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Exploring the Role and Future of Crime Victim Compensation

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State Crime Victim Compensation Programs: Nature and Scope

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Every state in the country provides financial assistance to victims of violent and personal crime through crime victim compensation programs. Currently, these programs pay close to \$400 million in benefits to or on behalf of more than 150,000 victims nationwide.¹ This aid extends to victims of domestic violence, child abuse, rape, assault, drunk driving, and homicide, as well as victims of terrorism both in this country and abroad. Medical care, counseling, lost wages, lost support, and funerals are the chief costs and losses covered by these programs.

Compensation programs are serving a dramatically increasing number of victims, despite a precipitous decline in the crime rate over the past ten years. Claims from victims, and payments on their behalf, increased 60 percent from 1993 to 2001 (45 percent just since 1997),² at the same time that violent victimizations declined 34 percent from their 1993 high.³ Most programs also have raised overall maximum awards as well as specific cost-category caps, like funeral benefits, in recent years. A number of programs have added benefits to try to improve their ability to meet the needs of specific types of victims, such domestic violence victims who need relocation costs paid to escape an abuser.

Yet the picture is not entirely bright. A rising tide of applications, and increased efforts to reach more victims who are not currently applying, require not only more money to pay benefits, but also increased administrative resources to process those claims in a timely fashion. Unfortunately, budget crises affecting more than 40 states have had an effect on the stability of funding for many compensation programs. Some state legislatures have redirected funds from their compensation programs for other governmental purposes, and there consideration to this has been given in many other states. Even without these cuts, a declining or stable crime base of offenders provides little new funding for compensation programs financed through offender fees. Further, the specter of having to help large number of victims of mass violence, whether the result of terrorism or mere malevolence, haunts budget planning by compensation programs. Finally, federal funds available to compensation programs through the Victims of Crime Act (VOCA) may be reduced in future years because of a drop in revenue.

¹ Office for Victims of Crime, Nationwide Analysis, 2001 Victims of Crime Act of 1984 Performance Report, State Compensation Programs.

² Ibid., for fiscal years 1993 – 2001.

³ Bureau of Justice Statistics, National Crime Victimization Survey, 2001.

To assist in considering these and other important issues that may affect the ability of compensation programs to continue to provide substantial help to crime victims, this paper will provide detailed information on how compensation programs operate, focusing on funding, eligibility requirements, and benefits. Trends in each of these areas will be discussed. The paper also will explore briefly the effectiveness of compensation programs in reaching eligible crime victims, and in meeting their needs. Finally, it will touch on how state compensation programs have responded to victims of the attacks of September 11, and discuss the effects and implications of new federal compensation programs that pay vastly larger benefits to narrowly defined classes of victims. What will be the nature and scope of state compensation programs in a post-9/11 environment?

Compensation Program Development, Size and Structure

Crime victim compensation is the oldest type of organized victim assistance in the United States.⁴ The first compensation program was created in California in 1965, seven years before the earliest programs providing other types of victim assistance were established. By 1980, 28 states operated victim compensation programs, and by 1992 all the states had established them, as well as the District of Columbia, the Virgin Islands, Puerto Rico, and Guam.

California is the largest program in the country by far, paying out close to \$100 million each year, a fourth of the total benefits paid by all programs combined. The median annual payout per state is just over \$2 million, but the range is considerable, with 15 of the smallest states paying \$1 million or less annually, and fifteen states paying more than \$5 million.⁵

Staff sizes tend to be quite small, with three-fourths of the states operating with a dozen or less employees, and only 10 having more than 30 staff.

The programs function within a variety of governmental settings. A third are in criminal-justice-related departments, and a fourth function within Attorney General Offices. Other affiliations include workers compensation bureaus, social service agencies, finance and management de-

⁴ Office for Victims of Crime, "Crime Victims' Rights in America," 2003 National Crime Victims' Rights Week Resource Guide.

⁵ Office for Victims of Crime, Victim Compensation Grant Program State Performance Reports, FY 2001.

partments, and claims courts, and some programs function as independent executive branch agencies. Colorado and Arizona are alone in operating compensation programs through local prosecutors' offices. Twenty-two compensation boards in Colorado (one for each district) and 15 boards in Arizona (one for each county) adjudicate claims under state law and coordination.

Almost half of the agencies operating state compensation programs also administer their states' federal VOCA assistance grants to support a multitude of victim service programs, such as domestic violence shelters, rape crisis programs, and prosecutor-based victims assistance.

State compensation programs remain the only governmental benefit source specific to providing financial assistance to victims of all violent crimes. Until 2001, there was no national or federal compensation program for victims of crimes in the U.S., other than the Public Safety Officers Benefit program. Newly created federal victim compensation programs, consisting of the 9/11 compensation fund and the Justice Department's International Terrorism Victim Compensation Program, focus on narrowly circumscribed categories of victims.

Funding

Programs get their funding primarily from offenders. Counting both state and federal VOCA funding, approximately 90 percent of all funds for compensating victims come from convicted persons. Four-fifths of the states get all their money from offenders, and only a handful of states depend entirely on general revenue for their state funding. In addition, all federal funding for compensation programs comes from federal criminal fines rather than tax dollars.

Nearly every state assesses felons and misdemeanants a small fee (\$15 - \$50 is typical) to be deposited in the crime victim program's fund. Some states add a surcharge or place an additional percentage on criminal fines to go to the compensation program. A number of states gain some income from prison industries, or from a small percentage of prison-canteen purchases. Oregon's compensation program now receives a portion of punitive damages assessed in civil suits. A few states, including several of the largest (New York, Illinois, Massachusetts, North Carolina and Wisconsin), are funded by general-revenue appropriations.

Federal funding for state compensation programs comes from the deposit of all federal criminal fines into VOCA's Crime Victims Fund.⁶ The Office for Victims of Crime (OVC) in the U.S. Department of Justice administers the fund to provide grants to state compensation programs and to support victim assistance programs in the states, as well as to support victim-witness positions in the FBI and the U.S. Attorneys' Offices and to provide training and technical assistance to the field. Under VOCA's allocation provisions, each state is eligible to receive a compensation grant equal to 60 percent of what the state spends in its own money. In other words, if a state spends \$1 million in compensating victims with state dollars, it will receive a federal grant of \$600,000 to provide additional benefits for victims. This results in an approximate mix in compensation spending of 65 percent state funds, and 35 percent federal funds, since the state must spend its \$1 million each year in order to receive (and also spend) the \$600,000 in federal funds (i.e., of the \$1.6 million spent each year, \$1 million will be state money, and \$600,000 will be federal). Federal funding for all compensation programs totals \$164 million in federal FY 2003, a new record, and up from the \$94 million provided in the previous year. (The percentage at which the federal grant is calculated rose to 60 percent for grants in federal fiscal year 2003; previously, the grant percentage was 40 percent, which meant a mix of 75 percent state funding and 25 percent federal funding for awards throughout the first 16 years of VOCA grants. States also bear almost the entire burden of administrative costs, since VOCA limits a state to the use of only as much as 5 percent of the federal grant for administrative purposes; administrative costs run much higher than that 5 percent, and in any event, close to half the states do not opt to use any of the 5 percent for administration, preferring to use it to pay awards to victims.)

VOCA also can provide special emergency funds for state compensation programs (as well as other entities) responding to mass violence and terrorism, if the state's own resources will be impacted unduly in compensating victims of those crimes. VOCA emergency funds have provided supplemental assistance to compensation programs in the wake of the September 11 attacks, as well as the Oklahoma City bombing and the Columbine High School shootings.

Over the past 20 years, many states have steadily built their state funding foundation by incrementally increasing penalty assessments. Most often, these enhancements to revenue come when

⁶ Victims of Crime Act of 1984, 42 U.S.C. 10601 et.seq.

a significant rise in claims results in straining (or draining) a program's fund account. During the period from 1988 – 1995, for example, claims in many states increased dramatically, and a number of programs bumped up their offender-fee mechanisms. The last few years have seen a similar dynamic among the states: rising application, and a search for more revenue. New emphasis has been placed in many states on recouping funds by seeking restitution from perpetrators, as well as from victims who have successfully sued their offenders, and some states report recovering between 5 – 15 percent of their payouts through these efforts.

Still, the fiscal picture of state compensation programs varies widely. While it appears that many states have sufficient funds to pay current caseloads, there are a number of states where resources are barely sufficient to sustain payments to victims who have filed claims. Further, in a handful of states, legislatures in the past two years have taken money away from compensation funds to use in helping resolve budget crises, even though those funds are supposed to be dedicated to victim compensation. These threats to compensation resources have arisen in many other states. States dependent solely on general revenue for their state funding are particularly vulnerable; Nebraska's compensation program just had its annual allocation reduced from \$200,000 to \$20,000. This unstable budget situation not only jeopardizes programs' ability to meet current demand; it paralyzes efforts to expand payments or add new benefits.

Federal funds also are increasingly unstable. After four years in which deposits of criminal fines in the Crime Victims Fund averaged \$700 million annually, collections are dropping, and may reach only \$300 million this fiscal year. Because Congress held in reserve some of the funds collected in recent years, VOCA has sufficient resources to keep VOCA grants for victim services and compensation at the current Congressional authorization of \$600 million for the next two years. But if this trend continues – and it may very well, since the abnormally high collection levels of the past four years resulted only from a handful of unusually high criminal fines against corporate malfeasors – then resources for victim service programs may be cut in half, and compensation grants will suffer as well. (VOCA's current distribution formula protects close to half the Crime Victims Fund for compensation grants if needed to pay them at the full 60 percent level, but if only \$300 million is available, there may not be enough to keep compensation grants at current levels of more than \$150 million. There also are proposals now before Congress to

change the way the Crime Victims Fund is allocated between assistance and compensation programs, which could result in even further reductions in VOCA compensation grants to the states.)⁷

Clearly, for compensation programs to thrive, a growing amount of resources must be available. At least in the short run, this funding appears to be threatened or uncertain. While efforts could be made to call attention to the need for more money for compensation by arguing that “hidden costs” of not assisting victims (loss of productivity, diminished quality of life) are far higher than the costs of providing sufficient help in the immediate aftermath of crime, it is unlikely that this proposition will see wide acceptance, much less direct action, from state and federal officials in the near future. It appears that in most states, for the time being, compensation programs must look carefully toward their bottom lines, and at various threats to their resources, when thinking about expanding eligibility or benefits.

Eligibility Requirements

While eligibility requirements vary somewhat from state to state, nearly all programs have the same basic criteria. To qualify for victim compensation, the victim generally must meet reporting, filing, and cooperation requirements; sustain a loss not covered by a readily available collateral source; and be innocent of criminal activity or substantial criminal conduct leading to the victimization. These requirements are discussed in further detail below.⁸

Report the crime promptly to law enforcement. Many states have a 72-hour standard, but twenty states have longer time frames. New Jersey’s reporting requirement is 90 days, for example, and Washington state allows one year for reporting. A few states (California, Texas, Utah, Vermont and Wyoming) have no set time frame at all; the reporting can occur at any time that is reasonable. In California, while reporting to police remains the most common means to show proof that a crime occurred, the program may determine eligibility by other means than a

⁷ S. 22 stipulates that if amounts available for compensation and assistance grants decline, then both types of grants will be reduced by an equal percentage, regardless whether the half of the Crime Victims Fund initially set aside for compensation is fully used.

⁸ Information on individual state compensation programs’ eligibility requirements, benefits and procedures can be found in the Program Directory on the website of the National Association of Crime Victim Compensation Boards, www.nacvcb.org.

report to law enforcement. In New Mexico, the reporting time of 30 days is extended to 180 days for victims of sexual assault and domestic violence. It's important to note that *every* state can extend its reporting period for "good cause," and all of them routinely do so for child victims of crime. Some states have statutory exceptions for child victims that allow for reporting up until a year or two after reaching the age of majority. In a recent informal survey of compensation programs, the National Association of Crime Victim Compensation Boards found at least a fifth of the states would consider extending eligibility to adult survivors of child abuse who seek compensation many years after the incident, though nearly all states would require a report to police and some substantiation of the crime by law enforcement.

Cooperate with police and prosecutors in the investigation and prosecution of the case. Every state has language in its compensation law requiring cooperation with the criminal justice system. It's also worth noting that programs are required as a condition of receiving a VOCA grant to certify to the U.S. Department of Justice that they "promote victim cooperation with the reasonable requests of law enforcement authorities." However, most states do not make a practice of denying claims because of a lack of cooperation. A victim's cooperation or lack thereof, at least after the initial police report, rarely comes to the attention of the typical compensation program, and its administrative practice does not call for routinely following up on this question. Most programs also indicate that they can waive the requirement when victims decline to cooperate because of legitimate fears for their health or safety.

File a timely claim with the compensation program. While half the states set a filing deadline of one year, the deadline in twenty states is two years or more, and three (California, Utah and Vermont) have no set time for filing at all. All of the programs can waive this requirement for good cause, and all programs routinely do so for children.

Sustain a cost or loss not covered by insurance or some other readily available collateral source. All compensation programs operate as "payers of last resort." Available collateral resources (with a few exceptions in some states) must be exhausted before compensation programs will make payment. These collateral-resource requirements are intended to allow compensation programs to save scarce funds for those victims who need them the most. Programs routinely

check to see if victims have medical insurance to cover hospital, doctor, and counseling bills, or if they qualify for Medicaid or other governmental benefit programs. Federal law (VOCA) makes clear that state compensation programs are last payers with regard to all federal benefit programs, like Medicaid, Indian Health Services, Veterans Administration, and Social Security.⁹ Compensation programs generally will pay co-pays and deductibles. States vary in counting life insurance as a collateral source to reduce awards; some do, some don't, and some exempt a portion of it (in Maine and Ohio, for example, up to \$50,000 of life insurance is exempt, with the rest reducing any award from the program). Restitution from an offender potentially can be a collateral source, but only if it is paid or is likely to be paid; often programs will make payment to victims who have restitution orders, and either ask the court to have restitution paid directly to the compensation program, or expect the victim to repay them if restitution is received. Proceeds from civil suits against the offender or third parties also are considered collateral sources if they cover costs paid for by the compensation program. Each victim is required to sign a subrogation agreement on the compensation program application form that requires repayment to the program if payment for costs covered by the program is received.

Be innocent of criminal activity or conduct that substantially caused or contributed to the victim's injury or death. State legislatures have been uniform in restricting victim compensation funds to those individuals who have not caused their own injuries or deaths through their criminal activity or significant misconduct. Drug dealers, for example, are often murdered and assaulted, but state governments exclude them from receiving compensation. Contributory-conduct denials also could extend to individuals who willingly engage in mutual combat, such as bar fights. Programs report that only a small number of cases are denied on these grounds, but the statutory provisions do require programs to review police reports carefully to determine whether such grounds exist.

Seven states may deny eligibility if a victim has a felony record or criminal convictions for violent crimes (in most of these states, denial is required by law, but in two it is a discretionary basis

⁹ Victims of Crime Act of 1984, section 1403(e) (42 U.S.C. 10602(e)).

for denial).¹⁰ The most recent state legislatures to add this provision (in North Carolina and Florida, both in 1999) did so only after national and local media aired and printed stories highlighting compensation benefits that had been paid to or on behalf of individuals with criminal records of violent assault, though their own victimizations were not a result of their misconduct. Some advocates complain that “felony exclusions” unfairly exclude deserving victims who simply have criminal pasts; others believe strongly that compensation funds rightfully are reserved only for “innocent” victims. There does not appear to be any current trend in the state legislatures to add criminal-record exclusions to compensation laws.

Apprehension or conviction of a perpetrator is not a prerequisite to a victim receiving compensation.

In homicides, the eligibility of a victim’s dependents or of other secondary victims hinges on the eligibility of the person who was killed. If a person is killed while committing a crime, the family almost always will be as ineligible for benefits as the victim would be if he survived. Exceptions are made, on a case-by-case, however, and some programs may pay for one expense (a funeral, for example) but not another (such as lost income from the offender) when contributory conduct is present. In 2002, Pennsylvania’s legislature became the first to authorize explicitly the payment of counseling benefits to family members regardless of the criminal or contributory actions of the victim.

In general, the trend in recent years has been for states to show greater flexibility with regard to enforcement of reporting, cooperation, and filing requirements, particularly in reference to victims of domestic violence and sexual assault, as well as child victims. Time frames for reporting and filing continue to be extended statutorily. However, programs that have extended their reporting and filing periods recently do not report substantial new numbers of claims being filed as a result.

¹⁰ Arkansas, Louisiana, Missouri, Ohio, and Rhode Island require denial when the victim has a criminal record, though there is some difference in their provisions. In Florida and North Carolina, denial is discretionary.

Benefits

All compensation programs cover the same major types of expenses. The primary compensable costs and losses are the following:

- Medical and dental care
- Mental health counseling for victims and for family members of homicide victims and, in some states, of other crimes
- Lost wages for victims unable to work because of crime-related injury
- Lost support for dependents of homicide victims, and
- Funerals and burials

Over the past decade, other benefit categories have been added by some, but not all programs, including the following:

- *Crime-scene cleanup*, or the cost of restoring a home to its pre-crime condition. Because VOCA does not allow federal funds to be used to pay for property damage or loss, except for windows and locks, many programs cannot pay for replacing furniture or other household items destroyed or damaged in a violent crime; cleanup is literally limited to cleaning. To recover costs for cleanup, there must have been a violent victimization; the benefit does not extend to property crimes.
- *Moving or relocation expenses*, usually limited to instances where the victim is in imminent physical danger, or if the move is medically necessary (because of severe emotional trauma from a sexual assault, for example). A few programs have embarked on what have become extensive and expensive efforts to move victims of domestic violence. Utah pays for moving and up to three months' rent, for example, as well as utility hook-ups. In Florida, about a fifth of its total compensation payments is now spent relocating domestic violence victims.
- *Transportation* to medical providers, or in some states, to trials and to funerals.
- *Replacement services* for household work or child care that the victim is unable to perform because of crime-related injury.
- *Rehabilitation*, which may include physical or occupational therapy.
- *Modifications* to homes or vehicles for victims who are disabled by crime.

- *Attorney* fees incurred in helping victims apply, but usually in limited amounts, and sometimes limited only to appealed cases.

Property that is stolen, lost or damaged during a crime is not covered, except for medical prostheses and eyeglasses, and with a few other very limited exceptions in a handful of states. As examples, New York covers up to \$500 for essential personal property, including \$100 in stolen cash; New Jersey can replace stolen cash up to \$200 for disabled victims and senior citizens below the poverty level; and Pennsylvania can replace the proceeds of one month's Social Security, pension, retirement, disability, or court-ordered child or spousal support.

All of the compensation programs have maximum limits, though these vary substantially. The median maximum is \$25,000. Five states' maximums are \$10,000; ten more can pay up to \$15,000. Eleven states can pay \$40,000 or more, with Washington state's \$150,000 maximum and California's \$70,000 maximum topping the list. New York can pay unlimited medical benefits, but places a \$30,000 limit on lost wages and support.

Fifteen states pay increased benefits either when a victim's injuries are totally and permanently disabling, or in homicides.¹¹ Texas, for example, has a normal maximum of \$50,000, but can pay up to \$125,000 when injuries are permanent. West Virginia normally pays up to \$25,000, but can increase this maximum to \$35,000 in homicides, and to \$100,000 for permanent and total disability. Alaska doubles its maximum to \$80,000 in death cases with multiple secondary victims.

The Effectiveness of State Victim Compensation Programs

When policy makers and compensation programs try to gauge the effectiveness of compensation programs, three issues seem of great importance. Are compensation programs serving sufficient numbers of victims? Are the benefits that are paid meeting victims' needs? And are these benefits being paid in a timely fashion?

¹¹ Alaska, Arkansas, Connecticut, Delaware, Florida, Louisiana, New Jersey, New Mexico, North Carolina, South Carolina, Texas, Utah, Washington, West Virginia, and Wyoming.

While the scope of this paper does not allow a full exploration of these issues, the following observations may help facilitate and inform their discussion.

The Reach of Victim Compensation. Most knowledgeable observers, including staff in compensation programs themselves, believe that significant numbers of crime victims who could be financially assisted are not applying for victim compensation. Lacking staffs themselves that can be tasked with informing individual victims directly, most programs spend a good deal of time and energy providing training to colleagues in victim services, law enforcement, and the medical and counseling professions whose jobs do bring them into regular contact with victims. There is no doubt that many victims are not informed about compensation opportunities, particularly those individuals whose interaction with victim services is minimal or nonexistent.

However, while no study has fully explored this issue, at least one that has touched on it indicates that far greater percentages of eligible victims *are* being compensated than generally may be believed. While this analysis should lead no one to think that outreach and expansion should not continue, it also counters assertions that compensation programs are reaching only a small fraction of those who could benefit.

Analyzing data from the National Crime Victimization Survey (NCVS), Uniform Crime Reports (UCR), and the Fatal Accident Reporting System (FARS), an NIJ-funded study concluded that in 1987, claims were received from 45 percent of violent crime victims who were uninsured and likely would be eligible for compensation.¹² The study noted that 63 percent of violent crimes reported in the NCVS are attempted rather than completed crimes; that half of crimes went unreported; that a large majority of victims do not sustain injuries or require medical care or lose time from work; that close to 70 percent of victims are insured; and that some victims are culpable for their victimizations. The study's conclusion is remarkable in two ways: first, the universe of violent victims who actually do suffer injury and economic loss is far smaller than may be recognized generally; and second, even those who need help may find assistance in other ways than from victim compensation. (It is interesting to note that the NCVS estimated 5.6 million violent

¹² Parent, Dale G., B. Auerbach, and K.E. Carlson, *Compensating Crime Victims: A Summary of Policies and Practices*, National Institute of Justice, January 1992: pages 16-17 and Appendix A.

victimizations in 1987, almost exactly the same number estimated in 2001, when claims received by compensation programs had more than doubled.)

The NCVS demonstrates that only one-third of violent crime victims suffer any physical injury, and only a third of those (or about a tenth overall) suffer more than “minor” injuries, defined as cuts, bruises, and the like. This is not to say that many victims who are not physically injured do not suffer major impairments in their ability to function or to enjoy life to the extent they did prior to the crime. But looking only to find a base population of victims who report crimes, suffer injuries and losses due to physical injury, don’t have insurance to cover those losses, and are not culpable in their victimizations, the 5.7 million violent victimizations reported by the NCVS for 2001 are reduced to approximately 200,000 victimizations for which crime victim compensation could be the primary source for financial assistance. Obviously, this is a rough calculation; the NCVS does not measure homicides or crimes against children younger than 12, and both categories are important sources of claims for compensation programs. But this analysis should be informative to at least some degree in trying to determine how effective compensation programs are in reaching an eligible and needy population.

Compensation programs also are remarkable effective in reaching various types of crime victims. Victims of child abuse are recipients of approximately 23 percent of all claims paid nationally. Of adult victims, domestic violence victims comprise 30 percent of all recipients of compensation, and rape victims benefit from 8 percent of all claims.¹³ While the gross numbers of victims helped may not be high, the proportionate distribution of types of crime victims receiving compensation shows that at least domestic violence, rape and child abuse victims are not underrepresented in comparison to other crimes.

Could these numbers be higher? Of course, and every compensation program takes seriously the need to perform outreach and to train extensively those who work daily with victims and who can provide them with information, including victim assistants and direct-service providers, police, prosecutors, medical personnel, and counselors. Compensation programs have found that

¹³ Office for Victims of Crime, Nationwide Analysis, 2001 Victims of Crime Act of 1984 Performance Report, State Compensation Programs.

training of professionals involved with victims is far more effective than public information campaigns. But with small staffs, and with few programs able to designate specialists in training and outreach, compensation programs necessarily struggle to ensure that the word about financial assistance to victims reaches those who need to hear it. Compensation programs believe that victim service programs need to do a much better job in providing training to their own staffs on the basics of victim compensation, and that they must emphasize the importance of providing compensation information to individual victims. However, the National Evaluation of State Victim Compensation Programs recently completed by the Office for Victims of Crime found that many victim service providers “were only minimally satisfying their obligations to assist victims.”¹⁴

Compensation programs, by statute, generally are not open to victims who do not report their victimizations to law enforcement, there remains a substantial population of victims who cannot access financial assistance from state programs. This may be true especially of victims of domestic violence and sexual assault.

Adequacy of Benefits. While compensation programs operate with limited benefits – the median maximum payment among the states is \$25,000 – programs find that the large majority of victims applying are paid fully for the losses and expenses requested by them and covered by the programs. States report that very few cases (even homicides) reach the maximum, and the average benefit paid per claim has remained between \$2,000 and \$2,500 for many years. The relative level of a state’s maximum (high or low) has little or no bearing on this average payment, with some states with higher maximums showing lower average payments than states with smaller overall caps.

In fact, lower average payments per claim may be indicative of a program’s effectiveness in reaching more victims. It may show that more victims whose expenses are relatively modest (several months of counseling for a child abuse or rape victim, for example) are applying. A program with higher average awards per claim may be benefiting a smaller number of victims,

¹⁴ Newmark, L., J. Bonderman, B. Smith, and B. Liner, *The National Evaluation of State Victims of Crime Act Assistance and Compensation Programs: Trends and Strategies for the Future*, The Urban Institute, Washington, D.C., 2003.

whose extensive injuries and high costs provide incentive both to the victims and to service providers to ensure they seek compensation.

Most compensation programs appear to be less effective in providing small emergency benefits quickly, such as funds to fix broken windows, repair doors and locks, and cash for living expenses that may be needed immediately. While many states do provide emergency benefits, programs centralized in state capitals are not adequately positioned or staffed to focus on immediate needs, particularly since compensation laws do require at least some analysis of police reports and other documentation. Many compensation program managers believe that victim assistance programs should be better able both to assess and respond to modest immediate needs, and should maintain small cash reserves for that purpose. It's worth noting that VOCA assistance funds may be used by local service programs for emergency needs relating to health and safety, and this can be done without the need to file an application or other paperwork with a state compensation program.

Timely Processing of Claims. Timely payment of benefits is an ongoing challenge, but most programs have shown marked improvement in processing times, through a combination of increased staffing, automation, and increased interaction and coordination with professionals in victim services and law enforcement. A survey done as part of the National Evaluation of State Victim Compensation Programs showed that 78 percent of claimants felt their claim was paid in a reasonable amount of time.¹⁵ The evaluation also showed that claims-processing time averaged 15.8 weeks in six states selected for site visits. Many states report informally that a three-to-six-month time frame is normal for paying the large majority of claims, but there are numerous claims that are paid more quickly, and some that take considerably longer to process.

For a claim to be processed quickly, programs are dependent on the cooperation of many other individuals and entities – victims to provide sufficient information on injuries and costs, police to send investigative reports, hospitals to release records and bills, insurance companies to issue statements of benefits – and often a claim is delayed by factors not directly within a compensation program's administrative control. Programs have an obligation to do what they can to en-

¹⁵ Ibid., Appendix D.

sure prompt response from the varied individuals and entities who need to help provide information for claim payment, but the programs do not control directly the work of those outside their agencies.

Implications and Effects of New Federal Compensation for Terrorist Victims

The federal compensation program for victims of the September 11 terrorist attacks drew enormous public attention to compensation for crime victims. It raised questions about the adequacy of state programs that could offer nowhere near the benefits that the 9/11 Fund provides. It also sparked debate about the fairness of providing disparate levels of benefits to different types of victims, and provoked discussion of the role that state compensation programs should play in terrorist incidents involving mass casualties.

To help examine these issues, a look first at how state compensation programs responded to victims of the 9/11 attacks may be helpful. Then, some observations on any effect the new federal benefits have had on compensation programs will be offered, along with some views regarding the disparity between benefits available to terrorist victims and others. Finally, the responsibilities of state and federal governments in responding to mass-casualty terrorism will be discussed. The intention is not to explore these important issues exhaustively or conclusively, but simply to provide information and insight that may help policy makers in approaching these matters.

State Government Response to Victims of Terrorism. New York's victim compensation program responded within hours of the attacks on the World Trade Center on September 11. Staff and commission members worked daily for weeks in the Family Assistance Centers established by the city, working side by side with the Red Cross and other charities, federal emergency management teams, and other programs providing services to victims. The program began making emergency payments to victims and surviving family members of the attacks within days, and over the ensuing year, the total amount paid to September 11 victims exceeded payments to all other victims, more than doubling the usual annual expenditure of compensation funds. This has placed great strains on the program's budget, which is dependent on appropriated funds from the legislature to meet its obligations to victims.

Similarly, Virginia's compensation program also moved quickly to offer financial assistance to victims of the Pentagon attack, coordinating these efforts with military and federal officials. Pennsylvania's compensation program sent a team of claims specialists to the scene of the crash in Somerset County to provide guidance to family members in filing claims. California worked diligently to identify and bring together family members in California of those killed at the various attack sites, since all four planes were destined for California cities. California also widened eligibility to include family members in the state whose relatives were not California residents at the time of their deaths (normally, a murder victim must be a California resident for family members to qualify for compensation). California also donated \$1 million of its compensation funds to New York's compensation program to assist in paying claims.

New Jersey offered benefits to its residents to supplement those available from the New York program (the claimant first had to apply in New York), and total annual compensation payments in New Jersey also may be doubled as a result. Massachusetts declared eligible the family members of victims on the two planes that departed from Boston on Sept 11, reasoning that the crimes had begun within the jurisdiction of the state. Compensation staff in Rhode Island and Connecticut also helped family members in those states file claims with New York for benefits.

New York, Virginia, Pennsylvania, and New Jersey all received substantial VOCA emergency-fund grants from OVC to help pay claims from 9/11 victims and surviving family members. This assistance was crucial in helping them avoid the detrimental impact that payment of the claims would have on their ability to pay other victims of crime.

While compensation programs in New York and New Jersey have provided large amounts of their available resources to what appears to be a large percentage of victims of 9/11, those programs have not been primary sustaining sources of financial help for surviving family members of September 11. The same is true in Virginia and Pennsylvania. Other sources of financial aid from charitable sources, workers compensation, and other governmental programs, as well as military benefits for Pentagon victims, provided far more financial assistance to most families who lost relatives on September 11, and served to some extent to reduce demand on state compensation programs.

Effect of 9/11 Program on the Nature and Scope of State Compensation. The federal 9/11 compensation fund offered benefits far in excess of those available from state compensation programs. The 9/11 program could pay benefits of well over a million dollars to each surviving family of those killed in the attacks, including \$250,000 per surviving spouse in pain and suffering, which in itself is more than ten times the median maximum for victims applying to state compensation programs. The 9/11 Fund also is intended to cover life-time loss of earning capacity, while state compensation programs can pay lost economic support only up to their maximums. (Other victims of international terrorism also are likely to receive benefits substantially greater than those offered by state compensation programs.¹⁶)

In the year and half after the creation of the 9/11 Fund, however, state compensation programs have not been changed in any noticeable degree. They have not been reconfigured either to pay pain and suffering or to become support systems for long-term loss of earning capacity. While a number of compensation programs now do offer increased benefits in cases involving death and/or severe disability, this trend began well before the fall of 2001, and has not accelerated since then.

Some compensation directors do believe that the 9/11 program raised public awareness of victim compensation for other crimes. This appears to have had wanted and unwanted effects. On the one hand, more non-9/11 victims may seek compensation. On the other hand, some victims seem confused that compensation for other crimes is not a cash entitlement for pain and suffering or long-term loss, as it appears to be for 9/11 victims. Some program directors believe the overall effect has been negative, because the wide disparity between their own programs and the 9/11 program has unfairly raised expectations that cannot be met.

Disparate treatment of terrorist victims and victims of other crimes. Some victims, as well as advocates, have complained that 9/11 victims should not receive far greater levels of benefits than victims of other crimes. They argue that individual grief, pain, suffering, and economic loss

¹⁶ A new International Terrorism Victim Compensation Program (ITVCP) authorized by Congress to cover victims of international terrorist incidents dating back to the Pan Am 103 bombing is under development by OVC; it is likely to pay benefits in excess of state compensation programs' limits. The U.S. Department of Justice's Public Safety Officer Benefit (PSOB) program pays \$250,000 to families of police officers and firefighters killed in the line of duty.

do not differ between different types of crimes. Victims of crimes that *are* similar, such as the Oklahoma City bombing, have been particularly vocal in expressing their dismay at not receiving such extraordinary levels of financial assistance.

Some observers in the victims field worry that resources simply are not available to provide those enormous benefits to all crime victims. They express concern that the next act of terrorism resulting in mass casualties may result in pressure to duplicate the 9/11 Fund's generosity, and this may have an impact on available resources both for providing compensation and services to other victims of crime. This is not to say that all victims, or all advocates, feel this way, but only that some have expressed these concerns.

Federal and State Roles in Compensating in Mass-Casualty Terrorist Crimes. In discussions since September 11, compensation program directors generally express the belief that their programs are not intended to be primary payment sources for major terrorist incidents resulting in mass casualties. Their budgets are simply not large enough to provide benefits to greatly expanded numbers of those needing assistance, and they fear that in paying huge amounts to a new class of victims, their payments to victims of domestic violence, child abuse, rape, and other nonterrorist crimes may suffer for a lack of resources. They know also that their staffs simply cannot handle a large influx of claims at one time, without their ability to process other claims being impaired.

Compensation programs are grateful for the supplemental resources available from VOCA's emergency fund for helping make payments in mass-casualty crimes, and believe that this money should continue to be available. Many program managers also believe that the federal government should have a primary, if not exclusive, role in shouldering the burden of financial assistance to victims of "the war on terrorism." Yet they are uneasy that these new federal programs may create substantial distinctions in help for victims of terrorism and victims of other crimes.

Again, it is not the purpose of this paper to draw any conclusions, but only to point out some of the concerns surfacing in state compensation programs when the implications of the 9/11 Fund are considered.

Summary

Compensation programs share many characteristics in terms of how they are operated; their eligibility requirements, benefits, procedures, and funding are broadly similar. While there are substantial variations in maximums and resources available in different states, as well as in some of the specific benefits offered, none of the programs is significantly different in nature or scope than others.

The trend among compensation programs in recent years has been toward expansion of benefits, increased maximums, and greater outreach. Claims received and paid, and total benefits awarded, have grown substantially in the past decade, and this trend has accelerated in the past five years. While there is little disagreement that more victims could be getting financial help from these programs, there is evidence that the programs are successful in reaching large numbers of eligible victims, and in meeting most of their economic needs. They are also reaching a broad spectrum of victim types, such as domestic violence, sexual assault, and child abuse.

Compensation programs all face great uncertainty in sustaining and increasing resources to meet growing demand. Any redefinition of the scope and nature of the state programs – expanding their role to provide more long-term benefits, or “noneconomic” losses like pain and suffering, for example – will require substantial new funding, both for payments to victims and for administrative needs. It will be up to policy makers to determine whether the nature and scope of state compensation programs will be changed in the future, and to ensure that sufficient resources are necessary to meet any expansion of their mission.

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