement • Investigators present case directly to board. • All investigators are law students on contract part-time. 	<ul style="list-style-type: none"> • Legislation pending to add provision for appeal to Superior Court.
Delaware			X		X		X			<ul style="list-style-type: none"> • Claims for under \$500 may be heard by one Board member; over \$500 must be a quorum. 	None
Florida	X				X		X			<ul style="list-style-type: none"> • Try to see as many claimants face to face as possible. • Bureau does not have authority to <u>advertise</u>, but can <u>publicize</u> the availability of compensation. 	<ul style="list-style-type: none"> • Commission abolished in 1980 and Bureau established, giving powers and duties of commission to workers' compensation division. • Pressure to change structure so that counties administer victim compensation.

Table IV (B) – Program Procedures (continued)

State	Payment Procedures						Links with Victim/Witness Programs			Distinctive Features	Changes in Program Procedures
	Method of Payment			Payment to Vendors			Yes	No	NA		
	Lump Sum	Installments	Both	Check to Victim	Direct to Vendors	Joint Checks					
Hawaii	X				X		X			<ul style="list-style-type: none"> • Annual report submission publicized in paper and on TV. • In 1980, VCOMP budget included \$20,000 for set-up of victim/witness assistance program. 	<ul style="list-style-type: none"> • Unsuccessful attempt in 1982 to provide for judicial review of claims on appeal. • Changed procedures in 1982 to allow for payment of vendors directly.
Illinois			X	X			X			<ul style="list-style-type: none"> • Single commissioner may decide claim. • Most cases paid in lump sums. • Will sometimes notify provider when claim has been paid to victim. • Program has posters on buses. • Cases of claimants over 60 take priority. • Victim/witness assistants aid disabled or elderly victims in verifying their claims. 	<ul style="list-style-type: none"> • 1979 legislation significantly amended program. In addition to delineating the powers and duties of the Attorney General and Court of Claims, the legislation established most of the provisions reported herein.
Indiana	X					X	X			<ul style="list-style-type: none"> • Investigator a third year law student. • Try to avoid contact with victim as much as possible. 	<ul style="list-style-type: none"> • Distribution of awards used to be allowed only twice a year. New statute effective July 1, 1982 allows for monthly distribution.
Kansas			X		X	X	X			<ul style="list-style-type: none"> • Full Board review. • Monthly meetings. • Board reconsiders annually all claims on which protracted payments are being made. 	None
Kentucky			X		X		X			<ul style="list-style-type: none"> • Single Board member review. 	<ul style="list-style-type: none"> • Increased filing deadline from 90 days to 6 months in 1978, then to 1 year in 1980.
Maryland			X	X	X					<ul style="list-style-type: none"> • Single commissioner may decide. 	<ul style="list-style-type: none"> • Increased filing deadline to 180 days.
Massachusetts	X			X ³			X			<ul style="list-style-type: none"> • Rape crisis centers also notify victims of potential eligibility to file claim. • \$5 filing fee. • See Table I for description of adversary proceedings. 	None
Michigan			X	X	X		X			<ul style="list-style-type: none"> • Work closely with county victim/witness assistance programs. • Toll free telephone from Detroit to Lansing. • Full Board review on appeal. 	None

Table IV (B) – Program Procedures (continued)

State	Payment Procedures						Links with Victim/Witness Programs			Distinctive Features	Changes in Program Procedures
	Method of Payment		Payment to Vendors				Yes	No	NA		
	Lump Sum	Installments	Both	Check to Victim	Direct to Vendors	Joint Checks					
Minnesota	X				X		X			<ul style="list-style-type: none"> Files are kept open indefinitely so claimants can re-apply informally for supplemental awards quarterly. Program has toll-free phone number for victim contact. Usually full Board review. Can take as much as 2-3 months for Dept. of Finance to get check out to victim. 	None
Montana		X			X			X		<ul style="list-style-type: none"> Payments are made on a biweekly schedule. 	None
Nebraska			X		X		X			<ul style="list-style-type: none"> Full Board review. Hospitals are required to report crime victims to police. For purposes of claim eligibility this constitutes claimant's report to law enforcement. Rather than paying claims on first come/first served basis, program encumbers funds: only makes payments if claim is \$300 or less and will hold back payment of medical vendors till money in fund is sufficient. This procedure is reported to create a lot of paperwork. 	<ul style="list-style-type: none"> In June of 1981 changed from independent to part of Crime Commission to reduce administrative costs. Used to draw joint checks for payment to vendors, but altered procedure after being defrauded.
Nevada	X				X		X			<ul style="list-style-type: none"> Program contracts w/ a private firm of insurance investigators for claims verification. Compliance officers paid \$50/hour up to \$250/case. Decisions rendered by hearing officers. 	<ul style="list-style-type: none"> Program changed as of September 1981 from covering just good samaritans to all victims. The program is still in the process of developing procedures and has not yet processed any claims under new statute.
New Jersey			X		X		X			<ul style="list-style-type: none"> Victim compensation program staffs and funds victim/witness services hotline. Special project w/Dept. on Aging--special brochures for elderly; special investigators; expedite claims of elderly persons. Victim's lack of cooperation w/police may be construed as lack of cooperation w/Board. 	<ul style="list-style-type: none"> As of August 1980 police and hospitals are required to notify victims of potential eligibility for compensation. Also special public awareness program for senior citizens instituted. Filing deadline extended.
New Mexico			X		Not yet determined		X			<ul style="list-style-type: none"> Review by single commissioner. 	<ul style="list-style-type: none"> Hoping to make notification of victim of potential eligibility by police mandatory.

Table IV (B) — Program Procedures (continued)

State	Payment Procedures					Links with Victim/Witness Programs			Distinctive Features	Changes in Program Procedures
	Method of Payment		Payment to Vendors			Yes	No	NA		
	Lump Sum	Installments	Both	Check to Victim	Direct to Vendors					
New York			X	X	X	X			<ul style="list-style-type: none"> • New York City has a pre-processing unit. • See Table I, footnote 8, infra. regarding victim compensation program oversight role in v/w advocacy. • Assistant to the Board responsible for outreach. • Posters in subways and buses. 	<ul style="list-style-type: none"> • 1977 passed legislation mandating law enforcement agencies to notify victims of potential eligibility for compensation. • Senior citizens unit established in FY 79-80; also an advocacy unit.
North Dakota		X			X			X	None	<ul style="list-style-type: none"> • Program feels that more victims would be aware of program if law enforcement agencies were required to inform them of it.
Ohio			X	X			X		<ul style="list-style-type: none"> • \$7.50 filing fee. • Single commissioner decides. • Supplemental applications allowed w/in five years. • May file application w/clerk of Court of Common Pleas. 	None
Oklahoma			X		X				<ul style="list-style-type: none"> • Board holds monthly meetings. • Full Board review. 	<ul style="list-style-type: none"> • Presently looking into feasibility of data automation for office to provide: (1) Info. for annual report; (2) monitoring of penalty assessment collection; (3) claims projections; (4) identifying rationales for claim decisions to set precedents and maintain consistency.
Oregon		X			X				<ul style="list-style-type: none"> • Program has considerable contact with victims. • Program applies "prudent person concept"—accept the word of claimant. • Monthly payments. 	<ul style="list-style-type: none"> • Presently drafting new administrative regulations.
Pennsylvania			X		X				<ul style="list-style-type: none"> • Full Board review. • Hospitals are required to report all assault cases treated—this constitutes a report to the proper authorities for purposes of claim eligibility. 	<ul style="list-style-type: none"> • As of 1980, law enforcement agencies are required to notify victims of potential eligibility for compensation.
Rhode Island	X			X			X		<ul style="list-style-type: none"> • See Table I for description of adversary process. 	None

Table IV (B) – Program Procedures (continued)

State	Payment Procedures						Links with Victim/Witness Programs			Distinctive Features	Changes in Program Procedures
	Method of Payment			Payment to Vendors			Yes	No	NA		
	Lump Sum	Installments	Both	Check to Victim	Direct to Vendors	Joint Checks					
Tennessee			X	X					X	<ul style="list-style-type: none"> • Board of Claims meets twice monthly. • DAs handle claims for state in District Court. Courts and DAs are reportedly not well-versed in statutory provisions so they approve improper claims which the Board presently has no authority to deny. • \$5 filing fee (refundable). • Checks mailed to attorney: one for victim, one for attorney. 	<ul style="list-style-type: none"> • Proposal being debated to provide authority to Board to deny claims.
Texas			X			X	X			<ul style="list-style-type: none"> • Victims are paid first, before providers. 	None
Virgin Islands					X		X			<ul style="list-style-type: none"> • If claimant did not receive maximum benefit, case can be reopened one calendar year from closing. • Personal contact with victim often. 	None

Table IV (B) – Program Procedures (continued)

State	Payment Procedures					Links with Victim/Witness Programs			Distinctive Features	Changes in Program Procedures
	Method of Payment		Payment to Vendors			Yes	No	NA		
	Lump Sum	Installments	Both	Check to Victim	Direct to Vendors					
Virginia			X		X				<ul style="list-style-type: none"> • Single Deputy Commissioner decides. • Interview victims over the phone often. • Preliminary claim process screens many ineligible claimants (e.g., 40% in 1981). 	<ul style="list-style-type: none"> • Effective July 1, 1981, victims have 90 days from mailing of affidavit to file claim.
Washington			X		X				<ul style="list-style-type: none"> • Counties can apply to Dept. of Labor & Industries for approval of victim/witness programs. 	<ul style="list-style-type: none"> • None--see earlier tables for synopsis of changes in program status.
West Virginia				X				X	<ul style="list-style-type: none"> • After Court of Claims makes award to victim, that award must be approved by the legislature before it can be paid. The legislature meets annually from January to March. • \$10 filing fee. • File with clerk of court. 	<ul style="list-style-type: none"> • None
Wisconsin			X		X			X	<ul style="list-style-type: none"> • Investigators become involved only in those cases where there is a problem in verification. 	<ul style="list-style-type: none"> • Program was switched from the Dept. of Industry, Labor and Human Relations in 1980 because of apparent lack of policies and procedural guidelines; lack of public awareness; and allegations of arbitrary decision-making. • Victim/witness bill of rights passed in 1980 and victim compensation program executive director also administers advocacy programs. • Considering reducing 2-year filing deadline to 1 year. • Also considering reduction of 5-day period for reporting to law enforcement.

Table IV (B) – Program Procedures (continued)

Notes

¹Though Connecticut does not require cooperation with law enforcement agencies, this factor is taken into consideration by the Board.

²A similar decentralized structure, tying victim compensation in with county victim/witness assistance services has been discussed in California. Colorado has just passed legislation (effective July, 1982) that designates county district attorneys responsible for establishing victim compensation boards in their jurisdiction.

³The method of payment to vendors in Massachusetts is strictly a matter of judicial discretion.

Table V Program Costs and Funding

State	Time Period	PROGRAM COSTS				PROGRAM REVENUES			Experienced Insufficient Funds	Changes in Costs & Funding
		Total Payments to Victims	Administrative Costs (% of Total)	Total Costs	Average Award	Funding Source	Total Revenues	Specific Provisions		
Alaska	FY 1981	\$ 237,100	\$ 102,200 (30%)	\$ 339,300	\$3500	eGeneral Revenues	\$ 339,300 ¹	None	Yes	eBecause of increasing medical costs, inflation and more claims, benefits are increasing but admin. costs are remaining stable.
California	FY 81-82	15,279,141	1,805,438 (10.5%)	17,075,579	2275	ePenalty Assessment	17,075,579	eAll felonies and most misdemeanors are assessed a \$4 penalty for every \$10 fine; 24.58% of these monies go to the victim compensation; the balance goes to victim witness and rape crisis centers	Yes	eThis is the first year that the program received no general fund support and was funded solely from fines & penalties. e\$2,620,860 worth of claims were carried over from previous year, leaving \$10,149,281 for payment of claims in '81-82. Additional spending authority granted to cover \$2.5 million shortfall this year.
Connecticut	1981 (Calendar)	632,000	87,650 (12%)	719,650	2200	eFines	1,100,000	Fines are assessed as follows: e\$15 on all motor vehicle and DUI offenses & misdemeanors e\$20 on all felony convictions	No	eBill pending to allow program to invest funds in short term interest-bearing accounts (presently remains in general fund with interest reverting to that fund).
Delaware	FY 1981	241,804	140,350 (37%)	382,154	3000	eFines & penalties eForfeitures eRestitution	343,317 ²	15% surcharge on all fines, penalties, and forfeitures (including traffic violations)	Yes	eSurcharge increased from 10% in 1982.
Florida	FY 1981	1,800,000	380,000 (11%)	2,180,000	2900	eFines & penalties	2,200,000 ³	\$10 additional court cost and 5% surcharge on all criminal penalties	No	eCourt costs & surcharges now will be assessed on criminal traffic offenses. Program estimates that this will provide 50% more revenue.
Hawaii	FY 1981	432,513	77,418 (15%)	509,931	1100	eGeneral Revenues	598,000	None	No	eAsked legislature for a \$500,000 revolving fund in 1981 but it did not pass.
Illinois	1980 (Calendar)	2,078,000	232,900 ⁴ (10%)	2,310,900	2928	eGeneral Revenues eSupplemental Approp.	2,300,000	None	Yes	None

Table V — Program Costs and Funding (continued)

State	Time Period	PROGRAM COSTS				PROGRAM REVIEWS				
		Total Payments to Victims	Administrative Costs (% of Total)	Total Costs	Average Award	Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding
Indiana	FY 1981	NOT AVAILABLE FROM PROGRAM			3000	<ul style="list-style-type: none"> •General Revenues •Fines & penalties 	50,000 (Administration) 900,000 (Benefits)	<ul style="list-style-type: none"> •\$15 on class A misdemeanors & all felonies (no traffic violations) •10% of salaries of prisoners on work release 	No	<ul style="list-style-type: none"> •Indiana has had a rollercoaster history of funding: 1978 Appropriation - \$200,000 1979 - \$1 1980 - \$0 1981 - Changed affiliation \$1 •Under new legislation, effective July 1982, the program will be self-supporting without any general appropriation. •Also under the new law, interest on the victim compensation fund will revert to that fund rather than to the general fund as in the past.
Kansas	FY 1981	173,142	61,883 (36%)	235,025	2086	<ul style="list-style-type: none"> •General Revenues 	239,452	None	No	<ul style="list-style-type: none"> •Bill pending to assess a penalty fee of \$25 on all felonies & \$10 on all misdemeanors to augment revenues from the general fund. The state made a projection as to the amount that would be collected & subtracted that much from the general appropriation so that funding remains stable.
Kentucky	FY 1981	410,533	— ⁵	410,533	2500	<ul style="list-style-type: none"> •General Revenues •Fines & penalties 	366,000	\$10 for all offenses for which imprisonment may be imposed	Yes	Legislation establishing fines effective July 15, 1982.
Maryland	FY 1981	\$ 1,415,472	\$ 782,281 (36%)	\$ 2,197,753	\$6376	<ul style="list-style-type: none"> •General Revenues •Court Costs 	\$2,004,763 (only \$318,230 was collected thru court cost)	\$10 on all conviction	Yes	None
Massachusetts	FY 1981	905,679	— ⁶	905,679 (Awards)	3546	<ul style="list-style-type: none"> •General Revenues 	905,967	None	Yes	<ul style="list-style-type: none"> •Legislation pending to allow for payment of some or all of any fine imposed on a convicted offender to the victim of that crime. •Bill also pending to allow for monies collected under Son of Sam provision to revert to the victim compensation fund if no civil action is brought by victim.
Michigan	FY 1981	1,822,605	158,195 (9%)	1,980,800	1445	<ul style="list-style-type: none"> •General Revenues •Supplemental Approp. 	1,980,800	None	Yes	None

Table V - Program Costs and Funding (continued)

State	Time Period	PROGRAM COSTS				PROGRAM REVIEWS				
		Total Payments to Victims	Administrative Costs (% of Total)	Total Costs	Average Award	Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Change in Costs & Funding
Minnesota	FY 1981	573,089	73,995 (13%)	647,084	1973 (Claim)	<ul style="list-style-type: none"> •General Revenues •Restitution •Refunds •Fines & Penalties 	573,089	See "changes"	Yes	<ul style="list-style-type: none"> •Anticipate that funding will decrease due to state government cutbacks. •Legislature passed surcharge provision stipulating that 10% of a fine (or \$40, whichever is greater) on every misdemeanor, gross misdemeanor & felony conviction should be collected & divided up among victim services. An additional \$5 is assessed for traffic violations. These funds will, however, be used to reimburse the general fund & thus only those monies in excess of the appropriation will go directly to victim compensation. •Program would like to mandate minimum monetary penalties on offenders. •Would also like to see a % of wages earned by prisoners go to victim compensation.
Montana	FY 1981	\$ 271,023	\$ 50,536 (18%)	\$ 321,559	\$1514	<ul style="list-style-type: none"> •Fines & Penalties •Restitution 	\$ 370,834	18% of fines & bail forfeitures assessed by highway patrol on all motor vehicle violations	No	Established new penalty assessment procedure in 1981 - Prior to that date the victim comp. fund received 6% of all fines for moving traffic violations (incl. cities & towns).
Nebraska	1981 (Calendar)	57,686	42,000 (73%)	99,686	1900	<ul style="list-style-type: none"> •General Revenues •Supplemental Approp. 	115,000	None	Yes	<ul style="list-style-type: none"> •Program was set up in 1979 with a 5-year test period established before appropriation would be raised, but there has been no problem in getting supplemental appropriations as needed. •However, because of state fiscal crunch governor requested 33% decrease in victim compensation budget last year and will probably effect similar decreases in the future.
Nevada	Sept. 1, 81 to Mar. 11, 82 (6 mos.)	— ⁷	—	—	—	<ul style="list-style-type: none"> •Bond Forfeitures •"Son-of-Sam" monies 	70,000	<ul style="list-style-type: none"> •Bond forfeitures on all felony cases •Half the earnings from "Son-of-Sam" provisions 	—	None

Table V — Program Costs and Funding (continued)

State	Time Period	PROGRAM COSTS				PROGRAM REVIEWS				
		Total Payments to Victims	Administrative Costs (% of Total)	Total Costs	Average Award	Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding
New Jersey	FY 1981	\$1,953,996	\$ 400,000 (17%)	\$2,353,996	\$3000	eGeneral Revenues eFines & Penalties	\$2,300,000 Approx.	eCourt costs of \$25 assessed on any simple assault or any crime; in cases of injury or death to a victim the judge can impose any fine up to a max. of \$10,000. Money comes directly to victim comp. office & is deposited in treasury account.	Yes	eCourt costs imposed effective Feb 6, 1980 but because of problems in collecting fines they did not begin to come in until 1981. Program has hired a court monitor to oversee collection of the penalties; so far in 1982, \$600,000 has accumulated. eProposal pending also to assess a fine of \$10 on juvenile convictions, as well as \$25 on all convictions for disorderly conduct. eBudget increased by \$1 million in 1979 (appropriation).
New Mexico	4/9/81 to 3/19/82	\$ 7,000	(10% station- cap on admin.	\$ 7,000 ⁸ (Awards)	\$1050	eGeneral Revenues	\$1,800,000	None	—	None
New York	FY 1981	5,750,549	1,081,730 (16%)	6,832,279	1948	eGeneral Revenues	6,800,000 ⁹	None	—	eLegislation was proposed in 1982 to allow for the proceeds of sale of abandoned property held by law enforcement to be paid into victim compensation fund. ealso proposed in 1982 a more rigorous restitution statute. eHave also proposed minimum mandatory monetary penalties on persons convicted of crimes. ealso proposing that 1/2 of all monies earned by convicted arsoners be used for victim compensation.
North Dakota	7/1/79 to 6/30/81	88,373	46,772 (35%)	135,145	1500-2000	eGeneral Revenues	\$311,068 ¹⁰	None	No	None
Ohio	FY 1981	7,654,240	1,531,279 (17%)	9,188,519	4900	eFines & Penalties eSupplemental Approp.	5,310,189	eAdditional court costs of \$3 (see "Changes") are assessed on any person who is convicted of or pleads guilty to any offense other than a non-moving traffic violation.	Yes	eLegislation eff. Nov. 15, 1981 provided that court cost be raised to \$10 until June 30, 1983 at which time it will revert back to \$3 unless action is taken to keep it at higher rate. eIn 1980 the legislature specified that court costs apply also to juveniles & that defendant out on bail is required to pay.

Table V — Program Costs and Funding (continued)

State	Time Period	PROGRAM COSTS				PROGRAM REVIEWS				
		Total Payments to Victims	Administrative Costs (% of Total)	Total Costs	Average Award	Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding
Oklahoma	10/19/81-6/82 (8 mos)	\$ 7,484	\$33,333 ¹² (cap on adm co)	\$ 40,817 (Awards)	\$2300 Claims; \$1487 Award	•General Revenues (Admin) for period 10/14/81 to 6/82 •Fines & Penalties (Collected thru 2/82) •Restitution Fund	\$ 50,000 \$4,022	•Fines & Penalties are to be assessed on pleas & convictions as follows: \$5 - misdemeanors (excluding traffic) \$25-non-violent felonies \$25-\$10,000 (judicial discretion) on violent felonies Project that these assessments will bring in \$250,000/year •Restitution fund-statute provides that any monies left in the fund over 3 years will revert to victim compensation fund; expecting to receive \$30,000 to \$35,000/year	—	None
Oregon	FY 1981	519,000	104,000 (17%)	623,000	1700	•General revenues •Restitution	1,761,000	•\$1,430,000 benefits, 281,000 admin. •Program is running on \$45,000/month less than appropriated •Unique restitution statute allows program to recoup costs from third parties, such as drinking establishments, who may be held responsible for the criminal acts of its patrons & must carry liability insurance	—	None
Pennsylvania	FY 1981	\$816,000	\$252,000 (24%)	\$1,068,000	\$2600	Fines & penalties	\$1,861,397 (collected) \$1,311,000 (budget)	• \$10 fine is assessed on any Title 18 criminal conviction. While this \$ goes into the general fund from which the victim compensation receives an appropriation the program is really self-supporting through imposition of court costs.	No	• Anticipate that their revenues will increase because the crime rate is going up.

Table V — Program Costs and Funding (continued)

State	Time Period	PROGRAM COSTS				PROGRAM REVIEWS			Experienced Insufficient Funds	Changes in Costs & Funding
		Total Payments to Victims	Administrative Costs (% of Total)	Total Costs	Average Award	Funding Source	Total Revenues	Specific Provisions		
Rhode Island	Cal. 1981	\$238,430 (claims) \$ 11,362 (Attys. fees)	— ¹³	\$249,792 (claims & attys. fees)	\$12,548	Fines & penalties	\$972,723	<ul style="list-style-type: none"> • Court costs are imposed on criminal convictions as follows: <ol style="list-style-type: none"> 1. \$10 on misdemeanors with penalty of less than 1 year incarceration; 2. \$30 on felonies w/ penalty up to 5 years; 3. \$50 on felonies w/penalty of more than 5 years 	No	None
Tennessee	Cal. 1981	\$801,452	— ¹⁴	\$801,452	\$8500 (includes attys. fees)	Fines & penalties	\$1,141,631	<ul style="list-style-type: none"> • Offenders on parole pay \$5/month • Court costs: (1) \$21 in Circuit Court; (2) \$10 Sessions Court 	Yes	<ul style="list-style-type: none"> • 1980 legislature included convictions in Sessions Court (less severe crimes) in court costs levies. • Taxing provision used to be "crimes against person or property"; now reads any criminal conviction except \$500 fine and no incarceration (eff. 1981).
Texas	FY 1981	\$988,182	\$263,886 (21X)	\$1,252,068	\$2856	Fines & penalties	\$1,129,520	<ul style="list-style-type: none"> • Court costs are assessed as follows: <ol style="list-style-type: none"> 1. \$15 on all felony convictions & 2. \$10 on all Class A & B misdemeanors (penalties of more than \$200 fine or incarceration) 	Yes	<ul style="list-style-type: none"> • Legislature does not meet again until 1983—at that time they will probably pass bill including Class C misdemeanors in levying fines.
Virgin Islands	FY 1981	\$121,967	\$16,000 ¹⁵ (12X)	\$137,967	\$3696	General revenues	\$125,000	<ul style="list-style-type: none"> • Benefits only 	Yes	<ul style="list-style-type: none"> • Considering possibility of setting up special rates; no formal action yet.
Virginia	FY 1981	\$430,687	\$54,775 (11X)	\$485,462	\$2,940	Fines & penalties	\$450,673 ¹⁶	<ul style="list-style-type: none"> • \$15 court cost assessed on individuals convicted of any felony or Class 1 & 2 misdemeanor (not including drunken driving, disorderly conduct, or traffic offenses) 	Yes	<ul style="list-style-type: none"> • Fee raised to \$15 from \$10 in 1981. • Have go-ahead from legislature to propose that interest from victim comp. fund revert to that special fund rather than general fund.

Table V – Program Costs and Funding (continued)

State	Time Period	PROGRAM COSTS				PROGRAM REVIEWS				
		Total Payments to Victims	Administrative Costs (X of Total)	Total Costs	Average Award	Funding Source	Total Revenues	Specific Provisions	Experienced Insufficient Funds	Changes in Costs & Funding
Washington	FY 1981	\$2,378,634	\$250,000 (approx. 10%)	\$2,628,634	\$2,088	<ul style="list-style-type: none"> • General revenues • Fines & penalties 	\$2,500,000	<ul style="list-style-type: none"> • \$50 felony or gross misdemeanor convictions • \$25 misdemeanor • Includes juveniles • Need not be convicted of victim-involved crime 	Yes	<ul style="list-style-type: none"> • Old legislation provided for \$25 fine or 10% of other fine (whichever is greater) to be assessed on victim-involved felony or gross misdemeanor. • New legislation contains monitoring & enforcement provisions. • New legislation is predicated on proposition that program will be self-supporting.
West Virginia ¹⁸	July 1, 1981 to March 12, 1982 (8 months)	—	—	—	—	Fines & penalties	\$318,000	<ul style="list-style-type: none"> • \$3 court cost imposed on any felony or misdemeanor conviction, including moving traffic violations. • Anticipate that they will be collecting between \$30,000 & \$40,000/month. 	—	None
Wisconsin	FY 1981	\$1,200,000	\$200,000 ¹⁹ (14%)	\$1,400,000	\$2,600	General revenues	\$1,788,000	<ul style="list-style-type: none"> • \$1,583,000—benefits • \$205,000—admin. 	No	<ul style="list-style-type: none"> • 1980 passed victim/witness bill of rights adding separate additional appropriation of \$572,000 in '81 for v/w services to be administered by victim comp. program.

Table V -- Program Costs and Funding (continued)

Notes

- ¹Information received from Alaska in interview and program documentation is ambiguous regarding total revenues from general funds and supplemental appropriations.
- ²There is a discrepancy in the information from Delaware which reports both a revenue balance carried over from the previous year and insufficient funds to pay all claims that same previous year. This figure does not include the reported carryover.
- ³In fiscal year 1981 the state of Florida collected \$33,969 in restitution from offenders.
- ⁴This figure represents an underestimate because it includes only the Illinois Attorney General's Office administrative costs and none of the Court Claims expenditures.
- ⁵Because the Crime Victim Compensation Board in Kentucky is also the Board of Claims, it is impossible to separate out the administrative costs of victim compensation alone.
- ⁶No "program" per se exists in Massachusetts, but simply investigation is provided by the staff of the Attorney General's Office to inform the court in deciding claims. These services have no separate staff or budget and thus it is impossible to determine administrative costs.
- ⁷Because the new Nevada victim compensation legislation only became effective as of September 1, 1981, it is just beginning to get going and has not yet processed any claims under the new law.
- ⁸Because the program in New Mexico is so new (eff. April 9, 1981) full information regarding program costs is not yet available.
- ⁹The New York Board recovered for the state a total of \$53,362 through exercising its rights of subrogation regarding restitution from the offender.
- ¹⁰The North Dakota program returned the unspent balance of \$178,623 to the general fund for the biennium 1979 - 1981.

Table V -- Program Costs and Funding (continued)

Notes (continued)

- 11 A supplemental appropriation of \$530,000 from the general funds was required in 1981 when the Ohio program ran out of money two months into the fiscal year. This was a one-time appropriation, and the program has since reimbursed the general fund for the full amount.
- 12 Because the Oklahoma program has only been in operation for six months, it is too soon to make a useful comparison between administrative and total program costs.
- 13 See preceding tables for a description of Rhode Island's adversarial claims process. Administrative costs under this procedure are paid out of the Attorney General's budget and are not monitored separately.
- 14 Administrative costs for Tennessee victim compensation are contained in the Board of Claims' budget and cannot be separated out.
- 15 This figure represents the Virgin Islands' program's administrative officer's salary--which is paid out of the budget of the Department of Social Welfare.
- 16 Because Virginia allowed money to collect in the fund for one year prior to program start-up, funds are amassed a year in advance even today. Thus, these monies targeted for 1981 expenditure were collected in 1980 at the old rate of \$10 per criminal conviction. Monies collected in 1981, under the new \$15 court cost provision, amount to \$643,728 for payment of claims in 1982.
- 17 Because prosecutors and judges in Washington were not aware of the requirements for collecting court costs, and there were no standard enforcement, auditing, or reporting measures, only \$170,000 was collected over a period of four years under the old law.
- 18 The West Virginia program is still too new for cost information to be available.
- 19 This figure also includes costs of the Wisconsin program's executive director administering of victim/witness assistance efforts in the state.

Table VI
Program Caseload

State	Time Period	Number of Applicants	Number of Claims Awarded	Number of Claims Denied	Number of Claims Pending	Percent of Applicants Receiving Benefits	Changes in Program Caseload
Alaska	FY '81	111	93 claims heard	Few	31	80%	• No significant changes until 1982, when increased significantly
California	FY '81	8700 (accepted)	5151	4491	Approximately 817	45-50%	• Increase in claims filed: '73-'74 - 1300 '76-'77 - 5526 claims filed
Connecticut	FY '81	430	333 claims heard	Not available	220	90%	• No. claims filed doubles yearly: '79 '80 '81 '82 79 206 430 800-1000
Delaware	FY '81	89	155	Not available	Not available	76%	• Steady increase of 10-15 new claims per fiscal year
Florida	FY '81	1586	301	612	673	40%	• No. claims filed increases steadily: '78 '79 '80 '81 (projected) 1141 1370 1555 1590
Hawaii	FY '81	441	393	140	154	Not available	• Awards fluctuate: '78 '79 '80 '81 216 241 450 393
Illinois	FY '80	Not available	710	275 82 dismissed	Not available	Not available, but less than 50% denied.	• Awards increased: '77 '78 '79 348 241 535
Indiana	FY '81	500 (since inception)	120	Not available	76	69%	• Not available
Kansas	FY '81	108	83	18 (+9 withdrawn)	53	70%	• No. of claims filed has increased: '79 '81 64 108
Kentucky	FY '81	369	128	157	Not available	33%	• 20% annual increase in no. of claims filed
Maryland	FY '81	705 (612 accepted & investigated)	222	85 disallowed	Not available	75%	• No. of applications rec'd. in 1981 increased dramatically over the no. in 1980; project that at least 800 claims will require investigation in 1982
Massachusetts	FY '81	Not available	256	Not available	Not available	Not available	• Steadily increasing

Table VI -- Program Caseload

State	Time Period	Number of Applicants	Number of Claims Awarded	Number of Claims Denied	Number of Claims Pending	Percent of Applicants Receiving Benefits	Changes in Program Caseload						
Michigan	FY '81	1448	727 initial 404 protracted	863	Not available	50%	• No. claims filed increasing 15% annually						
Minnesota	FY '81	504	253	101	477 pending	60%	• Increased no. of applications: <table style="margin-left: 20px; border-collapse: collapse;"> <tr> <td style="padding-right: 10px;">76</td> <td style="padding-right: 10px;">81</td> <td></td> </tr> <tr> <td style="border-top: 1px solid black; padding-top: 2px;">290</td> <td style="border-top: 1px solid black; padding-top: 2px;">504</td> <td></td> </tr> </table>	76	81		290	504	
76	81												
290	504												
Montana	FY '81	179	143 accepted	36	Not available	88-90%	• Slight increase						
Nebraska	FY '81	69	35	17 1 withdrawn	24 pending	40%	• None						
Nevada	FY '81	0	10 (since inception 10 yrs. ago)	Not available	Not available	Not available	• Not available--see previous tables for discussion of recent changes in Nevada program claims for the 1st 6 mos. of 1982						
New Jersey	FY '81	1256	691	498	Not available--significant backlog over the years	60%	• Claims for the 1st six mos. of 1982 exceed 1981 filings by 139%						
New Mexico	FY '81	Not available	7	Not available	Not available	Not available	• New program this FY						
New York	FY '81	9323 received 8573 accepted	2952	5670	314	33%	• Claims in FY 80-81 increased 18% over 79-80. This continues the progression of previous yrs.						
North Dakota	FY '80 & FY '81	93 (2 yrs.)	45	44	11	50%	• None						
Ohio	FY '81	2062	1236	637	Not available	66%	• No. claims filed has increased: <table style="margin-left: 20px; border-collapse: collapse;"> <tr> <td style="padding-right: 10px;">78</td> <td style="padding-right: 10px;">81</td> <td style="padding-right: 10px;">82 (10 mos.)</td> </tr> <tr> <td style="border-top: 1px solid black; padding-top: 2px;">1187</td> <td style="border-top: 1px solid black; padding-top: 2px;">2062</td> <td style="border-top: 1px solid black; padding-top: 2px;">1503</td> </tr> </table>	78	81	82 (10 mos.)	1187	2062	1503
78	81	82 (10 mos.)											
1187	2062	1503											
Oklahoma	FY '81 (1st quarter)	16 (projected 1200/year)	5	2	9	71%	• New program this FY						
Oregon	FY '81	471	212	204	55	57%	• Not available						

Table VI -- Program Caseload (continued)

State	Time Period	Number of Applicants	Number of Claims Awarded	Number of Claims Denied	Number of Claims Pending	Percent of Applicants Receiving Benefits	Changes in Program Caseload								
Pennsylvania	FY '81	1329	375	346	Not available	50%	• Steadily increasing-- 40 claims/month at inception; 120 claims/month now								
Rhode Island	FY '81	112	19	Two since inception	93	Not available	• None								
Tennessee	FY '81	Not available	131, of which 87 have been processed by the State Board of Claims	Not available	88 pending processing by the State Board of Claims	Not available	• Steadily increasing no. of awards: <table style="display: inline-table; border: none;"> <tr> <td style="text-align: right;">'78</td> <td style="text-align: right;">'79</td> <td style="text-align: right;">'80</td> <td style="text-align: right;">'81</td> </tr> <tr> <td style="text-align: right;">0</td> <td style="text-align: right;">31</td> <td style="text-align: right;">92</td> <td style="text-align: right;">131</td> </tr> </table>	'78	'79	'80	'81	0	31	92	131
'78	'79	'80	'81												
0	31	92	131												
Texas	FY '81	1526	346	1113 denied or dismissed	236	33-50%	• New program FY '80. Recent downturn in caseload possibly in response to economy.								
Virgin Islands	FY '81	47	23	1 denied 1 withdrawn	73	99%	• Slight increase								
Virginia	FY '81	503 inquiries (197 accepted for consideration)	202	68	43	Not available	• Inquiries have doubled. • Percentage of claims paid has increased as a result of screening process								
Washington	FY '81	1702	1189	494	19	51.7%	• No. applications steadily increasing								
West Virginia	FY '82	6	Not available	Not available	Not available	Not available	• New program FY '82								
Wisconsin	Cal. yr. '80	901	437	250 denied 201 withdrawn or closed	419	35-40%	• Increased applications: <table style="display: inline-table; border: none;"> <tr> <td style="text-align: right;">'77</td> <td style="text-align: right;">'81</td> </tr> <tr> <td style="text-align: right;">200</td> <td style="text-align: right;">1000</td> </tr> </table>	'77	'81	200	1000				
'77	'81														
200	1000														

Appendix B

New Victim Compensation Program Characteristics

Appendix B

New Victim Compensation Program Characteristics

STATE	EFFECTIVE DATE	CONTACT FOR INFORMATION	NON-RESIDENTS	FILING DEADLINE	REPORT TO L.E.	MAX. AWARD	MIN. LOSS	FINANCIAL NEED	EMERGENCY AWARD	FUNDING MECHANISM	DISTINCTIVE FEATURES
COLORADO	<ul style="list-style-type: none"> • July 1, 1981 (fund) • July 1, 1982 (program) 	Barbara Kendall V/W Assst. Unit 20th Jud. Dist. D.A.'s Office Boulder Co. Just. Ctr. P.O. Box 471 Boulder, CO 80306 (303) 441-3700	No (30-day residency requirement)	6 mos.	72 hrs.	\$ 1,500	\$25	None	\$500	<ul style="list-style-type: none"> • <u>Fines & Penalties:</u> \$50 - felony \$30 - misde- meanor \$15 - Class I & II traffic violations (incl. DWI, hit & run, etc.) 	<ul style="list-style-type: none"> • Indiv. boards will be establ. in each of 22 ju- dicial districts. District Atty.'s Offices will be responsible for administering programs.
DISTRICT OF COLUMBIA	Sept. 30, 1982	Robert Bailey Office of Crim. Just. Plans & Analysis Old Lansbury Bldg. Room 210 421 8th St. N.W. Washington, D.C. 20004	No (Except reciprocal agreements)	180 days	7 days	\$25,000	\$100	Yes	\$1,000	<ul style="list-style-type: none"> • <u>General Revenues:</u> \$750,000 from City Council for 1983 • <u>Fines & Penalties:</u> \$20-500 - felony \$10 - mis- demeanor 	<ul style="list-style-type: none"> • No sponsoring agency specified in statute--will probably be housed in Worker's Compensation Dpt. • No commission or board • \$5 filing fee
IOWA	<ul style="list-style-type: none"> • July 1, 1982 (fund) • Jan. 1, 1983 (program) 	Crime Victim Reparation Program Dept. of Public Safety Des Moines, IA	Not speci- fied in statute	180 days (injury) 120 days (death)	24 hrs.	\$ 2,000	None	None	\$500	<ul style="list-style-type: none"> • <u>Fines & Penalties:</u> 10% surcharge on all fines & forfeitures for violation of state law, cty. or city ord., incl. traffic viola. • <u>General Revenues:</u> \$200,000 for FY 1983 	<ul style="list-style-type: none"> • 90% of surcharge goes to State Treasurer; 10% to County or City Treasurer
MISSOURI	<ul style="list-style-type: none"> • Sept. 28, 1981 (fund) • July 1, 1982 (eligibility) • Jan. 1, 1983 (processing) 	Richard R. Rousselot Div. of Workers' Comp. Dept. of Public Safety P.O. Box 58 Jefferson City, MO 65102 (314) 751-4231	Not speci- fied in statute	one year (injury) 90 days (death)	48 hrs.	\$10,000	\$200 or 2 wks. loss of earn- ings or support (also a deduct- ible)	None	\$100	<ul style="list-style-type: none"> • <u>Fines & Penalties:</u> \$26 on all sentences of imprison- ment, pro- bation or parole 	<ul style="list-style-type: none"> • \$1 of ea. \$26 penalty retained by Clerk of Court • Public Safety Dept. has author- ity to contract for victim ser- vices, & is charged with coordinating responsibility
SOUTH CAROLINA	<ul style="list-style-type: none"> • Jan. 1, 1982 (fund) • Jan. 2, 1982 (program) 	Deputy Director State Workmen's Comp. Division Columbia, South Carolina	No (Except reciprocal agreements)	180 days	48 hrs.	\$10,000	\$300	None	\$500	<ul style="list-style-type: none"> • <u>Fines & Penalties:</u> \$2 - Muni- cipal & Magis- trate Crt. (incl. traffic) \$20 - General Sessions Crt. 	<ul style="list-style-type: none"> • Establishes Advisory Board with oversight & rule-making authority

Appendix C

Crime Victim Compensation Programs' Addresses

Appendix C

CRIME VICTIMS' COMPENSATION PROGRAMS*

Ms. Nola K. Capp, Administrator
Violent Crime Compensation Board
Pouch N
Juneau, AK 99811
907-465-3040

Mr. Fred Buenrostro
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916-422-4426

Mr. James D. O'Connor, Chairman
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Mr. Herbert G. Parker
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Division of Workers Compensation
Department of Labor & Employment
Security
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LIST EFFECTIVE JANUARY 1983

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Mrs. Jessie Slayton
Chairman & Executive Director
Crime Victims Compensation Board
P.O. Box 30036
Lansing, MI 48909
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Mr. Duane E. Woodworth
Executive Director
Crime Victims Reparations Board
702 American Center Building
160 East Kellogg Boulevard
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*This list was compiled with the kind cooperation of Mr. Robert W. Armstrong, Director of the Virginia Division of Crime Victims Compensation.

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Crime Victims Reparation
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301 Centennial Mall South
Lincoln, NB 68509
402-471-2828

Mr. Howard E. Barrett
The Board of Examiners
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209 East Musser Street
Carson City, NV 89710
702-885-4065

Mr. Kenneth Welch, Chairman
Violent Crimes Compensation Board
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Mr. Daniel Martinez, Director
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Mr. Charles W. Wood, Administrator
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Mr. Jerry L. Flakus, Director
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Mr. Marvin E. Miller
Crime Victims Compensation Board
Justice Department - Room 1432
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Mr. Robert Harrell
Deputy Administrator
Administrative Office of State
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Assistant Attorney General
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Texas Industrial Accident Board
Crime Victim Division
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Capital Station
Austin, TX 78701
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Mr. Robert B. Belz, Director
Victims of Crime Division
Court of Claims
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Mr. G. David Hutchins
Assistant Director
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Olympia, WA 98504
206-753-6318

Ms. Cheryle M. Hall, Clerk
West Virginia Court of Claims
Crime Victims Reparation Division
State Capitol
Charleston, WV 25305
304-348-3470

Mr. Richard H. Anderson
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Crime Victims Compensation Program
P.O. Box 7951
Madison, WI 53707
304-348-3470
608-266-6470

Appendix D

Victim Compensation Phone Interview Instrument

Appendix D

VICTIM COMPENSATION PHONE INTERVIEW INSTRUMENT

Program Organization

I would like to begin by asking a series of questions regarding your program's organization and staffing.

1. I would like to confirm the formal name of the program.

2. With what agency is your program affiliated?

(a) new/independent agency. (Specify _____)

(b) existing agency. (Specify _____)

(c) courts. (Specify _____)

(d) other. (Specify _____)

3. Has your program been affiliated with this agency since the inception of the program?

Yes

No. If not: (a) what earlier affiliations did it have?

(b) why was the affiliation changed?

4. How many professional staff members does the program have?

_____ full time _____ part time

What are their titles? _____

5. How many clerical staff members does the program have?

_____ full time _____ part time

6. How many commissioners does the program have? (applicable to executive agency programs).

_____ full time _____ part time

7. How has the staff configuration changed over the years since the inception of the program, if at all?

8. Does your program have any special educational or training requirements for professional staff members?

9. Does the program use volunteers or interns?

Yes. _____ No _____

If yes: (a) how many? _____

(b) where are they located? _____

(c) are you satisfied with the performance of volunteers and interns? _____

General Program Policies

I would like to turn to a series of questions regarding your program's statutory provisions and general program policies. I have available in front of me a summary of the policies mandated by your program's legislation and would like to confirm if my information is current and correct or if any changes have occurred in general program policies.

1. My information indicates that your program was established by _____ state law _____.

Have any recent statutes amended the original legislation? _____
If yes, what was the nature of these amendments?

2. Persons eligible for benefits (e.g., spouse, relative, dependent; a similar effort to confirm information and seek insights regarding how the provision is actually operating in practice will occur for this and subsequent items in this section. In each case the interviewer will work from descriptive information we already have regarding the statute. In cases in which the statute has no provision on a given issue, the questions will be asked to determine if a fixed internal policy has evolved).

3. Crimes to which act applies.

4. Losses recoverable (e.g., medical expenses, future earnings, etc.).

____ Medical Expenses
____ Counseling
____ Disability _____
____ Loss of Earnings (Past/Future)
____ Funeral (Maximum \$ _____)
____ Other Losses _____

2. Is it correct that the effective date of the original legislation was _____.

Coverage and Eligibility

I would like to discuss a number of specific provisions of the legislation and determine if my information is accurate. First, I am interested in program policies regarding coverage and eligibility of victims.

1. Definition of the victim (the interviewer will state her understanding of the program's definition of the victim and ask if it is accurate and if it has been possible to fully implement the provision in practice).

5. Consideration of financial need (list criteria).

6. Persons ineligible for compensation.

7. Do you feel that your eligibility criteria are appropriate and that your program policy is structured to provide compensation to the maximum number of eligible victims in your state?

8. Are there any changes in your program policies regarding coverage and eligibility that are presently being contemplated or proposed?

Benefits

1. Maximum award \$ _____
2. Minimum loss required \$ _____
3. Policy regarding attorney's fees.

4. Policy regarding recovery from collateral sources.

a. Public and private insurance

b. Reitution from the offender

c. Civil action against offender

5. Policy regarding emergency awards and established limits for them.
\$ _____

6. Policy regarding the impact of the conduct of the victim on award size.

7. In your opinion, do your program awards adequately compensate victims for their losses?

If not, what would you change?

8. Are there any changes in your program policies regarding benefits that are presently being contemplated or proposed?

Program Procedures

I would like to ask you a series of questions regarding your program's procedures for handling cases.

1. In your experience, how do victims become aware of your program, and what agencies inform victims regarding your services?

2. Have mass media information advertisements been used?

3. a. Do you feel victims in your state are well aware of your program?

b. If not, what steps could be taken to bring the program to people's attention?

4. How are claims processed in your program?

5. Would you please describe your hearings and appeals procedures for disputed claims.

What proportion of claim decisions are appealed annually and how many decisions are ultimately reversed?

6. What problems, if any, has your program encountered over time in determining the eligibility of victims for compensation?

7. Do you require victims to report the offense to law enforcement agencies?

8. Do you require victims to cooperate with law enforcement?

9. Would you please describe your method of payment (e.g., lump sum payments vs. installment payments).

10. How does your program provide for payment of benefits to third parties?

- Disbursed through victim
- Paid directly to third party

11. What, in your opinion, are the particular strengths and weaknesses of your program's claims policies and benefit payment procedures?

Program Costs and Funding

I would like to ask a series of questions regarding program costs and funding sources.

1. Current Costs For the most recent calendar year (1981) or fiscal year (specify dates _____), please indicate program costs for:

(a) TOTAL PAYMENTS TO VICTIMS \$ _____

Personal Injury \$ _____

- medical expenses \$ _____
- lost wages \$ _____
- disability/rehabilitation \$ _____
- replacement services \$ _____
- other _____ \$ _____

Death \$ _____

- medical expenses \$ _____
- loss of support \$ _____
- replacement services \$ _____
- funeral expenses \$ _____
- other _____ \$ _____

Emergency Awards \$ _____

Attorney Services \$ _____

Other Benefits _____ \$ _____

(b) ADMINISTRATIVE TOTAL COSTS \$ _____

- Salary \$ _____
- Fringe Benefits \$ _____
- Rent \$ _____
- Supplies \$ _____
- Overhead \$ _____
- Other _____ \$ _____

(c) TOTAL PROGRAM COSTS \$ _____

2. Past Costs How have program costs varied since the inception of the program?

a. To what do you attribute this variation? (E.g., change in number of claims, change in size of claims, impact of long-term payment of benefits, etc.)

b. How has the ratio of administrative costs to total program costs changed over time?

3. Sources of Funds. For the most recent calendar year (1981) or fiscal year (specify dates _____) please indicate the amounts of program funds for benefits and administrative expenses from the following sources: (Please indicate if specific sources are restricted in their use to benefits or administration.)

		<u>Benefits</u>	<u>Administration</u>
general revenues	\$ _____	_____	_____
penalties ¹	\$ _____	_____	_____
finer ²	\$ _____	_____	_____
civil suits	\$ _____	_____	_____
restitution	\$ _____	_____	_____
other: source _____	\$ _____	_____	_____

¹ how structured and what effect on administrative costs?

² how structured and what effect on administrative costs?

4. Do you feel funding for administration of the program is adequate?

5. Do you feel funding for benefits is adequate? If not, what would be an appropriate budget?

6. Has your program instituted any successful cost containment strategies? If so, what?

7. a. What is the average award made by your program?

b. Has this changed over time? If so, why?

8. Our information suggests that some programs run out of money before the end of the fiscal year. Has this ever happened to your program?

If yes, when has it happened, and how has the problem been dealt with?

9. Is it likely that the funding will increase or decrease significantly in the near future?

Program Caseload

I would like to ask a number of questions regarding your program's caseload.

1. How many victims applied for benefits in 1981 (or most recent fiscal year: specify when _____).
2. How many victims received benefits during that period?

3. What proportion of applicants receive benefits? (Any figures since program inception)
4. What are the major reasons for benefits being denied to applicants.
5. Has your program's caseload changed significantly in the last five years? (Or since its inception?)
 - a. If yes, how much?
 - b. To what do you attribute this change?
6. Do you have any data on applicant satisfaction with the program's services (e.g., their views regarding the adequacy of the amount of compensation they receive)?

7. How long on the average do cases take to be processed from application to compensation?

General Issues

I have only a few additional general questions to ask.

1. We would very much appreciate receiving annual reports of the project and related materials (e.g., forms, brochures, organization charts, evaluations, newspaper coverage, legislation).
2. Do you know if any additional relevant state literature on victim compensation is available (e.g., new proposed legislation, task force reports, etc.).
3. Are you aware of any other states currently planning to implement victim compensation programs?
4. What, in your opinion, are the three major issues facing victim compensation programs in the next five years?

5. Does your program have any official contact with victim witness assistance programs in your state?

6. Other than those issues we have already discussed, what are the major strengths and weaknesses of your program?

7. Other than proposals you have already mentioned, how would you improve your program, if at all?

THANK YOU FOR YOUR TIME AND COOPERATION.

Appendix E

**RECOMMENDATIONS OF THE PRESIDENT'S
TASK FORCE ON VICTIMS OF CRIME**

Proposed Federal Action

The foregoing recommendations of this Task Force are meant for consideration at both the federal and state levels. Those that follow are concerned specifically with efforts most properly undertaken by the federal government; they include recommendations for Congressionally directed funding of certain types of programs and of selected areas for further study.

Recommendations

1. Congress should enact legislation to provide federal funding to assist state crime victim compensation programs.
2. Congress should enact legislation to provide federal funding, reasonably matched by local revenues, to assist in the operation of federal, state, local, and private nonprofit victim/witness assistance agencies that make comprehensive assistance available to all victims of crime.
3. The federal government should establish a federally based resource center for victim and witness assistance.
4. The President should establish a task force to study the serious problem of violence within the family, including violence against children, spouse abuse, and abuse of the elderly, and to review and evaluate national, state, and local efforts to address this problem.
5. A study should be commissioned at the federal level to evaluate the juvenile justice system from the perspective of the victim.
6. The Task Force endorses the principle of accountability for gross negligence of parole board officials in releasing into the community dangerous criminals who then injure others. A study should be commissioned at the federal level to determine how, and under what circumstances, this principle of accountability should be implemented.

Commentary

Federal Executive and Legislative Recommendation 1:
Congress should enact legislation to provide federal funding to assist state crime victim compensation programs.

This Task Force believes that financial compensation for losses that victims sustain as a result of violent crime must be an integral part of both federal and state governments' response to assisting these innocent

citizens. No amount of money can erase the tragedy and trauma imposed on them; however, some financial redress can be an important first step in helping people begin the often lengthy process of recovery. For some, this modest financial assistance can be the lifeline that preserves not only some modicum of stability and dignity but also life itself. As indicated elsewhere in this report, the financial and nonfinancial losses that victims suffer are severalfold: exorbitant and unanticipated medical costs, lost wages, altered careers, and prolonged psychological trauma.

The financial impact of crime can be severe. There is a tendency to believe that insurance will cover most costs and losses. While some victims are made whole through adequate coverage, many others are not. The poor and the elderly often have no insurance. Even those victims who have coverage discover that recovery is made difficult or impossible by high deductible clauses, problems with market value assessment for unique items, and limited or precluded payment for such expenses as lost wages and psychological counseling.

Ordering the offender to pay restitution is a laudable goal that should be actively pursued, but its limitations must be recognized. A restitution order cannot even be made unless the criminal is caught and successfully prosecuted. Even when such an order is imposed, it does not help the victim if the defendant is without resources or if the ordering court does not enforce its order. In addition, even if complete restitution is made, it may take years to be accomplished. In the interim, the victim is left to bear the cost as well as he is able.

The problem is not just one of payment; it may be an issue of feeding the family or not losing the house while waiting for payment to be made. A victim compensation fund has an obvious function in such cases. Certainly, if monies are eventually recovered from insurance or restitution payments, such amounts can be repaid into the compensation fund. This Task Force examined the efficacy of some existing state compensation funds and has developed suggestions for federal participation.

State Compensation Programs

Thirty-six states and the District of Columbia now have crime victim compensation programs.¹⁰ The philosophical basis for these programs varies from a legal tort theory, whereby the state is seen to have failed to protect its citizens adequately, to a humanitarian rationale through which all citizens should receive assistance for their compelling needs, to a by-products theory that recognizes victim satisfaction as a benefit to the criminal justice system. In reality, most programs represent a mixture of these rationales.

Whatever the basis for their adoption, state programs now share a common concern, the acquisition of adequate funding.¹¹ In many states, program availability is not advertised for fear of depleting available resources or overtaxing a numerically inadequate staff. Victim claims may have to wait months until sufficient fines have been collected or until a new fiscal year begins and the budgetary fund is replenished. Creditors are seldom patient. While waiting for funding that will eventually come, victims can be sued civilly, harassed continually, or forced to watch their credit rating vanish. Not only is compensation important, its payment also must be timely to save victims inconvenience, embarrassment and substantial, long-term financial hardship.

The availability of unencumbered emergency assistance is also critical to many victims of violence. Immediate needs for food, shelter, and medical assistance cannot be deferred for the weeks or months it may take to process paper work. While many states provide emergency funds in theory, their failure to adequately fund these programs means that little actual relief is available in practice. Not many programs have been able to generate true emergency assistance where needed.¹² It is cold comfort to a hungry or homeless victim to learn that his state had thought about helping him but, unfortunately, emergency funds ran out three months ago.

Funding constraints also discourage programs from eliminating or raising the maximum allowable award. Available data suggest, however, that the number of claims approaching the maximum are few.¹³ A blanket maximum can severely disadvantage those most needy and worthy of assistance. One example is that of a young man who had just finished college and had no medical insurance when he became the victim of a brutal assault. Now in a body cast and blind in one eye, he has amassed medical bills of \$30,000. He still needs

extensive treatment and therapy. The maximum compensation award in his state is \$10,000. At the age of 22 he is permanently disabled, may have to forego medical care he needs but cannot afford, and faces debts that it may take a lifetime to repay.¹⁴

Whether the compensation funds come from general revenues, fines and penalties, or a combination of these, states should aggressively track their own progress in meeting victim needs. If the number of eligible applications is increasing, legislatures should be prepared to increase fund contributions accordingly. When offender fines are not being adequately collected, steps must be taken to identify problem areas and take appropriate action. Noncollection may stem from judicial apathy, local hesitancy to divert money to state coffers, or the inefficiency or disinterest of prosecutors and probation officers. At least one state employs a full-time court monitor to audit court records and verify that appropriate fine revenues are being submitted to the victim compensation program.¹⁵ Furthermore, states should periodically examine the administrative burden that has developed around the evaluation of claims to ensure that administrative costs do not divert a disproportionate share of the budget away from the meeting of victim needs.

Finally, some states are now using additional revenue sources for compensation funds, particularly since the level of available general revenues is shrinking. In some states a compensation award is made, and if the victim later receives restitution payments from the offender, the payments are returned to the compensation fund. Several states divert to the fund a small percentage of the salaries earned by offenders on work release or in prison.¹⁶ Other states have ordered that a defendant's profits from the sale of books or films based on his criminal activity must go to the compensation fund. Still other states provide that bail bond forfeitures be paid into the fund. Some of these new funding mechanisms have yet to prove their effectiveness; however, it behooves compensation programs to explore a multiplicity of funding sources, as many victim services programs have done, to improve their ability to provide assistance.

Funding problems are the most dramatic and the most visible for compensation programs because their survival is contingent on solving them. At the same time, economics should not overshadow other less pervasive but nonetheless important issues with which state programs must come to grips. The testimony of

both crime victims and experts appearing before the Task Force points to several other areas that warrant particular attention.

Those who administer compensation programs must remember that they are working in an area of government service to citizens whose lives have been altered by tragedy and subjected to hardship. One woman who suffered extensive nerve damage when she was forced to fall to the floor at gunpoint by an armed robber saw her life and that of her family drastically changed. Medical bills and the loss of a job that she was no longer physically able to perform created a desperate financial situation. When she first applied for compensation, she was inaccurately told that her claim was disqualified as untimely. When she reapplied, she received a form letter reading: "It is not clear whether you can be considered a victim of a violent crime . . . as you were never physically touched by any of the suspects."¹⁷

Another issue is whether victims who are related to, or are living with, the offender should be excluded from payment eligibility. The states' desire to minimize fraud is laudable; however, many innocent victims of violence in the home are being unfairly ignored. Some states have successfully experimented with allowing flexibility in this area as long as the award will not unjustly benefit the offender. A blanket exclusion can be particularly devastating to child victims of intra-family abuse who, as a result, are denied adequate treatment.

Crime victims and those who serve them repeatedly voiced concern over minimum loss requirements enacted by legislatures to contain costs. In practice, this exclusion places the elderly and low-income victims at a distinct disadvantage; a threshold of \$100 or \$250 represents to them a substantial loss that they cannot absorb. These limits also prevent rape victims from receiving compensation for the cost of rape examination and evidence collection procedures (see Executive and Legislative Recommendation 12). States are beginning to exclude elderly and fixed-income victims from these requirements and some are considering the exclusion of rape victims as well.¹⁸

Similarly, most programs will not compensate for property losses—although for the elderly, for example, the loss of a television set or a hearing aid may result in the loss of contact with the outside world. Victim services directors testified repeatedly that greater flexibility is needed. Rather than attempting to list the

classes of victims or kinds of expenses exempted from minimum or property loss requirements, the better practice seems to be the drafting of legislation allowing compensation for "other reasonable expenses" as may be determined by the administrator of the fund.

Finally, programs differ greatly in their residency requirements. Some states will only compensate residents who are victimized within their boundaries. Others will compensate their residents regardless of where they are victimized but will not compensate nonresidents who are victimized within the state. States that attract large numbers of tourists have been hesitant to offer coverage to nonresidents for fear of depleting the compensation fund. One man interviewed by the Task Force, a resident of state A, had been brutally stabbed while vacationing in state B. He was told that state A would compensate him only if he had been stabbed at home, while state B would not compensate out-of-state residents. Though he was no less a victim, there was no provision for his compensation.

At least 15 states have entered into reciprocal agreements. Although this policy is a first step toward an equitable approach, it is limited. To address the problem fully, states should agree either to compensate all eligible individuals victimized within a state, regardless of residency, or to compensate their own residents wherever they are victimized.

The Task Force's inquiry has shown that substantial progress has been made by many states in their attempts to compensate crime victims. The Task Force commends these states for their pioneering efforts to begin to meet victims' needs. However, the states' inability to fully address the problems that persist suggest that there is an important role for the federal government to play in this area.

Federal Involvement

Any discussion of federal funding for victim compensation revolves around two issues: propriety of federal involvement and cost. There are at least two sound bases for federal participation in victim compensation. First, most state programs currently compensate federal crime victims; however, because of the financial exigencies outlined above, they may be unwilling or unable to continue doing so. If state programs stop helping victims of federal crimes and no federal efforts are made, then either there would be no help

available for such victims, or victims of crimes over which federal and state governments share jurisdiction would find that their eligibility for assistance depends on a bureaucratic decision as to which jurisdiction will prosecute. These decisions are based on considerations that have nothing whatever to do with the condition of the victim. Furthermore, such a victim would be in a state of perpetual limbo if no one was apprehended for the crime and thus no charging decision was ever made.

The federal government could, of course, commit itself to aiding victims of federal crimes. If this course is chosen, a new bureaucracy covering 50 states would have to be created. The start-up and continued administrative costs would be substantial. The duplication of state and federal effort would not only be inefficient but also would be confusing to the victims both entities seek to serve. The most unfortunate result of this course would be that large sums would be expended unnecessarily on administration rather than made available to those victims who need assistance.

Second, the federal government has made substantial sums of money available to states for state prisons as well as for the education and rehabilitation of state prisoners who have committed state crimes. If the federal government will step in to assist state prisoners, it seems only just that the same federal government not shrink from aiding the innocent taxpaying citizens victimized by those very prisoners the government is assisting.

It should also be noted that, beyond the compensation issue, the federal government, like local governments, needs victim/witness programs to assist those who become involved with federal prosecutions. The distinction between these two areas should be clear. Victim compensation boards currently operate at the state level and make money available to reimburse victims for out-of-pocket costs they incur as a result of medical bills, therapy costs, funeral expenses, etc. Victim/witness assistance programs operate at the municipal or county level and help victims in a number of ways, including explaining the justice system, accompanying them to court, arranging transportation, interceding with creditors, referring them to counselors, and assisting them in applying for victim compensation and emergency services.

It is possible to address the issue of costs in such a way that imprecise figures need not be relied upon

and the potential for cost overruns is eliminated. The Task Force suggests that a Crime Victim's Assistance Fund be created and that it rely in part on federal criminal fines, penalties, and forfeitures that currently are paid directly into the general fund. Not only is it appropriate that these monies collected as a result of criminal activity be used to help victims, but this method of funding also ensures a program that is both administratively efficient and self-sufficient, requiring no funding from tax revenues.

It is proposed that the fund be administered in the following fashion. The first step is the acquisition of monies. There are six measures that can be relied upon to produce revenues. First, the Task Force endorses the recommendation proposed by the Criminal Code Revision that fines and penalties for violations of Title 18 and Title 21 of the United States Code be doubled or tripled. Second, in those cases in which the criminal realizes a gain or the victim suffers a loss that exceeds the maximum fine, the judge should be empowered to impose a fine that is double the gain or loss. Many federal crimes result in tremendous losses to victims and gains to criminals. If the criminal knows he can realize an enormous benefit while risking only a fine that represents a miniscule fraction of what he may acquire, there is no incentive for him to refrain from committing the crime. Not only will such provision result in penalties that are more appropriate to the crime, but they will also substantially increase the monies available to the fund. Third, efforts by the U.S. Department of Justice should be intensified to improve current fine collection and accounting procedures. Fourth, the fund should be augmented by a fee assessed in addition to any fine or other penalty on all those convicted of federal offenses. The fee would be paid at the time of sentencing and would range from \$10 to \$100 for misdemeanants and from \$25 to \$500 for felons. Fifth, a percentage of all federal forfeitures should be earmarked for the fund. Sixth, revenues collected through the excise tax on the sale of handguns could be diverted into the fund. This tax money currently is placed in the Pittman-Robertson Fund, which supports the maintenance of hunting preserves, certain wildlife studies, and a hunter education program. When initiated in 1937, the Pittman-Robertson Fund was supported solely by taxes on the sale of hunting rifles; the fund today continues to inure primarily to the benefit of hunting enthusiasts. In 1970, new legislation added the revenues from handgun

taxes to the fund. There is little if any relation between handguns and hunting or wildlife activity. There is a substantial relationship, however, between handguns and the commission of violent crime. It should be noted that the diversion of these monies into the Crime Victim's Assistance Fund will only reduce the Pittman-Robertson Fund by about 25 percent of its total every year. The Task Force suggests that Congress reevaluate its priorities with regard to the use of these funds. It appears that the implementation of this suggestion will not unduly impede the contribution made to hunters and wildlife protection by the Pittman-Robertson Fund, will substantially assist victims whose pressing needs are not now being met, and will direct the proceeds of this tax to a goal more closely related to the items that give rise to the revenue.

Once the monies have been acquired, the fund will be divided in two equal parts. The first half of the fund would be designated the Federal Victim Compensation Fund, monies from which will be disbursed to existing state compensation programs that meet the guidelines set out below. The decision to give money to existing programs rather than to provide seed money for new programs rests on two bases. Programs already in existence are currently giving service and need financial help; they are currently meeting the needs of victims and should not be disadvantaged. Further, requiring that local government assume the initial cost of starting the program and the primary responsibility for continued funding assures the existence of a genuine local commitment rather than the initiation of a proposal simply to put a claim in for available federal funds. No state program should be eligible for a portion of the compensation fund unless it provides compensation for anyone victimized within its borders, regardless of the victim's state of residency; provides compensation regardless of whether the crime violates state or federal law; and provides compensation for psychological counseling required as a result of victimization.

Monies from the compensation fund would be awarded among the states as follows: all states would report the total amount of compensation awarded in the previous year, and those figures would be totaled to give the total compensation awarded nationally. Each state's award would be figured in terms of its percentage of the national total. Each state would be awarded that percentage of the compensation fund for

the ensuing year with the limitation that it could not receive more than 10 percent of its total awards for the previous year. The 10 percent limitation will guard against depletion of the compensation fund and against larger states drawing off too large a segment of the fund. Any monies not dispersed would shift to the Federal Victim/Witness Assistance Fund.

The second half of the Crime Victim's Assistance Fund would be denoted the Federal Victim/Witness Assistance Fund; the monies allotted thereto would be used to support victim/witness assistance programs throughout the federal, state, and local system. (This proposal is discussed more fully in Federal Executive and Legislative Recommendation 2.)

The Task Force suggests that a sunset clause be added to the legislation proposed above whereby, in three years, the Attorney General would be required to reevaluate the effectiveness of this legislation and report to Congress as to whether it is the most efficient, effective, and fair way for the government to assist state compensation and victim/witness assistance programs. If, at the end of four years, Congress has not taken action on the Attorney General's report, this legislation would cease to remain in effect.

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