
National Roundtable on Victim Compensation

Exploring the Role and Future of Crime Victim Compensation

National Center for Victims of Crime

**Exploring the Role and Future
of Crime Victim Compensation:
Framing the Issue**

Susan Herman
National Center for Victims of Crime

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Overview

Every state in America has a crime victim compensation program that reimburses victims—usually only victims of violent crime—for their immediate out-of-pocket expenses. These programs are supported by federal money, which consists of fines and penalties paid by defendants in federal criminal cases, state money from fines and penalties of defendants in state prosecutions, and sometimes state tax revenue. Both the expenses covered by the programs, and the caps on the compensation for each victim, vary state by state. Victims are entitled to reimbursement only for certain expenses incurred immediately following the crime such as lost wages incurred while attending court or counseling sessions, health care or counseling fees, funeral bills, crime scene cleanup, transportation costs, or emergency day care. As a general rule, these programs do not compensate victims for non-economic losses such as pain and suffering, or for future ongoing reparative needs such as long-term counseling or medical services.

In addition to receiving compensation, many Americans have sought civil justice remedies as a result of the crimes (torts in civil law) committed against them. Increasingly, judges and juries are finding offenders, and third parties, liable for compensation for economic and non-economic losses, and punitive damages. For example, victims have successfully sued, and recovered damages from, rapists for their intentional harm as well as hotels that provided inadequate security. Crime victims have also pursued successful lawsuits against third parties under other theories of negligence, including negligent hiring and supervision, and premises liability. In fact, in recent years, victims of crime have received the majority of the top ten civil awards in tort cases throughout the United States.¹

Following the events of September 11, a new source of compensation was created by Congress, the federal September 11th Victim Compensation Fund of 2001 (Fund). The Fund is unprecedented in our nation's history. Never before has the federal government attempted to compensate victims of a mass attack; there was no similar program for the victims of the bombings in Oklahoma City, the U.S.S. Cole, American embassies overseas, or the first attack on the World Trade Center.

¹ *Lawyers Weekly USA*

The nature and scope of the federal Fund have sparked a new national conversation about the role of compensation in our society. The widespread debate about the federal compensation program for the victims of September 11 has great potential to inform our public discourse about the future role of victim compensation.

Background on Victim Compensation

The concept of government-supported victim compensation did not begin with September 11. There is an existing system in place that has been providing compensation to victims of crime for nearly three decades. The contrast between the two systems—both in design and scope—raise a number of policy questions about how we as a nation conceive of victim compensation.

September 11th Victim Compensation Fund

In the days and weeks following the September 11 terrorist attacks on the United States, Congress developed an unprecedented plan to provide financial assistance for the surviving victims. The legislation that established the September 11th Victim Compensation Fund, however, was not initially designed to help victims. The bill authorizing the Fund, the Air Transportation Safety and System Stabilization Act, was primarily focused on protecting the airline industry from collapse by providing loans and placing caps (equal to the airlines' level of insurance coverage) on liability payments from lawsuits. The section on victim compensation was added later in response to questions raised about the fairness of capping awards from civil suits. The result of these deliberations was an agreement to allow victims to apply for a new kind of compensation from the federal government in exchange for waiving their right to sue the airlines. Victims injured in the September 11 attacks and the families of deceased victims are eligible for compensation from the Fund.

The entire program, estimated to cost \$6 billion, was developed in just three days from the first draft to presidential signature. The legislation called for the appointment of a Special Master to oversee the Fund and develop a plan for administering the payouts. In November 2001, Attorney General John Ashcroft appointed Kenneth Feinberg, an attorney with experience mediating complex disputes, to run the September 11th Victim Compensation Fund. According to the

legislation, the Fund will compensate victims for both economic (*i.e.*, reimbursement for actual out-of-pocket expenses) and noneconomic losses (*i.e.*, pain and suffering).

Because the Fund was meant to serve as an alternative to the tort system, it was to some extent structured to operate like the civil justice system with awards structured to individual losses. The specific payout levels are to be determined by the Fund's Special Master. Feinberg set the payments for pain and suffering in cases of a death at \$250,000 per victim plus an additional \$100,000 to a surviving spouse and each surviving child. Determining payments for economic losses has been more complicated. Economic losses are calculated for each individual based on a formula that takes into account many factors including the victim's projected lifetime earnings. Payments for economic losses have ranged from \$400,000 to a high of \$5 million. The total payout, however, is reduced by the receipt of other sources of compensation such as life insurance payments and worker's compensation, although not by charitable contributions. As of May 2003, 1,723 people have applied for compensation from the Fund on behalf of a deceased family member.² The total average payout is \$1.5 million per victim in death cases, ranging from \$250,000 to \$6 million. To date, the Fund has issued payouts on 109 personal injury claims ranging from a low of \$500 to a high of \$6.8 million.

State Crime Victim Compensation Programs

Separate from the recently established federal September 11th Victim Compensation Fund, every state in the nation operates a crime victim compensation program. The first of these programs began in 1965 in California; by the early 1980s nearly 40 states had established similar programs. Today compensation programs across the country pay out an estimated \$265 million each year to over 115,000 victims of violent crime. The funding for these programs is shared by the states and the federal government.

² Information from the September 11th Victim Compensation Fund of 2001 website. www.usdoj.gov/victimcompensation/payments_deceased.html (Accessed May 28, 2003.)

Each state currently receives a federal grant under the Victims of Crime Act (VOCA) of 1984 equal to 60 percent of their total state compensation awards from the previous year.³ The VOCA program is not supported by tax dollars, but by fines, penalty assessments, and bond forfeitures collected from federal offenders. In 2000, the VOCA compensation fund provided \$81 million in grants to the states ranging from a high of \$19 million in California to a low of \$39,000 for the Virgin Islands. The median award to the states in 2000 was \$621,000.⁴

The majority of states also fund their victim compensation programs from fines and fees levied against criminal offenders, but some contribute tax dollars as well. Some states are also working with prosecutors and judges to actively pursue restitution from offenders as another means of supporting victim compensation programs. Although still a limited source of funding, a few state programs are reporting recovery of 10 percent of their total compensation awards from restitution payments.⁵

Similar to the federal September 11th Fund, state victim compensation programs cover medical expenses, counseling services, lost wages for victims unable to work due to a crime-related injury, lost support for dependents following the death of a crime victim, and funeral expenses. A number of states also cover crime scene cleanup, relocation expenses, travel to receive treatment, and child care.

Most states impose caps on the maximum payout award. These caps vary by state from a low of \$7,500 in Maine to a high of \$150,000 in Washington.⁶ A few states only place caps on awards for specific types of expenses. The average maximum payout is about \$25,000. However, few victims actually receive an award reaching anywhere near the maximum award limits, which were set to accommodate victims with high expenses such as drunk driving crash survivors with

³ Until recently the VOCA compensation grant formula had been 40 percent of state payments to crime victims during the previous year. Starting in 2003, the formula changed to 60 percent of state payouts. (Office for Victims of Crime, State Crime Victim Compensation and Assistance Grant Programs, January 2002.)

⁴ Lisa Newmark, Blaine Liner, Judy Bonderman, and Barbara Smith. 2001. *The National Evaluation of State Victims of Crime Act Compensation and Assistance Programs: Findings and Recommendations from a National Survey of State Administrators*. Washington, D.C.: Urban Institute.

⁵ National Association of Crime Victim Compensation Boards on-line program directory. <http://www.nacvcb.org/progdir.html> (Accessed May 2003.)

⁶ Newmark et al, *The National Evaluation of State Victims of Crime Act Compensation and Assistance Programs: Findings and Recommendations from a National Survey of State Administrators*.

catastrophic injuries. The average award amount in 2000 was nearly \$2,400 and ranged from a low of \$960 in Maine to a high of \$9,700 in Rhode Island. Only three states currently make awards for pain and suffering with maximum payouts ranging from \$2,000 to \$3,000.

One of the most significant differences between the federal September 11th Fund and state victim compensation programs is the fact that the state programs were not meant to serve as an alternative to the civil justice system. Payouts from the state compensation programs are significantly smaller with the aim of helping victims and their families cope with the immediate aftermath of crime rather than repairing the harm caused by the crime and making victims financially whole again.

State crime victim compensation programs also have some eligibility restrictions. While the U.S. Department of Justice guidelines on use of VOCA funds were recently clarified to allow limited compensation for victims of nonviolent crime, most state programs are still focused on providing financial assistance to victims of violent crime. This means that victims of nonviolent crimes, such as identity theft and fraud, typically are not eligible for compensation benefits. Victims who are in some way implicated in the crime, or in some states, victims who have a recent criminal conviction, also are not eligible for compensation funds. Finally, to be eligible for the VOCA funds, states must cover residents who are victims of terrorism in foreign countries. States are not required, however, to provide compensation for crimes overseas that are not terrorist acts. The result is that most state programs do not offer benefits to victims of crimes occurring outside the United States. According to a survey conducted by the federal Office for Victims of Crime, 28 foreign countries have crime victim compensation programs and all but three (France, Spain, and the United States) offer benefits to foreign citizens.⁷ In some cases, Americans have been able to access compensation benefits from other countries.

A national evaluation of state victim compensation programs was recently conducted by the Urban Institute through a telephone survey of 450 claimants in six states.⁸ The report provides

⁷ U.S. Department of Justice. 1999. Crime Victim Compensation Program Directory: 1998-1999. Washington, DC: Office for Victims of Crime.

⁸ Lisa Newmark, Judy Bonderman, and Barbara Smith. 2002. The National Evaluation of State Compensation Programs: Trends and Strategies for the Future. Washington, D.C.: Urban Institute.

information on the functioning of the state compensation programs that can inform the broader national discussion. For instance, a number of claimants reported incurring eligible expenses for which they did not file claims. Nearly 30 percent of victims with medical treatment expenses, over 50 percent of victims with funeral expenses, and 40 percent of victims with lost wages did not file a claim for these costs. Even after taking into account other sources of compensation, two-thirds of the respondents reported that they sustained some level of unrecovered losses. The researchers also found that female claimants and white claimants had more positive perceptions of compensation programs compared to men and people of color. These findings raise questions about the efficacy and reach of the current system that are important to the national conversation about victim compensation and future research efforts.

Issues for Discussion

Essentially, in the United States, we have developed two very different victim compensation systems to handle two classes of victims—victims of terrorism and victims of all other types of violent crime. Any discussion of these systems must also consider a third group of victims, those who have been victims of identify theft, burglary, fraud and other nonviolent crimes, who despite sometimes devastating financial and emotional losses cannot receive benefits under either compensation program.

The September 11 tragedy and the tremendous response that followed, has raised our collective awareness of the profound personal and societal impact of crime, the needs of individual crime victims, and the role and capacity of government in meeting those needs. This experience has also raised a number of critical and complex questions about how we assist victims in rebuilding their lives in the aftermath of crime, whether it is terrorism, domestic violence, or fraud:

- What is the purpose of victim compensation? Is it a part of achieving justice or a form of charity? Is it a symbolic gesture or is it intended to make victims financially whole? Is it a form of practical crisis intervention?
- Should compensation be tailored to individual needs, or should victims receive set amounts depending on the crime?

- Should the government provide compensation at all, or should victims be encouraged to seek civil remedies exclusively?
- For which crimes should victims be compensated by our government? All crimes or only violent crimes?
- Should we provide a different kind of compensation for victims of terrorism? And if so, under what policy rationale?
- Should compensation programs be funded by tax dollars as well as offender fines and penalties?

The purpose of the National Roundtable on Victim Compensation is to sharpen the recent national conversation on victim compensation which began following September 11, and deepen our thinking as a nation on how best to compensate victims of crime. There are many possible policy outcomes from this discussion. Our hope is that the Roundtable will spark the development of new research on victim compensation and how best to meet the needs of victims, as well as new legislative inquiries at the state and federal levels on how to improve our victim compensation programs and policies.

For more information on the National Roundtable on Victim Compensation:

National Center for Victims of Crime
2000 M Street, NW, Suite 480
Washington, DC 20036
Tel. 202-467-8700
Web. www.ncvc.org

Attn: Michelle Waul
Email. mwaul@ncvc.org

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