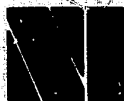


Crime Victim Compensation

U.S. Department of Justice
National Institute of Justice
Office of Development, Testing and Dissemination



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Program Models are a synthesis of research and evaluation findings, operational experience, and expert opinion in a criminal justice topic area. Each report presents a series of programmatic options and analyzes the advantages and disadvantages of each. The intent is to provide criminal justice administrators with the capability to make informed choices in planning, implementing, and improving efforts in a program area. The Models may also serve as the basis for testing and demonstration efforts.

The following individuals provided information and assistance in the conduct of this study.

**Gilbert Geis
Program in Social Ecology
University of California, Irvine**

**Martin Moylan
Executive Director
Maryland Criminal Injuries
Compensation Board**

**James Garofalo
Director
Research Center East
National Council on Crime
and Delinquency**

**Mark A. Cuniff
Executive Director
National Association of Criminal
Justice Planners**

**Anthony Pasciuto
National Institute of Justice
Program Monitor**

Crime Victim Compensation

Program Model

by
Deborah M. Carrow

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NATIONAL INSTITUTE OF JUSTICE

Henry S. Dogin, *Acting Director*

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PREFACE

A turning point in society's treatment of the victim of criminal incidents was realized in the mid-1960's, when years of discussion culminated in the establishment of the first victim compensation program in New Zealand. Since then, victim compensation legislation has been passed in 29 American jurisdictions and over a dozen foreign countries. Simply stated, victim compensation programs are the means by which the government assumes responsibility for providing financial assistance to innocent citizens injured as the result of a criminal incident. Based on the experiences of operating programs, the opinions of experts in the field of victim compensation, and available research on this topic, this program model examines the current status of victim compensation in the United States. Specifically, the document focuses on variations in policies, structures, and procedures among compensation programs, and explores the advantages and disadvantages associated with particular approaches.

A number of individuals and organizations assisted in the development of this program model. Victim compensation programs across the nation provided annual reports, statistical information, and descriptive materials, and their assistance is gratefully acknowledged. Field studies were conducted on crime victim compensation programs in the States of New York, Maryland, Delaware, and Washington. Thanks are given to the staff and board members of these programs for their participation and the substantive insights they provided on the issue of victim compensation.

Special appreciation is also extended to Professor Gilbert Geis, Program in Social Ecology, University of California, Irvine; Dr. James Garofalo, Director, Research Center East, National Council on Crime and Delinquency; Mr. Martin Moylan, Executive Director, Maryland Criminal Injuries Compensation Board; and Mr. Mark A. Cuniff, Executive Director, National Association of Criminal Justice Planners. As members of the Advisory Board, these individuals provided invaluable assistance and suggestions throughout the development of the program model.

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CHAPTER 1: INTRODUCTION

"It's about time that somebody paid attention to the crime victim." That sentiment, long echoed in police departments, courts, hospitals, and community agencies, has in recent years captured the attention of the general public and those elected to govern the public's affairs. Concern with growing victimization rates, and indignance over expenditures for offender treatment and rehabilitation, when no such resources are available for victims, have led many to question traditional practices which focus exclusively on the detection, apprehension, and correction of the offender. Too often the victim is left to recover as best he can or is burdened further through official impositions such as police interviews and court testimony. In response, a growing victim/witness assistance movement has emerged in localities across the nation. In addition, numerous states have developed programs to provide compensation payments to victims of crime. It is these latter programs which are the focus of this program model.

This report examines the concept of crime compensation as it has developed in the United States and highlights, where possible, the advantages and disadvantages of specific program structures, operations, and policy decisions. In so doing, this report also examines the process of translating theory into an operating program, and observes some of the unintended or unanticipated consequences of this implementation process.

The program model document presents the range of options available for establishing and operating a victim compensation program, and discusses the positive and negative consequences of each. The report is intended to assist two rather disparate groups: states with existing victim compensation programs, and states which may be considering implementation. Thus, it includes information of interest to both program designers and program operators. In addition, the program model may be useful to legislators, state executives, and victim service groups.

¹ See National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Victim/Witness Assistance by Robert H. Rosenblum and Carol Holliday Blew (Washington, D.C.: Government Printing Office, 1979). In addition, the Law Enforcement Assistance Administration is currently sponsoring a study of victim/witness assistance under its National Evaluation Program. This Phase I study is scheduled for completion in the spring of 1980.

The information in this document is drawn from a number of sources. In December 1978, the administrators of 22 operating victim compensation programs were contacted by letter, and asked to send such materials as annual reports, statistical summaries of their operations, informational brochures, application forms, and relevant state statutes. The 22 programs represented those which were operational as of mid-1978, but did not include the four chosen for on-site study. Nineteen programs responded to the initial request for information; copies of victim compensation statutes were obtained for the three non-responding programs. In addition, two states passed victim compensation legislation which became effective after mid-1978. Copies of these laws were also obtained. Complementing the review of this programmatic information was a review of the literature on victim compensation. After consultation with those leaders in the field of victim compensation who served as Advisory Board members for this project, four programs were chosen for more intensive study. Site visits were made to each during the first half of 1979. Those four programs were the New York Crime Victims Compensation Board, the Maryland Criminal Injuries Compensation Board, the Delaware Violent Crimes Compensation Board, and the Washington Crime Victims Compensation Division of the Department of Labor and Industries. The experiences of these four sites are highlighted throughout the report, and whenever possible, they are supplemented by information gained through the review of programmatic materials sent by other crime victim compensation programs.

1.1 History of Victim Compensation

As many writers have noted, the concept of victim compensation is far from new: references to victim compensation are found in the Code of Hammurabi, the Iliad, and the Old Testament. It would appear that there were many motives for developing a victim compensation scheme.² For some, it may have been a means to encourage commerce. In other societies, it may have indicated a concern for the stability of the society as a whole; it was not uncommon for early civilizations to require payments by offenders to their victims. As Edelhertz and Geis note:

Anthropologists believe that a similar interest in placating the offended and in deterring the possible offender in order to maintain harmonious social life underlies the almost ubiquitous provision in preliterate societies for payment of monies or goods by the family of an offender to the victim of violent depredation. It is presumed that, without such payment, a state of social unrest would be created, marked by unremitting vendettas.

² Herbert Edelhertz and Gilbert Geis, Public Compensation to Victims of Crime (New York: Praeger Publishers, 1974), p. 7.

³ Ibid., pp. 7-8.

These systems of payment from offender to victim were gradually changed with the advent of state-controlled prosecution of offenders. Under this system, the state assumed the responsibility for "making the victim whole" by bringing the offender to justice. Unfortunately, the state's assumption of responsibility also entailed the state's appropriation of all proceeds from criminal fines, leaving the victim with limited and generally ineffectual civil remedies to recover any losses incurred as a result of the crime.

Interest in victim compensation was raised during the 19th century, when writers such as Jeremy Bentham suggested that society bore the responsibility to assist crime victims when it failed in its obligation to protect these individuals from victimization.⁴ Still, little serious attention was given to proposals for victim compensation until the 1950's, when Margery Fry, an English Magistrate and social reformer, noted that "we have seen that in primitive societies this idea of making up for a wrong has wide currency. Let us once more look into the ways of earlier man, which may still hold some wisdom for us."⁵ Based largely on the work and advocacy of Fry, victim compensation legislation was passed in 1963 in New Zealand and 1964 in Great Britain.

In the United States, interest in victim compensation was spurred by the developments in New Zealand and Great Britain. The concept of victim compensation found support in several quarters. For example, while serving on the Supreme Court, Justice Arthur J. Goldberg "served an important function as a catalyst, providing legitimized support for importation of the idea of compensation for crime victims onto the American scene."⁶ Public support for the concept of victim compensation was also strong, as evidenced by a Gallup Poll conducted in 1965.

The first United States jurisdiction to respond to the growing public interest in victim compensation was California, which passed a victim compensation statute in 1965. New York followed California's initiative in 1967, establishing a program which contrasted in several respects to that of California. This was quickly followed by legislation in Hawaii, Massachusetts, and Maryland. Table 1.1 illustrates the states which have passed victim compensation legislation.

American victim compensation programs present a diversity of operations, structures, and procedures. In part, this variety is attributable to

⁴ John Bowring, ed., The Works of Jeremy Bentham (Edinburgh: Tait, 1843), vol. I, pp. 386-388, cited in Edelhertz and Geis, Public Compensation to Victims of Crime, p. 8.

⁵ Margery Fry, Arms of the Law (London: Gollancz, 1951), p. 124.

⁶ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 12.

Table 1.1

States with Victim Compensation Statutes^a

State	Year Enacted	State	Year Enacted
Alaska	1972	Montana	1977
California	1965	Nevada ^c	1969
Connecticut	1978	New Jersey	1971
Delaware	1975	New York	1967
Florida	1978	North Dakota	1975
Georgia ^b	1967	Ohio	1975
Hawaii	1967	Oregon	1977
Illinois	1973	Pennsylvania	1976
Indiana	1978	Rhode Island ^d	1976
Kansas	1978	Tennessee	1976
Kentucky	1976	Texas	1979
Maryland	1968	Virginia	1976
Massachusetts	1968	Washington	1974
Michigan	1976	Wisconsin	1976
Minnesota	1974		

^aLouisiana passed a victim compensation statute in 1972, but never funded the program. The Louisiana Legislature repealed its victim compensation statute in 1975, apparently due to delays in passage of federal subsidies for victim compensation programs.

^bGeorgia has passed a statute which compensates "Good Samaritans" only.

^cNevada has a very limited program. Only "Good Samaritans" are eligible for compensation. However, the statute also stipulates that counties may award rape victims up to \$1,000 for medical care and psychological treatment.

^dAlthough passed by the Rhode Island legislature, the statute states that the program will not go into effect until 30 days after the passage of federal victim compensation legislation.

physical variations among states--their sizes, populations, resources, geography, and existing government structures. In part, however, these differences may also stem from philosophical or political differences among those responsible for program development. In the section which follows, the various philosophies which have motivated victim compensation efforts are examined. Other factors which influence the decision to institute victim compensation programs are then discussed in a separate section below.

1.2 Victim Compensation Philosophies and Rationales

Over the last few decades, a number of justifications or rationales for initiating victim compensation programs have been advanced in the literature. Often contradictory in whole or in part, these rationales are generally reflected in states' victim compensation statutes and may serve as the justification for adoption of specific program procedures and daily operations. Thus, although the particular rationale cited for development of any given victim compensation program is unimportant in itself, a knowledge of the various and contradictory justifications for victim compensation may at least help to explain the development of certain provisions in compensation statutes and particular procedures adopted by victim compensation administrators.

One of the most common justifications for victim compensation is the so-called "torts theory" or "obligation of the state." This rationale holds that the government has gradually assumed responsibility for the protection of the individual and the prosecution of offenders by taking away this authority from the individual. In a sense, then, a sort of "social contract" is drawn: the individual agrees to turn over his right to avenge the crime and agrees to pay taxes in return for the protection of the state. In cases in which the state fails in its obligation to protect the individual, it is argued that the state has broken its agreement, and should thus be liable for the damage done to the victim of crime. Such a rationale would argue for the most liberal type of compensation program, as all citizens, regardless of income or degree or type of loss, theoretically would have equal right to place a claim against the state for its failure to protect.

While this theory is often proposed in the literature, no state has yet admitted such liability without reservation. Much more common as the functional justification for victim compensation is the "welfare" theory. This approach holds that, just as the state has a humanitarian duty to the poor, the sick, the unemployed, or the disabled veteran, so it has a similar duty towards the victim of crime. However, this duty is based not on any obligation or agreement of the state, but on the social conscience of its citizens. Relatively few state victim compensation statutes admit to this orientation; yet such provisions as financial need requirements or minimum loss requirements are clearly based in a welfare justification.

Related to the welfare theory is that of the "grace of the government." Under this justification it is argued that the state has the power to "deal mercifully with certain individuals." Thus it may, by legislative grace, grant compensation to individuals who have been unfortunate enough to become victims of specified criminal incidents. The theory of the "grace of the state" is less general and inclusive than the social welfare theory examined above.

Yet another rationale for victim compensation is the "shared risk" argument. In a sense, the government may be viewed as a manufacturer or service provider who includes the cost of the risk for each consumer using its product in the price of the product. Each consumer thus contributes towards payments made to those few individuals who must be compensated for damages. The taxes paid by citizens may be viewed as this type of "insurance" premium and the compensation to crime victims as the payment given to any injured individual under the "insurance" scheme.

Crime is often held to be the result of certain conditions of modern civilization: unemployment, lack of equal opportunities, poor education, etc. If this is considered to be true, then an argument may be made that society itself is to blame for a criminal victimization. Following this reasoning, it is easy to assert that crime is "society's responsibility," and that it is the government which ought to pay the victim of crime for the misfortune caused to the victim.

In addition to these major arguments for the implementation of victim compensation programs, several other justifications have been advanced. These include:

- public support: recent public opinion polls appear to indicate that the public supports the concept of victim compensation. In a democratic society, it is therefore the duty of legislatures to respond to this support by enacting victim compensation legislation.
- anti-alienation: traditional insensitivity of the criminal justice system to the needs of victims and witnesses can easily alienate citizens. A victim compensation program can help to alleviate this alienation.

⁷ Nancy Plunkett Johnson and James Walker Johnson, "Comments: Compensation for Victims of Violent Crimes," Kansas Law Review 26 (Winter 1978): 223.

- crime prevention: many citizens are afraid to become involved in the criminal justice system as "Good Samaritans" or witnesses. A victim compensation program may reduce the fear of involvement and may encourage cooperation with and participation in the system.

All of these justifications are reflected to some extent in the laws and procedures governing existing victim compensation programs. Unfortunately, their application has been somewhat inconsistent; one may find, for example, both the "welfare theory" and the contradictory "obligation of the state" argument cited as rationales for the same statute. In general, the provisions ultimately included in a victim compensation program may be seen as a constant interplay between those justifications attributing compensation as a "right" of the individual and those which hold that such payments are given only because of the good will of the state.

1.3 The Need for Victim Compensation

Three distinct areas of concern emerge when discussing the need for developing victim compensation programs in the United States: the availability of public or private systems of financial relief for individuals victimized by crime; the extent of financial need brought about by criminal victimization; and the political support available for public compensation to crime victims. The interplay of these variables in any one state (or nation, for that matter) may determine the viability of victim compensation in that jurisdiction.

1.3.1 Systems of Financial Relief

There are several avenues of financial assistance available for victims of crime, including civil remedies, private insurance, public assistance, and restitution. The existence of these more traditional remedies has often been cited as an argument against the development of victim compensation. However, each of these systems of financial relief includes serious drawbacks for the needy crime victim, and it is in answer to many of these shortcomings that victim compensation has been developed. Below, the positive and negative characteristics of the four traditional approaches are examined. This is followed by a brief overview of the advantages and disadvantages of victim compensation.

⁸ Commonwealth of Massachusetts, Report of the Special Commission on the Compensation of Victims of Violent Crimes, prepared for the Massachusetts Senate and House of Representatives, July 1967, pp. 12-13.

Civil Remedies. Under the Anglo-American system of law, the state gradually assumed many of the "functions" of the victim in legal proceedings. In criminal matters, this resulted in the "gradual elimination of the victim from the criminal law proceeding, while the state assumed responsibility for action against the offender and relegated the victim's interest to tort-law procedures." Thus, the state assumed the obligation to discover, apprehend, try, and punish the offender for the criminal offense; as a result, the victim yielded his right to seek additional satisfaction for the criminal offense, but retained the right to sue the offender in civil court for any wrongs that he may have committed against the victim. While in principal this theory is sound, it has proven to be most impractical as a means of attaining financial assistance or reparation for the victim of crime. The most obvious drawback to such a system is the relatively low percentage of offenders apprehended: the latest Uniform Crime Report, for example, indicates that only some 21 percent of all index crimes are solved by the arrest of the offender.¹⁰ It is obviously not possible for an aggrieved victim to institute a tort action against an offender who remains unapprehended.

Even if the offender is apprehended, however, there remain substantial barriers to winning a civil action against him. The offender generally has few, if any, reserves of funds, and most of these would be expended in the process of defense against criminal charges. If sentenced to prison, the offender has little chance to earn an income which could serve as the basis for a civil award. Finally, the civil court process itself is extremely time consuming for the victim and may result in substantial expenditures of the victim's own funds. Richard J. Gross, Administrator of the North Dakota victim compensation program, cites a study by the National Commission on the Causes and Prevention of Violence in which it was reported that "only 1.8 percent of the victims of crime ever collect damages from the perpetrator."¹¹ It would thus seem that the avenue of civil remedies has been effectively blocked for victims of crime in the United States.

Lamborn has noted the emergence of a new use of the civil courts for the interest of victims: obtaining reparations from third parties who "could have prevented the commission of a crime through the exercise of due care Such liability [however] extends only to those having a duty to have inter-

⁹ Burt Galaway and Leonard Rutman, "Victim Compensation: An Analysis of Substantive Issues," Social Service Review 38 (March 1974): 61, 62.

¹⁰ United States Department of Justice, FBI Uniform Crime Reports, 1977 (Washington, D.C.: Government Printing Office, 1978), p. 160.

¹¹ Richard J. Gross, "Crime Victim Compensation in North Dakota: A Year of Trial and Error," North Dakota Law Review 53 (1976): 7.

ferred with the offender or on behalf of the victim."¹² By requiring these third parties to pay reparations, Lamborn notes that negligence which may allow the commission of a crime may be reduced. Such remedies, however, are employed infrequently; in addition, suits against governments would often require a waiver of sovereign immunity. While this approach may hold promise for some, it is unlikely to answer the needs of the vast majority of crime victims.

Private Insurance. In many cases, private insurance offers the best protection against serious financial loss as a result of crime. Certainly, it is the best protection against property loss, as victim compensation programs generally do not offer systematic reparation for lost property. However, reliance on private insurance as the sole means of victim reparation raises a number of troubling issues. The first of these is, of course, equity. Should the person unable to afford comprehensive medical insurance, or the person temporarily without insurance due to a change in employment status be penalized? Should society allow the lower-income classes to bear the brunt of their victimization because they are not able to obtain insurance? According to a 1979 study of health care coverage, an estimated 11 to 18 million people were without health care coverage in 1978, representing some 5 to 8 percent of the total U.S. population. By far, the majority of these individuals were young, lower-income, and unemployed individuals.¹³ It is precisely these individuals who are most likely to be victimized. Finally, insurance companies themselves may pose significant barriers for certain classes of individuals. Health insurance may be difficult to obtain or extremely costly for the chronically-ill, the elderly, or the poor. Even those individuals who maintain some form of health care insurance may find that their coverage is inadequate for catastrophic expenses of the type which may be incurred by very seriously injured crime victims. It has been estimated that 15 percent of those covered may not have this type of protection through private insurance. In addition, there are likely to be substantial numbers of persons "with insufficient protection against out-of-pocket health expenditures that are high relative to income."¹⁴ Thus it seems that private insurance would provide an uneven and somewhat biased form of reparation for losses resulting from crime.

Public Assistance. Welfare, Social Security, Medicaid, Medicare, and other forms of public assistance may provide some measure of financial relief to crime victims. Because the administrative structures for these programs are

¹² Leroy L. Lamborn, "Reparations for Victims of Crime: Developments and Directions," Victimology (in press).

¹³ Congress of the United States, Congressional Budget Office, Profile of Health Care Coverage: The Haves and Have-Nots (Washington, D.C.: Government Printing Office, 1979), pp. 13, 16.

¹⁴ Ibid., p. 41.

already established in every community, these forms of assistance may be among the most readily available for many victims. Unfortunately, public assistance also presents several drawbacks for the crime victim. Most programs limit availability of benefits to individuals meeting certain levels of financial need, age, or disability, and these limitations could bar substantial numbers of victims from public assistance benefits. In addition, the level of benefits provided may not fully compensate victims for the true amount of loss experienced as a result of the crime.

Restitution. The concept of offender restitution is appealing to many, and is often linked with victim compensation. For example, a number of state victim compensation statutes specifically require that the state be empowered to exact restitution payments from offenders as a means of offsetting the financial burden of victim compensation. The Victims of Crime Act of 1978, which narrowly missed passage by the House and Senate in the closing hours of the 1978 Congressional Session, also required that states provide for offender restitution in order to gain eligibility for federal support for their compensation programs.

Proponents of restitution often cite as advantages the possible rehabilitative function of restitution, the inherent justice of letting the punishment fit the crime, and the fact that restitution would return the victim's right to exact punishment from the offender himself. The Law Enforcement Assistance Administration has sponsored a number of pilot restitution programs. For example, in Georgia some offenders may be diverted to the restitution program instead of being placed in prison. Offenders are allowed to work in the community during the day, and return to the Restitution Center in the evening. Their paychecks are forwarded to the Restitution Center, where appropriate sums are deducted for the restitution payment. While the program appears to be successful to date, not enough is yet known about its cost-effectiveness or suitability for other jurisdictions.

The barriers to restitution are many. First, and perhaps most limiting, is the fact that restitution would be available only in those cases in which the offender is apprehended and convicted. As noted above in Section 1.1, this number represents a relatively low percentage of all victimizations. Even if the offender is apprehended, the chances for a meaningful restitution program are minimal in most cases. As Harland has noted, "The victim's claim to restitution must assume its place among the hierarchy of traditional [criminal justice] system goals of deterrence, deserts, rehabilitation, and incapacitation. If these goals are in conflict with restitution, experience with current restitution programs shows that the victim will usually drop out

¹⁵ Roger E. Meiners, Victim Compensation (Lexington, Mass.: D.C. Heath and Company, 1978), pp. 38-39.

of the picture."¹⁶ Additionally, Lamborn has noted that restitution may be ordered infrequently due to the extra time, and effort such an order would require from the criminal justice system.

The financial condition of most offenders may also prevent restitution. The offender will most likely spend what little funds he has available on his criminal defense. If sentenced to prison he will most likely participate in a prison industries program where the wages are so inadequate as to preclude restitution payments. If the offender is sentenced to probation or released on parole, judges and probation officers may be reluctant to enforce restitution orders, fearing that imposition of this extra burden might prejudice the offender's chance of successful readjustment. Finally, the offender may indeed experience considerable difficulty in making the restitution payment. A significant percentage of the offenders for any major crime will consist of persons under 18 years of age. Even the adult offenders may have income levels which would effectively preclude restitution payments. For example, Harland cites the results of a national survey of jail inmates in the United States which showed that "Among inmates who were either awaiting trial or who were sentenced to jail terms, . . . the modal income category for twelve months prior to incarceration was below \$3,000."¹⁸

Public Crime Victim Compensation. Although victim compensation also offers several drawbacks as the principal form of financial aid for victims of crime, it is felt by many to be the most equitable and consistent method of "making the victim whole." Unlike torts systems and restitution payments, it is available even when the offender is not apprehended. The victim's ability to receive reparation does not rely on the offender's ability to make payment. In addition, the program does not carry the strong bias against the indigent, sick, or high-crime area resident that may be found under an insurance scheme for victim reparation.

The major drawbacks to victim compensation are the costs of the program and legislators' fears concerning the possible expense of the program if eligibility for compensation is not restricted to certain limited situations and individuals. These concerns for cost have resulted in several major restrictions on programs, such as financial need requirements, minimum claims, maximum award limits, and restrictions on the types of losses compensated. This latter area contains the almost universal restriction against payment for property loss found in existing compensation programs. The effect

¹⁶ Alan T. Harland, "Compensating the Victims of Crime," Criminal Law Bulletin 14 (May-June 1978): 216.

¹⁷ Lamborn, "Reparations for Victims of Crime," (in press).

¹⁸ Harland, "Compensating the Victims of Crime," p. 219.

that these restrictions may have on the availability of victim compensation is dramatic. Harland notes that on a national scale, some 90 percent of all victims are excluded from compensation by the property loss restrictions alone. Of those qualifying as injured victims of violent crimes, Harland notes that current restrictions on eligibility would allow compensation for only 8 percent.¹⁹ The use of eligibility criteria and restrictions is discussed in greater detail in Chapter 2.

1.3.2 The Extent of Financial Need Due to Criminal Victimization

Estimates of the financial losses incurred as a result of criminal victimization vary widely, and as yet no truly reliable indicator of these costs has been developed. However, some attempts to ascertain these losses have been made, and may be used to provide a general picture of the need for crime victim compensation in this country. As noted above, virtually every victim compensation program prohibits payments for property loss or damage resulting from crime victimization. Instead, programs focus on payments for medical expenses and loss of income resulting from crime. For this reason the following discussion will be limited to citizens' losses for these allowable expenses.

In what is to date the major study of crime victim compensation costs, Garofalo and Sutton have developed estimates of the value of time lost from work and the cost of medical attention for crime victims.²⁰ Based on data obtained in the 1974 National Crime Survey, the study points out a number of findings which may have some bearing on the need for crime victim compensation. For example, the study found that the economic resources of crime victims are often very limited:

- Nearly one-third of the victims of personal crimes were not employed at the time of the crime.²¹
- "It is the lowest income group which suffers both the greatest incidence and risk of total personal victimization. . ."²²

¹⁹ Harland, "Compensating the Victims of Crime," p. 211.

²⁰ National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice, Compensating Victims of Violent Crime: Potential Costs and Coverage of a National Program by James Garofalo and L. Paul Sutton (Washington, D.C.: Government Printing Office, 1978).

²¹ Ibid., p. 19.

²² Ibid., p. 20.

The National Crime Survey (NCS) data do not provide direct information on losses of income due to crime victimization. However, Garofalo and Sutton were able to infer some of these losses based on 1974 NCS data. For example, their study provided the following information:

Table 1.2
Estimated Number of Personal Victimizations in the United States
(resulting in some loss of work time, by number and value of work days lost, 1974)

Number of work days lost	Dollar value of time lost ^a								Total
	\$1-24	\$25-49	\$50-99	\$100-249	\$250-499	\$500-999	\$1,000-1,499	\$1,500-1,999	
Less than 1	94,517 60%	56,420 36%	6,743 4%	—	—	—	—	—	157,680 27 ^b
1 to 5	18,675 7%	21,500 8%	71,517 25%	140,731 50%	31,093 11%	—	—	—	283,516 49%
6 to 10	—	1,348 4% ^c	—	16,159 45% ^c	8,800 24% ^c	4,442 12% ^c	5,435 15% ^c	—	36,184 6%
More than 10	—	—	2,984 3%	21,622 22%	37,127 38%	27,692 28%	7,227 7%	1,350 1%	98,002 17%
Total	113,192 20%	79,268 14%	81,244 14%	178,512 31%	77,020 13%	32,134 6%	12,662 2%	1,350 0%	575,382 100%

SOURCE: Garofalo and Sutton, *Potential Costs and Coverage*, p. 30.

^a Cases in which the victim's family income was not ascertained have been proportionally allocated across cases which had the same number of days lost and in which income data was available.

^b Column percent

^c Percent computed on base that contains 50 or fewer sample cases.

This table indicates only the direct loss of income of crime victims; in many cases, victims receive some compensation from such sources as social security, workmen's compensation, or disability insurance. Nevertheless, the table provides an indication of the magnitude of income loss experienced by victims of crime.

The study also showed, however, that a relatively small percentage of crime victims actually suffer injuries, and that an even smaller percentage of these required medical attention. For example, it is noted that:

Of the total victimizations that involved victim/offender contact (5,910,199), 27 percent resulted in some injury to the victim; only 10 percent required medical attention of some sort; hospital treatment was administered in 7 percent of the cases; and a hospital stay of overnight or longer occurred for only 2 percent of the victimizations.²³

²³ Ibid., p. 22.

In spite of the relatively low number of victimizations requiring medical attention, the medical costs incurred by victims can be quite high. Building on the earlier work of Garofalo and Sutton, Garofalo and McDermott have revised and expanded the estimates of victim compensation costs using four years of NCS data. Table 1.3, based on the work of Garofalo and McDermott, illustrates the medical costs of crime victims.

Table 1.3
Total and Net Medical Expenses^a

	Total Medical Expenses		Net Medical Expenses^b	
	Number of Victimizations	Percent	Number of Victimizations	Percent
0	156,534	26	274,429	45
\$1 - 9	11,619	2	12,822	2
\$10 - 24	53,077	9	51,741	8
\$25 - 49	89,004	14	71,022	12
\$50 - 99	92,870	15	64,401	10
\$100 - 199	69,330	11	47,524	8
\$200 - 499	47,749	9	31,115	5
\$500 - 999	43,189	7	29,033	5
\$1,000 - 1,999	27,468	4	17,375	3
\$2,000 or more	21,216	3	13,149	2
Not ascertained	2,454	0	1,999	0
Totals	614,610	100	614,610	100

^aIncludes only personal victimizations in which medical attention was required. One-year average estimates derived from 1974-1976 National Crimes Survey data.

^bDefined as total medical expenses minus any amount paid by any kind of public or private medical insurance or health benefits programs, including Medicaid, Veteran's Administration programs, or social welfare programs.

SOURCE: James Garofalo and M. Joan McDermott, "National Victim Compensation—Its Cost and Coverage," *Law and Policy Quarterly* 1 (October 1979): 457.

As shown in Tables 1.2 and 1.3, the financial burden of medical expenses and loss of income is relatively small for most victims. Generally, medical costs are less than \$100; average loss of income due to the victimization is also less than \$100. Thus, the financial justification for victim compensation must rest less with the "average" case (which would be ineligible for compensation under most existing programs), and focus instead on those individuals representing the more extreme cases: the low-income individuals for whom even a loss of \$100 may pose a serious financial hardship, or the individuals who suffer serious injury resulting in thousands of dollars in medical expenses and loss of earnings. While these cases are relatively infrequent, they often constitute both the moral and practical justification for victim compensation programs in the United States: moral, in that it is difficult to deny the need to assist crime victims in such cases of hardship; and practical, in that the infrequency of such cases may assuage legislators' fears that a victim compensation program will develop into a "runaway" social/financial aid program.

1.3.3 Political Support for Victim Compensation

Victim compensation is an unusual program in terms of its ability to generate political support. In a sense, it is difficult to find opponents of victim compensation--the programs hurt no one, and benefit many; unlike many financial assistance programs, victim compensation is (at least nominally) designed for all sections of the population; and finally, few politicians will lose votes by virtue of their support for compensation to innocent victims of crime. The major focus of opposition to the program generally does not rest with the program philosophy, provisions, or target clients, but in concerns over its potential costs.

Public support for victim compensation may stem from many sources. In New York and Washington State, for example, support developed as a result of tragic and widely publicized criminal incidents. The increasing concern for victim rights and growing dissatisfaction with the disparity between expenditures for crime victims and expenditures for criminals was also a strong impetus for victim compensation. For example, the Massachusetts Report of the Special Commission on the Compensation of Victims of Violent Crimes noted that:

Clearly, the plight of the victim is immeasurably worse than that of the criminal. A truly enlightened society cannot possibly provide food, shelter, and legal protection for the offender while totally ignoring the victim.²⁴

²⁴ Commonwealth of Massachusetts, Report of the Special Commission on the Compensation of Victims of Violent Crimes, p. 9.

Finally, support for the idea of victim compensation may have been generated by the general public's increasing awareness of the growing crime rate and the changing perception of the likelihood of becoming a crime victim. As the public perceived the chance of victimization to be higher, support for a program which would offset some of the negative consequences of that victimization would be more likely to grow.²⁵

One final aspect of victim compensation which brings both public and law enforcement support for the concept is the almost universal provision that victims must cooperate with law enforcement officials to be eligible for compensation. In this respect, victim compensation has the potential to assist not only the innocent crime victim but the system designed to bring the offender to justice by encouraging reporting of criminal incidents and participation in the criminal justice process.

1.4 Overview and Summary

Program model documents are intended to provide a review and synthesis of available programmatic experience, research, and expert opinion on a given topic area. The result of this synthesis is not a series of definitive recommendations; rather, the document presents a series of program options, and examines the possible advantages and disadvantages of each.

There are three major dimensions which define the form and operations of a victim compensation program:

- policy;
- program operations and structure; and
- procedures.

The policy dimension includes the elements of coverage, eligibility criteria, and benefits. Included under the program operations and structure dimension are the elements of program placement, staff, interagency relations, and outreach activities. Finally, the procedures dimension includes both the claims/application process and the payment process.

²⁵ Harland, "Compensating the Victims of Crime," pp. 222-223.

The three dimensions of policy, program, and procedures are, of course, interrelated. For example, choices made concerning policy may have a profound effect on the options available for claims processing procedures, while the realities of program operations may limit or even determine the policy choices available to program designers. In some instances, the choice may be between two very different, mutually exclusive options: for example, administrative agency placement versus judicial system affiliation for the compensation program. In other instances, the choice may not be so unequivocal; for example, in selecting payment options, program designers may be able to choose either lump-sum or extended payments, or may decide to provide both these payment methods. Finally, the inclusion of some elements such as financial need or the conduct of an aggressive public outreach effort can be a matter completely at the discretion of policy-makers in each jurisdiction.

Chapters 2, 3 and 4 of this program model focus on each of these dimensions of policy, structure, and procedures. Chapter 5 examines the costs and funding of victim compensation programs, and Chapter 6 reviews methods of evaluating these programs. The sections which follow summarize the findings presented in each of these chapters.

1.4.1 Setting Policy

Chapter 2, Setting Policy, describes the advantages and disadvantages of various policy options available to legislators, state executives, and program operators. Major policy areas are summarized below.

Coverage. First examined is the issue of coverage, including both the types of losses to be compensated and the types of crime which will result in compensation. Virtually every compensation program allows payments for expenses incurred as a direct result of an injury or death resulting from a criminal victimization. For victims of crime, this includes unreimbursed medical expenses and loss of wages. In addition, some states offer payments for such costs as non-medical care or occupational training necessitated by the injury. For dependents, eligible losses include loss of support and funeral expenses. Finally, some states cover citizens' costs of replacing services which would have been performed by the crime victim. This latter type of coverage provides a more equitable compensation scheme, in that it recognizes the financial hardship imposed by loss of a homemaker.

Compensation for non-physical injuries, such as pain and suffering or mental and nervous shock, has generally been excluded. Yet pain and suffering may be a legitimate claim by many victims, particularly victims of sexual assault. The programs that exclude these categories of injuries generally do so on the bases of difficulties in determining the extent of harm, the costs involved

in compensation, and the possibility of fraud. However, recognizing that mental injury can result from a victimization, some programs have explicitly allowed this type of loss, while others include it indirectly through referral services or designation of treatment for shock as a medical expense.

Property loss is compensated only in very specialized cases. Although opposed on the basis of the high potential for fraud, the ready availability of private insurance, and the supposed minimal hardship entailed by these losses, the primary reasons for its exclusion are financial and administrative.

Compensable crimes may be defined either by specifying particular crimes or by including any crime involving violence or injury. While the narrow list of crimes avoids potential ambiguity and may minimize costs, the functional test is generally preferred, in that the risk of inequitable exclusion of crime victims is minimized. Motor vehicle offenses are universally excluded; exceptions are given only when the vehicle is intentionally used to inflict injury.

Eligibility Criteria. Eligibility criteria may be used to define beneficiaries, minimize unjust attainment of benefits, promote cooperation with the criminal justice system, and minimize program costs. Program beneficiaries generally include victims, intervenors, and dependents. Some debate has arisen concerning dependent eligibility: specifically, dependents may be defined either by a relations test or by a functional test which confers dependent status on anyone relying on the victim for financial support. Although the relations test is easy to apply and may result in lower costs, the functional test appears more equitable.

Many programs provide direct payments to service providers such as hospitals or physicians. Positive results of this policy may include increased incentives for service providers to offer treatment and greater certainty that funds intended for these third parties are actually received.

Residency is also an eligibility criterion in some states. While this may serve to reduce costs and may be justified under some compensation rationales, most states have found the residency requirement to be contrary to their compensation policy.

Attempting to reduce unjust attainment of benefits, programs have excluded victims related to the offender (on the basis that fraud may be more likely in these cases); excluded victims who contribute to their own injury; and required reporting of the incident to police. Many have opposed the first two exclusions on the grounds that they unjustly deny compensation to deserving

and needy individuals. It is also argued that the reporting requirement alone would reduce unjust attainment of benefits. The reporting requirement is also intended to further victim cooperation, as is the requirement that victims cooperate with police and prosecutors.

Cost containment is an issue for most victim compensation programs, and a number of eligibility criteria have been developed in answer to this concern. Minimum loss criteria, for example, screen out large numbers of small claims which would presumably cost a great deal to process. Unfortunately, many deserving victims may be excluded by these criteria. In addition, critics have charged that program costs would not be substantially increased by elimination of minimum loss criteria. Financial need requirements have also been used to exclude those cases in which the victim can afford to absorb the crime loss. However, these tests are difficult to administer, require substantial administrative cost investments, and may result in substantial inequities.

Benefits. Programs generally place a maximum ceiling on the awards to be paid, ranging from \$10,000 to \$50,000. While the limits are intended to reduce program costs, the lower maximums may be inadequate for victims who have received serious, disabling injuries. As most claims do not reach maximum limits, programs may consider raising these limits to accommodate the few cases of extreme need.

In addition to maximum limits, programs generally limit weekly payments to some specific maximum, usually ranging from \$100 to \$250. These maximums ensure that the total benefit will be paid over an extended period of time, and that a steady source of income will be realized. However, if the statutory weekly maximum is set at a low level, the true degree of assistance provided to the victim may be unduly diminished.

Minimum deductibles are also intended to reduce program costs by eliminating small claims and/or placing a portion of the financial loss with the victim. However, these restrictions do not appear to reduce costs substantially, since administrative costs are incurred in reviewing these applications, and the amounts in question are generally small.

Among the other benefits provided by victim compensation programs are emergency awards and attorneys' fees. While most programs provide some form of emergency assistance, programs are generally divided on the issue of attorneys' fees. On the one hand, provision of these fees may encourage use of attorneys, which can ease the administrative burden of compensation programs. On the other hand, some programs prefer to encourage a non-legalistic, non-adversary approach to victim compensation, and thereby prefer not to support attorneys' involvement in the process.

One final issue in benefits policy is the use of collateral source deductions. Programs generally compensate only those expenses remaining after other sources of compensation such as insurance, Medicaid, or welfare have been received. This policy may result in substantial savings in benefit expenditures. Some programs, however, have decided that deduction of certain payments, such as life insurance benefits, may bring about considerable hardship and have exempted such benefits from the collateral source deduction rule.

1.4.2 Structures and Operations

In response to varying political, geographical, and financial conditions, existing victim compensation programs in the United States have developed a surprising variety of structures and operations. Chapter 3 examines the range of available options for compensation programs and discusses the advantages and disadvantages of each.

Program Affiliation. Victim compensation programs typically assume placement in one of the following: a newly created administrative agency; an existing administrative agency; or judicial system placement.

Most compensation programs have chosen the new agency placement. Advantages of this affiliation include:

- flexibility and informality, which allow programs to minimize victim intimidation and streamline procedures (and therefore reduce program costs);
- accountability, through increased visibility of the programs' efforts and expenditures; and
- an exclusive focus on victim compensation which facilitates development of staff expertise, concern, and attention on compensation matters.

Disadvantages, on the other hand, include the possibility of longer implementation periods, higher initial costs, and inefficiency of operations in states with low claim volumes.

Placement in an existing administrative agency has also been chosen by a number of states. Generally, the sponsoring agency is either the workmen's compensation agency or an administrative board charged with hearing claims against the state. Advantages of this placement include: (1) rapid

implementation and lower costs due to the possibility of "borrowing" staff, procedures, and facilities from the sponsoring agency; and (2) the program's ability to draw upon contacts and relations established by the parent agency. Placement in the worker's compensation division offers some special advantages. The program may use the worker's compensation schedule of benefits for compensating crime victims; the victim compensation component may utilize the program's regional offices, thereby creating an inexpensive, decentralized structure; and crime victims may benefit from the lobbying efforts of labor groups for improved procedures or expanded benefits. Disadvantages of placement in an existing agency include potential resistance on the part of the sponsoring agency, possible conflicts between the procedures and policies necessary for victim compensation and those necessary for the other responsibilities of the agency, and the possibility that cost savings of this placement will disappear as the claims volume grows.

Judicial system placement has been chosen by only four states. Principal benefits of this placement are the potential for cost savings, since it would avoid establishment of a new structure for victim compensation; the availability of highly trained personnel to staff the compensation effort; and the availability of formalized procedures which may safeguard claimants' rights. However, disadvantages of this approach may be considerable:

- lack of centralized responsibility for the program;
- court overcrowding;
- increased costs due to relatively high salaries of court system personnel; and
- possible intimidation of the claimant.

Staff. Administrative programs generally employ both a claims board, charged with the ultimate responsibility for case decisions, and administrative staff, charged with program management and claims processing. Frequently, an executive secretary to the board or program administrator is given general management responsibility for the program. In some cases, however, responsibilities of the board and staff overlap: board members may assume program management duties, while administrative staff may take on claims decision-making responsibilities.

Staff size will be determined by claims volume and funding restraints; unfortunately, this latter condition predominates in many states, resulting in substantial case backlogs. Although requirements for the board and staff vary among programs, backgrounds in law, medicine, law enforcement, claims investigation, and human service programs are most common. Compensation statutes may also prescribe the specific composition of the board in many cases.

Court-based programs generally rely on existing personnel. Judges or commissioners usually serve as claims decision-makers; investigations are conducted by the State Attorneys' General Offices or District Attorneys' Offices; and claims processing is carried out by the Court Clerk. Court-based programs have often experienced difficulty in obtaining adequate numbers of staff for the victim compensation effort.

Training is an important staffing issue which is often overlooked by victim compensation programs. While most staff will already possess experience in such fields as law, medicine, law enforcement, or program administration, special training efforts are still necessary. Considerations involved in the development of victim compensation training methods are examined in Section 2.3.3.

Volunteers and interns may be used to ease staffing pressures in victim compensation programs. Volunteers should generally provide only supportive or ancillary services such as publicity efforts or special victim services. They must be closely supervised and well trained. Interns from local colleges or universities may offer a source of low-cost staff assistance in return for academic credit or nominal wages.

Interagency Liaison. Such groups as the police, courts, the medical community, governmental assistance programs, private insurance, and victim service programs all have an important bearing on the operations of the victim compensation program. By developing strong cooperative relations with these groups, the compensation program may facilitate the process of obtaining information on victim claims, improve its public awareness activities, and enhance its services to victims by referring needy individuals to appropriate services and agencies.

Public Awareness and Education. The effectiveness of a victim compensation program depends on its ability to reach its intended clients. However, many victims are not aware of the program's existence or are uninformed as to its benefits and requirements. In part, this may be due to policy-makers' unwillingness to publicize the program, due to their fear that large claims volumes will deplete the states' financial resources. However, many states have implemented some form of public awareness component. Methods include the distribution of printed materials, public speaking, media advertisements, requiring police and hospitals to notify victims of the availability of victim compensation, use of victim/witness service notification procedures for victims, and screening of police reports to identify potentially eligible victims who can be notified by mail or telephone.

1.4.3 Claims Procedures

Victim compensation procedures are established through a variety of sources, including the compensation statute, program rules and regulations, administrative decisions of the compensation staff, and the demands placed on the program by virtue of its placement and/or structure. Procedures are generally established in two areas: claims processing and claims payment. Chapter 4 examines these concerns.

The Claims Process. Application forms, which begin the claims process, generally take one of the following approaches:

- Comprehensive claim forms request detailed information on the crime, the victim, and the losses suffered. While they reduce the investigative burden on program staff and provide a sound basis for early screening decisions, they may discourage applicants or request unnecessary information.
- Short claim forms request only the information needed to make an initial screening decision. They reduce the burden on the claimant, but increase the investigative responsibilities of program staff.
- Combined claim forms have an initial screening section and a section requesting detailed information. They allow the program staff (and potential claimants) to screen claims quickly, while providing immediate access to detailed information on cases which appear to be eligible.

Regardless of the form used, programs must ensure that the form requests only the information absolutely necessary to carry out claims operations. There is now a trend toward more simple application forms.

There are several methods of distributing the application forms. Some rely solely on the victims' awareness of the program and initiative in obtaining the forms, while others rely on active participation by the police, victim service agencies, or the compensation program in seeking out potentially eligible victims. Some compensation programs have also instituted screening procedures which tend to restrict distribution of the full application to potentially eligible victims. Generally, the more aggressive and less restrictive distribution approaches will result in a greater number of applications, at the risk of receiving more unwarranted claims. More restrictive approaches, on the other hand, may reduce ineligible applications (and staff workload), at the expense of eligible victims who may inadvertently be denied an application.

Intake procedures are the next step in the claims process. Establishing an adequate claim record is essential to this procedure. Manual records which track the receipt of the application and note the progress of case processing are generally adequate, although some programs are considering computerization of records. Expense of this latter option may be prohibitive, however, for smaller programs or those which cannot share the expense of computerization with other agencies or a sponsoring agency.

Most programs perform some initial screening of the application before assigning it for further processing. By eliminating obviously ineligible cases at the outset, programs may reduce wasted staff effort and thereby reduce program costs. Mid- or lower-level staff can often perform this function at a much lower cost than higher-level employees or board members. Training and quality control review can ensure that the effectiveness of these decisions is maintained. The final stage in the intake process is assignment of the claim to an investigator. Assignment decisions may be made on a geographic or workload basis.

Claims investigation/verification is the most time-consuming aspect of the claims process. Information must be obtained on the crime, injuries received, victim behavior during and after the crime, extent of net loss, and in some cases, the finances of the victim. Programs which request most of this information on the application form will generally limit themselves to verification of that information, while programs which use abbreviated forms may be faced with a more intensive investigative effort. Investigation/verification procedures may include field work, telephone contacts with information sources, and mail requests for information. Several approaches have been developed to speed the investigative process, including greater reliance on verification than investigation; minimizing field work; conducting abbreviated investigations (or no investigations) on small, straightforward claims; and obtaining the assistance of medical facilities or victim service groups which are willing to aid the victim in obtaining necessary documentation of the claim.

Provisions for investigative hearings are included in most victim compensation statutes. These hearings may serve a number of purposes. For example, they may be used to (1) obtain additional information from the applicant, (2) verify specific points or clarify discrepancies, or (3) allow applicants to defend their claims. Provisions concerning hearings vary among programs: some hold no hearings at all, while others are required to conduct one on every claim. More commonly, programs provide hearings on an as-needed basis. Ideally, hearings should be conducted throughout the state at locations that are convenient for the applicant; in addition, hearings should assume a non-adversarial tone. Unfortunately, centralized hearings and adversarial proceedings are not uncommon.

Hearings may involve substantial expense to both the program and the applicant, and a reduction in the number of hearings conducted has thus been proposed as a cost-saving measure. The use of lower-level hearing personnel and less formal procedures has also been suggested for similar reasons. However, compensation programs must ensure that any cost-saving measures introduced do not compromise claimants' rights to justice.

The final stage of the claims process is the appeal, which is offered to those claimants who are dissatisfied with the original decision on their claim. Some states, however, do not provide any such procedure, apparently on the grounds that a "good will" gesture of the state should not be subject to appeal. Cost considerations may also figure in this decision.

Of those states which do provide for appeal, two types are available: internal/administrative review systems and judicial review. The internal review is especially common when original claims decisions are made by one member of the board or by a single administrative employee. These reviews are likely to be cost effective, and may be less intimidating than judicial reviews. Judicial review may be provided in addition to internal appeals, although in some states it is the only option offered. Opponents to judicial review have argued that it will overburden the courts and provide a legal basis for arguments that victim compensation is a right, rather than an act carried out by the grace of the state. In practice, however, these arguments are not supported, since judicial reviews are limited in scope and are used very infrequently in any case.

The Payment Process. Programs must also establish procedures for paying claims which are approved. Most long-term disability or death benefits are made on a protracted payment basis, while one-time medical expenses and loss of wages are paid by lump sum. Protracted payments require a greater investment of staff time to process and monitor payments. These costs may be recouped, however, since protracted payments may be terminated (and the total benefit payment reduced) if the claimant's financial condition improves or dependency status changes. Lump sum payments are simple and inexpensive to administer. However, they are best used only for smaller benefit payments.

In addition to establishing a payment process, programs must decide which parties may receive payments directly from the program. While every program includes victims and their dependents, some have also extended this eligibility to service providers who assist victims of crime. This procedure not only ensures that these parties will receive any payments due, but may also ensure that service providers will not hesitate to assist the victim of crime for fear of later non-payment.

1.4.4 Costs and Funding

The costs of victim compensation programs are examined in Chapter 5. The potential cost of victim compensation has been the major concern of legislators, program implementors, and program operators. A number of compensation programs have been opposed on the basis of cost, while those which have been implemented have been shaped by cost concerns.

Operating Costs. Programs have two broad areas of operating costs: administrative expenses and benefit expenditures. Administrative costs include such items as salaries, supplies, contractual services, travel, and communications, while benefits include all payments made to victims, their dependents, or service providers. In general, administrative costs for victim compensation programs are quite modest. Most use under 30 percent of their total budget for administrative purposes. In addition, programs generally become more efficient over time (that is, they supply more benefit dollars for the same number of administrative dollars).

Existing victim compensation programs differ dramatically with respect to amounts expended on benefits. For the most part, however, these differences appear to be explained by variations in the size of the states' total budgets rather than the potential demand for victim compensation benefits. Common maximum limits on benefits also appear to provide legislators with a certain degree of control over total benefit expenditures.

Although state-level data on the possible effects of program requirements are limited, studies of the potential costs of national victim compensation may provide some insight on the impact of these requirements. For example, the studies have indicated that the elimination of minimum loss criteria would increase program costs only slightly while greatly increasing the number of eligible crime victims.²⁶

Funding of Victim Compensation Programs. Most programs rely on the general revenues of the state for the majority of their financial support. While this offers a relatively stable source of funds, substantial problems may arise if appropriations for administrative expenses or benefit expenditures are inadequate.

²⁶ See National Criminal Justice Information and Statistics Service, Potential Costs and Coverage, and James Garofalo and M. Joan McDermott, "National Victim Compensation--I: Cost and Coverage," Law and Policy Quarterly 1 (October 1979).

A number of additional funding sources have also been suggested and/or implemented. The most common of these is the surcharge or fine levied on convicted offenders. Other approaches include imposition of filing fees, state recovery of any payments for damages which the victim might receive by suing the offender in civil court, and restitution payments. A recent funding strategy is to place in special escrow accounts any proceeds which offenders may gain by selling the rights to their stories to the media or the press. The escrow funds would be used to compensate the victims injured by the criminals in question.

Many attempts have been made in the U.S. Congress to establish federal support for crime victim compensation. Under most schemes, such support would be contingent upon states' compliance with the standards set forth in the legislation. Passage of federal legislation would therefore encourage additional states to implement crime victim compensation programs and promote uniformity of requirements and benefits among states.

1.4.5 Evaluation

Chapter 6 concludes the program model with an examination of key evaluation issues: the benefits of evaluation, program goals, establishing measures of program effects, and data collection and analysis. Although many compensation programs have been implemented in the United States, relatively little is known about their actual impact. Programs now have the opportunity to construct and implement quantitative assessments of their operations. Such evaluations would help to improve existing programs and guide the implementation of new programs.

Objectives of victim compensation programs are rarely made explicit. Generally, however, programs' objectives appear to center on the issues of (1) demonstrating the state's concern for the crime victim; (2) reducing the financial impact of victimization; (3) increasing cooperation with the criminal justice system; and (4) containing program costs. In addition, programs may develop objectives concerning the efficiency of their operations. Process and impact measures which may allow programs to assess their actual performance in comparison with their objectives are examined in Section 6.2.2. Although much of the data necessary for evaluations will be routinely collected by victim compensation programs in the course of their normal operations, programs may also wish to employ such supplementary data collection methods as applicant surveys, general population surveys, review of national statistics, or examination of records maintained by other local agencies such as the police department.

Future studies may focus on such critical issues as the effects of specific program structures and policies, the impact of expanding victim services, and the potential effects of federal support for victim compensation.

CHAPTER 2: SETTING POLICY

2.1 Introduction

The designers of a victim compensation program must define (1) exactly which people, (2) under what circumstances, (3) will receive what type of compensation. The policies of the victim compensation program are the formal expression of these basic decisions. By far the most important forum for stating victim compensation policy is the specific law which authorizes and defines the program. However, policies may also be stated in the formal rules and regulations of the program, or by less formal actions and agreements of the program designers and operators. Finally, the U.S. Congress may also influence policy for state programs, since any funding assistance for victim compensation provided as a result of a federal statute would be contingent on compliance with the program guidelines of that statute.

Policy decisions on clients and benefits are, of course, dictated by decision-makers' judgments concerning the optimum design of the program. Yet other factors may affect these decisions. In particular, decision-makers' assessment of public sentiment, their fears over potential abuse or fraud, and their concerns about program cost and financing have had a major impact on the policies which define the victim compensation effort. Specific policy decisions which reflect these concerns will be noted below.

The enabling legislation of a victim compensation program is by far the most important statement concerning the policy options chosen by the program designers, and thus this chapter will focus primarily on these victim compensation statutes. Although most of the present statutes are cast along similar lines, sufficient differences exist among them to enable states considering either new legislation or amendments to existing legislation to select from among several approaches in almost every provision of the law. This chapter identifies and examines the major policy options established in the statutes, and reviews the arguments which support or oppose these options.

Section 2.2 below addresses coverage of the victim compensation program. This is followed in Section 2.3 by a discussion of eligibility criteria, and in Section 2.4, by a discussion of the kinds of benefits and limits on payment.

2.2 Coverage

The most basic decision to be made by victim compensation programs is the circumstances under which they will provide compensation. Specifically, programs must determine the types of losses which will result in compensation. Most programs, for example, will wish to provide compensation for the actual monetary losses resulting from necessary medical care, while some may also wish to compensate victims for future losses. A second area to define is the type of crime to be covered under the victim compensation scheme. The policy options available in both these areas are examined below.

2.2.1 Compensable Losses

At the most general level, compensable losses are those which are incurred as the direct result of a criminal incident. Thus, for example, losses may include the following:

- medical expenses;
- rehabilitation costs;
- physical disability;
- loss of the services of a family member;
- loss of support for dependents;
- funeral costs;
- loss of future earnings;
- mental impairment; and
- property loss and damage.

However, for a variety of reasons, including cost, ease of administration, practicality and the political and moral values of program designers, most programs do not attempt to compensate every possible loss resulting from a crime. Below the typical compensable losses are examined, and the reasons for and against compensation of certain types of losses are explored.

Expenses Resulting From Criminal Injury or Death. In one form or another, every existing victim compensation program provides payments for monetary

losses which are attributable to an injury or death resulting from a criminal victimization. However, these monetary losses can stem from several different sources, and programs often vary in the particular sources of loss compensated.

Payment for medical expenses incurred in treating a criminal injury is the most common type of compensation offered, and one which is covered by every victim compensation program. Similarly, all programs provide payments to cover loss of earnings resulting from injuries caused by the crime. Certain statutes specifically include expenses for other types of losses: Florida, for example, stipulates that expenses for nonmedical care or "treatment rendered in accordance with a religious method of healing" will be compensable; California provides that occupational training costs will be reimbursable by the victim compensation program;² and Delaware specifies that loss of future earnings may be compensated.³ In states where loss of future earnings is not specifically provided for, the loss of earnings provision is often construed to cover future earnings as well.

In addition to these losses, some states have realized that a family member may provide services for which no payment is received, such as a homemaker who manages the household or a family member who routinely provides important maintenance or repair services for the home. Thus, some statutes also stipulate that victim compensation may cover the amount required to replace these services through a paid employee, such as a housekeeper or maintenance worker. These "replacement service costs" may be paid either to injured victims or the survivors of persons killed as a result of a crime. Other benefits generally offered to survivors include funeral costs and loss of support.

Compensation for Non-Physical Injury. In addition to compensation for physical injuries, compensation programs may elect to provide payments for non-physical detriment caused as a result of a crime. This would generally include payments in two areas: pain and suffering, and mental and nervous shock. However, most victim compensation programs consider these injuries to be too vaguely defined and have rejected these types of payments.

Only two states, Hawaii and Minnesota, include benefits for pain and suffering under their victim compensation program. Generally, states have opposed these awards on the grounds that they would be (1) inappropriate for a victim

¹ Florida Stat. Ann., Sec. 960.08 (West Supp. 1977).

² California Government Code, Sec. 13965(a)(3) (West, 1977).

³ Delaware Code Ann., Title 11, Sec. 9001(8) (Supp. 1978).

compensation program, (2) too difficult to administer, and (3) too costly. These arguments are examined below.

In the context of most civil cases, awards for pain and suffering are intended to compensate the victim and to punish the wrongdoer. The awards are often large, and are paid by the wrongdoer himself. While pain and suffering awards by the victim compensation program would appear to be similar to pain and suffering awards provided in civil court actions, they differ in two important aspects: (1) the awards are paid by the state, not the wrongdoer; and (2) the awards are not punitive in nature. Because of these essential differences, opponents conclude that it is inappropriate for victim compensation programs to provide this type of award.

It has also been argued that the difficulty of determining the actual amount to be awarded for pain and suffering could pose significant administrative problems for victim compensation programs. Lamborn cites the experience of the Hawaii program, which appears to support this argument.

As a practical matter, the evaluation of pain and suffering and the amount to be awarded for it has been the most difficult aspect of our deliberations. Of necessity pain and suffering is unique to each case and it is impossible to establish objective criteria for its measurement. The lack of such criteria makes it difficult, if not impossible to assure that each qualified applicant is receiving a fair and equitable award.

Finally, awards for pain and suffering have been opposed on financial grounds. In civil actions, at least, awards for pain and suffering may be quite high; many have expressed the fear that comparable awards under a victim compensation program would require more funds than most legislatures would be willing to appropriate. Also, since pain and suffering may accompany a wide variety and great number of criminal victimizations, programs which offer these payments may expect to pay a substantial number of awards in this area. This contention is again supported by the experience of Hawaii, where 39.2 percent of the total awards in 1977 were for pain and suffering.

⁴ Leroy Lamborn, "The Scope of Programs for Governmental Compensation of Victims of Crime," University of Illinois Law Forum (1973): 35.

⁵ Hawaii Criminal Injuries Compensation Commission, First Report, 1969, pp. 4-5, cited in Lamborn, "Compensation of Victims of Crime," p. 36.

⁶ Hawaii Criminal Injuries Compensation Commission, Tenth Annual Report, 1977, p. 6.

In spite of the administrative problems arising from attempts to assess pain and suffering, one strong argument exists for including this type of injury. Pain and suffering is a real, and often disabling result of many crimes. Rape victims, in particular, experience pain and suffering and yet often do not sustain physical injury; thus under most state programs they are denied compensation. Tennessee has recently remedied this situation by specifically making compensation available for pain and suffering experienced by victims of rape or sexual deviancy. Five states, Delaware, Hawaii, Minnesota, New Jersey and Wisconsin, provide compensation for pregnancy resulting from rape, but this provides benefits in only a small percentage of all rape cases.

Some programs which use the structure and/or benefits of workmen's compensation have circumvented the problems inherent in awarding pain and suffering without totally denying this type of award. As Lamborn notes, workmen's compensation benefits generally incorporate some losses which are normally included under the concept of pain and suffering. Thus, for example, workmen's compensation will not only pay the medical expenses associated with injuries resulting in a permanent total disability, but will also provide a lump sum award for the disability. Although the disability award is usually smaller than a civil court award for pain and suffering, it serves much the same purpose. Maryland provides one example of this practice in a victim compensation framework. There, the victim compensation board often gives awards for disfigurement resulting from the crime, over and above expenses, even if the disfigurement does not impair the earnings or earning potential of the victim.

Compensation for mental and nervous shock is provided in five states: Delaware, Hawaii, Minnesota, New Jersey, and Wisconsin. The exclusion of this type of injury from most compensation programs is based on a number of factors. There is concern over the possibility of fraud resulting from pretended injuries of this nature. Proof of a connection between the crime and the mental and nervous shock may be difficult, especially where no physical injury has occurred. Also, awarding compensation for psychological injuries may place too great a financial strain on the program. Finally, mental and nervous shock is similar to pain and suffering, and the problems associated with the latter apply here as well.

In spite of these potential drawbacks, many have argued that mental and nervous shock is a legitimate, appropriate, and practical area for compensation. Victimization may often result in short- or long-term psychological damage which may be as disabling as any physical injury. If professional treatment is provided to remedy this psychological damage, it is difficult to argue that those medical expenses should not be compensated. Some programs have tacitly recognized this fact. Thus, while compensation for mental and

⁷ Lamborn, "Compensation of Victims of Crime," p. 35.

nervous shock may not be specifically authorized in their statutes, medical bills incurred through treatment for this condition are treated as any other medical expense. Other programs may achieve a similar result by referring applicants having severe mental and nervous shock to various counseling services. This arrangement is used in New York State, for example, where the board may contract directly for counseling services for victims.

Property Loss. The third option for compensable losses is to provide payments for property lost as a result of criminal victimization. With a few narrow exceptions, none of the existing compensation programs have elected this option. Most programs implicitly exclude property losses by defining a victim as one who suffers personal injury or death, or by defining compensable losses as those arising from a criminal injury. Some states such as Wisconsin accomplish the same result by listing the crimes compensable and restricting this list to crimes against the person. Finally, some statutes also include express prohibitions of awards for damage or loss of property.

Almost every statute includes one exception to the property loss exclusion, however. Recognizing that certain types of property such as eyeglasses, hearing aids, dentures, and so on may be essential to the well-being of the victim, many states provide for the loss of this property under their victim compensation benefits. Some, like Wisconsin, explicitly list these items as compensable losses, while others implicitly include them within the broad scope of medically-related expenses they cover.

The question of whether property losses should be included in crime victims compensation programs has been the subject of considerable discussion. The overriding objection to property coverage is the excessive financial burden such coverage would entail. In 1977, reported property losses from robbery,¹⁰ burglary, larceny-theft, and motor vehicle theft totaled over \$4.3 billion. Arguments against property loss compensation have been bolstered by the claim that "most property lost or damaged through crime is recovered."¹¹ However, the FBI reported that in 1977 only 32 percent of all property stolen was recovered. Further, the overall recovery rate was only as high as it was because of the high recovery rate for stolen motor vehicles, 60 percent; the

⁸ New York Crime Victims Compensation Board, 1976-1977 Annual Report, pp. 4, 15.

⁹ Wisconsin Stat. Ann. Sec. 949.01(4) (West Supp. 1977).

¹⁰ United States Department of Justice, FBI Uniform Crime Report, 1977 (Washington, D.C.: Government Printing Office, 1978), p. 159.

¹¹ Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," Minnesota Law Review 50 (1965): 272.

recovery rates for all other types of property were considerably lower than 32 percent.¹² Moreover, even when property is recovered, a loss may be sustained because of damage to the property.

Another concern with property loss compensation is the possibility of fraud. This possibility is thought to be much greater than in the personal injury situation because the chances of success are so much greater. A person could easily overstate the value of property stolen or even claim a theft where none occurs. It would be considerably more difficult to feign a personal (physical) injury or to claim greater expenses resulting from such injury than actually existed. Intentional destruction of property, such as occurs in arson cases, is also a possibility, whereas self-inflicted injury is highly unlikely.

A third argument against property loss coverage is the ready availability of other forms of financial relief for this type of loss. Opponents argue, for example, that property insurance is both readily available and widely used. Similarly, they state that federal income tax deductions are available for stolen property which is uninsured. Unfortunately, these sources of financial assistance do not meet the needs of many citizens. Low income residents, for example, may not be able to afford property insurance, and yet may not benefit from a tax deduction.

The remaining reasons for not extending benefits to property loss situations are based on philosophical and social policy considerations. Loss or damage to property lacks the social and personal impact of personal injury. Many argue that in light of the limited financial resources of compensation programs, benefits must be restricted to situations involving the greatest hardship. Childres states:

Criminally caused damage to property is never as disastrous as serious injury to the person. Property damage does not destroy a person's only indispensable asset, that is, the ability to earn a living.¹³

This argument is not entirely persuasive, however. The loss of a business or of a valuable personal property could prove to be more severe than a minor personal injury. The gravity of a loss must be determined by the facts of the situation. This reasoning has led one commentator to suggest that

¹² U.S. Department of Justice, FBI Uniform Crime Report, 1977, p. 159.

¹³ Robert D. Childres, "Compensation for Criminally Inflicted Personal Injury," New York University Law Review 39 (May 1964): 444.

essential property be covered.¹⁴ Nevertheless, the perception of much greater harm befalling the personal injury victim than the individual whose property is stolen causes the public to have more sympathy for the former. This sympathy translates into a reluctance on the part of legislators to provide for property loss, and the rejection of this option by victim compensation programs.

General Considerations. Regardless of the specific type of loss considered to be compensable, most programs also stipulate that the losses must meet certain other characteristics. On the most basic level, the loss must result from a specific criminal incident. Additionally, the loss must consist of (1) present and future earnings and support lost due to the victimization, and (2) out-of-pocket expenses. This latter category excludes losses which will be reimbursed through other sources such as insurance or workman's compensation, and represents only those expenses which the victim actually incurs. The provision for compensation of "out-of-pocket" expenses is rooted in the philosophy that victim compensation is a remedy of "last resort," and that all other sources of assistance must be exhausted before victim compensation will be granted. Further information on this aspect of victim compensation is provided in Section 2.4.5.

2.2.2 Compensable Crimes

In the most general sense, victim compensation payments are intended for individuals who are injured as a result of crime. Thus, a major concern of most policy-makers has been to define the crimes which will establish the victim's eligibility. Statutes have adopted a number of approaches to specifying these crimes; these options are examined below. This is followed by a discussion of some specific provisions which are often included in an attempt to clarify compensable offenses.

Defining Compensable Offenses. Many statutes simply include as a compensable offense any felony or misdemeanor which is punishable under the laws of the state and which, in fact, results in physical injury or death; this is the broadest definition. A few statutes, such as that of Kentucky, limit coverage to those crimes that inherently pose a threat of injury or death. Another group accomplishes much the same result by specifying a list of crimes which are inherently dangerous. New Jersey combines two approaches, listing specific crimes, but also including a catch-all provision covering "any other crime involving violence."

¹⁴ U.S. Congress, Select Committee on Aging, Victim Compensation and the Elderly: Policy and Administrative Issues by Richard Hofrichter, 96th Cong., 1st sess. (Washington, D.C.: Government Printing Office, 1979), p. 4.

Each of the above approaches embodies benefits and drawbacks. The broad approach is the most liberal, making compensation available to a person who has been injured as a result of any crime. This prevents denial of benefits in a situation where injury arises from the commission of a crime not inherently violent in nature, such as the individual who is accidentally injured when a shoplifter attempts to escape capture. More restrictive definitions, on the other hand, may be easier to administer and may assuage legislators' concerns that "undeserving" victims might receive compensation. Thus, several states have defined compensable crimes as violent crimes or those posing an inherent threat of injury or death. Others have listed the specific crimes which will result in compensation.

While this latter approach minimizes ambiguity and problems of interpretation, it may occasionally produce the inequitable result of a person being denied compensation only because the crime was not specifically included in the statute.¹⁵ The case of a person being injured as the result of an arson fire provides a relevant hypothetical example. If the original drafters of the legislation did not include arson in the list of compensable crimes, an injured arson victim would receive no compensation. A second drawback of listing specific crimes is that updating of the victim compensation statute would be required whenever penal law revisions are made.

Intent of the Offender. Many statutes contain a provision which creates a distinction between the nature of the act and the intent of the offender. This provision removes from consideration the state of mind of the actor, or the mens rea element of the offense, so far as recovery is concerned. Thus, an act will be considered to be criminal for purposes of compensation (if otherwise qualified) even if the offender lacks the legal capacity to commit a crime by reason of insanity, intoxication, infancy, or the like. These provisions are based on the premise that capacity is irrelevant to the question of eligibility for compensation. Moreover, this type of provision serves to lighten the administrative burden by eliminating the necessity to prove capacity.¹⁶

Motor Vehicle Offenses. While the above provision tends to increase the scope of crimes covered, another common provision restricts the scope of included offenses. This provision excludes from the definition of crime any act involving operation of a motor vehicle unless the vehicle is intentionally used to inflict injury.¹⁷ The major reason for this restriction apparently

¹⁵ Nancy Plunkett Johnson and James Walker Johnson, "Comments: Compensation for Victims of Violent Crimes," Kansas Law Review 26 (Winter 1978): 229.

¹⁶ *Ibid.*, p. 230.

¹⁷ *Ibid.*

is the intention of these programs to compensate victims of violent criminal conduct as opposed to victims of negligent behavior.

Excluding motor vehicle accidents which are unintentional may cause some hardship. For example, an injury may occur when the perpetrator commits such motor vehicle offenses as driving recklessly or driving while intoxicated. Unhappy situations such as these are tempered somewhat by the fact of insurance, but it is not altogether uncommon for a vehicle to be uninsured. Overall, the motor vehicle exclusion is supported by valid reasons, but situations could arise where benefits would be inequitably denied.

2.3 Eligibility Criteria

Compensation programs may further define and limit the scope of their activities and clients by imposing specific eligibility criteria on victims and their dependents. Policies concerning eligibility are generally formulated with the following objectives in mind:

- to define the intended beneficiaries of the victim compensation program;
- to minimize the possibility of "unjust" attainment of benefits;
- to promote victim cooperation with the criminal justice system; and
- to contain the potential costs of providing crime victim compensation.

The eligibility options included in a state's victim compensation statute reflect the degree of emphasis which the state gives to each of these objectives. Using these objectives as the ~~framework for discussion~~, the various eligibility criteria available to victim compensation programs are examined below.

2.3.1 Criteria Which Define Program Beneficiaries

Persons Eligible for Compensation. Since the intent of most victim compensation programs is to assist victims of crime or their dependents, the eligibility criteria of the program first and foremost must specify precisely which individuals may apply. Generally, these individuals fall into three

categories: victims, intervenors, and dependents. "Victims" are defined in the same manner for all states, but the definitions of intervenors and dependents varies among states.

A victim is commonly defined as a person who is injured or killed as a direct result of a crime. Intervenors or "Good Samaritans," on the other hand, are defined as persons injured or killed:

- acting to prevent a crime;
- acting to apprehend a criminal;
- acting to aid a victim of crime; and/or
- aiding a law enforcement officer.

Typically, statutes will provide some combination of these factors in their definition of intervenors. In some cases, states make no distinction between victims and intervenors, using the term "victim" to apply to both.

Intervenors are sometimes afforded a greater scope of coverage than victims, apparently on the theory that they play an active role in crime prevention and control, and should thereby receive extra consideration for their efforts. For example, some statutes offer intervenors reparations for property damaged or lost during the attempt to stop or prevent a crime. It is precisely to encourage this kind of role in crime prevention and control that some states have included compensation payments for the Good Samaritan.

If the victim or intervenor dies as a result of the violent crime, his dependents are eligible for compensation. Several options exist for defining exactly which persons qualify as dependents. One test confers dependency status only on specified relatives such as a spouse, parent, or child. Another test, functional in nature, does not rely on the relationship between victim and dependent, and instead defines a dependent as one who wholly or partially relies on the victim for support. The functional test appears to be the more realistic one, but its application may require greater expenditures of investigative time and administrative resources. The relationship test, on the other hand, is more easily applied. However, it does risk excluding individuals who would rightfully deserve compensation as a dependent. Some states such as Maryland provide for both these tests, qualifying a person who falls into either category as a dependent.

In addition to claims from victims, Good Samaritans, and dependents, the majority of programs will also accept claims from another category of persons--those who provide or arrange for services for an injured victim, and therefore incur expenses on behalf of the victim. The persons covered by

this provision include doctors, hospitals, pharmacists, and any others who might assume responsibility for a victim's care. This provision offers two major advantages. First, it may serve as an incentive for these individuals to aid the victim of crime immediately, without concern for their payment. Second, it may guarantee that payments for such services will actually be made to these individuals--if payments are made only to the victim, neither the victim compensation program nor the service provider has any assurance that providers' bills will be paid.

While compensation programs will pay service providers, they will not compensate "collateral sources"--groups such as insurance companies, social security, workmen's compensation, and so on, which have a contracted obligation to pay the victim or dependent in the event of an injury or disability. Thus, if the victim or dependent would normally receive some payment from one of these collateral sources, that source is obligated to pay and may not recover those payments from the victim compensation program. This ensures that the victim will receive the full range of payments to which he or she is due (since the payments from these sources may often exceed those available under victim compensation), and also serves to minimize the victim compensation costs, as programs generally reduce the amount of their awards by the amounts paid through these collateral sources.

A number of statutes permit the filing of a claim by an authorized person acting on behalf of any eligible party, such as a parent or guardian on behalf of a minor, or a guardian on behalf of someone who is mentally incompetent. This provision ensures that eligible persons are not unfairly excluded simply because they lack the capacity to complete the compensation process. Programs which do not include the authority for this type of claim in their statutes often permit it by administrative regulation or court rule.

One final eligibility option which has raised considerable debate is the issue of residency requirements. In some states such as Maryland, New York, and Washington, benefits are extended to any innocent victims of crime injured in the state, regardless of their actual state of residence. A minority of programs, however, make compensation available only to residents. Michigan provides an example of this approach.

The choice of a residency requirement is dictated both by the underlying philosophy of the compensation program and by the ever-present concern over funds. For example, states which believe that the victim compensation program is a "risk-sharing" effort, similar to an insurance policy, may well hold that non-residents should not be eligible for compensation, as they have

¹⁸ Johnson and Johnson, "Compensation for Victims of Violent Crimes," p. 232.

not contributed to the "insurance payments" through their state taxes. On the other hand, if the program is viewed as an "obligation of the state" resulting from the state's failure to protect--or even as a program which is provided "by the grace of the state"--it may be more difficult to justify the exclusion of non-residents.

Concerns over funds will of course influence any decisions reached on the basis of the program philosophy. It will obviously be more costly for programs to provide payments to out-of-state residents, and one way to reduce costs--particularly in states where major cities are located close to the borders of other states--is to deny payments to non-residents. Pennsylvania has established a unique solution to this problem by including a reciprocity clause in their statute.¹⁹ Thus, they will compensate residents of another state only if the other state similarly provides for residents of Pennsylvania.

Much of the concern over residency requirements may be remedied should federal legislation on victim compensation be passed. Most of the recent bills introduced in the U.S. Congress have included a provision that any victim injured as a result of a qualifying crime is eligible for compensation. States which do not compensate out-of-state residents would thus be forced to modify their statutes to be eligible for federal support.

Persons Ineligible for Compensation. Logically enough, every victim compensation program makes the offender ineligible for compensation. Thus, persons who are injured in the course of carrying out a crime are categorically excluded from receiving compensation for that injury. In most states, this exclusion also extends to persons injured as an indirect result of their criminal activity, such as the drug dealer who is assaulted several hours after a drug transaction due to "customer dissatisfaction." While this last provision may necessitate a greater investigative burden for the program, it is a burden which most programs will gladly assume.

Several statutes also exclude on-duty peace officers and firemen from the benefits of the victim compensation program. This exclusion may be based on legislators' attitude that it is the job of a law enforcement officer to intervene in criminal incidents and that he or she therefore runs the risk of injury. Behind this "feeling" is the concrete observation that public officers are in any case covered by workmen's compensation, other forms of insurance, or benefits provided under the Public Safety Officers' Benefits Act of 1976.²⁰ Thus, exclusion of these individuals would seem to do little harm, while resulting in a potential cost savings for the program.

¹⁹ Pennsylvania Stat. Ann. tit. 71, sec. 180-7.3(c) (Purdon Supp. 1978).

²⁰ The Public Safety Officers' Benefits Act of 1976 is an amendment to the Omnibus Crime Control and Safe Streets Act of 1968, as amended. The Act provides benefits of \$50,000 to the survivors of public safety officers who have died as a result of a personal injury sustained in the line of duty.

2.3.2 Minimizing Unjust Attainment of Benefits

Program designers have been concerned about the potential for fraud or the possibility that the program might unwittingly allow benefits to persons whose status as an "innocent" victim of crime is open to question. Thus, several eligibility criteria have been established which are intended to minimize the payment of benefits to "undeserving" individuals: restrictions concerning family members, exclusions or reductions based on victim contribution to the injury, and, to a lesser extent, reporting requirements. These options are examined in the following paragraphs.

Victims Related to the Offender. A very common, and very controversial criterion is the provision that victims who are related to the offender are ineligible for compensation benefits. The means of specifying the excluded relationships vary from program to program. For example, family relatives are often excluded; a commonly applied formula is to exclude all individuals related within the third degree of consanguinity or affinity. In other statutes, specific relatives are named (e.g., parents, children, brothers, and sisters). Some statutes only exclude family relations who reside in the same household as the offender. Conversely, other statutes make a common residence an independent ground for exclusion. Another class of individuals often excluded are those maintaining a sexual or common-law relationship with the person who committed the crime.

The overriding concern prompting this type of exclusion is that the offender may unjustly benefit from an award to the victim. Specifically, program designers may fear that the availability of compensation might be an incentive for one family member to act criminally towards the other in the hope of benefitting from an award to the surviving victim, or as a dependent in the event of the victim's death. A second fear is that family members may conspire to defraud the victim compensation program--that a father may, for example, claim that an injury received while working at home was actually caused by an attack by his son, in the hope of receiving victim compensation.

The validity of these fears has been questioned by many. For example, it has been argued that the possibility of obtaining victim compensation would rarely be a sufficient incentive for family members to commit crimes against each other. Certainly other factors would have to be present--hatred, coupled with a lack of concern about punishment--and these factors alone could well be enough to instigate the crime in any case. The fear that family members might conspire to defraud the program also appears to be unjustified. Few family members would be willing to run the risk of prosecution for a crime that was never committed. The familial exclusion has also been countered by arguments that close friends would be equally likely to collude, and yet no restriction exists concerning these individuals.

The family exclusion, based as it is on a strict relationship test, can have unfortunate results. For example, many have pointed out that under these exclusions, the innocent children of a woman murdered by her husband would be denied any benefits, simply because of their relation to the victim. Similarly, should a child assaulted by a parent or a person abused by his or her spouse be denied medical benefits simply because of a relation to the offender?

The drawbacks of the family relationship test could be eliminated by replacing it with a functional test which denies awards if unjust enrichment would result. This test would directly address the question which is the basis for the family exclusion--the possibility of fraud--and would avoid the inferential approach of the relationship test, which may or may not lead to equitable results. The Uniform Crime Victim's Reparations Act (Appendix A) provides an example of such an approach. The Act contains an unjust enrichment clause, together with an optional exclusionary provision based on family relations and household members. The latter provision, however, contains an escape clause which permits a compensation board to make an award to a family or household member if justice requires. The two-prong test of the Uniform Act has been adopted by several states. Others have taken a modified approach also designed to mitigate the harsh effects of the strict relationship test. Apparently concluding that the basis for the family member exclusion applies mainly to husband-wife crimes, Indiana permits awards to legal non-spouse dependents where justice requires. Michigan denies awards to persons who reside in the same household as the offender, but excludes a domestic employee unrelated by blood or marriage from this category.

A second justification for the exclusion of family members has been the issue of program cost. Since significant percentages of such violent crimes as aggravated assault, child abuse, and homicides occur between family members, it is argued that excluding these cases may result in substantial savings of funds for benefits and administrative costs. This categorical exclusion is further justified by the fact that in many cases of intra-family violence, both victim and offender may share in the blame for the incident.

The efficacy of the family exclusion as a cost savings device is open to question. Great Britain, New York, Maryland, Hawaii, and Saskatchewan report only a very small percentage of claims denied on this basis. However, it is not known how many claims were not filed in these jurisdictions because the individuals involved realized they were ineligible for benefits on the basis of this restriction.

²¹ Lamborn, "Compensation of Victims of Crime," p. 87.

Victim Contribution to Injury. The intent of every victim compensation program is to provide benefits for innocent victims of crime. While individuals who have contributed to or provoked their own injury may indeed be victims of crime, they are rarely considered "innocent." Most programs thus deny benefits to these individuals. Most of the theoretical bases for victim compensation programs would seem to justify denial or reduction of an award where the victim has contributed to his own injury. Thus, under the tort theory, the duty of the state to protect the victim is diminished, if not entirely relieved, where the victim has actively participated in the incident producing his injury. The risk-sharing theory assumes that persons are randomly susceptible to criminal attack; this randomness is lacking where the victim is partially responsible for the attack. Even the welfare theory is directed at the innocent victim of crime. Public sympathy, or a sense of fairness towards crime victims, is also thought to be a factor behind victim compensation programs, but the resulting moral responsibility of the state to provide compensation may be lacking "when the crime arises directly from the undesirable activities of the victim, his mode of life, and the company he keeps."²²

States have generally adopted one of two methods to avoid unjust payments to these individuals. The first option, found in most statutes, is to provide for reduction or denial of benefits depending on the extent of the victim's contribution to the injury. Delaware's statute is typical in this regard:

If the victim bears any share of responsibility that caused his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.²³

Under this first option, when a case presents evidence of victim misconduct, awarding authorities face a number of difficult problems in determining the claim. First, they must decide whether the misconduct is of such a nature as to warrant any reduction of the award. If a reduction appears justified, they must then determine if an award should be totally denied or, if not, by how much it should be reduced.

This process may entail a significant investigation burden, as it is often difficult to specify the degree of victim culpability from the information

²² Lamborn, "Compensation of Victims of Crime," p. 80.

²³ Delaware Code Ann. tit. 11, Sec. 9006(c) (Supp. 1977).

available on the claim form and initial police report. Investigators may have to obtain additional police reports, speak to investigating officers, or even interview witnesses to the crime. In addition, claims decision-makers may have to invest greater amounts of time in considering these cases. Thus, this option would demand a greater expenditure of program resources.

The second option concerning victim contribution to injury is to deny compensation if the victim bears any degree of culpability. Washington is one state which uses this approach. The advantages of the "all-or-nothing" option are its ease of administration and the fact that it would entail lower program costs--both because of the ease of administration and because fewer victims would be eligible for compensation. However, this option does risk excluding victims who would appear to deserve at least some compensation, such as a victim who initiates a heated argument, and is then injured when the other party assaults him with a knife. Staff of the Washington program have suggested that their all-or-nothing approach should be modified.

In general, the use of restrictions concerning victim contribution--whether based on the first or second option--raises a number of practical considerations which are very similar to those regarding restrictions on the victim/offender relationship. For example, it is argued that in addition to their value in preventing unjust enrichment of undeserving victims, application of these restrictions may also reduce the program's expenditures for benefits, as considerable percentages of homicide and aggravated assault cases are said to involve victim provocation. Offsetting any cost savings, of course, are the administrative expenses and delays attendant to investigations and determinations of questions of victim responsibility. Boards report fewer reduced or denied awards as a result of victim contribution than might be expected, but this may possibly be due to the hesitancy of culpable victims to apply for awards. Finally, in death cases, innocent dependents, especially children, may be totally or partially denied benefits because of the victim's contribution.²⁴ Even if the victim responsibility rule is adopted, it would seem wise to provide an exemption for dependent claims.

Reporting the Crime. Every victim compensation program requires as a precondition for eligibility that the crime be reported to the police within a certain period of time. As the primary intent of this requirement is to promote victim cooperation with the criminal justice system, it will be discussed more fully in Section 2.3.3 below. However, it should be noted that reporting requirements also serve to minimize opportunities for unjust attainment of benefits. For example, if a crime between two family members is reported to the police, the victim compensation program may be reasonably assured that there is no collusion to defraud the program. Few family members would risk prosecution for a falsely reported crime in order to

²⁴ Lamborn, "Compensation of Victims of Crime", pp. 81-83.

obtain compensation benefits. Thus, the reporting requirement may answer many of the same concerns as the familial exclusion rules, without many of the drawbacks of those rules. To a lesser extent the reporting requirement may also serve to screen out claims involving victim provocation or contribution to the injury, as culpable victims would be aware that an objective, third-party report on their involvement--the police report--would be readily available for victim compensation programs to review.

2.3.3 Promoting Victim Cooperation with the Criminal Justice System

Although the most obvious goal of criminal injuries compensation programs is to assist the victims of crime, a second objective is to promote victim cooperation with the criminal justice system. Edelhertz and Geis note, for example, that during the initial public hearings on the New York victim compensation legislation, witnesses " . . . suggested, rather hopefully, that a crime victim compensation law might encourage more willing cooperation by the citizen with law enforcement agencies."²⁵ It was thought that increasing cooperation with the criminal justice system would ultimately increase the effectiveness of the police and courts in apprehending and convicting criminals. Two requirements for compensation were thus incorporated in victim compensation statutes: general requirements for victim cooperation, and specific requirements regarding reporting the crime to police. These requirements are examined below.

Reporting. While virtually every program stipulates that the crime must be reported to the police, programs vary greatly in the time limits for reporting and provisions for extending these time limits. Most statutes require the report of the crime to be made within a specific period of time, with an extended period allowed for good cause. Generally speaking, the basic period varies from forty-eight hours (as in Kentucky) to one week (as in New York). Limits are not placed on the extended time period, thus enabling the Board to judge the validity of the reporting delay on the facts of the case. There are a few unusual formulations of the reporting requirement. One statute requires the crime to be reported within five days of its occurrence, but if this cannot reasonably be done, within five days of the time it could be reasonably reported.²⁶ Another statute establishes a fixed reporting period, but permits the board to suspend the reporting requirement altogether if justice requires.²⁷ A few states set no fixed period, but rather

²⁵ Herbert Edelhertz and Gilbert Geis, Public Compensation to Victims of Crime (New York: Praeger Publishers, 1974), p. 29.

²⁶ Wisc. Stat. Ann. sec. 949.08(1) (West Supp. 1977).

²⁷ Ind. Stat. Ann. sec. 16-7-3.6-7 (Burns 1977).

require the crime to be reported as soon as possible.²⁸ Finally, some states such as California place no time limits on reporting the crime to the police.

As with other requirements and definitions, such as crimes covered or intra-family exclusions, a fixed standard for reporting results in ease of administration while a flexible standard allows for more equitable results. Good cause extension provisions may not greatly mitigate the inequities caused by a fixed time standard since good cause is difficult to prove.

A number of reasons have been advanced for the reporting requirements. First, prompt notification to the police increases the chances of apprehending the offender. Second, the encouragement of crime reporting leads to better crime statistics and a better picture of the overall crime situation. One intrinsic, philosophical reason is the idea that one who does not report a crime has failed in his public duty and thereby waived his right to receive public aid. Finally, and perhaps most important, the reporting requirement is seen as a means of curbing fraud.

Cooperation with the Police. Most, although not all, of the victim compensation programs require that the claimant or victim must have cooperated with the police in order to receive an award. This condition is grounded on the same considerations as the reporting requirement. As with the reporting provisions, the existing options for prescribing victim cooperation are essentially variations on the main theme. Some states, like Maryland, simply provide that an award may be denied or withdrawn²⁹ for failure to cooperate--an all or nothing proposition. Other states such as Florida provide more flexibility by authorizing boards to reduce as well as deny awards. This enables the board to assess the degree of cooperation. As with many other eligibility factors, this type of provision involves a tradeoff of administrative ease in return for greater equity. One statute injects greater flexibility into this area in another way: it first prohibits an award if the claimant fails to cooperate fully with the police, but then goes on to permit this requirement to be suspended if justice so requires.³⁰

As yet there is no evidence that these requirements have actually supported the goal of increasing victim support or cooperation with the criminal justice system. Given the relatively small number of crime victims who

²⁸ Johnson and Johnson, "Compensation for Victims of Violent Crimes," p. 234.

²⁹ By providing for withdrawal of an award, the statutes evidently contemplate that the fact of non-cooperation may surface after the award has been made.

³⁰ Ind. Stat. Ann. sec 16-7-3.6-7 (Burns 1977).

actually come into contact with the victim compensation programs of most states, it is unlikely that the cooperation of compensated victims would have a significant impact in any event. Still, requirements for reporting and victim cooperation appear sensible, if for no other reasons than to reduce opportunities for fraud and to gain the support of criminal justice agencies.

2.3.4 Containing Potential Costs of Victim Compensation

The theme of cost control is present in many of the coverage and eligibility options available to victim compensation program designers. Restrictions concerning family members may reduce the opportunity for fraud, but they also contribute to cost containment; similarly, property losses are excluded from coverage due to legislators' concerns about the potential cost of compensation. Given the importance of cost containment in designing victim compensation programs, it is not surprising to find specific eligibility criteria which are exclusively intended to reduce the costs of the program: financial needs requirements and minimum loss criteria. To a lesser extent, time limitations on filing the claim are also intended to contain program costs. The use of these cost-saving eligibility criteria and the arguments for and against these options are examined below.

Minimum Loss Criteria. Several studies have shown that for most crime victims, the cost of victimization--and therefore the size of a victim compensation claim--would be relatively low. For example, Garofalo and Sutton estimate that seventy-five percent of the victims with unreimbursed medical costs could have a loss of under \$100; similarly, in eighty-three percent of the victimizations, victims lose ten or less days from work as a result of the crime.³¹ As it is presumed that most victims can support such losses, states which wish to control the costs of their program are offered an attractive, and seemingly innocuous method for reducing costs: by simply instituting minimum loss criteria they can substantially reduce the number of victims receiving compensation without denying compensation to individuals with substantial losses.

There are several arguments which favor minimum loss criteria. Most of these focus on the disadvantages of processing a high number of small claims. Hofrichter notes, for example, that processing small claims may:

³¹ National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice, Compensating Victims of Violent Crime: Potential Costs and Coverage of a National Program, by James Garofalo and L. Paul Sutton (Washington, D.C.: Government Printing Office, 1978), pp. 25, 32.

- add to administrative costs, and that the administrative costs of processing these claims may exceed in dollar value the benefits paid to the victim;
- waste time that the board might spend on more complex cases;
- lead to frivolous, fraudulent, or inflated claims; and
- expand the workload of the program and thereby the case backlog.³²

Only seven states do not include provisions for minimum loss criteria; Alaska, California, Florida, Hawaii, New York, Ohio, and Washington.³³ (New York originally provided for minimum loss criteria, but eliminated this requirement as of January 1, 1977.) Of those which do require that some threshold value of loss be reached, most limit the loss to \$100 in out-of-pocket medical expenses and/or two weeks continuous loss of earnings. However, the exact method of specifying these minimum criteria varies from program to program.

The "out-of-pocket loss or continuous weeks of lost earnings" approach can create special problems. For example, New York at one time interpreted this provision such that the losses were considered in the alternative; they could not be aggregated to reach the minimum.³⁴ This can result in some applicants being ineligible with a total loss greater than others who are eligible. For example, under a law which specifies a minimum loss of \$100 out-of-pocket expenses or two weeks' lost earnings or support, the following could occur. One person, earning \$60 a week and out of work for two consecutive weeks, would recover \$120. A second, who incurs \$150 in medical expenses, would recover that amount. A third, however, who pays \$90 for medical treatment and loses one week's pay of \$120, thereby incurring a total loss of \$210, would recover nothing.³⁵

If a state is going to impose a loss threshold as an eligibility requirement, it would seem preferable to define the minimum, at whatever level it deemed

³² U.S. Congress, Victim Compensation and the Elderly, pp. 20-21.

³³ Ibid., p. 25.

³⁴ Comments, "The New York Crime Victims Compensation Board Act: Four Years Later" Columbia Journal of Law and Social Problems, 7 (Winter 1971): 42, cited in Notes, "Pending Crime Victim Compensation in Iowa: An Analysis," Drake Law Review, 26 (1976-1977): 849.

³⁵ Notes, "Pending Crime Victim Compensation in Iowa," p. 849.

appropriate, in terms of the aggregate loss incurred. Such a course is taken in those states which have adopted the Uniform Crime Victims Compensation Act, presented in Appendix A. The Uniform Act specifies a threshold of \$100 of economic loss. Since economic loss encompasses all categories of loss covered by the Act (medical payments, work loss, etc.), this approach in effect defines the minimum loss in terms of an aggregate figure.

The use of minimum loss criteria has been criticized on many fronts. For example, the contention that minimum loss criteria will reduce administrative costs has been countered by the argument that many victims would submit claims in spite of the minimum loss criteria; thus costs would be incurred in any event in screening and investigating these claims. Others have noted that the threshold limitation poses problems to the poor victim, to whom the statutory minimum may be a significant sum. Since most victims who are eligible for compensation are poor, this is not an unimportant consideration.³⁶ In this regard, some statutes give relief to the elderly or disabled victim either by making the limitation inapplicable (as in Kentucky) or by permitting the compensation board to waive the limitation (as in Michigan). Finally, some have argued that minimums may also encourage "padding" of claims,³⁷ as commonly occurs in automobile accident cases in order to reach the level of eligibility.

Alternative approaches to a lower limit have been proposed. For example, compensation boards or courts could be given discretion to deny awards in small claims cases rather than being absolutely precluded from considering them. A filing fee could be imposed to deter minimal claims. Loss thresholds could be made to vary with the level of income. A simplified procedure could also be instituted for determining these claims; for example, programs could dispense with hearings.³⁸

Eliminating minimum loss criteria may have beneficial consequences. If even those individuals who suffer only a slight loss or injury are prompted to file claims, knowledge about the nature and scope of the crime problem will be enhanced. Further, a greater number of awards will increase the public exposure of the compensation program and make more individuals who are seriously injured aware of its existence. Finally, awarding benefits in small claims cases would increase support for the program among recipients and thus be of political value.³⁹

³⁶ Johnson and Johnson, "Compensation for Victims of Violent Crimes", p. 246.

³⁷ Ibid.

³⁸ Lamborn, "Compensation of Victims of Crime," pp. 54-55.

³⁹ Ibid., p. 55.

Eliminating or not instituting thresholds will have some cost consequences, but these may not be great. For example, Garofalo and McDermott have estimated that the costs of a national crime victim compensation program would increase by only 12% if all minimum loss criteria were eliminated.⁴⁰

Financial Need Requirement. The thresholds discussed above only constitute an absolute minimum in some jurisdictions, applicable to all claims filed. Many statutes also contain a provision which (1) requires a showing of financial need on the part of the claimant and (2) serves to raise the threshold of eligibility in some cases and cause denial of awards in others, depending on the financial status of the claimant. It has been observed that the minimum loss and financial need provisions together establish "a floating lower limit tied to the resources of the individual."⁴¹ It should be noted that some statutes, such as those of New York and California, that do not specify a lower dollar limit of eligibility do, however, include a financial means test. Financial need requirements have occasioned much criticism and probably constitute the most controversial aspect of victim compensation.

Financial means tests are intended to deny benefits to those individuals who will not suffer some degree of financial hardship caused by loss of earnings or support and out-of-pocket expenses incurred as a result of criminally inflicted injury. Nine states currently impose some needs test: Alaska, California,⁴² Florida, Kansas, Kentucky, Maryland, Michigan, New York, and Wisconsin. The Texas statute, which has not yet been implemented, also calls for imposition of a needs test. The degree of hardship imposed varies from statute to statute. The most stringent test requires the victim or claimant to suffer serious financial hardship in order to be eligible for compensation. Theoretically more liberal are those tests that merely specify financial hardship as the eligibility threshold. These statutes require the examiner to consider all of the financial resources of the claimant in determining financial need. However, by directing the administering agency to "adopt specific standards by rule for determining such hardship," they do allow for a flexible application of the financial need requirement. This approach, for example, is taken in Wisconsin. In fact, compensation boards have adopted rules which tend to mitigate the severity of the statutes. Basically, these rules exempt certain assets such as the value of life insurance payments or the claimant's home from the determination of need and permit reapplication in cases where the hardship test has not yet been met, but may be in the future.⁴³

⁴⁰ James Garofalo and M. Joan McDermott, "National Victim Compensation-- Its Cost and Coverage," Law and Policy Quarterly 1 (October 1979): 456.

⁴¹ Lamborn, "Compensation of Victims of Crime," p. 53.

⁴² U.S. Congress, Victim Compensation and the Elderly, p. 25.

⁴³ Lamborn, "Compensation of Victims of Crime," pp. 57, 58.

As in other areas, the Uniform Crime Victims Reparation Act (presented in Appendix A) contains a provision on financial need more definitive than those discussed above. The basic requirement of the Act regarding need is that a claimant may not be awarded compensation unless "he will suffer financial stress as the result of economic loss otherwise reparable." Suffering financial stress involves an inability on the part of the claimant to "maintain his customary level of health, safety and education for himself and his dependents without undue financial hardship." The Act goes on to provide more specific guidelines. All factors relevant to the claimant's financial status must be considered in determining hardship, including:

- number of dependents;
- usual living expenses of the claimant and his family;
- special needs of the claimant and his dependents;
- the claimant's income and potential earning capacity; and
- the claimant's resources.

In addition, the Act provides a special objective test of financial stress, proscribing awards "if the claimant's economic loss does not exceed ten percent of his net financial resources." Net financial resources do not include the present value of future earnings and are determined by deducting the following assets from the claimant's total financial resources:

- one year's earnings;
- claimant's equity in his home, not exceeding \$30,000;
- one motor vehicle; and
- any other property exempt from execution under the laws of the state adopting the Act.

The ten percent rule is not absolute, however. A board may make an award to a claimant whose economic loss does not exceed ten percent of his net financial resources if it finds that his resources will be depleted during his lifetime, taking into account the following factors:

- the claimant's age;
- life expectancy;
- physical or mental condition; and
- expectancy of income, including future earning power.

Conversely, even if the ten percent test is satisfied, the board must still find that the claimant will suffer undue financial hardship if an award is not made. Thus, the board may (a) reject the claim finally or (b) reject the claim provisionally, reserving the right of the claimant to reintroduce his claim if exhaustion of his financial resources appears likely. Overall, the detailed financial need test of the Uniform Act seems likely to afford compensation to a larger class of individuals than the stricter provisions of other statutes. Indeed, the Uniform Act's provisions are expressly designed to avoid limiting benefits to those persons already on welfare.

On a philosophical level, the financial need test may be justified by the underlying assumption of some victim compensation programs: that payments are provided by the grace of the state, as a service to needy individuals. This rationale, which places victim compensation on the same level as state welfare programs, would argue that states may restrict benefits to those individuals in need.

Many, however, have rejected the idea that welfare and crime victim compensation are similar. Childres observes:

[W]elfare programs are analogous only in that they deal with destitution, which compensation is intended to prevent. Welfare and compensation are unrelated in their rationale, their victims, and the social problems they seek to alleviate. . . . For most poverty . . . , there is no admitted causal relationship involving the government. For destitution threatened by criminal injury to the person there unquestionably is such a relationship. Victims of crime ought not to be required to divest themselves of all resources before qualifying for compensation.⁴⁴

The relationship seen between criminal injury and the government seems to indicate support for the idea that victim compensation programs are based upon the state's duty to protect its citizens. As Lamborn suggests:

The state's assumption of the duty of protecting all of its citizens imposes a duty to indemnify victims of crime for their losses rather than merely preventing destitution.⁴⁵

This is just another formulation of the risk sharing theory, whereby all citizens through taxation bear the burden of society's failure to prevent crime and, in turn, may receive benefits if they suffer the harm which the

⁴⁴ Robert Childres, "Compensation for Criminally Inflicted Personal Injury," p. 462.

⁴⁵ Lamborn, "Compensation of Victims of Crime," p. 57.

publicly funded program is intended to address. Financial hardship tests seem especially inconsistent with this theory, since they discriminate against wealthy taxpayers, who make a greater contribution to the compensation fund, and others whose frugality raises them above the poverty level. Viewed as equally disturbing is the indignity imposed on needy crime victims resulting from the false association of victim compensation with charity. This leads to a reluctance on the part of these victims to apply for benefits.⁴⁶

Most policy-makers are aware of the philosophical difficulties raised by the issue of financial needs tests. The justification for their inclusion in victim compensation statutes thus does not rest in program philosophy, but in the very real concerns regarding program cost. In particular, it has been argued that the financial need requirement may lower the total amount of benefits paid by restricting access to the program; if costs must be contained, supporters maintain that it is better to accomplish this by providing benefits only to those truly in need. Thus, limited program resources are reserved for the cases in which they will give the most benefit. Finally, the financial need requirement is politically attractive to legislators. Some have even noted that this requirement may be a necessary concession to assure the passage of victim compensation legislation.⁴⁷ This was certainly the case in New York, where a financial hardship requirement was included in the legislation in spite of the opposition to such a provision which was expressed during hearings on the bill.⁴⁸

Several practical considerations which argue against the use of these tests have also been advanced, however. It is proposed that needs tests, especially strict needs tests, make too gross a distinction concerning the ability of claimants to forego compensation without financial hardship. The tests seem to be based on the premise that only two disparate groups of people are affected by crime--the very well-to-do (who can clearly forego compensation) and the poverty-stricken (who clearly cannot). But this is simply not the case. Crime victims cover the spectrum of income levels and crime can work a severe financial disruption for all except perhaps the very wealthy.⁴⁹ Thus, needs tests can have disastrous consequences for those just over the threshold of need established by the program. Inevitably,⁵⁰ the middle class and the elderly will be the groups caught in the squeeze. So far as the

⁴⁶ Michael R. McAdam, "Emerging Issue: An Analysis of Victim Compensation in American," Urban Lawyer 8 (Spring 1976): 346, 347.

⁴⁷ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 271.

⁴⁸ *Ibid.*, p. 32.

⁴⁹ Lamborn, "Compensation of Victims of Crime," p. 57.

⁵⁰ Johnson and Johnson, "Compensation for Victims of Violent Crime," p. 238.

wealthy are concerned, the restriction is unnecessary because this class will probably not apply for benefits, especially when the losses are small. The well-to-do are more likely to make use of other remedies, such as insurance and tax deductions. Moreover, the wealthy constitute only a small percentage of the crime victim population.

Many administrators of compensation programs oppose financial hardship tests on a number of grounds. First, the tests are difficult to administer. In their attempts to reach a fair determination of claimants' need, compensation boards must conduct painstaking investigations of the claimants' financial status. Second, financial needs tests are costly to administer. The increased administrative costs brought about by these requirements would at least partially offset the savings in awards effected by the tests. Geis and Edelhertz state that overall program costs might even be reduced were the hardship requirement to be eliminated.⁵¹ Third, needs tests may not have as great an impact in controlling program costs as previously thought. The chief investigator for the New York board has estimated that the compensation program would only be about \$150,000 more costly per year, an increase of about ten percent, if the serious financial hardship test of that state were abandoned.⁵² In addition, in New York, only 2.7 percent of all claims⁵³ denied were disallowed on the basis of no serious financial hardship. Edelhertz and Geis state that "there were only a very small handful of claims paid in New Jersey (which has no needs test) that might not have been payable in New York or Maryland."⁵⁴

Program administrators are also disturbed by the inequities flowing from the hardship test. Although administrative rules tend to have a liberalizing effect, boards must still operate with the bounds set by the statute. Of necessity, then, boards reach determinations in cases which appear manifestly inequitable when the facts of the cases are compared. The New York board, which considers the serious financial hardship question its most difficult problem, provides an archetypical example involving elderly claimants: "frugal individuals who have saved their money are discriminated against in favor of others who have earned more money but squandered it."⁵⁵ Twelve years after the passage of New York State's crime victim compensation

⁵¹ Gilbert Geis and Herbert Edelhertz, "California's New Crime Victim Compensation Statute," San Diego Law Review 11 (June 1974): 880, 994.

⁵² Lamborn, "Compensation of Victims of Crime," p. 60.

⁵³ New York Crime Victims Compensation Board, 1977-1978 Annual Report, p. 272.

⁵⁴ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 272.

⁵⁵ Notes, "Pending Crime Victim Compensation in Iowa: An Analysis," p. 846.

legislation, the New York Board still supports modification of the state's serious financial hardship standard.⁵⁶

Time limitation on filing. To some extent, the statute of limitations on the filing of claims commonly found in victim compensation statutes may also be an indirect attempt to control costs. These limits serve to exclude persons who file untimely claims on the theory that these claimants have indicated a lack of need by failing to file within the period allowed. They are also useful in avoiding claims based on stale evidence, thereby easing the decision-making process and preventing fraud.⁵⁷

States vary widely in the limits placed on filing of claims. Some states, like Indiana, specify a basic period and permit an extension of that time limit for good cause shown. Unlike the reporting requirement, the extension period is usually limited to a specific time. Most statutes provide that the time limit runs from the date of injury or, if the victim dies, from the date of death. This ensures dependents a sufficient amount of time to file a claim in response to the change in circumstances brought about by the victim's death.⁵⁸ Some statutes, such as that of Kentucky, do not provide for an extension of the basic period.

Programs' efforts at cost control are not limited to the policies concerning eligibility: limitations may also be placed on the actual benefits provided. These limitations are examined in Section 2.4 below.

2.4 Benefits

A claim which surmounts all of the eligibility hurdles discussed in the previous section still faces certain limitations and conditions regarding the award and payment of benefits. Almost all programs place upper limits on awards and provide for deductions of amounts received from collateral sources. Additionally, some programs impose a minimum deductible. Many statutes also contain a provision authorizing payment of emergency awards in certain circumstances, thereby enabling the awarding authority to ease the plight of the victim or claimant while the claim is under consideration. Attorneys'

⁵⁶ New York Crime Victims Compensation Board, 1977-1978 Annual Report, p. 35.

⁵⁷ Johnson and Johnson, "Compensation for Victims of Violent Crimes," p. 235.

⁵⁸ Ibid.

fees may influence the amount of the recovery. Finally, restitution may also play a role in the overall scheme of victim compensation, although it may be of less direct interest to the claimant than other benefit provisions. The various options states employ in defining and limiting their victim compensation benefits are examined below.

2.4.1 Upper Limits

Table 2.1 lists the maximum award provisions of the 29 existing compensation statutes. As that table shows, most statutes simply establish a maximum dollar figure which may be paid to a claimant for the aggregate of his losses. Washington State, however, fixes no maximum in cases where the victim survives, but does set a maximum for payments to dependents. Among other American jurisdictions, Ohio and Texas have the highest specified maximum, \$50,000. Maryland's upper limit is \$45,000, but additional expenses are compensable in certain cases. The majority of jurisdictions fix limits of \$10,000 or \$15,000.

Table 2.1
Upper Limits on Victim Compensation Benefit Payments in U.S. Jurisdictions

Alaska	\$25,000	per victim/\$40,000 for two or more survivors
California	\$10,000	medical/\$10,000 lost earnings/\$3,000 rehabilitation
Connecticut	\$10,000	
Delaware	\$10,000	
Florida	\$10,000	
Georgia	\$ 5,000	for Good Samaritans
Hawaii	\$10,000	
Illinois	\$10,000	
Indiana	\$10,000	
Kansas	\$10,000	
Kentucky	\$15,000	
Maryland	\$45,000	unlimited permanent disability and death benefits
Massachusetts	\$10,000	
Michigan	\$15,000	
Minnesota	\$25,000	
Montana	\$25,000	per victim/\$1,100 funeral
Nevada	\$ 5,000	maximum "Good Samaritan"/\$1,000 maximum rape
New Jersey	\$10,000	
New York	Unlimited	medical/\$20,000 wage loss
North Dakota	\$25,000	
Ohio	\$50,000	
Oregon	\$23,000	
Pennsylvania	\$25,000	loss of earnings or support/\$15,000 death benefits
Rhode Island	\$25,000	
Tennessee	\$10,000	
Texas	\$50,000	
Virginia	\$10,000	
Washington	Unlimited	amounts set by Workmen's Compensation
Wisconsin	\$10,000	each victim/\$2,000 funeral costs

Obviously, maximum award limitations are imposed to reduce program costs and to make victim compensation programs politically acceptable. That maximum awards can easily be depleted by medical expenses, leaving nothing to cover loss of earnings or support, is the main argument against upper limits. Further, even when medical expenses are nominal, the maximum available award could be grossly inadequate to compensate lost earnings or support. This seems especially possible where the victim was killed. These unfortunate results are most often realized where the upper limit is \$5,000 or even \$10,000. As legislators have gained experience with victim compensation programs and determined that program costs have turned out not to be as burdensome as expected, they have raised the upper limit. For example, New York in 1977 raised the maximum award for lost earnings or support from \$15,000 to \$20,000, while in the same year both Alaska and Minnesota raised their limits from \$10,000 to \$25,000.

Some sentiment has been expressed for removing all upper limits, but this view has generally been rejected. However, the opinion does prevail that there should be no limit on medical expenses.⁵⁹ Lamborn notes that, contrary to expectations, compensation boards have not reported an overwhelming number of cases reaching the upper limits.⁶⁰ This seems to support the view that upper limits could be raised to take care of the relatively few cases necessitating higher awards without imposing an undue financial burden on programs.

In addition to maximum limits on the total award, many statutes also established an upper limit on the weekly benefits which may be paid for loss of earnings or loss of support. Generally, these limits range from \$100 to \$250 per week, although in some states the maximum limit is not specified, but is tied to the workman's compensation maximum.

Advantages of specifying a weekly maximum relate primarily to issues of cost. For example, the limits are intended to ensure that a program's total expenditures for loss of support/wages will be kept within manageable bounds. They also ensure that an individual claimant's total benefit for loss of wages/support is not expended too quickly. This may also work to the advantage of the compensation program. Since benefits for loss of wages/support may be suspended if the claimant's financial status changes for the better, the compensation program may eventually realize a cost savings if the wage/support benefits are not paid at once, but are instead paid at a reasonable weekly rate. A maximum weekly limit may also promote equity, in that wealthy victims will not receive much greater benefits than poorer victims. Finally, these limits may assuage legislators' concerns that some victims

⁵⁹ Lamborn, "Compensation of Victims of Crime," p. 51.

⁶⁰ Ibid.

will receive benefits greater than those needed for basic support or will use the program to obtain higher weekly earnings than those received prior to the victimization.

Weekly limits are not without their drawbacks, however. Placing the limits at too low a figure may severely limit the value of such a benefit for victims in the state. Similarly, an arbitrary maximum limit cannot accommodate differences in claimants' needs: an adequate maximum level for some claimants (such as an individual with few or no expenses and no dependents) may be an inadequate and unjust maximum for others (such as an individual with several dependents).

2.4.2 Minimum Deductibles

As noted in Section 2.3.4, many programs have instituted certain minimum loss thresholds as one criterion for victim compensation eligibility. Established as a cost-saving measure, minimum loss criteria are successful in screening out many claims, reducing both the benefits paid and the administrative costs associated with processing those claims. Many programs which use the minimum loss criterion have also stipulated that the dollar amount specified as the minimum loss threshold must be deducted from those claims which do receive benefits. Although these "minimum deductibles" will not reduce the administrative costs of the program, they may well have a significant effect on the level of benefits awarded.

States which employ a minimum loss criterion without the related minimum deductible may be faced with inequitable allocations of benefits in some cases. For example, in a state with a nondeductible minimum loss threshold of \$100, a claimant with a loss of \$99 would receive nothing, while a claimant with expenses of \$101 would receive the entire \$101. By comparison, if the minimum loss were also a deductible, the second claimant would receive only \$1, a more equitable result. However, since the use of a minimum loss criterion without a deductible would result in a greater number of small claims actually receiving some significant monetary award, this option may be preferred by some in spite of its potential inequities.

2.4.3 Emergency Awards

Some individuals may experience real financial hardship immediately after a criminal attack. Medical costs may deplete some claimants' cash reserves leaving no money to pay for essential needs such as food or shelter. Others, unable to work for several days or weeks, may be faced with an

immediate and disastrous loss of income. Several states have recognized that some crime victims may experience extreme difficulty if forced to wait the normal period for processing of their claims; these states have included special emergency award provisions in their statutes or operating procedures. Table 2.2 shows the states with these provisions and the limitations which they place on emergency awards.

Table 2.2

**Emergency Award Provisions in U.S. Jurisdictions
With Active Victim Compensation Programs**

State	Emergency Award Allowed	Limits
Alaska	Yes	\$1,500
California	No	—
Connecticut	No	—
Delaware	Yes	No specific limit
Florida	Yes	\$ 500
Hawaii	No	—
Illinois	No	—
Indiana	Yes	\$ 500
Kansas	Yes	No specific limit
Kentucky	Yes	\$ 500
Maryland	Yes	\$1,000
Massachusetts	No	—
Michigan	Yes	\$ 500
Minnesota	Yes	No specific limit
Montana	Yes	No specific limit
Nevada	Yes	No specific limit
New Jersey	No	—
New York	Yes	3 awards of up to \$500 each; \$1,500 maximum
North Dakota	Yes	No specific limit
Ohio	Yes	No specific limit
Oregon	Yes	\$1,000
Pennsylvania	Yes	\$1,000
Tennessee	Yes	\$ 500
Texas	Yes	\$1,000
Virginia	Yes	\$1,000
Washington	No	—
Wisconsin	Yes	\$500 for compensation; \$2,000 for funeral & burial

Every state that grants emergency awards places some restrictions on the conditions under which they may be granted. Most stipulate that awards may only be granted if (1) it appears likely that the claim will result in a final award and (2) the claimant will suffer undue hardship if an immediate payment is not made. All deduct the emergency award from any final award. Also, if the emergency award exceeds the final award, or if there is no final award, the claimant must respectively repay the excess or refund the emergency award in its entirety to the program.

As Table 2.2 demonstrates, there is considerable variance among states in the amount available for emergency awards: of the 19 states which provide these payments, six set a limit of \$500, while the largest award in terms of total dollars is found in Wisconsin--\$500 for compensation and \$2,000 for funeral and burial expenses. The highest limits for general compensation are found in Alaska and Texas (\$1,500) and New York (three awards of up to \$500 each).

In view of the fact that medical expenses alone may quickly exceed most maximum emergency awards, many have criticized states for their relatively low limits. As these awards are made only in cases which would appear to warrant compensation, and as the emergency award is deducted from the final award in any case, there appear to be few drawbacks to raising the limits. Alaska, in fact, raised its emergency award limit from \$500 to \$1,500 in 1977.⁶¹

2.4.4 Attorneys' Fees

The process of applying for victim compensation, attending hearings, and even appealing the original compensation decision varies in complexity from state to state. Although compensation proceedings are rarely adversarial in nature, most jurisdictions have recognized that victims may require legal representation at one or more points during the compensation process. The degree to which this counsel may be needed varies due to several factors. The complexity and issues involved in the claim itself, the capacity of the individual claimant to deal with the processing requirements, and the complexity and formality of the claims procedures established by the victim compensation programs will all influence claimants' use of attorneys.

Some programs, such as Maryland's, support claimants' use of attorneys, in recognition of the fact that attorneys will ease the administrative burden of the program by ensuring that the claim form is complete and accurate and

⁶¹ State of Alaska, Violent Crimes Compensation Board, Fourth Annual Report, p. 3.

that all necessary information is supplied to the board. In Maryland over 90 percent of the claimants are represented by attorneys.⁶² Other programs support a much more limited use of attorneys. In North Dakota, for example, the informational brochure on the compensation program states that "attorney fees will be paid by the Fund in the case of a contested claim only. Legal assistance should not be required for filing a claim."⁶³ Both Illinois and North Dakota specify that attorneys should be used only in cases of contested claims.

Attorney involvement in the victim compensation process has been a matter of some controversy. Supporters of attorney involvement argue that the attorney helps the victim to interpret victim compensation applications and proceedings, and may thus perform a valuable service which the program staff are often unable to provide. In addition, the attorney may serve as a spokesman for the crime victim, who may be physically or emotionally unable to speak for himself or too unfamiliar with the requirements and language of administrative or judicial organizations to represent himself effectively. Obviously, these arguments are more valid for programs with more complex procedures and fewer in-house resources for victim assistance.

On the other hand, opponents argue that use of attorneys may allow victim compensation programs to perpetuate complicated and unwieldy procedures, and may in fact encourage such procedures. They also contend that use of attorneys tends to create a more formal and adversarial climate in victim compensation proceedings. Finally, the use of attorneys by some clients may work to the disadvantage of claimants who do not retain attorneys, creating possible inequities in the distribution of victim compensation benefits.

In recognition of the fact that many claimants may need or desire legal representation during the claims process, most states have established specific policies concerning payment of attorneys' fees. These policies differ from state to state, and the many approaches chosen reflect a wide variety of concerns about attorneys' involvement in the crime victim compensation process. Table 2.3 shows the provisions for attorneys' fees made by active victim compensation programs in the United States.

As the table demonstrates, some programs limit fees to a maximum dollar amount or percentage of the award; others set no specific limit, but provide that the program authority may award reasonable fees. Attorneys' fees

⁶² State of Maryland Criminal Injuries Compensation Board, Ninth Annual Report, 1978, p. 5.

⁶³ North Dakota Crime Victims Reparations, Workmen's Compensation Bureau, "When Crime Strikes--Injured Victims of Violent Crime Can Get Help."

Table 2.3

Provisions for Attorneys Fees in U.S. Jurisdictions With Active Victim Compensation Programs

	Attorneys Fees Allowed?	Limits	Method of Payment
Alaska	Yes	25% of first \$1,000; 15% of next \$9,000; 7.5% of award over \$10,000	in addition to award
California	Yes	10% of award or \$500, whichever is less	in addition to award
Connecticut	Yes	15% of amount awarded	out of award
Delaware	Yes	15% of award or \$1,000, whichever is less	in addition to award
Florida	Yes	Commission determines "reasonable fees"	in addition to award
Hawaii	Yes	Not more than 15% of awards over \$1,000	out of award
Illinois	Yes ^a	No fees allowed for claims preparation. May charge fees for representation at a hearing	out of award
Indiana	Yes	May not exceed 15% of awards less than \$5,000, 10% of awards between \$5,000 and \$10,000	included in the award
Kansas	Yes	Board determines reasonable fee	in addition to award
Kentucky	No	—	—
Maryland	Yes	\$3,000 maximum, 20% of minor award, 7.5% of major award	out of award
Massachusetts	Yes	Up to 15% of the award	in addition to award
Michigan	Yes	Board determines amount	out of award
Minnesota	No	—	—
Montana	Yes	May not exceed 5% of award	in addition to award
Nevada	Yes	May not exceed 10% of award	out of award
New Jersey	Yes	May not exceed 15% of award	in addition to award
New York	Yes	Board determines fee	out of award
North Dakota	Yes ^a	For contested cases only	in addition to award
Ohio	Yes	Commissioners determine reasonable fee	in addition to award
Oregon	No	—	—
Pennsylvania	Yes	Not stipulated	in addition to award
Tennessee	Yes	May not exceed 15% of award	in addition to award
Texas	Yes	Board determines and awards reasonable fees	in addition to award
Virginia	No	—	—
Washington	Yes	Not stipulated	out of award
Wisconsin	Yes	May not exceed 20% of award	out of award

^aAttorneys allowed for contested cases or hearings only.

may either be included in the award or paid in addition to the award. These provisions may have indirect effects on the use of attorneys: for example, programs which set very low limits on attorneys' fees may do so in an attempt to minimize attorney involvement in the program. Similarly, programs which stipulate that attorneys' fees be paid out of the award, rather than in addition to the award, may again be providing subtle disincentives for attorney involvement. Of course, both these measures may also reflect programs' larger concerns with program costs. Individual programs must determine if the benefits that attorneys may offer equal or exceed the cost of providing this service; if not, it may be sufficient to permit attorneys' involvement in the process at the claimants' expense.

2.4.5 Collateral Source Deductions

All compensation programs require that the victim compensation award be reduced by the amount of available payments to the victim from such collateral sources as workmen's compensation, insurance companies, welfare, medicare, social security, and so on. Two main reasons are advanced for requiring these deductions: effecting cost savings for the compensation program and preventing double recovery. While these reasons are basically sound, a number of problems have arisen in applying the collateral source deduction rule. First, there is a question of construction--should the deductible amounts be subtracted from the total loss or the maximum award available? One Massachusetts case, for example, held that sums recovered from collateral sources must be subtracted from the upper award limit, without regard to the amount of the loss.⁶⁴ This approach could have led to severe financial consequences for some victims. For example, a victim could suffer actual losses of \$15,000. If the maximum award of the victim compensation program is \$10,000, and the victim receives \$10,000 worth of benefits from other sources, then no payments could be received from the victim compensation program. Yet, the victim would still be left with a \$5,000 loss--a considerable hardship in most cases.

To prevent situations such as this, it has been proposed that net awards be determined by subtracting collateral source deductibles from the actual loss, not the maximum award. Under this system, if a claimant's actual loss were \$15,000 and collateral sources offered \$10,000 in benefits, those benefits would be subtracted from the \$15,000 loss. This would leave \$5,000 which the compensation program could then cover. This approach prevents double recovery without subjecting the victim to unnecessary financial hardship. In fact, a Massachusetts Supreme Judicial Court decision reversed the earlier lower court decision and instituted this approach in Massachusetts.⁶⁵

⁶⁴ Gurley v. Commonwealth of Massachusetts (1972), 49 Mass. App. Dec. 78.

⁶⁵ Gurley v. Com. (1973) 296 N.E.2d 477, 363 Mass. 595.

A second concern is whether certain collateral source payments should be deducted at all, with the major focus of the debate being private insurance payments. Those who oppose offsetting compensation payments by the amount received from insurance argue that where the state has failed in its duty to protect its citizens from crime, it is obligated to reimburse all victims' expenses--not just the expenses of those without insurance.⁶⁶ However, this argument assumes that states base their programs on the "torts" philosophy of compensation, as opposed to a welfare theory; generally, this assumption is not true. More practically, it is argued that one who has the foresight to purchase insurance and has had to pay premiums should not be penalized. At least, so the argument goes, the premiums paid and losses not covered by the policy should be covered.⁶⁷ On the other side of the debate, those supporting insurance deductions note that insurance payments relieve victims' financial burdens, the very purpose of compensation programs. By extension, taxpayers should not have to support those who have an independent, adequate remedy.⁶⁸

Several jurisdictions have accepted the arguments opposing insurance payment deductions and wholly or partially exempted insurance proceeds from the deducting rule. In Indiana, for example, the statute specifies that "a deduction may not be made for death benefits under an insurance policy covering the life of a deceased victim."⁶⁹ Similar arguments, pro and con, have been made concerning deductions of amounts received from public sources, such as pensions, social security, and welfare. In Illinois, funds from "pension plans, federal social security benefits, and the net proceeds of the first \$25,000 of life insurance that would insure to the benefit of the applicant . . ."⁷⁰ are exempted from deductions. Some jurisdictions also exempt from deduction government old age pensions or death or disability benefits paid from public funds to on-duty peace officers or their surviving dependents.

2.4.6 Restitution

Several of the compensation statutes contain a provision requiring the offender to make restitution to the program authority to the extent of any award made. Of course, restitution by the criminal to the victim or his family has long

⁶⁶ Lamborn, "Compensation of Victims of Crime," p. 68.

⁶⁷ Ibid.

⁶⁸ Ibid., p. 69.

⁶⁹ Ind. Stat. Ann., Sec. 16-7-3.6-11(a) (Burns, 1977).

⁷⁰ Ill. Ann., Ch. 77,(d) (Smith-Hurd Supp. 1977).

been proposed as a remedy independent of victim compensation programs. As noted in Chapter 1, there are many problems with the use of restitution as a source of financial relief for victims, including low apprehensions rates, the offender's lack assets, and his lack of income earning ability in prison. Independent of its value in terms of victim compensation, the usefulness of restitution as a means of rehabilitating the criminal has been hotly debated. Schafer, for example, believes that restitution can have therapeutic value in the reformation process if it involves the offender's own labor. It has also been suggested, however, that restitution may impede rehabilitation by stirring up resentment in the offender and creating hardships for his family.⁷² Both commentators recognize the flaws inherent in a system of restitution that would enable the offender to 'buy his way out' of prison. Another commentator recognizes the problems with restitution, but believes that, with reforms in the correctional system, e.g., greater development of prison industries, it can be made viable.⁷³ On balance, however, it does not appear that restitution by the offender can effectively replace compensation by the state in the foreseeable future.

⁷¹ Stephan Schafer, "The Proper Role of a Victim-Compensation System," Crime and Delinquency 21 (January 1975): 45, 46-47.

⁷² McAdam, "An Analysis of Victim Compensation in America," p. 349.

⁷³ Harland, "Compensating the Victims of Crime," pp. 215-222.

CHAPTER 3: STRUCTURES AND OPERATIONS

3.1 Introduction

Choices among the policy options noted in Chapter 2 develop a framework for the victim compensation program. To build an operating program around that framework, program designers must make equally important decisions concerning program operations and structures. This chapter discusses the organization of the victim compensation program: its placement in the state government structure; its staff; its relations with other agencies; and its outreach and public awareness activities. The advantages and drawbacks of various approaches are also examined.

3.2 Program Affiliation

There are currently three major types of organizational placements for a victim compensation program. In the first, a new administrative agency is created specifically for the purpose of operating the victim compensation effort. Newly created victim compensation programs generally are characterized by the establishment of a board or commission, appointed by the Governor, and charged with decision-making concerning victim compensation claims, establishment of program rules and regulations, and policy decisions for the program. Depending on the size of the program, the board or commission may be assisted by administrative and/or investigative personnel.

In a second type of administrative placement, responsibility for the victim compensation effort is placed in an existing administrative agency by expanding the original jurisdiction of that agency to include victim compensation. Generally, the agencies chosen for this placement are affiliated with an existing board or commission, such as the board of claims or workmen's compensation board. The existing board and the administrative staff which support the board are given responsibility for victim compensation operations in addition to their previous duties.

A third potential placement is within the courts system. Under this option, most often judges or commissioners of the court bear responsibility for

claims decision-making, while court staff, the State Attorney General's Office, or local District Attorneys are responsible for claims processing. Table 3.1 below illustrates the organizational affiliation of the 29 victim compensation programs in the United States.

Table 3.1

Administrative Placement of U.S. Crime Victim Compensation Programs

State	Year Legislation Enacted	Program Placement
Alaska	1972	New Administrative Agency
California	1965	Existing Administrative Agency
Connecticut	1978	New Administrative Agency
Delaware	1975	New Administrative Agency
Florida	1978	New Administrative Agency
Georgia	1967	Existing Administrative Agency
Hawaii	1967	New Administrative Agency
Illinois	1973	Courts System
Indiana	1978	New Administrative Agency
Kansas	1978	New Administrative Agency
Kentucky	1976	New Administrative Agency
Maryland	1968	New Administrative Agency
Massachusetts	1968	Courts System
Michigan	1976	New Administrative Agency
Minnesota	1974	New Administrative Agency
Montana	1977	Existing Administrative Agency
Nevada	1969	Existing Administrative Agency
New Jersey	1971	New Administrative Agency
New York	1967	New Administrative Agency
North Dakota	1975	Existing Administrative Agency
Ohio	1975	Courts System
Oregon	1977	Existing Administrative Agency
Pennsylvania	1976	New Administrative Agency
Rhode Island	1976	Courts System
Tennessee	1976	Courts System
Texas	1979	Existing Administrative Agency
Virginia	1976	Existing Administrative Agency
Washington	1974	Existing Administrative Agency
Wisconsin	1976	Existing Administrative Agency

The choice of program placement options may be affected by a number of factors, including the anticipated costs associated with each placement; the willingness of existing state agencies to accept the victim compensation program; the degree of formal authority thought to be necessary for the program; and philosophical and/or policy decisions concerning the way in which claims should be handled. Each of the major program placement options is discussed below. The first two sections examine administrative placements of the victim compensation program, while the third discusses judicial system affiliation.

3.2.1 New Agency

Of the programs studied during the course of preparing this document, those of New York, Delaware, and Maryland are all newly-created agencies within the state government structure. In New York, the Crime Victims Compensation Board is affiliated with the Executive Department. In Maryland, the Criminal Injuries Compensation Board is administered under the Department of Public Safety and Corrections, while in Delaware the Violent Crimes Compensation Board is affiliated with the Administrative Office of the Courts for budget purposes only. The creation of a new agency is by far the most common choice among states having victim compensation programs (14 out of 29). Perhaps because of this, it is also the placement which has received the most acceptance in the literature: for example, in a 1973 survey of compensation program administrators Brooks found that:

"...there was near unanimous agreement among the respondents regarding their preference for the creation of a special administrative board to administer the crime compensation program."

The placement of all "new administrative agency" victim compensation programs is illustrated in Table 3.2 below.

There appears to be no set pattern concerning the placement of the program within the government structure. For example, the underlying philosophy or orientation of the program (as a criminal justice program, a welfare or human service program or an administrative program) can affect the placement. Similarly, the political realities of the state may affect program affiliation, as some departments may be more willing or better equipped to accept a new agency under their jurisdiction. These conditions are likely to vary widely among states, and thus preclude prescription of any one optimal placement for the new agency.

¹James Brooks, "Crime Compensation Programs: An Opinion Survey of Program Administrators," Criminology 11 (August 1973): 259.

Table 3.2

**Victim Compensation Programs Given New Administrative Agency Status:
Placement Within the State Government Structure**

Department	Number of programs
Health, Social Services, or Rehabilitative Services	4
Public Safety, Department of Justice	4
Management, Planning, Budget Offices	2
Executive Offices, Cabinet	3
Administrative Office of the Courts	1

There are several advantages associated with the creation of a new agency to administer a victim compensation program. Based on a survey of victim compensation program administrators, James Brooks summarizes the perceived advantages as follows:

- administrative flexibility;
- specialization, leading to expertise in handling claims;
- uniformity;
- centralized control of the awarding of payments;
- quickness in handling claims; and
- informality of procedures.²

Within the parameters established by the victim compensation statute, newly-created agencies for victim compensation may be able to establish and organize procedures, forms, rules, and staffing patterns which are uniquely suited to the needs of the crime victim compensation effort. Unlike court-affiliated programs, those established in newly created agencies will be able to institute less formal procedures for case investigation and hearings. This informality may lead to increased willingness of the victim to approach the compensation program, and can allow the program to take advantage of potential cost savings from simplified, streamlined, or less official procedures.

²James Brooks, "Compensating Victims of Crime: The Recommendations of Program Administrators," Law and Society Review 7 (Spring 1973): 448.

The process of modifying these procedures and patterns or instituting new initiatives may also be facilitated by the "independent" status; resistance to change is likely to be much less if that change does not contradict the established procedures of a long-entrenched agency. In addition, the newly-created agency offers program designers a unique opportunity to staff the victim compensation effort with persons whose interests, experience, and capabilities match the needs of the program.

Another advantage of the newly-created agency is its exclusive focus on victim compensation. This may benefit the program in several ways. First, the agency will be able to create its own constituency. Second, staff time and attention will be devoted exclusively to victim compensation, minimizing the possibility of interference due to other concerns or duties. Finally, an exclusive focus on victim compensation may enable staff to develop greater expertise in the issues and procedures of victim compensation. This has important implications for states with large (or potentially large) claim volumes, as it may increase the efficiency of the claims process and result in cost savings to the victim compensation program.

A related advantage of the newly-created victim compensation agency is the degree of accountability it offers. 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. Finally, funding for the program may be facilitated, as budget requests for victim compensation will not be dependent on favorable budget decisions for a parent agency.

Although the new agency affiliation offers several advantages, there are also numerous drawbacks. For the most part, these involve the expense and inconvenience of establishing a new agency. First, program designers may find legislatures to be reluctant to create new agencies. Second, the implementation period for the program may well be longer if it is developed as a new, independent agency. Office facilities will have to be secured, and the board and staff will have to be recruited, hired, and trained. Although this process may be simplified by recruiting among persons already involved in state government or programs which might be related to victim compensation, such as insurance or workmen's compensation, it may still require a substantial period of time. In Delaware, for example, legislation became effective on January 1, 1975; the Director was not hired until March 1975; and the program did not begin processing claims until May 1975.

The second disadvantage of the new agency placement may be program costs. Overhead expenses are likely to be greater for a small, newly-established agency; the cost of implementation may also be higher to accommodate recruiting, development of program rules and regulations, and implementation of processing procedures. If the claims volume is very low, the problem of

agency costs may be much more pressing. Programs may find it uneconomical to employ support and clerical staff, and yet may be faced with a real need for such services. Expenses associated with hiring and facilities may also be difficult to support. On the other hand, in states having moderate to high claim volumes, the new agency may present an economical choice.

3.2.2 Existing Administrative Agency

The second type of administrative placement available for crime victim compensation programs is to vest the responsibility for the program in an established agency by expanding its jurisdiction to cover crime victims. Typically, victim compensation programs affiliated with established agencies place responsibility for claims hearings and decisions with a quasi-judicial state board associated with the agency. Staff support for victim compensation activities may be provided by existing personnel, or by persons hired specifically for the victim compensation program. Staffing issues are discussed more thoroughly in Section 3.3. As Table 3.1 indicates, 10 of the 29 existing crime victim compensation statutes place the program under the jurisdiction of an existing agency. Table 3.3 indicates the placements of these 10 programs. This table demonstrates that there are two major options for states choosing this type of administrative placement. For example, the States of California, Georgia, and Nevada have placed their programs with administrative boards charged with hearing claims against the state. More common, however, is the course chosen by the remaining 7 states: placement of the program within the department which has responsibility for administering industrial insurance/workmen's compensation programs. In placing its program within the Workmen's Compensation Division of the Department of Labor and Industries, Washington was the first American jurisdiction to make use of this organizational affiliation, mirroring the experience of its Canadian neighbor, Manitoba. Although many reasons may be advanced in support of this placement, the two noted by the Washington program are the most commonly heard: (1) that the philosophy, procedures, forms, rules, etc. necessary for crime victim compensation would be very similar to those already established for workmen's compensation; and (2) that the state could realize substantial savings in administrative costs by placing the program in an established agency.

To some extent, advantages and disadvantages of this placement are the opposites of those of the newly-created agency. Clearly the most obvious factors in favor of this placement are related to potential cost savings and ease of implementation. Unlike the new agency, which must build its program from the ground up, the program established in an existing agency already has the framework for its operations. Existing staff and facilities may be tapped, thus cutting the often extensive delays in program implementation due to recruiting and training. Procedures such as claims processing, investigations, and hearings may easily be transferred to the new crime victim

Table 3.3

**Placement of Victim Compensation Programs Located in
Existing Administrative Agencies**

California	State Board of Control
Georgia	Claims Advisory Board
Montana	Workmen's Compensation Division
Nevada	State Board of Examiners
North Dakota	Workmen's Compensation Bureau
Oregon	State Accident Insurance Fund
Texas	Industrial Accident Board
Virginia	Industrial Commission of Virginia
Washington	Department of Labor and Industries, Workmen's Compensation Division
Wisconsin	Department of Industry, Labor and Human Relations

compensation effort. Savings in administrative costs may also be realized: overhead costs already established for the parent agency will increase only slightly with the addition of victim compensation responsibilities; and support staff, record-keeping facilities, and even administrative/investigative staff may be "shared," keeping personnel costs down. In addition, the program may benefit from the previously-established relations of its parent agencies. In Washington, for example, it was noted that the relations with medical service providers were enhanced by the Department of Labor's long history of close dealings with hospitals, physicians, and pharmacists throughout the state. The parent agency's relations with other government departments, the state legislature, and local governments may also facilitate the operations of the victim compensation program.

Affiliation with the agency handling workmen's compensation claims also brings some rather unique benefits. For example, a number of victim compensation programs have discovered that maintaining only one central office can cause considerable difficulties for claimants trying to attend hearings or seek information, as it is often inconvenient for applicants to travel to the central office. Thus, several victim compensation programs have considered establishing regional offices in addition to their central office to answer these victims' needs. Yet many workmen's compensation programs have already established a network of regional offices throughout their states. For example, the Washington Crime Victim Compensation Division finds that it is able to make use of the staff and facilities of the regional offices to distribute and collect claims forms, answer questions from applicants, and investigate claims originating in their service area. This procedure offers potential cost savings in terms of investigative time and personnel costs, and answers the rather persistent need for decentralization found in many victim compensation programs.

A second benefit of workmen's compensation affiliation is that the crime victim compensation program may make use of the schedule of benefits already established for industrial insurance. While this advantage is also available to newly established programs--the Maryland Criminal Injuries Compensation Board also makes use of the Maryland Workmen's Compensation schedule of benefits--it is guaranteed only to those programs having a workmen's compensation affiliation. This advantage may be a powerful incentive for choosing the workmen's compensation affiliation, especially in states with a strong industrial insurance program. In states with lower benefit schedules, the availability of these schedules for victim compensation may figure less strongly in the placement decision. A related benefit unique to the workmen's compensation affiliation is the automatic "lobbying group" it provides for crime victims. As the director of the Washington program has noted, labor groups are a powerful force in ensuring that the schedule of benefits established under workmen's compensation is fair and keeps pace with inflation; they also have a constant interest in improving the workmen's compensation claim process. By placing the crime victim compensation program within the Workmen's Compensation Bureau, crime victims benefit from the lobbying efforts of labor groups.

In spite of these advantages, placement in an existing agency may present a number of drawbacks. Perhaps the most serious of these is the potential conflicts that may arise as an existing agency is asked to take on additional responsibilities. For example, it is possible that the victim compensation program placed in an existing agency may be "hampered by principles, procedures,³ and work habits ill-suited to the requirements of victim compensation." This was exemplified in the early years of the California program, when placement in the State Welfare Department brought inappropriate welfare procedures and philosophies to the victim compensation effort. Edelhertz and Geis have noted:

In practice, all of the generally derogatory statements about the likely consequences of including crime victim compensation in California within the welfare realm were well found. Based on interviews with several dozen recipients of state aid under the California compensation program, one of the present authors summarized the situation as follows in a report prepared for the National Commission of the Causes and Prevention of Violence:

. . . applicants for compensation were handled in essentially the same manner as persons applying for welfare assistance, being subject to most of the indignities traditionally associated with state

³ U.S. Congress, Select Committee on Aging, Victim Compensation and the Elderly: Policy and Administrative Issues by Richard Hofrichter, 69th Cong., 1st sess. (Washington, D.C.: Government Printing Office, 1979), p. 13.

aid; suspicions regarding the veracity of their claim, overlong delays in processing papers, excessive waiting periods in inhospitable offices, condescension and pressures pushing toward an early return to work and cancellation of benefits.⁴

On a much smaller scale, this conflict of procedures and principles may be found even in successful programs. In the Washington program, for example, investigative procedures differ for workmen's compensation claims and crime victim compensation claims. The program administrator has found it necessary to make special efforts to keep the investigative staff aware of the particular information requirements for victim compensation.

A second type of conflict may arise if staff of the existing agency are required to assume additional responsibility and work without an increase in personnel, or if the staff feel a greater commitment to their original clients rather than an equal commitment to those clients and the victims of crime. Unless the program is quite small, it is often necessary to hire additional personnel. The program may then choose either (1) to assign all personnel to duties relating to the full range of responsibilities of the existing program, or (2) to allow some staff to specialize in victim compensation while others deal with the other responsibilities of the agency. A third potential disadvantage of the existing administrative agency placement is resistance of the agency to assignment of new duties. Again, the experience of the California program exemplifies this type of problem; when first placed in the Department of Social Welfare, staff had very negative reactions:

The California Department of Social Welfare, handed a task that it had neither asked for nor wanted, turned truculent and graceless in its administration of the country's pioneering crime victim compensation measure. In an interview with one of the authors [of Public Compensation to Victims of Crime] on October 7, 1965, the director of the department declared that he believed the program to have been 'improperly placed.' An assistant director told a newspaper reporter that crime victim compensation 'violates our whole philosophy.' . . . Staff members also resented the new duties the program thrust upon them. . . .⁵

When the program was transferred to the State Board of Control, this resistance was still evident:

⁴Herbert Edelhertz and Gilbert Geis, Public Compensation to Victims of Crime (New York: Praeger Publishers, 1974), p. 85.

⁵Ibid., p. 82.

At the same time, the assistant attorney general noted that his office had no keener enthusiasm for its mission in this field than its predecessor had shown: 'We were reluctant,' he noted. 'We took it only because of Senator McAteer's position and preeminence in the Legislature.'⁶

This type of divisive attitude need not be the rule, however. In North Dakota, the proposed "site" for the victim compensation program (the North Dakota Workmen's Compensation Bureau) promoted victim compensation legislation in the state and supported the measure in hearings before the State's Senate Judiciary Committee. Enlisting the cooperation and support of the proposed host agency during the legislative phase is an essential step in successful program implementation.

A final disadvantage of placing the program in an existing agency is that the cost savings associated with this placement may be only temporary. As the volume of cases increases, it will be necessary to hire staff in addition to those already employed by the parent agency and to expand the facilities and services available for crime victim compensation activities. In time, costs of placement in an existing agency may equal those of placement in a new agency.

3.2.3 Judicial System

The two administrative placements for the victim compensation effort--the new agency or the existing agency--are similar in many respects. Both make use of administrative boards to hear cases; both offer flexibility and informality; and to varying degrees, both offer a core staff able to concentrate on the issues and needs of crime victim compensation. Most importantly, both centralize the responsibility for program administration and operations in one office.

Placement within the judicial system is a clear alternative to affiliation with an administrative agency. To date, this arrangement has been chosen in four states: Massachusetts, Illinois, Ohio, and Tennessee. In terms of the benefits offered to victims of violent crimes, these programs do not differ substantially from programs having an administrative agency placement. Three of these states provide maximum payments of \$10,000, while Ohio offers up to

⁶ Ibid., p. 90

⁷ Richard J. Gross, "Crime Victim Compensation in North Dakota: A Year of Trial and Error," North Dakota Law Review 53 (1976): 16.

\$50,000. Eligibility requirements and crimes covered also parallel those of administrative programs. Thus, the major difference between the administrative and judicial placement lies in the program administration and not in the compensation itself.

Generally, responsibility for the crime victim compensation program is given to the lower courts or courts of limited jurisdiction. The exception is Tennessee, where responsibility for victim compensation is given to the circuit courts which are courts of general jurisdiction. Table 3.4 shows the placement of the four court-based victim compensation programs.

Table 3.4

Placement of Court-Based Victim Compensation Programs

State	Year Program Started	Placement of Program	Additional Offices with Responsibility for Victim Compensation
Massachusetts	1969	District Courts	Attorney General
Illinois	1973	Court of Claims	Attorney General
Ohio	1976	Court of Claims	Attorney General
Tennessee	1978	Circuit Courts	District Attorneys and State Board of Claims

Clearly, there is considerable diversity in placement and organization even among these court-based programs. Typically, the court personnel--whether judges or commissioners--are responsible for hearing claims and making the ultimate compensation decision. However, claims investigation may be carried out by the Attorney General's Office or local District Attorneys. In two states the Attorney General is responsible for maintaining the records concerning crime victim compensation activities; in Ohio the Court of Claims maintains all compensation records, whereas in Tennessee that responsibility rests with the State Board of Claims. More information on staffing issues and claims processing is provided in Sections 3.3 and 4.2 respectively.

Massachusetts was the first American state to place its victim compensation program in the judicial system. Prior to the program's implementation, victim compensation issues were studied by the Massachusetts Special Commission on the Compensation of Victims of Violent Crimes, which was created in 1966 by the State Legislature. The report of that Commission delineates the rationale for and perceived benefits of the judicial placement for the Massachusetts victim compensation program. The Commission argued, for example, that an administrative body was better suited for matters of monitoring and regulation, and that the judicial placement was more suitable for

matters involving investigation and determinations based on fact. It was also argued that judges possess the requisite training, skills, and experience to hear and determine claims.

Additional benefits cited by the Commission and echoed in other sources include cost, fairness, and decentralization. Like placement in an existing administrative agency, it has been proposed that court placement may reduce costs associated with hiring new staff, acquiring office space, training, and procedures development. Proponents of this view maintain that administrative placement of the victim compensation program is duplicative and wasteful, since the courts already offer the type of structures necessary for the program. For example, Schafer asserts that by placing responsibility for victim compensation with administrative agencies, states make "compensation procedures parallel with civil law practice. Such suggestions are little more than sophisticated tort or insurance-law propositions."

At least initially, court-based programs do not require substantial additions of personnel; however, this condition may not prevail as the program grows. For example, the Illinois program has been troubled by large claim backlogs, due in part to a lack of adequate staffing. Thus, the cost savings realized by court placement may be obtained at the expense of other factors such as efficient claims processing.¹⁰ In addition, the potential for cost savings may be illusory. Judicial salaries may well exceed those of administrative agency employees, and the investigative services provided by the Attorney General's Office or the local District Attorneys may also be quite expensive. Finally, establishment of the program within the judicial system may preclude the adoption of such cost saving measures as the use of lower-level personnel as hearing officers or the adoption of informal hearing procedures.

A second possible benefit of the judicial placement is that it may offer claimants greater protection of their rights and may ensure proper review.¹¹ Courts have a long-established concern with the rights of the petitioner--a concern which may be lacking in an administrative agency which focuses on processing and disbursement of funds. However, this concern for claimants' rights may be too seldom evidenced in those courts with very high claims

⁸ Commonwealth of Massachusetts, Report of the Special Commission on the Compensation of Victims of Violent Crimes, prepared for the Massachusetts Senate and House of Representatives, July 1967.

⁹ Stephen Schafer, "The Proper Role of a Victim Compensation System," Crime and Delinquency (January 1975): 48.

¹⁰ U.S. Congress, Victim Compensation and the Elderly, p. 14.

¹¹ Ibid., p. 13.

volumes. Perhaps even more important is the benefit of decentralization offered by the courts. In judicial-based programs such as those of Massachusetts and Tennessee, claimants' cases would be heard in the court serving their own towns, which may make the hearing process more convenient and accessible. However, in those programs housed in the Court of Claims, this benefit may not apply; for example, hearings in Ohio are held in Springfield, the seat of the Ohio Court of Claims.

In general, placement of the victim compensation program in the courts is viewed with less enthusiasm than administrative affiliation. Edelhertz and Geis, for example, find that in Massachusetts the decentralization of responsibility for the victim compensation program between the court and the Attorney General was one of the major drawbacks to the court-based program. They state:

The principal [reservation about the judicial model] is the lack of central responsibility for administration of the program. No Massachusetts official has as his main responsibility the duty to see that all eligible victims of crime are made aware of their rights under the statute and are helped to obtain the relief to which they may be entitled. . . . There is no separate budget request for the program as a whole that can be considered as part of the budget-making process of the commonwealth. Instead, each agency involved--the attorney general, the courts, and perhaps the state treasurer--will at most make this a line item in its budget request and perhaps include compensation responsibilities as one of a potpourri of justifications to support the funding requested.¹²

This same decentralization of responsibility would seem to characterize the other court-based victim compensation programs as well. Durso notes, for example, that in Illinois "a claim is processed through several stages; Illinois' procedures are primarily administrative in that a claimant must deal with several state offices."¹³

While decentralization of the hearing process increases the program's accessibility and convenience, it also brings some disadvantages. Unlike administrative programs, which have a limited number of claims decision-makers answering to one central authority, court placement of the program brings larger numbers of relatively autonomous decision-makers to the victim

¹² Edelhertz and Geis, Public Compensation to Victims of Crime, p. 127.

¹³ John J. Durso, "Illinois' Crime Victim Compensation Act," Loyola University Law Journal 7 (Spring 1976): 356.

compensation effort. Thus, there exists a potential for unequitable variations in the claims decision-making process among the decentralized courts. To overcome this problem, states with court-based programs must take special care in their training and information distribution activities--an investment which many states are unwilling or unable to make.

Although formality of procedures and judicial safeguards of petitioners' rights may be an advantage under many circumstances, these same characteristics of the court-based program may also constitute a serious drawback. In Illinois, for example, claimants must first submit an "intent to file form" to the Attorney General, and then complete a rather lengthy application form which is filed with the Court of Claims. Unlike administrative programs, claimants must generally pay a filing fee. Hearings are held in court facilities before a judge or commissioner of the court, which may prove intimidating to the applicant. Thus, the procedures and environment associated with the court-based program may discourage claimants. Furthermore, the applicants' perceptions of the court and judicial process may contribute to a reluctance to make use of the program. Hofrichter notes that the judicially-based program may discourage claimants, and that this "may be partially explained by the tendency of citizens to perceive what goes on in courts as adversarial in nature and by the negative images and experiences associated with an overloaded, understaffed, and otherwise inaccessible bureaucracy, prone to delay."¹⁴ In fact, concern over the adversarial nature of the courts may be well-founded. Courts have traditionally focused on prosecution of offenders or defense of the state against claims on its resources. The considerable change in role and philosophy implied by helping the victim may not be successfully accomplished in many courts.

In some cases, the overcrowded case dockets which trouble many state court systems may have a negative impact on their ability to process crime victim compensation claims with any speed. Generally, the lack of "spare" personnel, the considerable responsibilities of existing personnel, and the lack of a centralized authority for administration of the program would seem to indicate that court-based programs are most likely to succeed in states with low claim volumes for crime victim compensation.

The choice between administrative and judicial placement of the program is influenced not only by the advantages and disadvantages that each presents, but by prevailing policies, philosophies, and public attitudes in the state. For example, states' decision-makers may have different philosophies concerning the nature of a compensation decision and the way that decision ought to be made. In some cases, it is acknowledged that the process is quasi-judicial in nature, and an administrative, quasi-judicial board is therefore employed to make these decisions. Other decision-makers may believe that

¹⁴ U.S. Congress, Victim Compensation and the Elderly, p. 14.

victim compensation claims more rightly belong in the realm of the judicial decision-making process. Court-based programs may then provide that "judicial tone": claims are filed with the court, investigated by the Attorney General or District Attorney, and decided by judges or commissioners of the courts.

Table 3.5 summarizes the advantages and disadvantages of the three placement options discussed in this section.

3.3 Victim Compensation Program Staff

Regardless of its size, policies, or administrative placement, every victim compensation program must have a core of individuals responsible for program operations. Yet staff configurations will vary widely across programs, affected by such factors as program procedures, placement policies, funding, and size. One thing, however, will remain constant--the need to carry out the following minimum functions:

- claims intake;
- responses to claimant inquiries;
- claims investigation;
- claims hearings;
- claims decisions;
- records keeping; and
- outreach/publicity.

Victim compensation programs currently in operation have developed varying staffing approaches in response to these functional needs. In the sections which follow, staffing issues for administrative-based programs are discussed. Because staffing of court-based programs presents a number of unique concerns, this topic will be addressed in a separate section below; still, many of the issues raised with respect to administrative agency staffing are also relevant to court-based programs.

Table 3.5
Major Options for Program Placement—Summary of Advantages and Disadvantages

Placement	Advantages	Disadvantages	Comments
New Administrative Agency	<ul style="list-style-type: none"> • Can establish procedures, forms, rules, and staff which are uniquely suited to victim compensation • Informality • Specialization and exclusive focus on victim compensation • High degree of accountability • Case processing costs may be minimized by ability of program to adopt streamlined administrative procedures • Less intimidating to claimants 	<ul style="list-style-type: none"> • Implementation costs may be higher • May require more time to become fully operational • Operating costs may be relatively high in low volume states 	Appears most appropriate for states with large claims volumes
Existing Administrative Agency	<ul style="list-style-type: none"> • Implementation period and start-up costs should be minimal • Ongoing administrative costs may be lower • Program may benefit from the contacts and relations established by its parent agency • Program may be able to "borrow" the procedures, forms, staff, regional structure etc. of the parent agency • Less intimidating to claimants 	<ul style="list-style-type: none"> • High potential for conflict between procedures and duties of the parent agency and those of the victim compensation program • Staff of the parent agency may resist or resent the addition of victim compensation duties • May experience difficulties in handling large claims volumes 	The success of this placement is very dependent on the effectiveness of the parent agency <i>prior</i> to the addition of victim compensation responsibilities. May be more appropriate for states with smaller claims volumes
Court System	<ul style="list-style-type: none"> • Offers a pool of highly trained and specialized personnel • Implementation period and start-up costs should be minimal • May offer greater protection of claimant's rights 	<ul style="list-style-type: none"> • Lack of central administrative authority and responsibility for the program • Individual courts may be overburdened by case backlogs • May be difficult to obtain additional staff for claims processing, particularly within the Attorney General's Office • Court setting may intimidate claimants • May be more costly in the long run, as salaries of judicial personnel and the Attorney General's staff are likely to be higher than those of administrative personnel 	May be most appropriate in states with low claims volumes. Problems in uniformity of claims decisions may occur without training on victim compensation procedures

3.3.1 Staffing the Administrative-Based Program

Table 3.6 summarizes the staff organization of the four programs studied in the course of preparing this document. As the table indicates, programs vary along such dimensions as staff size, position, location of staff, and salary ranges. Major reasons for these variations include the legislative requirements of the victim compensation program, the existing state government structure, claim volumes, placement of the program, and funding levels. For example, legislative requirements dictate the size of the board in Maryland, Delaware, and New York; the previously established regional offices of the Washington Department of Labor and Industries determine that state's crime victim compensation staff; and the large claim volume in states such as New York (more than 4,000 per year) necessitate a much greater staffing level than that of a smaller program such as Delaware.

The smallest victim compensation programs may find it sufficient to employ only an administrator, a support/clerical staff member, and an individual or individuals charged with making claims decisions. Some smaller programs even require that these latter positions be filled on a volunteer or per diem basis, or combine the administrative and claims decision staff positions. Many programs have found it necessary, however, to add other staff positions, particularly claims investigators. Finally, the largest programs may find that such positions as mid-level supervisory personnel, financial analysts, public education/outreach workers, or claims adjudicators/reviewers may be warranted by their claims volume and funding levels.

Unfortunately, the dictates of funding levels are more likely to determine staff size than the pressures of case volumes. This has led to persistent problems with understaffing and increasing claims backlogs resulting from inadequate staff levels. In fact, understaffing represents one of the more serious causes of processing delays for victim compensation programs. The New Jersey program presents an extreme example of this problem: one source noted in 1979 that "Because of understaffing, the New Jersey Board is now considering claims made in the winter of 1975-1976."¹⁵

The crime victim compensation board in most states is a quasi-judicial body charged with the responsibility for claims decision-making. While the board may also assume responsibility for the day-to-day administration of the compensation program, its primary duties relate to claims determinations and appeals.

¹⁵ John Blackmore, "Paying the Price of Crime," Police Magazine (July 1979): 62.

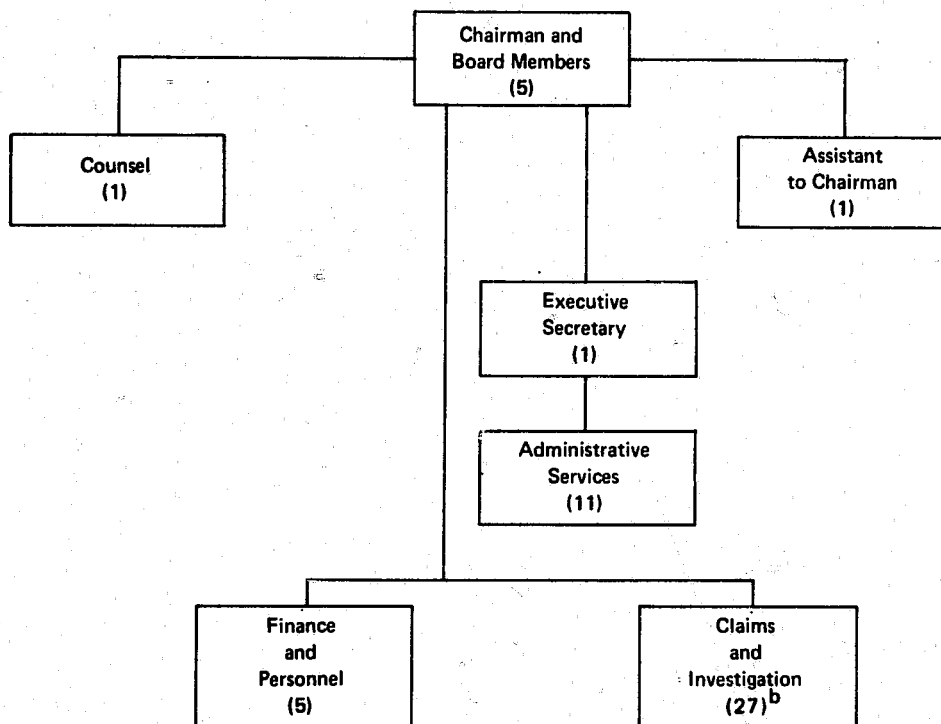
Table 3.6
Administrative-Based Program Staffing

	New York	Maryland	Delaware	Washington
Number of Board Members	5	3	5	1*
Number of Program Staff	46	7	5	6
Positions Included in Program Staff	Executive Secretary Assistant to Chairman Counsel to the Board Supervising Investigator Senior Investigators Investigators Claims Examiners Fiscal Officer Medical Fee Specialist Senior Account Clerk Account Clerks Receptionist Secretaries	Executive Secretary Claims Investigator III Claims Investigator II Fiscal Associate Office Secretary	Executive Secretary Claims Investigators Administrative Asst. Secretary	Administrator Claims Adjudicator Investigator Secretary
Responsibility for Program Administration	Chairman of the Board	Executive Secretary to the Board	Executive Secretary to the Board	Administrator
Staff Location	Central office in New York City; branch offices in Albany, Syracuse, Buffalo, Mineola	One central office in Baltimore	Central office in Wilmington	Central office in Olympia; 16 branch offices throughout state
Board Salaries	\$39,650 Chairman \$32,250 Members	\$10,000	\$5,000 Chairman \$4,000 Members	N/A
Staff Salaries (average)				
Administrator	\$25,179	\$22,000	N/A	\$23,000
Investigators	\$11,077-\$19,368	\$12,800-\$15,100	\$11,500	\$16,000
Clerical	\$ 6,165-\$14,052	\$ 7,500-\$10,500	\$ 8,500	\$14,000
Other:		\$12,200	\$10,000	\$19,000
Assistant to the Chairman	\$22,890	(Fiscal Assistant)	(Administrative Ass't.)	(Claims Adjudicator)
Counsel	\$27,890			
Account Clerk	\$ 8,762-\$16,582			
Claims Examiner	\$ 7,565-\$10,429			
Medical Fee Specialist	\$15,445			

*Most claims are decided by the claims adjudicator, an administrative employee. Only appeals are heard by the Board of Industrial Insurance Appeals.

Since the board members bear the final, key role in the claims processing procedure, it is important that there be a sufficient number of board members to manage the claims placed before it. As shown in Table 3.6 above, board size varies among programs: New York, for example, has 5 board members, while Maryland has only three. In a 1973 survey of 20 victim compensation board members, Brooks found that most respondents favored boards with three or more members. However, several respondents noted that the size of the board would depend on the work load, while 2 of the 20 felt that large boards exceeding 8 or 9 members would be most appropriate.¹⁶ To some extent, the need for large boards may be offset by the procedural options chosen by the victim compensation program. These procedural options are examined below in Chapter 4.

Figure 3.1
New York
Organization of the Crime Victims Compensation Program^a



SOURCE: New York Legislative Commission on Expenditure Review, *Crime Victims Compensation Program, Program Audit*, April 1979, p. 7.

^aNew York Legislative Commission on Expenditure Review, *Crime Victims Compensation Program, Program Audit*, April 1979, p. 7.

^bClaims and Investigation staff are based in New York City, Albany, Buffalo, Syracuse and Mineola.

¹⁶James Brooks, "Crime Compensation Programs: An Opinion Survey of Program Administrators," pp. 261-262.

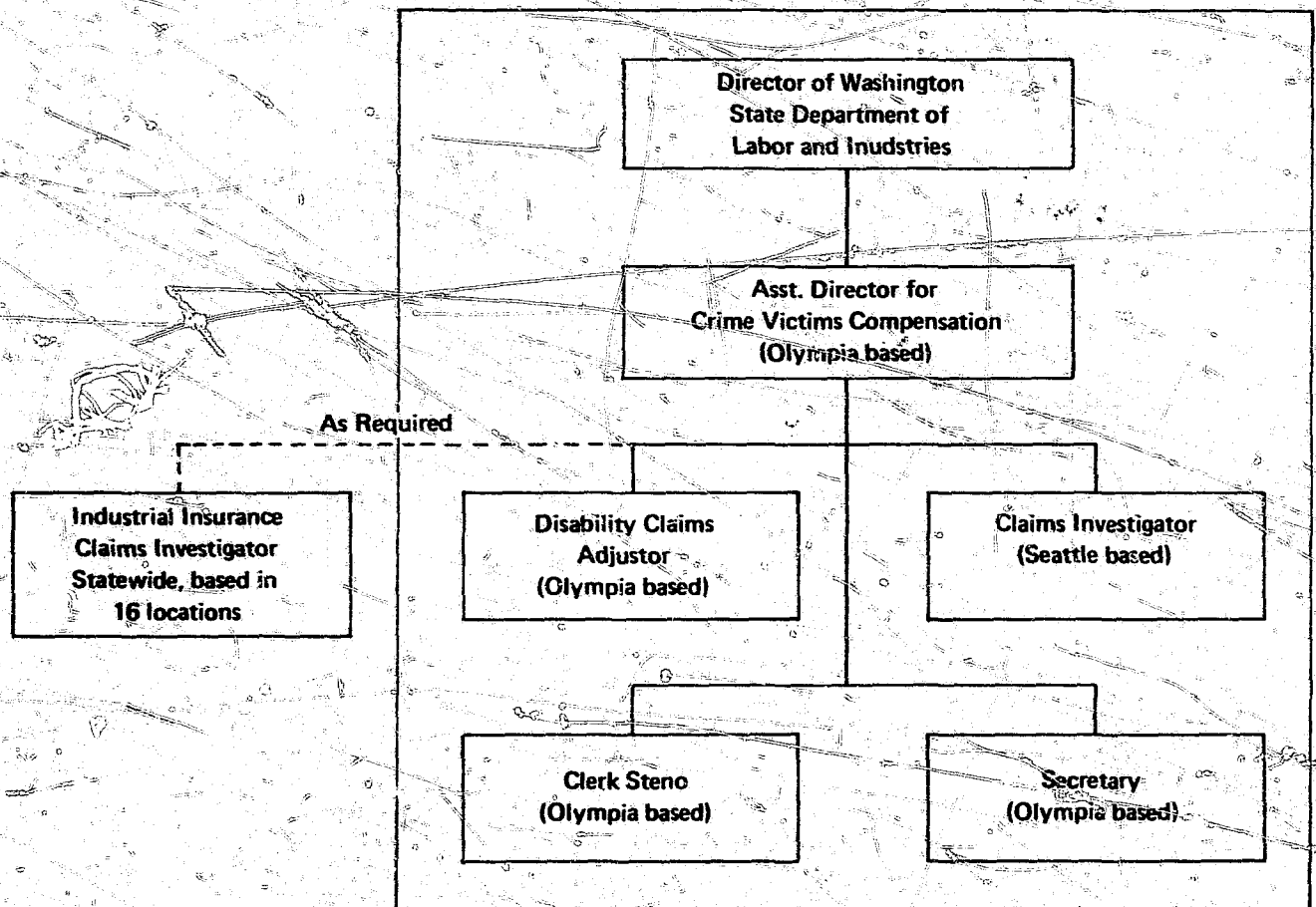
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Staff organization is also likely to vary according to the number of workers, the volume of claims, and the prevalent administrative structures of government agencies in the state. Figure 3.1 above is an organization chart of the New York crime victim compensation program. The staff organization of the Washington program is shown in Figure 3.2 below, providing a contrast between a large, new agency program and a medium sized program affiliated with a pre-existing agency.

Figure 3.2

**Washington
Organization of the Crime Victims Compensation Division**



The key feature of any successful victim compensation program will be the quality of its staff. As an agency which deals with human needs, the staff must be able to strike a careful balance of compassion and reason. As an agency which deals with the public and the media, staff must have a feel for public relations. Finally, as an agency which depends on the services, cooperation, and good will of other departments and agencies, the staff must have a clear understanding of the workings of these agencies and must possess the political finesse to deal with these departments in an effective manner.

It is particularly important that the individual selected for administration of the program be capable, energetic, politically sensitive, and committed. A strong and talented administrator will be an invaluable asset in establishing the program's place within the state government, building the relationships necessary for program success, and improving and expanding the victim compensation effort. Without the guidance of a strong administrator, the program will at best remain a stable but little known part of the state government bureaucracy.

Recruiting methods and hiring procedures for the victim compensation program staff will vary among jurisdictions, depending on the personnel policies of the state and the design of the program. Examined below are the staff qualifications and capabilities which victim compensation programs have established as selection criteria for their board members, administrators, and investigators.

Board Members. Generally the term and selection procedures for crime victim compensation board members are prescribed in the program's enabling legislation. By far the most common selection mechanism for the board is appointment by the state Governor. Often general guidelines on the required qualifications and background for board members are included in the statute as well. The most common qualifications and restrictions concerning board members' backgrounds are:

- Political affiliation. As may be expected, drafting and enacting victim compensation legislation requires substantial political activity. These political overtones are often carried over in the requirement that no more than two of the three, or three of the five board members be of the same political party. Presumably this requirement would reduce the possibility that board membership could be used as a political reward for the members of the Governor's party and would keep the board as politically neutral as possible.

- Background in law. Many statutes require that the board members (or some number of the members) be attorneys licensed to practice within the state. Often there is some requirement concerning the length of time that the board member must have been a member of the state bar. As the compensation decision often requires some interpretation of the victim compensation statute and hearings are often quasi-judicial in nature, the requirement for legal training is thought to be desirable in many states.
- Medical training. Recognizing that the purpose of the vast majority of compensation programs is to compensate individuals for their physical injuries, several victim compensation programs require that at least one board member be a licensed physician. The rationale for such a requirement is apparently that this will better allow the board to evaluate medical claims, the extent of injuries caused by the incident, and the likely impact of the injury on the victim's future well-being.
- Experience in claims adjudication or investigation. In some jurisdictions, board members are required to have previous experience in hearing, determining or investigating claims in such areas as insurance or workmen's compensation.

It would appear that all of these requirements offer significant advantages to the board in carrying out its responsibilities for victim compensation. The primary disadvantage of some requirements--particularly those relating to the professional training of board members--is that they may exclude other groups which may offer valuable input to the compensation problem, such as lay persons or community activists. If possible, programs should examine their requirements for board membership with an eye toward both effectiveness and representativeness. Many programs now require that members come from diverse backgrounds--one an attorney, one a physician, and so on.

If an existing administrative agency affiliation is adopted by the victim compensation program, there will be little or no opportunity to choose the victim compensation board with the requirements of the program specifically in mind; the program will make use of the existing board and be bound by the selection criteria already in effect.

Program Administrators. In programs such as that of New York, the board itself has responsibility for the program administration; in these cases, the chairman of the board may assume administrative duties. Often, however, the board members will be assisted by an administrator, known by such titles as executive secretary to the board, director, program administrator, and so

on. The placement of administrative responsibility will depend on the size of the program, staffing levels, and the requirements of the enabling legislation.

If a board member is to serve as the program administrator, requirements and qualifications for the position would be identical to those of the board. However, if a program chooses to have an administrator in addition to the board, separate requirements for that position may be established. Criteria for this position may include legal training, previous experience in administration of claims-oriented agencies, or investigative experience.

Investigative Personnel. Most of the large victim compensation programs employ investigative staff responsible for acquiring financial and insurance information, verifying police reports, and checking the accuracy of claim information. Programs may look for backgrounds in law enforcement, insurance claims investigations, or human service programs for investigative personnel.

3.3.2 Staffing the Court-Based Program

Proponents of the court-based victim compensation program have argued that this placement could alleviate many staffing concerns. In this respect, advantages of this placement are seen to be very similar to those of placement in an existing administrative agency. In theory, recruiting and selection efforts for court-based programs would be minimal, since existing staff would be used to operate the program. There would be little concern with organizational issues, since the program organization would be that of the courts. Training needs would also be minimal, since the victim compensation procedures would parallel those already established for such typical court functions as hearings or case adjudication. In practice, however, many of these expectations have not been fulfilled. In the following paragraphs the issues concerning staffing of the court-based victim compensation program will be examined, with emphasis on those expectations which have not been fulfilled in programs' experience.

As noted above in Section 3.2.3, the organization of court-based victim compensation programs has one major flaw: it is more difficult to establish central responsibility for the program. Typically, responsibility for program operations is given to several distinct agencies, including the courts, the Attorney General, and the local District Attorneys. The major options for court-based program organization which have emerged so far are illustrated in Table 3.7.

Table 3.7

**Court-Based Victim Compensation Programs:
Distribution of Responsibility for Program Operations**

	Decentralized	Centralized
Responsibility for claims hearings	Judges of local court systems—either the courts of limited jurisdiction (MA) or courts of general jurisdiction (TN)	Judges or Commissioners of the Court of Claims
Responsibility for claims investigations	Attorney General (MA) or local district attorneys (TN)	Attorney General
Responsibility for claims processing	Court Clerk	Court Clerk
Responsibility for reporting on victim compensation progress and efforts	Attorney General (MA) or State Board of Claims (TN)	Court of Claims (OH) Attorney General (IL)

As the above information indicates, there is considerable diversity even among these options. It would appear that the "centralized" court-based program situated in states' Court of Claims would most closely approximate the workings of the administrative-based program, in that: (1) activities of the court would be managed from one central location; (2) persons who hear cases would have the opportunity to confer, share their expertise, and develop uniform processing and decision-making procedures; and (3) responsibilities of the judges and/or commissioners would be restricted to a few related activities (hearing claims against the state), allowing them to develop expertise in these responsibilities. The decentralized model, on the other hand, offers the advantage of a network of "offices" throughout the state, and the possibility of greater cost savings since the increased workload brought about by the introduction of victim compensation procedures could be shared across many courts and many employees, thus reducing the need for new staff and facilities. In Tennessee this decentralization is carried to the maximum by having local District Attorneys (rather than the State Attorney General's Office) assume responsibility for case investigation. This would serve to ease the burden on the Attorney General's Office-- a problem which has been noted in the other three court-based programs.

Generally, it would appear that staff selection is less of an issue for the court-based program than the administrative-based victim compensation program. For the most part, judicial selection procedures will not be affected by the requirements of the victim compensation program. However, in some cases it may be more appropriate to consider the specific needs of victim compensation when selecting judges for the court. In Illinois, for example, approximately one-half of the caseload of the Court of Claims involves victim compensation proceedings; this would indicate that equal consideration should be given to candidates' judicial skill and suitability as victim compensation decision-makers when selecting members for that body.

A second reason that staff selection has received less attention in the court-based program is that economic pressures and other considerations have kept additional hiring for the victim compensation program at a minimum. These low staffing levels have been a source of considerable criticism: Edelhertz and Geis have noted, for example, that the Massachusetts Attorney General's Office does not have sufficient staff resources available to meet the needs of the victim compensation program.¹⁷ Illinois' victim compensation program has also been troubled by staffing shortages. One source has stated, for example:

The problem which has plagued efficient operation of the Crime Victims Compensation Act is the lack of financial resources and administrative personnel. . . . The manpower shortage is most acute in the Attorney General's Office. A limited number of personnel are assigned to the victims compensation program's Attorney General's legal staff. The writing of the recommendation by the legal staff is the most time-consuming factor in the entire [claims handling] process. In order to allow the victims to receive compensation as quickly as possible, greater manpower resources must be allocated to the legal staff.¹⁸

Lamborn has also noted that "those jurisdictions utilizing the courts and existing administrative agencies have found, contrary to their expectations, that new personnel must¹⁹ be employed to handle the specialized crime victim compensation programs.

The primary options for adding staff to the court-based victim compensation program would appear to be (1) to add personnel to the Attorney General's

¹⁷ Edelhertz and Geis, Public Compensation to Victims of Crime, pp. 123, 128.

¹⁸ Durso, "Illinois' Crime Victim Compensation Act," pp. 357-358.

¹⁹ Leroy L. Lamborn, "Crime Victim Compensation: Theory and Practice in the Second Decade," Victimology 1 (Winter 1976): 507.

Office or (2) to provide some centralized staff to support court personnel involved in victim compensation claims processing. The choice of where to add staff would generally be determined by the existing program configuration. For example, it could be difficult to add court-based support personnel to a program using the "decentralized" staff organization, as this could mean the addition of numerous staff in several locations. For this reason--and because claims investigation (usually carried out by the Attorney General's Office) is one of the most time-consuming activities of the claims process--the option of adding personnel to the Attorney General's Office would appear to be more attractive for most court-based programs.

3.3.3 Staff Training

Staff training is an issue which is often overlooked in programs such as victim compensation. Many, if not most, of the staff will come to the program with considerable experience in related projects or substantial training in professions such as law or law enforcement. Often the staff remain with the program for a considerable length of time. Thus, there may be few incentives to establish and maintain a defined training effort. The sections which follow examine the most common approaches to staff training taken by administrative and court-based programs respectively.

Administrative-Based Programs. Staff training needs are likely to vary with the age of the program, program size, and the specific procedural options adopted by the state. For example, training needs will be most intensive as the program begins its operations, and will diminish as the stability of both procedures and staff increases. In addition, the need for training may be more pressing in a program which makes use of extensive personal contact with claimants or one which is experiencing rapid growth in its claims volume.

The most challenging period for staff training will be the implementation phase. Whether the program is located in a new or existing agency, all staff will require some instruction on the claims processing procedures, provisions of the victim compensation statute, and the general operations of the office. In addition, training in such specific areas as interviewing techniques, methods of obtaining information from official sources, and the special requirements of the victim compensation effort may be provided to staff. This period is likely to be the most difficult for staff training, as many procedures and operations will not be firmly established and may be subject to revision.

During this initial period there will be several options concerning the provision of staff training. The program administrator will generally bear most of the responsibility in this area; however, training may also be

provided by other staff members (such as the board or investigators), members of the parent agency, other government agencies which may have the expertise needed in a certain area, or staff members of other victim compensation programs. This latter option may be extremely effective, as those individuals may offer both training and general technical assistance in establishing the program.

Ongoing training activities may be somewhat limited by the number of staff, staff decentralization, and the amount of turnover the program experiences. Most training will be conducted on-the-job, as small agencies such as victim compensation have neither the need nor the resources to carry out frequent training sessions. As the staff will primarily require training on new procedures and "refreshers" on existing procedures, training may easily take the form of small seminars, distribution of training memoranda, or one-on-one discussions.

One training option which every program should consider is allowing the program administrator and/or board members to attend regional and national conferences and workshops on victim compensation, victimology, and victim services. Although these programs are potentially costly, the expense is minimal when their value as a source of information exchange and training is considered.

Court-Based Programs. The personnel assigned to the court-based victim compensation program are likely to be highly skilled and specially trained for their existing duties. Most will have extensive legal training and experience, in addition to their expertise in investigating and determining cases. Thus, there may be a strong temptation to forego any specialized training in victim compensation issues for those persons. Still, training in victim compensation issues and procedures is essential. However similar in general principle to the duties carried out by the courts and the Attorney General's Office, victim compensation procedures will be new to the staff. There will be special processing requirements, and staff may need to be alerted to important differences between their usual duties and those they will assume under the victim compensation program. Finally, under the decentralized model, it is important to ensure a similar basis of procedures and operations for each court, so that variations in processing and claims decisions do not develop from jurisdiction to jurisdiction. Unfortunately, it may be especially difficult to develop and coordinate training activities under the decentralized model, as there is no single individual who would naturally bear responsibility for such an effort.

Like staff training activities for the administration-based program, the training activities for the court-based program may be largely informal. One-to-one communications, training memoranda to staff members, or occasional seminars held on a regional or state-wide basis may be used. In addition,

judicial conferences or formal training programs developed for the state's judiciary may also be a useful forum for training about victim compensation procedures.

3.3.4 Volunteers and Interns

A relatively new and largely untried option for staffing the victim compensation program is the use of volunteers. Support for this option has developed for a number of reasons:

- The volume of work in some locations has expanded far beyond the capability of existing staff.
- The range of desired activities for victim compensation programs has expanded into new areas, including outreach, advocacy, and assistance to victims with special needs (such as the disabled, the elderly, or non-English speaking individuals).
- The funds available for program staff are limited, and programs must examine lower cost alternatives for completing the required duties of the program.

The New York Crime Victims Compensation Board originally planned to use volunteers in 1976, when it noted in its Annual Report:

We believe it is now necessary for a volunteer program to be initiated by the CVCB in New York City to help our investigative staff process claims. The emphasis of the work of these volunteers will be to work with the elderly victims of violent crime in assembling the necessary information relating to established criteria for evaluating a claim. Duties of these volunteers would include visiting with elderly claimants in the hospital or in their homes in order to help these claimants obtain the necessary information. They will be supervised by a Senior Investigator assigned by the Board as the Staff Supervisor for this purpose.²⁰

It was also planned that the Community Service Society of New York would screen volunteers; that the staff and board of the New York program would train volunteers; and that workmen's compensation benefits would be extended to volunteers working for the agency.

²⁰ New York Crime Victims Compensation Board, 1976-1977 Annual Report, p. 14.

The New York program has not yet initiated its volunteer component, as legislation authorizing this move was not passed until July 1979. Opinions on the use of volunteers, at least among the four sites studied for the program model, appear to be divided. New York obviously supports this concept, and is currently in the process of implementing such a component. The Director of the Washington Crime Victims Compensation Program has also stated that volunteers could be helpful in that state, especially in assisting the elderly with the claims process. Yet members of the Delaware and Maryland programs have expressed doubts about the use of volunteers. Both stated that volunteers would not be appropriate for the kinds of activities carried out by their programs.

Others object to the use of volunteers for both practical and philosophical reasons. For example, it has been argued that management of volunteers requires a considerable investment of paid staff time--an investment which often does not result in corresponding benefits. Similarly, it has been noted that it is difficult to maintain accountability and motivation of volunteers, both of which are essential for performing the sensitive duties of a victim compensation program's staff. Volunteers have also been opposed on philosophical grounds. Specifically, some persons object to the use of volunteers to perform work which would ordinarily be carried out by paid employees, both because it reduces the jobs available to the paid work force and because it exploits the willingness of some individuals to perform these services free of charge.

In spite of the mixed feelings concerning the use of volunteers, this option may be very valuable for programs wishing to provide new forms of advocacy and assistance to crime victims. Volunteers would not perform the core services of the victim compensation program; however, they could enhance the staff's ability to perform core functions by freeing them from some of the ancillary services of the program.

To use volunteers effectively, programs must be willing to make the initial investments necessary to support a volunteer component. When properly managed, volunteers can assist victims in obtaining compensation forms, claims information, and medical records and bills. They can also perform specialized outreach duties, develop relations with minority organizations and groups, and perform public education services such as speaking engagements or distributing victim compensation literature. However, it is essential that adequate screening, training, and supervisory mechanisms be established to ensure that the services provided by volunteers are of the same high quality as those provided by paid staff.

A second relatively new option for staffing victim compensation programs is the use of interns. To develop an intern component, the victim compensation program and a local college or university can make a cooperative arrangement

whereby the program agrees to employ a certain number of interns in specific positions and pay a certain nominal wage, while the colleges offer academic credit and/or wages to the students filling these positions. The advantage of this arrangement is that the crime victim compensation program may obtain well-educated, motivated individuals for a relatively low wage, while the students gain valuable experience and income during their internship. The interns may also constitute an important source of future permanent staff for the victim compensation program.

A final option for expanding staff services at minimal cost is to develop close working relations with existing victim assistance and advocacy services. These programs offer outreach, advocacy, counseling, and notification services to victims and witnesses, and may be a valuable resource in providing public education and claims assistance to victims of crime.

3.4 Interagency Liaison

Victim compensation programs are, in effect, "latecomers" to society's system for dealing with crime and its victims. That "system," if it may be construed as such, includes the police, the medical community, the courts, governmental assistance programs, private insurance, and, to some extent, specialized victim assistance programs. As the newcomer to this field, the victim compensation program may find it difficult to merge with the established network of communications, information, and services--yet this is exactly what it must do to achieve its purpose of victim compensation. The victim compensation program depends on these other agencies for information on the crime, the victim, and the treatment received by the victim; often, it must also depend on these agencies for assistance and services to victims which it has neither the mandate nor the resources to perform. Finally, speedy processing of the victim compensation claim often rests on the swift response of other agencies to the compensation program's requests for information and assistance.

Developing relations with existing agencies thus involves several distinct activities. First, it calls for awareness of the compensation program's existence, services, and needs. The victim compensation program must ensure that key agencies in the community are familiar with its activities and requirements. Second, it calls for the development of working relations--standard forms of interaction and exchange which may facilitate the duties of both parties. Lastly, it requires that complementary responsibilities and activities be established and that, where appropriate, referral systems be developed to minimize duplicative efforts and to enhance the services provided by all groups.

3.4.1 Information and Assistance Requirements

As noted above, victim compensation programs have compelling reasons to develop interagency relations with such groups as the police, the medical community, the courts, and human service groups. Police agencies, for example, provide essential information on the crime report, the circumstances of the incident, victim provocation, and victim cooperation. In many states, police also bear some responsibility for notifying the public of the availability of victim compensation. Similarly, compensation programs rely on hospitals for information on injuries, treatment, treatment costs, and medical insurance payments. In California, hospitals also share responsibility for notification of the availability of victim compensation benefits. Although the claimant is generally responsible for providing information on insurance coverage, victim compensation programs may have to approach these companies for information concerning benefits paid, both for medical and life insurance.

In some cases, victim compensation programs may require information from the courts. For example, in states such as New Jersey and North Dakota, a conviction serves as conclusive evidence that the victim's injury resulted from a crime, and may thus have a bearing on compensation claims. Many statutes also require that the prosecutor (1) be notified of impending victim compensation claims and (2) be given the opportunity to delay the claims process until the criminal prosecution is concluded.

Other government agencies such as welfare or public assistance, workmen's compensation, rehabilitation services, and the state employment service may also have an effect on the victim compensation process. The program may thus require information on benefits provided to victims from such groups as welfare or workmen's compensation. It may also request the aid of these programs in obtaining services for victims. Finally, the victim compensation agency may establish relations with victim assistance programs throughout the state in order to obtain services and assistance for victims of crime applying for compensation.

3.4.2 Approaches to Interagency Relations

Victim compensation programs have available a wide variety of techniques and procedures for developing interagency relations. Not every approach is suitable for every jurisdiction; similarly, the approach required for a specific agency such as the police may differ dramatically from that needed for one such as a victim/witness assistance program. Compensation programs may find that many of their interagency relations are formally prescribed, either in the victim compensation statute, the formal rules and regulations

of the program, or through the forms and procedures established by the program. These formal procedures are the keystone of the liaison process; however, they must often be supplemented with other activities, both formal and informal, if they are to be truly effective. Procedural options and the interactions they entail are discussed below in Chapter 4. This section examines those liaison activities which fall outside the scope of those procedural options.

The staff and board of the victim compensation program are potentially among the most valuable resources for interagency liaison available to the program. As noted in 3.3.2 above, staff and boards may bring backgrounds in such fields as law, medicine, law enforcement, insurance, and human service programs to the victim compensation program. The staff thus brings to the compensation program both a knowledge of other agencies' procedures and a wealth of personal and professional contacts and affiliations. The program should not hesitate to capitalize on these prior relationships, as these may (1) help the victim compensation program to gain access to necessary information in a timely fashion, (2) help to establish agencies' awareness of the program's existence and services, and (3) assist in establishing close working ties with the other agencies. These relations will generally be of an informal and personal nature, and can be an excellent base from which to expedite more formal types of interaction. For example, in Maryland much of the information collection from police agencies is generally carried out by mail in a relatively impersonal and formal manner. One of the investigators--a former police detective--uses his prior affiliation with the police to advantage, however, in attempts to obtain further information from police or to speed a claim which has been slowed through delays in police handling.

To ensure awareness of the victim compensation program and the special requirements of the compensation effort, programs may wish to undertake more aggressive liaison activities. These activities might include education and training on victim compensation for employees and members of various community agencies such as the police, hospitals, or victim service agencies. The administrator of the Delaware program, for example, speaks regularly on victim compensation to recruits at the police academy. In Minnesota, the Director of the Crime Victims Reparations Board presents several training sessions each year at the Police Academy, reaching both new recruits and mid-management law officers. If agencies such as hospitals, welfare, or the courts have training or education programs for their staff, the victim compensation program may volunteer to provide a session on victim compensation or may offer to provide a written passage on victim compensation to be included in any training materials given to new agency members. The staff may also distribute informational materials, training memoranda, brochures, and other materials to these agencies.

Finally, the program--and especially the board members and administrator--may make a specific effort to develop relations with key professional organizations in the state, such as the bar association, hospital administrative and

planning boards, the medical association, or local and state-wide police organizations. The support of these groups may enhance the compensation program's position in the community and may help to improve relations and cooperation between member organizations and the victim compensation program staff.

One new area currently being considered by victim compensation programs is the assumption of a victim advocacy role. Such a move would expand the liaison function of victim compensation programs to a new level, making it an even more essential responsibility of the program. The effect that an advocacy position may have on the scope of liaison activities is demonstrated by New York, which enacted an innovative amendment to its victim compensation statute in July 1979. The Act authorized the Crime Victims Compensation Board to assume an advocacy position, and specifically stated that the Board should "coordinate state programs and activities relating to crime victims, . . . cooperate with and assist political subdivisions of the state in the development of local programs for crime victims, . . . [and] advocate the rights and interests of crime victims of the state before federal, state, and local administrative, regulatory, legislative, judicial, and criminal justice agencies."²¹ The mandate implied in this law would place the victim compensation program in the unique position of being the one state-level agency empowered to interact with all agencies for the benefit of the crime victim.

3.4.3 Factors Affecting Liaison Activities

Every crime victim compensation program must establish formal contact with other agencies serving crime victims in its jurisdiction. Still, the amount and nature of this contact will vary from program to program, shaped by a number of local and state conditions. For example, in some jurisdictions certain interagency relations may be prescribed by the enabling legislation of the compensation program. In Maryland, for example, the statute describes victim compensation program procedures for notifying the prosecutor when compensation claims are received. Similarly, the California statute stipulates that the program must develop methods of overseeing police involvement in notifying victims of the availability of victim compensation. The legislation may also affect interagency relations by prescribing the powers of the compensation program: it is helpful if friendly overtures concerning resource and information exchange are backed by a formal authority to obtain this assistance and information.

²¹ N.Y. Exec. Law sec. 623(11), (12), (15) as Amended by Ch. 415, Laws of 1979.

A second feature which may have a profound effect on the liaison activities of the victim compensation program is the "unofficial" power of the program to command cooperation. This power may be derived from the prestige of the staff and board members, the support which the compensation program may have in the legislature and state government, the power and/or prestige of the parent agency of the compensation program, or the network of contacts and supporters which staff and board members may bring from their previous affiliations. For example, the Washington Crime Victim Compensation Division benefits from the Department of Labor's network of contacts with the medical community of that state.

A third condition which may affect interagency relations is one which is inherent in the nature of the victim compensation program: it is a statewide program, dealing with organizations which are essentially local in nature. The small staff of the victim compensation program must interact with police agencies, sheriff's departments, local hospitals, individual physicians, city- or county-based victim assistance programs and prosecutors from all across the state. Developing good working relations with these hundreds of local organizations may pose a formidable burden on the staff, particularly as the program may rarely have cause to contact many of these organizations. To some extent, this problem is alleviated by the fact that a few police agencies, hospitals, and other local agencies in the largest cities will generally be responsible for the majority of cases eligible for victim compensation. In New York, for example, approximately 80 percent of all victim compensation claims originate from the New York City region. Thus, the program staff may develop close working relations and cooperative procedures with that smaller group of organizations and establish formal, but less comprehensive, relations with other organizations in the state.

The final condition which many victim compensation programs may face in establishing interagency liaisons is financial constraints. Development of effective working relations can take time and effort, and maintaining these relations can require an ongoing commitment of staff involvement. Some programs, faced with extensive claims backlogs or the need to devote the majority of staff resources to claims processing, may find the investments in time and funds to be too great for their resources. While this would not preclude a minimal form of interagency liaison--for example, the program may maintain written communications with police agencies in order to verify crime incident reports--it may preclude other forms of interaction, such as inter-agency education activities concerning the victim compensation efforts, or cooperative efforts to obtain needed services for victims of crime. In some cases, however, failure to establish interagency relations due to financial constraints may actually be a false economy, as development of these relations could speed case processing and eventually ease workload pressures.

3.5 Public Awareness and Education

The effectiveness of a program such as crime victim compensation must be judged not only in terms of the way it handles claims, treats the victims of crime, and distributes benefits, but also on its ability to reach those members of the public it is intended to serve. This ability will be profoundly affected by general public awareness of the program's existence and services and, more specifically, the awareness of those individuals who are the intended beneficiaries of the program--crime victims and their dependents. This awareness may be difficult to generate for a number of reasons. Crime victim compensation is a relatively new concept in the United States. Many programs have been in existence for only a few years and have not yet settled into the public's consciousness as a "standard" government service. Also, differences among various states' programs and the fact that not every state has established a crime victim compensation effort may contribute to a general lack of awareness.

That there seems to be a problem with public awareness of victim compensation programs is demonstrated on a number of fronts. Discussing the New York State compensation program, Edelhertz and Geis noted in 1974:

The discrepancy between the number of presumed potential qualifiers for state [victim compensation] aid and the number of persons actually to apply for such assistance is largely regarded as a function of lack of public and official information about the program's existence. 'Oddly enough,' an article in the New York Times Magazine notes, 'very few people know the program exists.' 'There are even prosecutors who have never heard of it,' one of the board members observes. The failure to attract more eligible applicants is a theme that recurs in board reports. Generally the tone is one of concern, based on the assumption that the state had mandated the program with the intent of having every person who qualifies receive assistance.²²

The concern with low application rates continues in New York and other locations. The 1978 Annual Report of the New York Crime Victims Compensation Board estimates that there were approximately 20,000 eligible crime victims in that state in 1977-1978.²³ Still, only 4,914 applications were received--approximately one-fourth of the eligible population. Concerned about low numbers of applications, the Minnesota Crime Victims Reparations Board

²² Edelhertz and Geis, Public Compensation to Victims of Crime, pp. 44-45.

²³ New York Crime Victims Compensation Board, 1977-1978 Annual Report, p. 10.

implemented a special management study of its public information activities in 1978. In that study, the "application ratio" (number of applicants/number of reported violent crimes) for Minnesota was estimated to be only 2 percent. Other states' application ratios were listed as follows: Alaska, 5 percent; Wisconsin,²⁴ 5 percent; Hawaii, 3 percent; California, 5 percent; and New York, 7 percent.

Crime victim compensation programs have generally recognized the need for public awareness, and many have included public information and education activities in their scope of duties. In some states, the crime victim compensation statute mandates the public information effort. For example, the Kentucky statute stipulates that the board has the duty "to publicize widely the availability of reparations and information regarding the claims therefor."²⁵ Similarly, the Michigan statute states that the board shall "conduct a program to insure continued public awareness of the provisions of this act in cooperation with state and local agencies."²⁶ Generally, however, the statutes contain little or no mention of the manner in which the public is to be made aware of the program.

There appear to be two major approaches to public information and awareness. In the first, primary responsibility for public awareness rests with the crime victim compensation program. In the second, the responsibility for public information is shared among other community agencies (such as police, hospitals, the courts) and the compensation program. There is a wide range of activities and levels of effort in both of these approaches. Specific public awareness options exercised under these two general approaches are examined below in Section 3.5.1; conditions which influence the nature, direction, and effectiveness of public awareness programs are discussed in Section 3.5.2.

3.5.1 Public Awareness Options

Those crime victim compensation programs which are engaged in public awareness activities may choose from among a wide range of options. By virtue of such factors as cost, interagency cooperation, legal authority, and availability, some options may be more appropriate than others for any given

²⁴ State of Minnesota, Department of Administration, "An Analysis of the Public Information Effort of the Minnesota Crime Victims Reparations Board," St. Paul, Minnesota, July 1978, pp. 14, 25.

²⁵ Ky. Rev. Stat. sec. 346.040(8) (Supp. 1978).

²⁶ Mich. Comp. Laws Ann. sec 18.353(j) (Supp. 1977).

jurisdiction. In the paragraphs which follow, each option is briefly described and some of the major considerations, advantages, and disadvantages involved in their use are examined.

Printed Materials. Most crime victim compensation programs have developed brochures or pamphlets which describe the program's benefits, eligibility requirements, and operations. Some have also developed cards, posters, and other printed materials which summarize key elements of the program. Distribution of these materials may be carried out in a variety of ways--some more successful than others. For example, brochures may be distributed to public agencies such as the police, courts, public libraries, hospitals, and social services. Generally, the agency which receives these materials will assume a passive role, simply making the materials available to interested individuals. In other cases, materials may be distributed in a more aggressive or selective manner. Specific examples are discussed further below. Posters may be placed in hospital emergency rooms, public transportation facilities, pharmacies, and public areas of police agencies, courthouses, and so on. Cards may be distributed to the general public, or presented more selectively to crime victims, persons in high crime areas, or individuals seeking further information on the program.

In using written materials, it is essential that the information be presented in clear, concise, non-technical language. For example, confusion may be generated by such terms as "innocent" victim or "subrogation." Instead of mirroring the language of the statute, the materials should describe program operations and requirements in laymen's terms. In addition, bilingual materials should be made available. Another common failing in using printed materials is the provision of too little information or failure to explain fully the program's requirements. Edelhertz and Geis note the problems experienced by the New York program:

Early in the program, placards were placed on subway cars in New York as part of the Governor's reelection effort, announcing the program's existence and function. The board, one member recalls, 'was immediately snowed with people standing in line wanting money. The posters sounded like the compensation was a government handout.' Most people, he remembers, had lost a watch or a hundred dollars--they just wanted it back.²⁷

Distribution of printed materials is a relatively simple form of public education that consumes few resources in terms of the program budget or staff time. It offers the advantage of providing the public with materials which they may read on their own time or even keep for future reference.

²⁷ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 46.

The disadvantages of relying on printed materials as the primary source of public awareness are that: (1) those who may be most likely to require information on the victim compensation program may also be those least likely to pick up printed materials; (2) it may be difficult to ensure that materials are adequately distributed; (3) people may not bother to read materials about a program which they expect (or hope) not to use; and (4) the public may not be able to remember the materials they have read if they should actually become victims of crime. Thus it would appear that printed materials would be most effective when used in conjunction with other public awareness activities or when distributed in a selective fashion to those who have immediate need for the information. This latter issue will be discussed more thoroughly below.

Public Speaking. Complementing the distribution of printed materials are public speaking activities of the victim compensation board and/or staff. In addition to any training that these individuals may conduct for police, medical service agencies, the courts, and other professional organizations involved in victim compensation, the board and staff may be available for presentations to community groups, municipal organizations, clubs, conventions, service groups, churches, and so on. Among the states which have employed this public awareness option are New York, California, Delaware, Hawaii, and Illinois. During the presentation, speakers can explain the purpose and history of the victim compensation program, eligibility requirements, benefits, and any statistics on program operations which they may wish to share with the public.

Public speaking is a low-cost activity which offers the advantage of personal contact with a pool of potential program clients. Unfortunately, public speaking may be time-consuming for the staff, may reach only limited numbers of individuals, and may be difficult to carry out on a comprehensive basis in large or sparsely populated jurisdictions. Edelhertz and Geis note that the New York board has concluded that these activities "take more time than [they] are worth in terms of results."²⁸ Still, it remains a popular option for many crime victim compensation programs.

The Media. Newspapers, radio, television, and magazines offer another source of public education and awareness which has been pursued by many victim compensation programs. Contact with and use of the media may be carried out in two ways: the public service announcement and the news or public interest feature. Radio and television stations have available a certain amount of broadcast time which they must donate for public service announcements. To make use of these announcements, the victim compensation program should provide stations with the information to be included in the broadcast, taking care that they present enough information to prevent public misconceptions.

²⁸ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 46.

about the program's services and requirements. Although somewhat less direct than the public service announcement, public awareness of the victim compensation program can also be generated through news features. These can deal with such topics as the compensation program itself, a specific crime which resulted in compensation for a "deserving" victim, the plight of crime victims, compensation program activities or staff, or any other related issues.

As the media may tend to reach a wide audience with some regularity, they can be an important method of generating public awareness. In addition, news features and public service announcements will cost the victim compensation program little. However, it may be difficult to maintain continued access to these low-cost media sources; many other deserving programs and services vie for limited public service announcement time, and stations may be reluctant to provide announcements about the same program on a continuing basis. Similarly, once the initial flurry of news created by establishment of the program has subsided, the frequency of news coverage for the program will decrease as well. Compensation programs may have to make more aggressive overtures to the media to keep their program in the public eye.

Paid Advertisements. This option is exercised very infrequently, but it may be one which victim compensation programs wish to consider. It can be a particularly effective way to reach areas of the state which may not receive adequate public information coverage by other means due to low population densities, distance from major population centers, or less frequent opportunity for potential victims to learn of the program through informal means, such as word of mouth. Paid announcements in local or county-based publications, rental of billboard space, or paid advertising space in local organizations' newsletters may provide a high return of public awareness for a limited expenditure of program funds, as these sources of advertising are often inexpensive.

Police Departments. An eligibility requirement of virtually every victim compensation program is to report the incident to the police within some specified period of time. Thus, in theory the police should come into contact with every eligible victim of crime. Many states have sought to capitalize on this fact by requesting police to notify victims of the existence and provisions of the victim compensation program and by providing crime victim compensation claims forms in police stations. In the states of California, Minnesota, Alaska, Washington, Texas, and New York, notification by police is a legal requirement.

Police involvement in public awareness activities can thus occur at many levels and may involve many different types of activities. In its most basic form, police may agree to have informational materials and application forms available for individuals who may request this information. Arrangements by which the police are requested to notify victims of the program

constitute a second level of involvement, whereas programs which require police to perform this service provide the highest level of police involvement. The form of notification afforded under these latter two options may range from informal verbal reminders, to presentation of "Miranda" type statements and information cards to every victim of crime, to police operated mailouts for eligible crime victims based on information obtained from police crime incident reports. This latter option will be discussed in greater detail below.

Police involvement in the public awareness effort is potentially one of the most effective means of ensuring that the intended beneficiaries learn of the program. Unlike methods such as posters or media advertisements, such involvement results in personal contact with only those individuals who need information on the program, and presents the information at a time when it is truly needed. Thus, it overcomes the problems of audience inattention or forgetfulness that may reduce the effectiveness of other measures. In addition, most forms of notification by the police will bring few direct costs to the program or to police agencies.

One disadvantage of this approach is the possibility that the physical or emotional condition of the victim at the time of the initial police contact may preclude effective delivery of information on victim compensation benefits. Other drawbacks of police notification are not so much the product of those procedures in themselves but, rather, the ways in which this public awareness option seems to operate in practice; thus, they are not inherent problems and may be subject to correction. For example, the police themselves may be ill-informed concerning the existence of the program, its benefits and requirements, and their duties concerning notification. A study of the Minnesota Crime Victim Reparations Board's public information activities showed that in Minnesota (where police are legally required to inform victims of the program), 6 percent of the 63 officers interviewed did not know about the victim compensation program; 22 percent of those who knew of it had incorrect impressions of the program, particularly concerning eligibility requirements; and only 8 percent actually informed all victims of the program.²⁹ Other problems encountered with requirements or requests for police notification of victims include officers' reluctance to assume the additional responsibility; resistance to that duty as one which is not properly a "police" activity, but a social service activity; and unenforceability of requirements and requests for police notification.

Lack of knowledge concerning the program's existence and requirements, and ignorance of the responsibility to notify victims are perhaps the most serious problems of those noted above, and yet they are also the ones most easily remedied. For example, the Minnesota study recommended that:

²⁹ Minnesota Department of Administration, "An Analysis of the Public Information Effort," p. 63.

- Since provision of information on the program at police academy classes reaches only a small percentage of the active force, the victim compensation program should also contact the state-wide training officers' association, the state-wide association of crime prevention officers' training program, and the state-wide network of regional associations of police officers.
- Agency heads should be provided with accurate information. Contact should be made with the state sheriff's association and the state chiefs of police association. Newly elected sheriffs should be sent letters and information soon after their election.
- Materials sent to police agencies should be clarified and simplified, and the boards' interpretation of the statute should be made clear to police.
- Printed materials should be supplied to police for distribution to victims.³⁰

In short, police should be well-informed and well-trained, and should have brochures or Miranda-type cards to give to victims to ensure that accurate information is provided. In addition, communities should institute procedures which will improve police participation in the notification process. For example, officers should be held accountable for their notification responsibilities, and disciplinary procedures for non-performance of this duty should be developed and enforced. Police departments may also monitor officers' command of victim compensation procedures and requirements by including these topics in police entry and promotion examinations.

Medical Community. Hospitals, clinics, and even individual physicians are often among the most effective sources of public awareness available to victim compensation programs. New York, Maryland, Delaware, Hawaii, Alaska, and California all rely on hospitals for many of the referrals to their victim compensation programs. In part, this is because virtually every eligible crime victim will come into contact with the medical community for treatment or verification of injury. In part, it is also because the medical community is strongly motivated by self-interest in referring crime victims to the compensation program, as this is one method of ensuring that they receive payment for treatment and services provided to the victim.

The primary methods of involving hospitals in the public information effort are to supply them with claims forms, to allow hospitals to distribute informational booklets, and to require them to post notices or posters--

³⁰ Ibid., pp. 72, 73.

usually in the emergency room area--concerning the compensation program activities and requirements. The advantages that this approach offers are: (1) potential contact with most eligible victims; (2) general willingness of the hospital to carry out the public awareness function; and (3) motivation and availability to assist crime victims in filling out claims applications forms. A disadvantage noted in the New York program was that notification of the program by the hospitals spurred the submission of significant numbers of frivolous claims initiated by the hospital.³¹ However, this disadvantage has not been a problem in other states such as Delaware or Maryland.

Social Service/Public Agencies. Groups such as welfare, workmen's compensation, unemployment compensation, or employment services often come into contact with eligible victims of violent crimes. Many victims turn to these agencies for assistance after a criminal incident because they are familiar with these government services and are not aware of the victim compensation program. Thus, these agencies and services can be a valuable source of referral to the victim compensation program. They should be made aware of the compensation program through training, interagency memoranda, and interagency agreements, and should be supplied with brochures, cards, and application materials.

Victim/Witness Assistance Programs. Specialized programs, such as victim/witness assistance programs, crisis centers, or other programs designed to help crime victims, may play a very important role in notifying victims of the availability of compensation and the requirements of the program. They may also assist victims in completing application materials and presenting their claims. One example of the effectiveness of this approach is the experience of Project Turnaround, a victim/witness program in Milwaukee County, Wisconsin. During the first year of operations of the Wisconsin victim compensation program, 57 percent of the claims originated from Milwaukee County, largely due to the assistance efforts of Project Turnaround staff.³² In some cases, this public awareness function may be quite extensive. For example, the Monroe County Victim Assistance Program reports that:

Seventy-five percent (75%) of our contacts are the result of our outreach efforts. That is, we telephone, if possible, or send a personal letter to the victims of major (felony) physical crimes within a week of their victimization to offer our support and expertise, to informally evaluate their eligibility for N.Y.S. Crime Victims Compensation and to

³¹ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 46.

³² National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Victim/Witness Assistance by Robert H. Rosenblum and Carol Holliday Blew (Washington, D.C.: Government Printing Office, 1979), p. 28.

inform them how they may apply, and to give them case status. The phone call or letter often results in recontacts to provide other services and to file for Crime Victims Compensation. . . .³³

Individualized Identification and Notification. A final form of public awareness activity, representing the most aggressive option available to victim compensation programs, is individualized notification of eligible victims. Under this option police crime incident reports are screened to determine potentially eligible victims, and brochures and/or application forms are then mailed to the crime victims. This screening and notification process may be carried out on either a local or centralized basis. In Delaware, for example, the procedure is centralized.

Under the Delaware referral system, . . . the state's crime files are reviewed in the victim referral unit of the Attorney General's office. Complete crime files are received by the Attorney General's office for use by the state prosecuting attorney. Names of crime victims who are possibly eligible under the requirements of the statute are listed by the referral office and sent to the board. The board forwards claim forms to the victims referred to them by the Attorney General's referral unit. . . . It was estimated (by the Delaware VCCB executive secretary) that somewhere in excess of 230-250 claim forms were issued in response to the referral list during the July 1 to December 31, 1977 time period.³⁴

A very similar procedure may be carried out on the local level. One Minnesota jurisdiction employs the following procedure:

[The] agency has designated one individual (a clerical staff person, in this case) who reviews all officers' crime reports (not just major crime reports) in order to identify those victims who have been noted in the reports as injured physically as a result of the crimes. This clerical staff person then has the head of the agency send a letter to all victims who have been physically injured. This letter does not tell the victim that the agency thinks he is eligible, but merely informs him of the program.³⁵

³³ New York Legislative Commission on Expenditure Review, Crime Victim Compensation Program, Program Audit, April 1979, p. 54.

³⁴ Minnesota Department of Administration, "An Analysis of the Public Information Effort," p. 28.

³⁵ Ibid., pp. 70-71

A sample letter from that department is included in Appendix B. The New York City Police Department conducts a similar outreach effort for crime victims.³⁶

The advantages of direct notification are obvious: line officers are relieved of the additional responsibility of informing victims of the compensation program; every case may be screened to ensure that all potentially eligible victims are notified; victims are not informed immediately after the criminal incident, when they may be emotionally or physically unable to grasp the information provided; and individualized contact is made, providing greater guarantees that the victim will accept and comprehend the notification.

As this option requires the designation of one or more individuals to screen crime incident reports and compile lists of potential claimants, it may result in higher costs to the program or police departments. Some programs may have to eliminate this option due to limitations on their resources. Also, in states with large populations or jurisdictions containing major metropolitan areas, the burden of casescreening can be formidable and may tax the resources of any program. Finally, it is important that the criteria used in screening cases be equitable and uniform. Eligibility criteria such as probable minimum losses, financial need, or lack of victim provocation should not be used as screening criteria. Decisions concerning claimants's eligibility should be made on the basis of the information presented in the application, and should not be determined prior to the victim's notification of the program's availability.

3.5.2 Considerations and Constraints on Public Awareness Activities

The most common constraint on public information activities of crime victim compensation programs will be limits on resources and funds. Printed materials and posters can rarely be produced free of charge; staff speaking engagements and media appearances consume time that might ordinarily be spent on case processing, and increase the case workload for all; direct notification will incur staff expense, mailing expense, and costs for materials distributed in the mailouts. Some programs, burdened by enormous claim backlogs, cannot afford to devote any staff time to public awareness, while others may be able to donate only staff time, and must rely on the lowest-cost options of public speaking: public service announcements, distribution of printed materials, and news coverage. Legislatures are often reluctant to appropriate funds for public education and information--none of the four programs studied for this program model had specific public information budgets.

³⁶ New York Legislative Commission on Expenditure Review, Crime Victim Compensation Program, Program Audit, April 1979, p. 55.

A second related factor is the ambivalence of some programs and legislatures concerning the need for public education. This lack of wholehearted support generally stems from a fear that increased public education will result in vast increases of the number of claims and huge expenditures for compensation. This fear was even echoed by the drafters of the federal Victims of Crime Act of 1978. In the Joint Explanatory Statement of the Committee of Conference for that bill, it is noted that the conference chooses not to include a provision requiring law enforcement agencies and officials to publicize the existence of the program and the methods of applying for compensation. Their rationale was as follows:

The impact of the publicity requirement will be to increase the total cost of a State crime victim compensation program. In view of the small Federal contribution to the State program (less than 25 percent of the total cost of the program), the conferees agree that it would be unwise to increase the State program's overall costs in this manner.³⁷

There may in fact be valid reasons to de-emphasize general public awareness as a major concern for crime victim compensation programs. It has been argued that public education activities of the sort usually carried out by programs--public speaking, public service announcements, posters, and the like--have minimal value. People will pay little or no attention to those messages, as they do not expect that the program will be of any concern to them; once victimized, they will still need to be told of the program, its requirements, and its benefits. It may also be unrealistic to expect widespread public awareness of particular aspects of the victim compensation program. Other benefit programs such as workmen's compensation or social security have been in existence for many years and have publicized their benefits widely. Most citizens, however, are still not aware of their benefits under these programs.

There is still considerable debate concerning the proper "placement" of responsibility for public awareness. As noted above, many law enforcement agencies resist accepting the added responsibility of informing victims about the program. Law enforcement is not alone in this reluctance: in California, responsibility for public awareness was at one time given to the local District Attorneys. Edelhertz and Geis note that resistance to those additional duties, coupled with concern over potential liability questions if an official should fail to notify a victim, spurred a successful lobbying campaign by the District Attorneys to rid themselves of that responsibility.³⁸

³⁷ U.S. House of Representatives, 95th Congress, Victims of Crime Act of 1978--Conference Report, October 11, 1978.

³⁸ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 96.

Generally, the added notification responsibility of police, hospitals, and other agencies is not accompanied with an increase in resource allocations. Thus it may be argued that the compensation program alone should bear responsibility for public awareness. Unfortunately, this latter option is the one most often chosen, in spite of the fact that it appears to be a less effective approach to public education.

Whatever form of publicity is employed by the compensation program, a careful balance must be made in the kind of information which is presented. While the message should be concise and easy to understand, it should not stop with simple notification of the crime victim compensation program's existence. The public must also be given a brief but complete outline of the eligibility criteria, limits on benefits, and processing procedures to avoid raising public expectations for benefits which are not available. Any other procedure presents the possibility of both general public disappointment and disaffection, and increased program workloads brought about by large numbers of frivolous or obviously ineligible cases.

A final consideration in public information and awareness activities is the general lack of knowledge concerning the true effectiveness of the available options and the impacts that these options have on the public, either separately or in combination. One approach which could have enormous value in assessing public awareness activities is to include a question on the application form regarding the sources from which applicants learned of the program. A 1971 study of California crime victim compensation applicants indicated, for example, that the sources of information on the program were, in descending rank: lawyers, doctors, friends and relatives, newspaper articles and radio, social workers, and police.³⁹ In New York, where police are required to notify victims of the availability of compensation, a recent study showed that police and friends or relatives were the most frequent sources of information. Other sources, in descending order of importance, were the media, hospital staff, attorneys, the compensation program, and the District Attorney.⁴⁰ Information such as this collected in a systematic fashion would allow compensation programs to assess the effectiveness of their public awareness activities, to determine the effectiveness of other agencies in informing victims of the program, and to plan future public awareness strategies.

³⁹ Sylvia Fogelman, "Compensation to Victims of Crimes of Violence--the Forgotten Program" (unpublished M.S.W. thesis, University of Southern California, 1971), cited in Edelhertz and Geis, Public Compensation to Victims of Crime, p. 99.

⁴⁰ New York Legislative Commission on Expenditure Review, Crime Victim Compensation Program, Program Audit, April 1979, p. 51.

CHAPTER 4: CLAIMS PROCEDURES

4.1 Introduction

In Hawaii, claimants may wait for a year for their compensation checks to arrive. In Massachusetts, claimants must first pay a "filing fee" before submitting a claim for crime victim compensation. In Delaware, every claimant has a hearing, while in Washington, no hearings are held at all. In handling crime victim compensation claims, every program uses the same starting point: a crime is committed. However, the process that occurs after that point varies enormously from program to program. Yet that process is important. It can determine the claimant's satisfaction with the program. It can affect program costs. It can dictate the speed with which a claim is determined, and can be the source of considerable delays in the ultimate award. Finally, the process can offer ways to circumvent unintentional constraints and roadblocks to the compensation effort which are brought about by the policies or program options discussed in Chapters 2 and 3.

Every victim compensation program has two primary areas in which procedures must be established: processing of claims, and making payments to claimants. In both these areas, there are several "procedural options"--different steps that programs can choose, different ways they can handle claims.

Choices among the available procedural options may be made on several levels. First, the enabling legislation of the victim compensation program may prescribe many of the program's procedures, especially those concerning notification of prosecuting attorneys, assignment of claims to board members, the appeals process, and the payment process. For example, the Maryland statute provides that:

Upon filing of a claim pursuant to this article, the Board shall promptly notify the State's Attorney of the county, or Baltimore City, as the case may be, wherein the crime is alleged to have occurred. If, within ten days after such notification, the State's Attorney so notified advises the Board that a criminal prosecution is pending upon the same alleged crime, the Board shall defer all proceedings

under this article until such time as such criminal prosecution has been concluded and shall so notify such State's Attorney and the claimant.

However, the level of detail provided in the statute is often minimal. In at least one state the advisability of including these procedural decisions within the statute itself has been amply demonstrated. Discussing the Illinois victim compensation program Durso notes that:

. . . of the victims who have applied for compensation only a few have had their claims reach a final disposition during [the first two years of the existence of the Victim Compensation Act]. This delay is traceable to the legislature's original inadequate draftsmanship. Because the Act set forth only minimal procedural guidelines, a substantial amount of time after its enactment was spent establishing administrative procedures.

A second level on which procedural options may be determined is through the rules and regulations established by the board. While substantially echoing the provisions of the statute, these rules and regulations generally set forth in greater detail the procedures chosen. In some states, the rules and regulations serve a dual purpose: to establish formal guidelines for the board and staff, and to inform the public of the program's procedures. In these cases, copies of the rules and regulations are either made available at the crime victim compensation office or are distributed directly to all applicants.

On a third level, some procedures may be determined by the organizational affiliation of the victim compensation program, especially in those programs situated in the judicial system or existing administrative agencies. In Washington State, for example, the Crime Victims Compensation Division is placed in the Department of Labor and Industries and employs the claims procedures of the Department's Industrial Insurance Division. The statute on victims of crimes compensation states:

7.68.060 Applications for benefits. For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations, and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040, and 51.28.060 as now or hereafter amended shall apply.

¹ Md. Ann. Code, Art. 25A, sec. 6(d) 19.

² John J. Durso, "Illinois' Crime Victims Compensation Act," Loyola University Law Journal 7 (Spring 1976): 352-353.

³ Wash. Rev. Code, sec. 7.68.060 (1977).

Section 51.28 referenced in the victim compensation law deals with applications for compensation under the State's Industrial Insurance laws. To a lesser extent there is a similar tendency to impose the sponsoring agency's procedures in programs placed under the jurisdiction of the judicial system.

Finally, the procedures employed by the victim compensation program may be developed by the program administrators and/or the victim compensation board. The more important of these decisions may be detailed in the program's rules and regulations, discussed above. However, many daily operations, such as details of the claims investigation process, intake procedures, or the development of the claims application form, may not be described in such formal terms. Yet even in these cases the decisions of the administrator or board constitutes a choice of procedures which may have a profound effect on the operation of the crime victim compensation program.

Decisions among the many available procedural options may thus be made by legislators, program administrators, the compensation board, and even the program staff. These decisions will also be influenced by a number of variables. These include:

- program characteristics such as size, claims volume, or number of staff;
- funding levels;
- choices made concerning policy and program options; and
- philosophies or judgments concerning the nature of the program.

In addition, concerns over costs, speedy handling of claims, fairness, and adherence to the law will necessarily influence choices among procedural options. In the sections which follow, the available procedures for victim compensation will be examined, and some of the advantages and disadvantages associated with each will be discussed. In addition, factors which may affect the choices between particular procedures will be noted.

4.2 The Claims Process

The claims process covers a wide range of activities, from distributing the claims forms to potential applicants, to investigations, to claims decisions, and in some cases, appeals of those decisions. Possible procedures associated with each stage of the claims process are examined below.

4.2.1 Application Forms

The key to initiating the victim compensation process is, of course, the application form. (Sample forms are provided in Appendix C.) While every victim compensation program makes use of some type of application, the length, scope, format, and intrusiveness of these forms varies widely among programs. This diversity stems as much from the fact that the forms were developed by different individuals, at different times, and with different degrees of experience as from the diverse program requirements and information needs. Early programs had a relatively small base of program experience on which they could draw in developing their application forms. Later programs have been able to profit from the earlier programs' experience, adopting portions of existing applications or even basing their entire application on the efforts of other programs by simply modifying the forms to fit the particular requirements of their jurisdiction. The forms used by Maryland, for example, are very similar to those developed by the State of New York. North Dakota also based its application forms on those of another jurisdiction. Richard J. Gross, Director of the North Dakota crime victim compensation program, notes:

A set of forms was devised for applications and for investigation of claims. Forms from several states were examined, but Minnesota's seemed most satisfactory. Because they were short and uncomplicated, and corresponded well with the requirements of the North Dakota Act, these forms became the basic guideline for those adopted by the Board for the program in North Dakota.⁴

The application form itself may have an important impact on the claims process. Forms which are overly long, poorly organized, ambiguous, repetitive, or overly intrusive may serve as an unintended roadblock to many applicants. In addition, language barriers or other difficulties in completing the forms can discourage significant numbers of applicants. Programs should thus take care that their forms are clearly written, request only the information absolutely necessary to process claims, are well organized and easy to read, and provide enough space for the applicant to write answers. Bilingual forms should also be available from the compensation program.

There are two major options for application forms. In the first, the form is rather lengthy, and requests information on such topics as the crime, the victim's involvement, financial losses, financial assets, treatments received, time lost from work, insurance and other benefits available to the claimant, and so on. If well organized and clearly worded, these forms should pose no particular barrier to the claimant other than the amount of time and research

⁴ Richard J. Gross, "Crime Victim Compensation in North Dakota: A Year of Trial and Error," North Dakota Law Review 53 (1976): 20.

that will be necessary to complete the form. However, time and research may be significant barriers for many applicants. Until 1976, the New York Crime Victims Compensation Board used a long and detailed application form and placed the burden for obtaining the required information on the applicant alone. Edelhertz and Geis note the problems brought about by this approach.

The difficulty, of course, is that, in what appears to be a significant number of cases, claimants may decide that it is not worth their time or trouble to pursue such information, despite their eligibility for assistance, since the added costs cut deeply--in fiscal⁵ and emotional terms--into any gains that might be achieved.

In addition, it may not be entirely necessary for the claimant to provide extremely detailed information, as during the claims investigation the crime victim compensation staff will generally verify each point on the application. Thus, programs should scrutinize their application forms to ensure that (1) they are not asking claimants to provide data which investigators will later obtain from a secondary source and (2) they include only those facts which are essential to the investigation.

The second option for the application form is to provide a short series of questions which may be answered by brief responses or a simple yes/no checklist. Usually these questions relate directly to the eligibility requirements of the program--for example, "Are you a resident of this state?" or "Did the crime injure you bodily?" Under this type of application form the additional information needed to process the claim may be obtained through subsequent questionnaires filled out by the victim or by forms filled out by compensation program staff during the course of the claims investigation. The primary benefit of these application forms is their simplicity: if well written, they present few challenges to the claimant, and may facilitate the screening process for the victim compensation staff. They may encourage applications, as claimants will be less intimidated by the form. In addition, shorter application forms will generally be less confusing, resulting in fewer omissions of information or errors in responses.

Unfortunately, these forms must necessarily trade simplicity for comprehensiveness. Because they are brief and ask for few details, a substantial burden of claims investigation is placed upon the victim compensation program. While this should pose no difficulty for programs with low claims volumes or ample resources for claims investigation, it may be a contributing cause of claims backlogs and processing delays in programs which are not equipped to handle extensive investigative activities.

⁵ Herbert Edelhertz and Gilbert Geis, Public Compensation to Victims of Crime (New York: Praeger Publishers, 1974), p. 41.

A variation of these options is to combine the two types of claims forms: the initial section of the application form thus would have a short series of "screening" questions which allows the program staff (and the applicant) to determine the claimant's eligibility at a glance. These questions would be followed by several others which request information on the victim's background, the crime, the financial status of the applicant, and the financial impact of the crime. This "combined" form would offer the advantages of simple case screening for eligibility and the provision of more in-depth information on which to base the claim decision. Unfortunately, it also combines the disadvantages of these two forms. Examples of each of these application forms--long, short, and combined--are provided in Appendix C.

The choice between these three types of application forms is not easy, since several conditions may influence the type of application form adopted by the program. In general, however, the major considerations must be: the true information requirements of the program; the resources available to carry out any investigation and verification necessitated by the form; and applicants' ability and willingness to respond to the application. As each program determines its position on these dimensions, the optimal choice among application form options for that program should become more evident.

4.2.2 Distributing the Application Form

A second aspect of the claims process which has major implications for program accessibility and effectiveness is the distribution of claims application forms. Several distribution options are available; some require only a minimal effort on the part of the victim compensation staff, while others demand more extensive outreach activities. In addition, these options are not mutually exclusive, and many programs have found it useful to employ several distribution approaches simultaneously. A number of these options were examined above in Section 3.5 in the context of public awareness activities of the compensation program. Below the various methods of distributing the application form are examined, and some of the advantages and drawbacks of each are noted. Activities requiring the least commitment of program effort are first discussed, followed by options which require a greater commitment of resources.

By far the most common approach to distributing application forms is to provide the forms in response to applicants' inquiries or requests. This can be done by making the forms available at the crime victim compensation program offices, by mailing out application forms in response to written or telephone requests, or by distributing the forms to various agencies and groups throughout the state who then provide the forms to individuals who request them. This approach is relatively easy for compensation programs to implement, and does not require extensive use of program resources. In

addition, it may be an effective method of distribution, as most potential applicants would normally turn to the compensation program, the police, hospitals, the courts, or other public agencies to obtain assistance after a criminal incident. The drawback to this approach is that it depends so heavily on the public's awareness of the program and assumes that crime victims or their dependents will be physically and emotionally able to seek out application forms. In addition, it relies on the willingness of those other agencies in the community to cooperate in the distribution effort, and thus presupposes the development of some minimal level of interagency liaison. If substantial, effective public education and interagency liaison efforts have not been undertaken by the program, use of this approach alone is likely to exclude significant numbers of eligible individuals from obtaining application forms.

The second approach to distribution of the application form involves both a greater commitment of staff resources and a more selective distribution of the application materials. In this option, the applicant still takes the primary responsibility for obtaining the materials, either by requesting that forms be mailed or by picking up the applications in person. However, requests for forms are screened by the compensation program staff in an effort to minimize the number of obviously ineligible claims reaching the program. The rationale for such an approach is that a minimal investment of staff time at the pre-application stage may result in substantial savings of staff resources once applications are actually submitted, as staff will not spend as great an amount of time registering and investigating claims which have no merit. Several methods for pre-screening applications have been used by crime victim compensation programs. For example, during each telephone inquiry the staff member taking the call may briefly review the eligibility requirements of the program for the caller and may seek to make at least a preliminary determination of the applicant's ability to meet those requirements. The obviously ineligible applicant could then be informed of the likelihood of the claim being accepted. An application form would only be sent to eligible individuals or those who still wished to apply knowing that their chances for acceptance would be minimal.

A more formal approach to pre-screening is the use of pre-applications. For example, in North Dakota a procedure was developed whereby claims forms are sent only to those individuals who meet the minimum eligibility requirements. As described by Richard Gross, the procedure is as follows:

- (1) Upon his request for benefits, an applicant is sent a "Declaration of Eligibility" form which contains nine statements of fact for the claimant to check. (2) If the applicant checks all nine statements, he is eligible to be considered for compensation, and he is sent a claim form. If he does not check all nine statements on the eligibility form, he cannot be considered for compensation and is so notified⁶

⁶Gross, "Crime Victim Compensation in North Dakota," p. 26.

While this procedure was not established specifically for the purpose of reducing the staff burden of investigating claims which do not meet minimum eligibility criteria, it has this result in effect.

The advantages of pre-screening requests for application forms are that it reduces the number of unfounded claims reaching the compensation office and allows staff to concentrate their limited resources on those claims which have a greater likelihood of receiving compensation. However, use of this procedure brings an associated risk of unjustly denying application forms, as screening during a telephone conversation or on the basis of a pre-application checklist which is not verified by any independent sources may give rise to mistakes in assessing potential eligibility. It may also lead to increased paperwork for the program and increased processing delays, as eligible claimants will be forced to go through the extra step of submitting a pre-application and waiting for the full application form. In addition, this approach to distribution of the application forms also depends heavily on an extensive public awareness of the program and on the public's willingness and motivation to make the initial move of inquiring about the possibility of benefits.

The third option for claims distribution involves considerably more aggressive activities. As many of the possible approaches involved in this option were examined above in Section 3.5, they will be discussed only briefly here. Both state-level programs and individual communities have taken measures to seek out potentially eligible claimants and to make sure that those individuals receive application forms. In part, this is accomplished through aggressive public awareness activities. Extensive advertising of the program's existence and benefits, or notification of the program's activities by police or medical personnel can contribute to public awareness which in turn enhances the program's ability to make application materials available to the public. In some jurisdictions the notification responsibility given to police or hospitals may be coupled with an obligation or agreement to initiate the distribution of application materials. Other jurisdictions such as New York may include a copy of the application form in their public information brochures. Finally, some states such as Delaware, have made use of a special outreach program whereby police reports are screened for eligible individuals and claims forms are mailed directly to those persons.

Those more aggressive claims distribution techniques answer many of the concerns raised by the other two options noted above--they ensure that applicants become aware of the program and its benefits, and they remove the program's reliance on the applicant's own initiative in beginning the application process. In addition, they present an effective means of distributing materials to precisely those individuals most likely to need them. However, development of positive and ongoing interagency liaisons is essential if this approach is to be successful. As noted in Section 3.4 above, establishing and maintaining interagency relations demands an invest-

ment in staff time which may be beyond the resources of many victim compensation programs. In addition, these approaches rely on other agencies' acceptance of added responsibilities. Where that acceptance is given only grudgingly, or not at all, the effectiveness of this approach suffers greatly. Finally, even where cooperation and resources are adequate, the problem of improper applicant screening may arise. Police and hospitals may make unofficial, and occasionally uninformed decisions as to the probable eligibility of a victim of crime, and may fail to notify or provide materials to those individuals they judge to be ineligible.⁷ Similarly, individuals responsible for screening police reports may apply improper criteria or make errors in judgment which result in ineffective distribution of materials.

As noted above, many programs have resolved the difficulties posed by each of these options by employing several different approaches simultaneously. Victim compensation programs may not be totally free in their choice of distribution methods, however. Constraints in funds or staff time may militate against the more active outreach approaches. Similarly, a concern over the availability of funds for compensation payments may result in pressures to keep distribution efforts at their lowest acceptable level, and may again preclude more aggressive distribution mechanisms. Finally, as many of these approaches depend on the cooperation and dedication of several agencies throughout the state, it may be difficult for the compensation program to control the extent and aggressiveness of the distribution effort carried out by those groups.

4.2.3 Intake Procedures

Smaller victim compensation programs may receive two or three claims a week; larger programs such as that of New York might expect to receive over one hundred. To some extent, the volume of claims received by a victim compensation program will determine that program's response to the arrival of a claim. Yet the responses of most programs will have a basic similarity--every program must establish procedures to note the arrival of a claim, to make some preliminary assessment concerning the need to dedicate program resources to process the claim, and to assign staff members to the claim. These constitute the basic framework for the intake procedures of the victim compensation program. This section examines some of the options which programs have in establishing intake procedures.

The types of procedures established will of course be a function of the number of claims received. Smaller programs may find it simple to establish

⁷State of Minnesota, Department of Administration, "An Analysis of the Public Information Effort of the Minnesota Crime Victims Reparations Board," St. Paul, Minnesota, July 1978, pp. 39-40.

a claims log and to ensure that claims are quickly examined and passed along to the appropriate staff members. In some cases, all processing may be carried out by only one or two individuals, which eliminates much of the need for formalized procedures. As programs grow, however, so may the need for more strictly prescribed procedures, in order to avoid "losing" a claim once it enters the office, to decrease the expenditure of staff resources on invalid claims, and to ensure that claims are quickly moved into the later stages of processing and investigation.

Claims Records. Every program must develop some procedure to note the receipt of a claim and to establish a formal method for handling and collecting the information gathered on that claim. Most victim compensation programs accomplish this by establishing a claims log book and manual filing systems in which a separate file folder is established to contain all relevant information on a claim. In the interests of efficient claims processing, some programs have also printed claim processing information or indices of folder contents on the file folder itself. Thus, at a glance, the staff members receiving the file folder may determine exactly which procedures have been completed and which remain to be done, can see exactly which individuals have worked on the claim and what they have accomplished, or precisely which types of information and correspondence have been included in the folder and which have not. The Maryland victim compensation program currently places a "summary of case processing" on the folders used for their victim compensation claims, while the New York Crime Victims Compensation Board records an index of contents on the folders in their records.

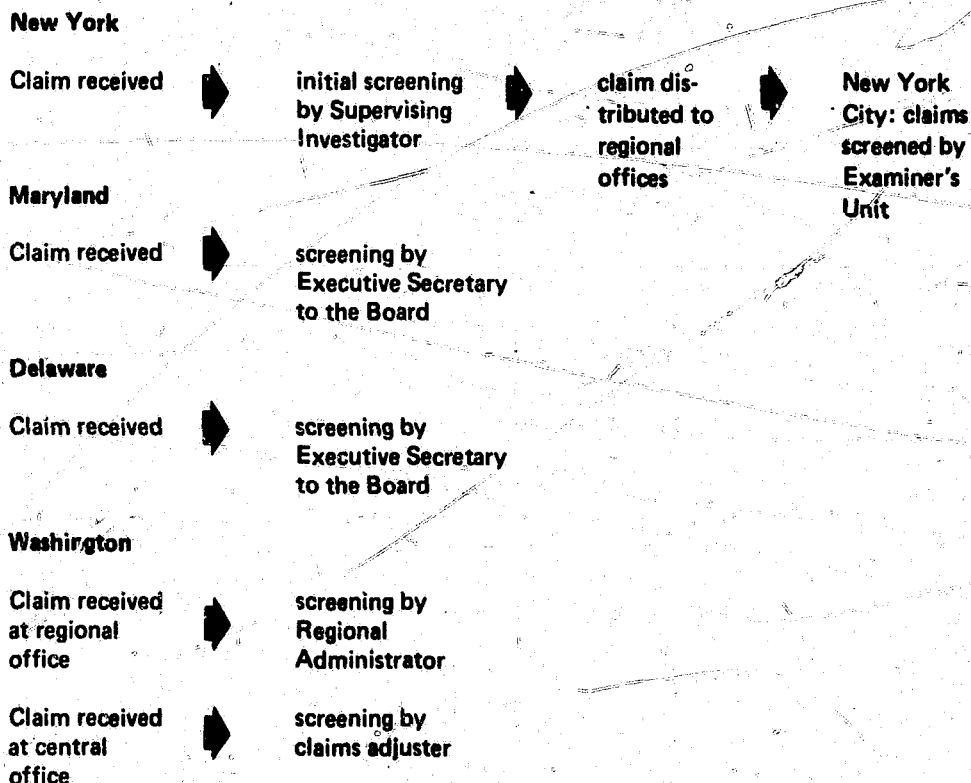
New York is now planning a considerable revision of its intake procedures by changing from manual to computerized records. They anticipate that claims received by the office will be entered into the computer instead of a log book, and that additional information received on the claim or obtained during the investigation will be coded and added to the claim record. In this way the staff can gain quicker access to claims information and the problems of records storage and handling will be minimized.

While computerization of claims records will most likely be an efficient move for large programs, the costs might be prohibitive for programs with fewer resources and lower claims volumes. Programs established as new administrative agencies might find the costs of computerization to be quite forbidding, as the costs of system development and use would be borne by their budget alone. Programs affiliated with existing agencies may find it possible to share computer resources with the parent agency, and thus reduce the costs for all. Even with the option of sharing these costs, however, victim compensation programs may find it unnecessary to move to a computerized records system. In Washington, for example, the Department of Labor and Industries maintains a large computer facility, and yet the Crime Victims Compensation Division continues to use a manual records system. Their rationale for maintaining a manual system is that their relatively modest claims volume makes a computerized records system impractical and unnecessary.

Screening. A second step of most programs' intake procedures is to review or screen the application to ensure that it meets at least some minimal compliance with program requirements. The initial review may take place at a number of different points, and by a number of different individuals within the organization. The key to the screening process, however, is that it presents a quick, low-cost method of diverting inappropriate applications early in the claims processing procedure so that valuable program resources are not wasted on the claim. In establishing a procedure to accomplish this end, program designers must decide (1) which persons will perform case screening duties, (2) the basis on which the screening decision should be made, and (3) the action which should be taken on claims which have been screened.

There appear to be two clear options for the assignment of personnel to the screening function. In some cases, this assignment may be given only to top level personnel: the executive secretary, clerk of the court, or even board members themselves. In other cases screening decisions may be delegated to lower level support or clerical personnel. Figure 4.1 illustrates the screening assignments used in the four program studied in the course of preparing this document.

Figure 4.1
Sample Screening Assignments for Victim Compensation Programs



A number of considerations may enter into the decision concerning assignment of screening responsibility. Case volume is perhaps the most important of these, and its influence is illustrated by the procedures established in New York State. The volume of claims in New York has risen steadily during the program's twelve years of operations, and staff levels have not kept pace with that rise, resulting in substantial backlogs. In 1978, in an effort to reduce backlogs without drastically increasing staff costs, an Examiner's Unit was established in New York City. The support staff assigned to that unit now review all claims coming in to the New York City offices. Examiners have a dual function: they screen out cases which do not meet the minimum criteria for eligibility, and they make the initial contacts with claimants to obtain the additional information necessary to process the claim. In this way they save investigators' time by diverting cases which are obviously ineligible and by managing the more routine information verification activities formerly handled by investigators.

The press of a very high claims volume in New York made the use of administrative personnel, investigators, or board members impractical for case screening responsibilities. However, other programs with lower claims volumes may encounter just the opposite conditions: it may be more feasible to assign screening duties to a top level employee than to a clerical or support staff member. The low claim volume in Delaware, for example, makes it possible for the executive secretary to the board to screen all cases. Assigning case screening to the administrator may also be more efficient if the administrator must review cases for other purposes, such as personnel assignment or quality control of the investigation.

If the volume of claims is sufficiently large that claim screening would occupy a substantial percentage of one individual's time, then programs must carefully consider their claim screening assignment. It may be less efficient to assign this responsibility to a higher-level employee (such as the administrator), as that individual is likely to have other administrative responsibilities and would also be performing a task which lower-level employees may be able to provide at a substantially lower cost. In cases such as this, it might be wise to establish a middle- or lower-level position charged with case screening responsibilities. If necessary, case screeners could be assigned other support responsibilities as well.

For the most part, preliminary screening decisions are made on the basis of the applicant's compliance with the minimum eligibility criteria for victim compensation. Such factors as time limits on reporting and filing, relationship of the victim and offender, injury of the victim, and types of financial losses incurred as a result of the crime may be considered during the initial screening. Eligibility criteria such as serious financial hardship or victim provocation which may be more difficult to determine or which require some interpretation are not often considered in these preliminary screening decisions. Often this type of information is not even provided on the original application, and is obtained only during the course of the investigation.

Programs such as those in Washington or Kentucky facilitate the screening process by providing several initial questions on the application which quickly establish compensation eligibility. Sample forms from these states are provided in Appendix C. In some cases these questions require short answers, while in others these questions are phrased so that a simple yes/no answer is all that is required. Such screening questions not only speed the screening process, but make the decisions reached more consistent by helping to eliminate errors in interpretation.

Depending on the program requirements or personnel assignments, the initial screening decision may be subject to further review. Logically enough, this review is less common when the screening is carried out by a key administrator, and more common when clerical and support workers make the screening decision. In New York City, for example, the Examiner's Unit reviews all incoming cases. Those which they determine to be ineligible are then passed to the appropriate board member, who reviews the case and makes the final decision concerning eligibility or ineligibility. Claims which the Examiners find to meet the minimum eligibility criteria are passed on to the investigators, where they are further substantiated.

In some states, the preliminary screening decision may stand on the basis of the information contained in the application; in others, even a decision not to accept an application is subject to some verification. In Delaware, for example, the executive director of the board examines all cases, and eliminates all ineligible claims. Yet police reports must be obtained on all claims, regardless of the screening decision. This procedure allows the program to document all screening decisions; however, it also brings additional processing expense to the program. If programs can determine that minimal eligibility criteria have not been met on the basis of the information in the application, it would seem to be unnecessary to verify information on the crime. Any possibility of unfairness to the claimant may be rectified by allowing claimants to reapply with additional information should their application not be accepted.

Assignment of Investigators and Claims Decision-Makers. At some point during the initial stages of case processing it is necessary to make decisions concerning the screening personnel, investigators, and claims decision-makers to be assigned to the claim. In programs having one or more branch offices, many of these decisions may be made on a geographic basis; in New York, for example, all claims are received at the central office in Albany, and are then distributed to staff of the regional offices. Assignment of staff to the claim takes place at that initial distribution, and applicants are informed of the name of the claims examiner and board member who will be handling their application. Programs which do not have a decentralized structure may still make assignments based on geographic considerations, if, for example, one staff member is more familiar with a certain area of the state. In Maryland, for example, claims originating from the areas of

the state close to Washington, D.C. are generally assigned to a board member who resides in that area.

Considerations other than geography may also enter into the staff assignment decision. For example, claim backlogs may influence case assignments, as new cases will not generally be assigned to individuals carrying the highest number of cases. In addition, if a case appears to require any special expertise or liaison with any particular group in the community, the background and abilities of the staff may be taken into consideration when making the assignment.

4.2.4 Claims Investigation/Verification

Of all procedures involved in claims processing, investigation/verification is one which has attracted both the greatest amount of attention and the greatest allocation of resources, both in terms of the number of staff devoted to that function and the amount of processing time dedicated to that responsibility. In part, the importance given to claims investigation is derived from the enabling legislation and the policy choices established in the legislation: for example, eligibility criteria such as financial need or minimum losses, or provisions excluding victims who bear some responsibility for their injury virtually demand an investigative component in the claims processing mechanism. The requirement for investigation also has important implications for the political support of the program--having instituted certain eligibility criteria and requirements, legislators, program designers, and the public may feel less apprehension concerning possible program costs and the potential for abuse of the program's services if great attention and resources are given to the investigation of claims.

This phase of the claims process consists of two related activities: verification of information which is provided by the claimant, either on the application form or on subsequent information forms, and acquisition of additional information through traditional investigative activities such as examination of official records or interviews with victims or witnesses. In some cases, it may also entail investigatory hearings conducted by board members, hearing officers, judges, or investigators. Although the investigation and hearing functions are closely related, issues concerning hearings are not addressed in this section. Instead, these are examined separately in 4.2.5 below.

The information to be collected and/or verified during the investigation generally includes:

- initial and subsequent police reports, to determine victim reporting of the crime, the fact that a crime actually occurred, possible victim contribution to the crime, the identity of the offender, and possible victim-offender relationships.
- medical records and information, to determine if injury did occur, if the injury could have resulted from the crime, the extent of injuries received, the extent of disability caused by the injury, the amount of financial loss incurred for medical expenses, and the probability of victim recovery from the injury.
- insurance records and reports, to determine payments already made to the victim and/or applicant for medical treatment or loss of earnings.
- other financial assistance program records, to find if payments have been made to the claimant and to determine if the claimant might be eligible for aid under these programs.
- employment information, to verify that the victim was employed, to determine other sources of financial assistance for the victim, and to determine the extent of income loss due to the criminal injury.
- personal financial records of the victim, to verify or determine financial need and to ensure that other sources of financial assistance have been exhausted.
- court records, to determine if the offender has been tried and to ascertain the outcome of the prosecution.

As this list demonstrates, the information needs of the program are determined by the eligibility requirements and restrictions of the program.

The investigation/verification procedure is of particular interest in designing the victim compensation program, as it is one area in which (1) a wide range of very distinct options is available and (2) choices among these options may have a dramatic effect on program costs and claims processing time. In the paragraphs which follow these options are described and the positive and negative aspects of each are reviewed.

Investigation Versus Verification. As noted above, victim compensation programs can assume two related, but different approaches in this phase of the claims process: they may simply confirm the information furnished in the claim application, placing the burden of providing that information with

the applicant; or they may obtain the bulk of the information needed to process the claim through their own efforts, requiring only that the applicant provide the basic information necessary to allow the acquisition of the additional information. To some extent every program will conduct both these activities. For example, they may verify items such as the victim's employment, but may investigate aspects of the crime to determine if the victim had any role in provoking the injury. Yet the relative emphasis given to verification and investigation varies considerably from program to program, and the choices made concerning the "mixture" of these two approaches may influence both the program's effectiveness and efficiency.

The advantages of emphasizing verification rather than investigation are obvious. Working from a base of information already provided by the applicant can facilitate the investigators' work, and result in lower staff costs for the program. It can also speed the processing of claims, as verification will usually require less time to complete than investigation. The claimant may thus benefit from his greater investment of time in completing the required information forms by reducing the time it will take to actually process the claim and receive a final decision on benefits. In fact, the "investment" required to complete this form may not be so formidable for most applicants. Concerning the forms required by the New York program, Edelhertz and Geis note:

. . . our field interviews with both successful and unsuccessful applicants showed without question that members of both groups saw the forms they were required to complete as a reasonable component of any grant-giving program. They generally said that they found the forms requested by the crime victim compensation program less burdensome than anticipated and simpler than those they had faced in other bureaucratic encounters.⁸

Still, placing the "burden of proof" on the applicant may create several unintentional barriers to the compensation process. Completing an application form which requires a substantial amount of personal information can be a formidable hurdle to many people, even under the best of circumstances. The emotional and physical trauma brought about by the crime may further aggravate any difficulties in completing the information. Finally, many groups such as the elderly, the disabled, lower-income individuals, or non-English speaking individuals may find it difficult to provide the required information under any circumstances. In these cases reliance on verification, rather than investigation, may lead to disqualification of claims due to the claimant's inability--not unwillingness--to provide the necessary information. In addition, under a verification procedure it may be tempting for programs to require more information than is absolutely necessary, or to request information from the applicant that is also obtained through a

⁸ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 41.

secondary source in every case. This unnecessary and duplicative effort on the part of the applicant constitutes an inappropriate burden on the claimant, and may also waste valuable program resources as staff must assimilate and respond to this extraneous information.

Victim compensation programs which make use of verification procedures have developed several methods to counteract some of the drawbacks of this approach. For example, programs may employ a two-stage information gathering process: the original application form may request only the minimum information necessary to open and screen the claim; once the claim is accepted, the program sends out additional forms which request the detailed information necessary for verification. This procedure is used very successfully in New York. The short application form is simple for claimants to complete, and does not discourage applications. Subsequent information forms, while more difficult to complete, are sent only to those individuals who would have a reasonable expectation of being eligible for compensation, and even then the program staff are available to assist applicants with any questions they may have concerning the forms.

Providing some minimal level of applicant assistance can be a most valuable service of programs which rely on verification procedures. Often the assistance needed is no more than the answer to a few simple questions or advice concerning the best way to collect and present the required information. In New York, the Examiner's Unit provides much of this assistance, relieving investigators of that responsibility. Depending on their staffing arrangements, other programs may assign investigators, administrators, or support/clerical personnel to assist claimants in completing the application. Of all these, of course, the trained support/clerical worker would generally be the most cost-effective alternative.

Recognizing that certain groups such as the elderly may experience an inordinate amount of difficulty in completing the required materials, some programs target special efforts specifically for these individuals. One of the best examples may again be found in the New York Crime Victims Compensation Board. Recently the Board established a special Elderly Unit in the New York City office consisting of two investigators and one typist. That unit handles all claims from individuals aged 60 or over. The investigators of that unit contact each applicant personally, and monitor the information received on each claim. If necessary, several contacts may be made with the applicant, and if it appears that the elderly claimant is having difficulty completing the required information forms, the investigator may make a personal visit to the claimant to assist him or her with the forms. The Elderly Unit appears to be very successful: program staff cite a 47 percent reduction in the number of claims by elderly applicants disallowed for lack of information.

Programs may also provide assistance by enrolling the help of other agencies in the community. Victim advocate or victim/witness assistance programs are very useful in this respect. In Delaware, for example, the crime victim compensation program has implemented a victim advocate program which may, among other things, assist applicants in completing victim compensation claim forms. Similar assistance is provided by the Peoria Witness Information Service (WIS), which has been designated an Exemplary Project by the National Institute of Law Enforcement and Criminal Justice:

WIS not only provides extensive assistance in documenting and filing claims but screens police records to identify potentially eligible victims. These victims are then sent letters that explain compensation, eligibility criteria, and suggest that the victim contact WIS for further information and assistance.

The rape victim advocate programs in the State of Washington have been very active in assisting victims with compensation claims. As a result, nearly 35 percent of the claims in Washington are from victims of rape.

Many of the steps taken to ease the burden of proof on the victim during claims verification may also be appropriate for states which assume more of the burden of information acquisition, although in these jurisdictions the need for such activities would of course be less pressing. Easing of applicant responsibility for providing the information is the major advantage of an investigative orientation. By assuming this responsibility, programs may be able to encourage applications, to minimize the "loss" of eligible applicants during claims processing, and to ensure that accurate information is obtained. The disadvantages are the possible costs of these more extensive investigative activities in terms of staff time and possible delays that may be more likely to occur in this type of investigation. In investigations in which personal contacts are made with concerned parties or where complex eligibility questions such as financial need or victim provocation are involved, the investigation process may require substantial amounts of time and staff effort.

However, given sufficient resources, programs which assume the bulk of the responsibility for obtaining claims information may be very successful, and may even have shorter claims processing times than many "verification-oriented" programs. For example, in the State of Washington the only information required to open a compensation claim is the victim's name, and the name of the police department to which the crime was reported. While the applicant is asked to provide certain facts, the investigative staff gathers the

⁹ National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Exemplary Project Validation Report, Witness Information Service, Peoria, Illinois, by Abt Associates Inc. (Cambridge, Mass: Abt Associates Inc., July 1979), p. 25.

majority of the information needed. Yet case processing in Washington, even with limited resources and a growing case volume, takes only a few weeks. A sample form from Washington is included in Appendix C.

Adversarial Investigation. Closely related to the issue of investigation/verification of claims is the nature of the investigation: whether it assumes an adversarial tone, or whether it is conducted in a manner which presumes the good faith of the applicant. Although few programs would admit to conducting an adversarial investigation--and although such an orientation is contrary to both the rules and established procedures of most programs--this tone may unintentionally characterize the investigative phase of many programs' claims processes. Hofrichter, for example, has noted that some programs place an "overemphasis on accuracy as opposed to truthfulness," and that in some cases "investigators devote more time to proper form completion and distinguishing mistakes from truth rather than stressing truths versus purposeful falsehoods."¹⁰ Other programs have observed that on occasion their investigators may begin to conduct all investigations with the goal of minimizing or eliminating the benefits paid, as if forgetting that the purpose of the victim compensation program is to provide funds to injured victims of crime.

An adversarial orientation can develop as a result of several factors. One of the most prevalent will be the general concern about costs which accompanies most victim compensation programs. The knowledge that funds are limited for program administration and benefits, coupled with general pressures to keep costs down, could very well influence the nature of the investigation/verification. In addition, some eligibility requirements may foster this attitude, as they may require more aggressive investigations. The placement of the program may also influence the tenor of the investigation. If authority for the program is given to a state board of claims, for example, a more adversarial posture may be encouraged. Similarly, workmen's compensation programs occasionally assume formalized procedures and investigative measures which foster adversarial roles between the program and the claimant. Finally, the backgrounds of investigators and other employees of the program--backgrounds in law enforcement, insurance investigations, private investigation, and so on--may also encourage this approach.

Although few programs would like to acknowledge that this posture has any merit, an adversarial approach to investigations may in fact be more likely to discover attempts at fraud, may ensure that overpayments are not made, and can ensure more uniform quality of investigation. However, it can create a negative impression on the part of claimants, imparting the feeling

¹⁰ U.S. Congress, Select Committee on Aging, Victim Compensation and the Elderly: Policy and Administrative Issues by Richard Hofrichter, 96th Cong., 1st sess. (Washington, D.C.: Government Printing Office, 1979), p. 52.

that the victim, not the criminal, is the one who has done something wrong. As this attitude of "blaming the victim" is one which advocacy programs have been combatting for years, and one which victim compensation was designed in part to remedy, programs may rightly decide that an adversarial approach is one which does not support their objective, and take actions to ensure that such an approach is not employed by their investigators. Instead, a helping climate in which the program assumes a cooperative relation between its own staff and its clients can further program objectives by encouraging claims, and can create significant public awareness, sympathy, and support for the victim compensation program.

Investigation/Verification Methods. Investigation and verification of claims may be carried out using two primary methods: field or "in-person" efforts; and the less active "desk" investigation. In the aggressive approach the investigator makes active, personal contact with a number of individuals and groups. In some cases contact may also be made with the victim or applicant. The less active "desk" approach usually involves sending out information forms for concerned parties to complete. Most programs naturally draw from both these methods, and yet clear distinctions among programs may be found in the amount of each usually carried out. Of course, these distinctions stem in part from the type of claim being investigated--complex cases always require a more aggressive investigation, and may thus be the source of considerable diversity in techniques even within the same program. The size of the state and the program may also affect investigation techniques. Unless they have developed an extremely decentralized structure, programs in larger states may find the "in-person" investigations to be costly and unpractical. Programs in smaller states may well decide that extensive investigator contact is quite feasible. Delaware, for example, uses a more aggressive and personal investigation approach than New York.

Field investigations may present the advantages of speed, accuracy, and detail. The personal contacts made at the investigators' initiative will allow the program to secure information more quickly. In addition, as the investigator may personally collect much of the information, he or she can control the accuracy of the information collected. Finally, the investigator can record information at the level of detail most appropriate to the case, rather than relying on the sometimes unreliable judgment of those filling out the information forms concerning what is important and what is not. Although information collection from any one source may be speeded by field investigation methods, on the whole each investigation will take a greater amount of time due to travel and logistical considerations. Thus, the overall impact of this approach will most likely be to increase investigation time, to increase the number of investigative personnel needed to process claims, and ultimately to increase program costs.

"Desk" investigations conducted by mail or telephone are likely to be much less expensive, in that they require almost no travel time and may be

carried out using fewer staff members. However, without the face-to-face contact inherent in the field investigation, programs might be forced to overlook powerful information sources, such as interviews with other witnesses. Claim delays may characterize this approach also, since programs must rely on the efficiency, good will, and memory of other programs responding to the information request forms. This good will and efficiency has not always been forthcoming, and has caused significant and troubling delays for a number of programs. To be truly effective, this type of investigative approach demands well established, formal, and cordial relations with other community agencies and programs. Issues concerning these liaison activities are discussed in Section 3.5.

Full Versus Abbreviated Investigations. The claim investigation is the one step which consumes the greatest amount of time and the greatest amount of resources to complete. It is a process that is often characterized by long delays, originating both within and without the program. Hofrichter provides the following list of possible sources of delay in the investigation process:¹²

- obtaining verification of financial resources where proof of hardship is a requirement;
- obtaining information from an insurance company because not enough time has lapsed from the time the claimant was discharged from the hospital or because the final bill is otherwise not available;
- awaiting the outcome of court proceedings or other administrative action involving claimant eligibility;
- determining the degree of disability while waiting for claimant to achieve maximum physical improvement;
- interviewing applicants by telephone and in person to reverify statements made in writing;
- writing and reviewing investigative reports;
- verifying contacts with police; and
- the process of verification.

In addition, Hofrichter also cites problems concerning lack of standardized working relationships between the compensation program and other agencies;

¹¹ Ibid., p. 51.

¹² Ibid., p. 50.

the formality of the investigative procedures themselves; and inefficient management procedures governing the investigative process.¹³

The delays in processing can be astounding. In New Jersey, for example, claims may take well over a year to process.¹⁴ Programs have taken a number of measures to shorten this process, many of which have been discussed above: pre-screening of cases, use of verification rather than investigation, using mail and telephone contacts rather than field investigations. Another option which programs may consider is the use of abbreviated investigations. Every program has the option of providing a "full" investigation--one in which all sources of information are contacted, and every point of data in the application is verified. However, many victim compensation applications present no serious issues, either in terms of the apparent eligibility of the applicant or the amount of money requested. It has thus been suggested that in these cases programs should collect only the very minimum information necessary to substantiate the claim, resulting in an abbreviated investigation. Simplified procedures may also be adopted for the actual decision-making process. In Delaware, for example, after every case is screened by the Executive Secretary to the board it is reviewed by the board, which determines if an investigation is needed in addition to obtaining the police report on the incident. If not, the case may be decided on the basis of the application and the police report alone, saving considerable investigative time and reducing delays.

Other approaches to the abbreviated investigation might be to screen cases on the basis of the amount of money requested, and institute accelerated processing procedures for small claims.¹⁵ Since the cost of investigating a smaller claim may very well exceed the amount of the claim itself, minimal investigation of these claims may be the only way to justify their inclusion by the compensation program. By either method, the abbreviated investigation offers the advantages of reduced processing time and reduced costs, in contrast to the longer full investigation. However, the full investigation does ensure more equal treatment of all applicants and reduces the chances that a decision will be based on faulty or incomplete information.

¹³ Ibid., pp. 51-52.

¹⁴ John Blackmore, "Paying the Price of Crime," Police Magazine (July 1979): 62.

¹⁵ U.S. Congress, Crime Victim Compensation and the Elderly, p. 27.

4.2.5 Hearings

Most victim compensation programs make provisions for hearings where the applicant appears before one or more representatives of the compensation program. These hearings may be held either in the investigation phase of the claims process or as a part of the appeals procedure. In this section, issues relating to the investigative hearing are explored. Appeal hearings are discussed in 4.2.6 below.

Investigative hearings may be held for a number of purposes. Some programs conduct them as a matter of course to verify and supplement the information obtained on the application. Others may hold hearings to obtain information on specific points not covered on application forms. Still others use hearings to clarify matters of dispute or to determine the actual facts when two information sources appear to contradict each other. Finally, some programs may hold hearings to allow the applicant to defend his or her claim, conducting hearings only after notifying the claimant that the application will most likely be disallowed. The conditions under which hearings may be held and the uses of hearings are often specified in the rules and regulations of the program and/or included in the victim compensation statute.

Program Decisions to Hold Hearings. The first choices programs may face concerning hearings are (1) whether or not to provide hearings and (2) the conditions under which hearings may be held. Three options are available:

- hold no hearings during the investigation stage;
- provide hearings only on cases which require such a move, either to clarify an issue of fact or obtain additional information; or
- require hearings on every claim accepted for processing.

Washington State provides an example of the first option. It holds no hearings for claimants during case investigations, offering the hearing only in cases of appeal. Maryland, on the other hand, conducts hearings to gain additional information from the claimant or to settle issues of fact, but does not routinely furnish a hearing in every case. Finally, in Delaware, hearings are held in almost every case, with exceptions granted only when the amount of the claim is very small or appearance at the hearing will cause undue hardship for the applicant; in these cases, however, the claimant must waive his or her right to the hearing.

The option of holding no hearings is generally the least expensive approach for compensation programs. It also lessens the overall burden on the appli-

cant, as it does not require the applicant to travel to the hearing location and spend the time involved in the hearing process. Larger states--particularly those which do not have a decentralized program structure--may find that eliminating hearings will reduce both the burden on the applicant and the potential staff costs involved in holding hearings or traveling to and from hearing sites. On the negative side, however, persons concerned with the rights of the applicant may find that the applicant may have less opportunity to defend his or her claim and obtain any benefits rightfully due without the forum of the hearing. This option may also entail some hidden costs in the form of greater expenditures of investigative time to obtain necessary claims information.

The second option, provision of hearings only in those cases in which it is deemed necessary, would allow programs to balance concerns for costs with concerns for the victims' rights and the need for information on the claim. This option would permit the program to minimize the number of hearings conducted, and thus reduce administrative costs. Claimants' rights would be protected by provisions allowing them to receive an investigative hearing upon request.

The final option of providing hearings on virtually every claim certainly guarantees the claimant's right to be heard; yet the costs associated with this option and the risks of placing an unwanted requirement on claimants make it less practical for many programs. States with high claims volumes or overextended staff resources may find that the burden of scheduling and holding hearings on every claim would result in unreasonable administrative costs. Certainly if the enabling legislation for the program will permit, the option of reducing the proportion of cases receiving hearings can be an attractive cost-saving measure for many programs.

Hearing Personnel. The cost, convenience, availability, and feasibility of investigatory hearings may also be influenced by the choice of personnel to lead the hearing. To some extent, this choice may be dictated by the program placement: for instance, court-based programs may be more likely to use commissioners or judges than administrators or investigators as hearing personnel. Yet the placement cannot totally determine which personnel might be available. Several programs already have some latitude in this area, and other programs may be able to gain increased flexibility in hearing assignments through promulgation of new rules or law reform.

Among the personnel available to conduct the hearing are board members, administrative personnel, special hearing officers, investigators, judges, and court commissioners. The advantage of using "lower level" personnel such as hearing officers, investigators, or even commissioners is that it offers a potential cost savings. Because each hearing conducted by lower level staff

would entail fewer staff costs, it may also be possible to provide more hearings and to decentralize the hearing staff. Alaska offers an extreme example of these advantages. There, volunteer officers appointed by the board conduct hearings throughout the state.¹⁶

Higher level personnel, on the other hand, may offer greater experience in these procedures, a closer relationship between the person conducting the hearing and the person actually making the claim determination, and greater authority. In spite of these considerable advantages, the use of higher level personnel does offer some drawbacks. One negative aspect is that higher level personnel generally receive higher salaries, which would result in greater costs per hearing and the possibility of reduced hearing availabilities due to cost considerations. A second negative aspect concerning the use of these personnel is that there may be limits on their availability. For example, most programs will have only three or five board members and one executive secretary, who will all have other duties in addition to hearings. Court-based programs may have limited access to key personnel--there may be three judges assigned to a central court of claims or a maximum of two or three judges in each local court. As judicial personnel invariably have other duties in addition to hearing victim compensation claims, their time for victim compensation matters may be limited.

It would seem that competent, properly trained, middle-level staff members would be a very efficient option for staffing investigative hearings. Programs concerned about rising administrative costs may wish to consider this option carefully. To lower hearing costs further, programs should ensure that investigatory hearings are conducted by only one hearing official whenever possible. The use of more than one staff member at investigative hearings is a luxury which few programs can now afford.

Location of the Hearings. In deciding the location for investigative hearings, program designers may choose between two options, one of which focuses more on the needs of the applicant, while the other answers programs' needs to contain administrative costs. The first of these options is to hold hearings throughout the state, tailoring both the time and the location of the hearing to the applicants' needs. Some programs such as Maryland may accomplish this by having informal hearings in a variety of locations, including public buildings throughout the state, hospitals, applicants' homes, lawyers' offices, and their own central offices. Other programs which have several regional offices may cater to claimants' needs by holding hearings in each of those branches. Finally, programs which make use of the state court system may easily conduct hearings throughout the state. By bringing hearings out to the public and making them more accessible and

¹⁶ State of Alaska, Violent Crimes Compensation Board, Fourth Annual Report, pp. 6, 12.

convenient for applicants, the victim compensation program may better answer its mandate to serve the victims of crime. This outreach effort brings associated expenses, however: travel costs, the cost of maintaining branch offices, and the increased amount of time spent by staff in arranging and attending these hearings may increase the costs of this option.

The second option is to hold the hearings only in the central office of the compensation program, requiring applicants throughout the state to travel to the hearing. This will not be a significant problem for those who live near the central office, or for the residents of states which have a small enough land area that travel across the state will not be difficult. However, in larger states this could be a problem for applicants, as the burden of travel expense, travel time, and inconvenience is shifted to the applicant. The administrative costs of hearings will be maintained at a minimal level under this option.

Nature of the Hearing. The procedures and tone of the hearing are subject to a considerable amount of variation among programs. These variations can have two important areas of impact: (1) program costs and processing time; and (2) relations with claimants and the public. While the procedures and tone may be dictated to a great extent by the enabling legislation and program placement, programs have some latitude in this area.

The procedures and tone of the hearing will be set by decisions concerning the degree to which the burden of proof is to be placed on the claimant, the degree of formality maintained during the hearing, and the public or private nature of the proceeding. For example, in programs which place the burden of proof on the claimant, the hearing may be used as an opportunity to present all information in favor of the claim. Unfortunately, many claimants will not view this as an opportunity, but as a test of their truthfulness and honesty. They may assume an adversarial relation exists between themselves and the program, and may feel that they have been asked to prove their eligibility. This point is illustrated by Edelhertz and Geis when they describe the results of one hearing conducted by the New York State program in which a woman was questioned concerning discrepancies in her financial statements:

"The applicant however, remained visibly anxious as she tried to respond to questions. The board decided, when they had heard her out, to review the case later, after they had received income tax statements, a doctor's report on surgery necessitated by the crime, and medical verification of the woman's crime related disability. Still uncounseled, the woman, as she was leaving the board room blurted out, "I feel like a criminal."

¹⁷ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 63.

Proceedings which are conducted to settle an issue of fact or to allow the claimant to present information on a claim which appears to be ineligible are more likely than others to assume this adversarial tone. In addition, hearings held in the court systems may assume a more adversarial nature, as both the claimant and the court personnel may tend to associate appearances before the court with wrongdoing and the adversarial system of justice.

Placing the burden of proof on the claimant is an approach taken by many programs, and as noted in Section 4.2.4, it can serve legitimate purposes of cost control and information acquisition. However, programs which place the burden of proof on the client during hearings may find it difficult to counter client's perceptions of the hearings as an adversarial process. This, in turn, may have several negative implications for public support and public relations.

The degree of formality used in the hearing is one trait which may have important implications for hearing costs. Formal procedures which require such features as the use of rules of evidence and formal transcripts of the proceedings are more likely to be time consuming, and therefore costly. In addition, formal procedures may encourage claimants' use of attorneys, which can also raise programs costs. However, a more formal procedure has the benefit of encouraging consideration of claimants' rights.

An alternative to the formal proceeding is one which does not make use of the court rules of evidence, in which claimants and the hearing official interact freely, and in which less formal records of the hearing, such as a tape recording, may be used. In general, the lower costs and easier client relations implied in the informal hearing may make this the more attractive option for hearings during the investigatory phase. Any possible detriment to the claimant's rights could be counteracted by providing for claimant appeals of the initial decision and by requiring that appeal hearings be conducted on a more formal basis. This would serve to balance the concern for program costs with the concern for claimant rights.

A final issue in hearings is their confidentiality. Most programs provide that their operations--including the hearing itself--are a matter of public record, and that hearings are open to the public. Realizing, however, that this could be a cause for concern for the victims of sensitive crimes such as sexual assault, or an impediment to justice in claims which may have a bearing on impending criminal prosecutions, many programs have made provisions to close their hearings under these circumstances. The Oregon law is typical in this regard:

147.115 Confidentiality of application information; board proceedings; use of record; witnesses before board. (1) All information submitted to the fund

by an applicant and all hearings of the board under ORS 147.005 to 147.365 shall be open to the public unless the fund or board determines that the information shall be kept confidential or that a closed hearing shall be held because:

(a) The alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either his apprehension or his trial;

(b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;

(c) The victim or alleged assailant is a minor; or

(d) The interests of justice would be frustrated rather than furthered, if the information were disclosed or if the hearing were open to the public.

Provisions for confidentiality under certain conditions thus may ensure that the program can serve both the public interest and the individual victim's need for privacy.

4.2.6 Appeals

Most victim compensation programs offer some form of review or appeal procedure for claimants who are dissatisfied with the original decision on their application. Conditions under which an appeal may be granted, the personnel who hear the appeal, and the number of "levels" of appeal available to the claimant vary from program to program. Table 4.1 illustrates the appeal procedure of the four sites studied in the course of preparing this report. Information on the Massachusetts court-based victim compensation program is also included for comparison.

As Table 4.1 illustrates, there are several options available to victim compensation programs designing an appeals procedure. The first, of course, is to provide no appeal or review procedure at all. This option may be found in the states of Illinois, Nevada, Tennessee, and Connecticut. However, the majority of programs make some provision for a review or appeal, although the formality of that proceeding and the levels of appeal afforded to the claimant are quite different among programs.

¹⁸ Or. Rev. Stat. sec. 147.115 (Supp. 1977).

Table 4.1
Appeals Process in Selected U.S. Jurisdictions

	New York	Maryland	Delaware	Washington	Massachusetts
How is appeal initiated?	Claimant makes application in writing to Chairman of Board.	Claimant makes an application in writing to the Board.	Claimant makes appeal to the Superior Court.	Claimant must file a notice of appeal with the Board and the Director, by mail or in person.	Claimant files a claim of appeal.
Time limitations on filing the appeal.	Within 30 days of the original decision.	Within 30 days of the original decision.	Within 30 days of the decision of the Board.	Within 60 days of the decision.	Within 15 days after the notice of judgment is sent to the claimant.
Where is appeal filed?	With Chairman.	At the Board offices in Baltimore.	Superior Court.	With the Board and Director in Olympia.	With the Clerk of the court where the claim was heard.
Who heard the appeal?	Panel of three Board members, not including members who originally decided the claim.	The three members of the Criminal Inquiries compensation board.	Superior Court.	Board of Industrial Insurance Appeals.	The Appellate Division of the court.
In what form in the appeal board?	An informal hearing in which claimant presents evidence in support of the claim.	Hearing before the full board.	—	Board may deny or accept claim based on information in the notice of appeal; or it may hold hearings, which are conducted in the county of residence of the claimant. Hearings may be held by one or more Board members or by an authorized hearing examiner.	A hearing before the appellate court.
Are there provisions for a second level of appeal for the claimant?	Yes. Claimant can initiate a procedure to review the decision in the courts pursuant to Article 78 of the Civil Practice Law and Rules.	Yes. Claimant may ask for a review of the decision by the courts.	No.	Yes. Within 30 days the claimant must file an appeal with the Superior Court.	No.
Who hears the second level appeal?	New York State Courts.	Maryland State Courts.	—	The Superior Court in county of residence.	—
Are there any other forms of review or appeal?	The Attorney General or Comptroller can seek a review of the Board's Decision within 30 days, if the award is considered illegal or excessive.	The Attorney General or Secretary of Public Safety and Correctional Services may seek judicial review of the decision, if they consider the award improper.	No.	No.	The Attorney General may appeal a decision by the District Court Justice.
Who hears this additional appeal or review?	The New York State appellate division of the supreme court.	Circuit court of the the county or Supreme Bench of Baltimore City.	—	—	Appellate Division of the Court.
Time limits on filing this other appeal.	30 days	30 days	—	—	Within 15 days of the notice of judgment.

There are several arguments which may be presented in favor of the "no appeal" option. First, compensation is not generally considered to be a right of the claimant, but assistance which is provided by the grace of the state. As such, the claimant may be considered to have no right to appeal a decision concerning provision of a gift or good-will gesture. Court-based programs may have an additional justification for the no-appeal option. In many states, the major, and final avenue of appeal is to petition the courts to review the claim decision. Court-based programs such as Illinois or Tennessee might therefore reason that since their original decision is made at the level of the courts, no higher level review is needed. Finally, programs may wish to avoid the cost and encumbrances of the appeals process. While appeals or requests for review are relatively infrequent in most programs, the cost of an appeal can be significant, and the bulk of the costs would be borne by the victim compensation program.

Most programs, however, do provide some form of review. The options available and the conditions under which they are usually employed are examined below.

Internal/Administrative Review Systems. Most programs which offer a review procedure first provide an internal or administrative review. However, there are a number of different options for this internal review, varying in the degree of program effort they require and in the "formality" of the review itself. In addition, programs may provide several levels of internal review, usually starting with the less formal mechanisms and progressing to more formal procedures. One of the least formal review procedures--and one which takes place before a claim decision is actually made--is for the program to alert the claimant to the possibility that his or her claim will be denied, and to give the claimant the opportunity to request a hearing with the decision-making authority before a final decision is made. This very informal review process is used in the states of Alaska, New Jersey, and Wisconsin.

A second, more formal approach to administrative review found in many victim compensation programs is to have the decision made by one employee reviewed at a higher level. The procedure is most common where the original decision-making authority is given to a lower-level employee, an administrative employee, or only one member of a panel of decision-makers. For example, Table 4.1 shows that the states of New York and Maryland first assign decision-making authority to one member of their victim compensation boards. If dissatisfied with the decision of that individual, the claimant may request a review by either a three-member panel in the New York program, or the entire board in the Maryland program. Other states which use this procedure include Kentucky, Michigan, Minnesota, Ohio and Virginia. Some programs provide that a decision made by a lower-level employee such as a hearing officer or claims reviewer may be reviewed by a single, higher-level employee. This procedure is followed in Indiana, for example, where a hearing officer makes the

original claims decision. If the claimant does not agree with that finding, he or she may request a review by the division director. Very similar procedures are used in Wisconsin. Finally, some states provide that while an administrative employee makes the original decision, claimants may ask that the decision be reviewed by a formal board or panel. This approach is used in the states of Montana, Oregon, Indiana, and Washington.

A final form of administrative review is to allow the claimant to ask the decision-making authority to reconsider its original determination. Often, the authority is not required to reconsider, but may do so if the claimant can provide sufficient evidence that the claim should be reviewed. This approach is used in the states of California, Hawaii, Montana, North Dakota, and Oregon.

Administrative or internal review procedures offer a number of advantages to both the victim compensation program and the applicant. By offering the claimant a mechanism by which unfavorable decisions may be reconsidered, the program helps to ensure that claimants' rights are guaranteed. Also, by providing for administrative review, many programs have been able to make use of cost-saving measures which otherwise might raise many objections: one board member decisions, the use of administrative personnel as claims decision-makers, the delegation of claims decisions to lower level employees such as hearing examiners, and provision of hearings only in cases in which there is a pressing need for such proceedings. Allowing claimants access to review ensures that the claimant is not penalized by the use of these cost-saving measures, and thus helps to eliminate any objections to their use.

A further advantage of administrative review is that it offers a cost-effective approach to appeals for both the claimant and the program, especially when compared to the expense and time involved in an external or judicial review of the claims decision. Finally, administrative/internal reviews may be more accessible and less intimidating for many applicants. Thus, if the victim compensation program wishes to ensure that all applicants have easy access to appeals, administrative review may be an attractive option.

The administrative/internal review is not without drawbacks, however. Because it is accessible and less intimidating than the courts, more claims may be subject to appeal. This may result in higher administrative costs--an outcome which most programs wish to avoid. Secondly, some claimants may fear that an internal review of their claim may not be as objective or as fair as a review conducted by an impartial third party. Edelhertz and Geis have noted the particular concern of some individuals when the original decision-maker is part of the panel of decision-makers which hears the appeal.¹⁹ However, as most states provide for judicial review as well as internal reviews, this should not generally be a problem.

¹⁹ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 57.

Judicial/External Review. In addition to administrative review procedures, many programs also provide that decisions on victim compensation claims may be reviewed in the courts. In some states, judicial review is the only form of appeal offered by the program. Table 4.2 lists those states which officially provide for judicial review in their victim compensation statutes or rules and regulations.

In deciding whether or not to provide for judicial review of the claims decision, programs may be torn between a concern for claimants' rights and needs on the one hand, with fears that (1) by providing for judicial review, they are admitting that compensation is a right, and not a benefit given by the grace of the state; and (2) the courts will be overburdened with victim compensation claims. Thus, few programs offer judicial review without some form of administrative review, and most restrict the scope of the inquiry during the judicial review. As Hofrichter notes:

States that permit judicial review . . . [limit] judicial review to a summary proceeding whereby the court never reviews questions of facts but asks instead whether the board overextended its authority and jurisdiction or otherwise erred in its procedures. Thus, judicial review stresses legal questions rather than issues of substance. Appeals at this level are rare and usually sustain board actions.²⁰

Judicial review is an excellent way to ensure that claimants receive equitable and proper treatment by the victim compensation program. Given that recourse to judicial review is a step seldom taken by most applicants, and that programs may remedy some of the drawbacks to judicial review by providing internal review and limiting the scope of judicial review, there are few reasons to withhold this form of appeal. Both New York and Maryland now offer judicial review of their victim compensation decisions, after several years of operation with no such provision. No adverse results have been found after these programs implemented provisions for judicial review.

4.3 The Payment Process

Once the claim has been decided, crime victim compensation payments may be made to the applicant. In structuring the payment process, programs must determine: (1) the method of payment to be used and (2) to whom the payments may be made. These elements are examined below.

²⁰ U.S. Congress, Victim Compensation and the Elderly, p. 64.

Table 4.2

Provisions for Judicial Appeals in U.S. Jurisdictions

California	Judicial review of the final decision may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure.
Delaware	Claimant may make an appeal to the Superior Court of Delaware within 30 days of receiving the board decision.
Florida	Final decisions of the commission are reviewable in the District Court of Appeal.
Hawaii	Claimant may appeal to the Supreme Court within 30 days only in cases where the appeal is based on the fact that the decision was in excess of the commission's authority or jurisdiction.
Indiana	If an appeal is denied by the board, the claimant may appeal the decision through a civil proceeding in a court of law.
Kansas	A final decision of the board is subject to judicial review on appeal by the claimant, the attorney general, or the offenders in the manner prescribed by KSA 1977 Supp. 60-2101.
Kentucky	Within 30 days of the final decision by the board, the Attorney General or the claimant may file a proceeding in the Franklin Circuit Court.
Maryland	Claimant may ask for a review of the decision in the circuit court of the county.
Michigan	Within 30 days of the final decision by the board, the claimant may file a request for leave to appeal with the Court of Appeals.
Montana	Claimants may appeal the decisions of the Workers' Compensation Judge by filing an appeal directly with the Supreme Court of Montana in the manner provided by law for appeals in the district court in civil cases.
New Jersey	Claimants may initiate judicial review of the full Board decision by a process governed by the New Jersey Administrative Procedures Act and by rules set forth by the Supreme Court of the State of New Jersey.
New York	Claimant may initiate a proceeding to review the decision in the courts pursuant to Article 78 of the Civil Practice Laws and Rules.
North Dakota	Claimant may appeal a decision of the Board to the District Courts of North Dakota.
Pennsylvania	Within 30 days of the notice of the final decision, the claimant may appeal the decision in the Commonwealth Court.
Texas	Within 20 days of the Board's final ruling, the claimant may bring suit in the district court having jurisdiction in the county where the injury or death occurred or the county where the victim resided at the time the death or injury occurred.
Virginia	Within 30 days of the final decision, the claimant may appeal the decision to the Supreme Court of Virginia.
Washington	Within 30 days of the decision of the Board, the claimant may file an appeal with the Supreme Court.
Wisconsin	Within 30 days after the final decision, the applicant may file a petition in the Circuit Court of Dane County for review.

4.3.1 Method of Payment

Two clear options have emerged concerning the methods by which programs make payments to applicants. Under the first, all payments are provided on a one-time-only, lump sum basis. In this system both out-of-pocket expenses for medical services or loss of income, and expected expenses such as continued loss of income due to disability would be made in one full payment. This approach may be found in states such as Alaska or Connecticut, where the victim compensation statute mandates that all payments be provided in a lump sum. Much more common, however, is the option of providing both lump sum payments and payments made on an installment basis. Generally programs are required to make lump sum payments for the majority of their claims; however, in cases of death or disability, the program is mandated to provide payments on a protracted, installment basis. Several states make reference in their statutes or regulations to providing both lump sum and protracted payments for victims of crime.²¹ No state statute includes a provision that only installment or protracted payments may be made.

Both the lump-sum and installment payment methods offer very compelling advantages. Lump sum payments, for example, are simple to administer. Because they do not require any ongoing costs either to provide the payments or to monitor the continuing eligibility status of the beneficiaries, the administrative costs associated with this payment method are minimal. Finally, a lump sum payment is the most reasonable approach when there are one-time costs to the claimant, when recovery from injuries is complete, or when the amount in question is relatively small.

As noted above, protracted or installment payments are generally employed in death or disability cases. However, they are also of great benefit in instances in which it would appear that the claimant does not possess the fiscal acuity to manage a large lump sum payment or in cases in which the need for compensation cannot be determined conclusively or is likely to vary with time. While installment payments do entail higher costs of administration than lump sum payments, that added expense may be outweighed by the potential cost savings of this approach. Almost every program which provides for installment payments to applicants also requires that the payments be reviewed periodically to determine if the claimant is still eligible for the benefits and if the amount of the benefits provided is still appropriate. Protracted payments may be modified, reduced, or discontinued if the victim is finally able to return to work, if the dependency status of the applicant changes, or if the victim dies of causes unrelated to the criminal injury. Thus, the program can reduce its expenditures by reducing the total amount of

²¹ California, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Montana, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Tennessee, Virginia, Washington, and Wisconsin.

the award actually paid to such individuals. That possibility could not be realized if the award were made on a lump sum basis only, since programs would not be able to retract a payment already made to the claimant.

By far the most practical option in developing the payment process is to provide both the lump sum and installment payment methods. In this way programs may tailor the payment method to the conditions of the claim, developing an approach which may better serve the interests of both the claimant and the program. If only the lump sum payment option is offered, programs may unwisely trade flexibility and control in the payment process for a shorter-term reduction in administrative costs.

4.3.2 Eligibility for Payment

As noted in Section 2.3, every program specifies that the victim of crime, or persons dependent on the victim for support may receive victim compensation benefits. Yet many other parties may have an interest in the compensation payments--some with legitimate cause, and some not. Recognizing that this may be the case, a number of programs have sought to clarify their positions on the distribution of benefits. Many statutes contain provisions similar to that of Delaware:

Awards and recoveries granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.²²

While this provision effectively protects the claimant, it does little to protect the service provider who assists the victim of a crime. These groups may be legitimately concerned when they are given no guarantee that the victim who is awarded payments for treatment or services will actually turn those funds over once the treatment is received. Thus some states have incorporated provisions such as the following in their victim compensation statutes:

No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from injury which is the basis for the claim.²³

²² Del. Code. Ann. tit. 11, sec. 9011(a) (Supp. 1977).

²³ Md. Ann. Code, art. 26A, sec. 13 (Supp. 1977).

Some states make even more specific reference to the payment of service providers. For example, the Indiana statute provides that "the part of an award covering an unpaid bill shall be made payable jointly to the claimant and the creditor on that bill,"²⁴ while the Wisconsin statute states that "the department may, in its discretion, pay any portion of an award directly to the provider of any service which is the basis for that portion of the claim."²⁵ These provisions do not compromise claimants' rights and may in fact be welcomed by claimants, as they can eliminate their involvement in payments to service providers. In addition, provisions for direct payments to service providers may increase these providers' willingness to assist the victims of crime, as they will be guaranteed payment for their services.

²⁴ Ind. Stat. Ann., sec. 16-7-3.6-12 (Burns, 1977).

²⁵ Wis. Stat. Ann. sec. 949.07 (West Supp. 1977).

CHAPTER 5: COSTS AND FUNDING

5.1 Introduction

Throughout the history of victim compensation in the United States, costs have perhaps been the single major concern of legislators, program implementors, and program operators. Uncertainty over costs complicates deliberation in almost every aspect of victim compensation operations--it influences the decision to initiate a victim compensation program and, if a program is implemented, cost considerations influence the actual shape the program will take. In the early stages of developing the New York program, for example, opposition to the program was partially based in the issue of cost. Edelhertz and Geis note:

The first voice opposing victim compensation heard by the committee was that of Richard Kuh, a former assistant district attorney in Manhattan. Kuh calculated that payments of, say, \$250 to each of the 25,000 persons who had entered complaints as victims of crimes of violence during the past year in the state would amount to \$6 million. 'There are', he maintained, 'more important calls in that six million than a nice appealing program of compensating victims of crime.'

Many other programs have faced similar resistance due to cost issues, and efforts to pass federal legislation on victim compensation have also been constrained by concerns about cost. As early as 1974 Edelhertz and Geis noted that "the greatest obstacle to enactment of legislation to compensate victims of crime in the states and the District of Columbia was and is apprehension as to the costs of such programs."² More recently, Blackmore quotes the dissenting members of the House Judiciary Committee in hearings on victim compensation legislation:

The bill 'provides an interminable life-support system to a continually expanding plexus of state programs,' the dissenting

¹ Herbert Edelhertz and Gilbert Geis, Public Compensation to Victims of Crime, (New York: Praeger Publishers, 1974), p. 27.

² Ibid., p. 192.

committee members argued. 'The bill seems particularly ill-timed when there currently is so widespread an appreciation of the exhaustability of the federal font.'³

Concerns about costs can also influence the implementation of programs once legislation is passed. Rhode Island, for example, has had a victim compensation statute since 1972, but has stipulated that the act will only take effect 30 days after the passage of federal legislation.⁴ As federal legislation was expected to provide financial subsidies to state programs, one can only assume that the potential cost of the program is the sole impediment to implementation in Rhode Island.

In a similar action Louisiana passed crime victim compensation legislation in 1972, but did not fund the program. Under pressure to appropriate monies for the program in spite of several unsuccessful attempts of the federal government to offer a national compensation program, Louisiana repealed its legislation in 1976.

The most important influence of the cost limitations has been on the structure, operations, and policies of compensation programs. Much of the discussion concerning program placement has centered around the potential costs of each placement option; often cost considerations appear to match or outweigh considerations about the probable effectiveness of the placement. Concerns about the cost of compensation benefits has also led to the adoption of various restrictions on benefits and eligible clients.

Finally, limitations on administrative costs have profoundly affected program operations. Often appropriations for these costs have not kept pace with the actual program needs, resulting in situations like that of New Jersey or Illinois: a reduced capacity to handle the workload and an increased claim backlog. Concern over cost has also influenced decisions regarding program procedures and, as a result, programs have considered or implemented many of the cost- or time-saving procedural options noted in Chapter 4.

Section 5.2 below examines the issues of program cost and discusses actual program expenditures. Some of the early concerns about program costs are also examined in light of programs' experience. This is followed in Section 5.3 with a discussion of the various funding mechanisms and sources of support for victim compensation programs.

³ John Blackmore, "Paying the Price of Crime," Police Magazine (July 1979): 56.

⁴ Rhode Island General Laws Annotated, ch. 24-12 (Supp. 1975).

5.2 Operating Costs

Every victim compensation program has two primary types of expenditures: administrative costs and benefits payments. Most attention has focused on benefits payments and their potential to consume considerable amounts of the state's available revenues. Once statutory or administrative definitions have established who is eligible for compensation and a schedule of benefits is fixed, the total expenditure for direct payment is--at least in principle--an actuarial function of the number of people covered, the risks they incur, and the seriousness of their losses. The separation between administrative and benefit payments is, however, only partial. An agency with insufficient administrative staff may delay processing of claims enough to reduce the cash flow at the expense of storing ever-increasing liabilities in the backlog of unfinished cases. On the other hand, a well-funded agency may be able to field an aggressive outreach program which will materially increase the volume of claims.

Due to variations in appropriations levels, case loads, eligibility criteria, state size, and benefits offered, there is enormous variation in the operating costs of existing victim compensation programs. This is illustrated by the information presented in Table 5.1, which shows cost, staffing, and workload data for 18 operating programs. It should be noted that most data for this table, and all subsequent tables, were drawn from the years 1977-1978. Any conclusions regarding current costs and expenditures of victim compensation programs must therefore be drawn with caution.

5.2.1 Administrative Costs

Administrative expenses for victim compensation programs include such cost elements as facilities, staff salaries and benefits, materials and supplies, travel, and maintenance costs--in short, all costs associated with the activities, facilities, and personnel necessary to process claims and provide benefits to victims. During the initial years of program operations, these may also include one-time expenditures for equipment or special start-up costs. Administrative cost expenditures for the four sites studied in the course of preparing this report are presented in Table 5.2.

Comparisons among the administrative costs of victim compensation programs are confounded by a number of factors. The most obvious of these factors are the differing cost categories used in each program and the variations in the specific items included in cost categories which would appear to be similar. Even more important are the differences among the kinds of administrative costs which are included in programs' budgets. Table 5.2 illustrates this point. Delaware and Washington both include rent as a category in their

Table 5.1
Cost, Staffing and Workload Data on 18 U.S. Victim
Compensation Programs

State		Year Legislation Passed	Total Budget	Benefit Payments	Adminis- trative Costs	Number Administrative and Investiga- tive Staff	Program Placement	Claims Filed	Cases Decided and Closed	Number of Awards	Number Denied	Cases Open at End of Period
Alaska	(7/1/77-6/30/78)	1971	*359,577	*285,673	*73,884	2	New Agency	100	NA	99	NA	33
California	(7/1/77-6/30/78)	1965	*5,454,086	*5,025,289	*428,797	NA	Existing Agency	*6,525	5,791	*2,411	3,380	*5,113
Delaware	(7/1/77-6/30/78)	1975	242,139	154,197	87,942	5	New Agency	101	93	65	21	0
Florida ^a	(1/1/77-6/30/78)	1978	*223,133	*47,971	*175,162	NA	New Agency	*565	NA	*142	NA	*423
Hawaii	(12/16/76-12/15/77)	1967	283,813	226,869	56,944	2	New Agency	298	228 ^h	162	56	338
Maryland	(7/1/77-6/30/78)	1968	1,607,711	1,468,289	139,122	7	New Agency	476	407	341	66	0
Michigan	(10/1/77-9/30/78)	1976	551,912	493,185	58,727	2 ^f	New Agency	949	750	415	*335	199
Minnesota	(7/1/77-6/30/78)	1974	*400,000	*347,500	*52,500	2	New Agency	*389	*510	*241	*146	*123
Montana	(1/1/78-12/12/78)	1977	44,311	28,282	16,029	NA	Existing Agency	87 ^g	32	17	8	55
New Jersey	(7/1/77-6/30/78)	1971	*1,104,826	*919,046	*185,780	6	New Agency	*819	NA	*279	NA	*2,563
New York	(4/1/77-3/31/78)	1967	5,052,395	4,313,078	739,317	46	New Agency	5,489	4,539	1,476	3,063	2,701
North Dakota	(7/1/77-6/30/78)	1975	102,741 ^d	84,325 ^d	18,416 ^d	2	Existing Agency	44	46	27	19	5
Ohio	(7/1/77-6/30/78)	1975	1,314,020	1,242,753	377,749	NA	Court	1,187	656	421	235	531
Oregon ^a	(1/1/77-12/31/78)	1977	*215,207 ^e	132,785	*82,422 ^e	2	Existing Agency	229	137	71	66	92
Pennsylvania ^b	(10/1/77-7/1/78)	1976	*452,104	*272,104	*180,000	3	New Agency	*559	361	*162	199	*198
Virginia	(7/1/77-6/30/78)	1976	*134,345	*103,269	*31,076	NA	Existing Agency	*197	NA	*43	NA	*94
Washington	(7/1/77-6/30/78)	1974	1,139,535	983,610	155,925	5	Existing Agency	1,041	1,041	708	333 ⁱ	0
Wisconsin ^c	(2/1/77-9/30/78)	1976	*472,133	*401,017	*71,116	3.5	Existing Agency	*264	NA	*141	NA	*109

SOURCE: Table 5.1 is based on information gathered from annual reports of victim compensation programs and the results of a survey conducted by the New York Legislative Commission on Expenditure Review. The survey results may be found in the following source: New York Legislative Commission on Expenditure Review, *Crime Victims Compensation Program, Program Audit*, 1979, pp. 38, 59.

* Drawn from the survey conducted by the New York Legislative Commission on Expenditure Review.

^a six months data

^b eleven months data

^c eight months data

^d one-year costs are estimated, based on costs for the 1977-1979 biennium. Benefit payments include those actually paid and those held in reserve for future payments on claims already awarded.

^e estimate, based on \$41,211 administrative costs for 6 months; assumed \$82,422 administrative costs for full year.

^f includes chairman of the Board, who also serves as Administrator

^g includes applications received and claims filed for victims by the compensation program itself

^h includes cases withdrawn

ⁱ includes cases which were eligible but received no compensation payments

administrative costs; Maryland does not. Of the three states shown in Table 5.2, Washington is the only one which includes employee benefits as an item in its budget. In some states, attorneys' fees for claimants are included as an administrative expense, while in others they are included in the benefits category. States will thus vary on the degree to which their reported administrative costs actually reflect the costs of administering their crime victim compensation programs, and any interstate comparisons of administrative costs must be made with these differences in mind.

Table 5.2
Administrative Costs of Victim Compensation

Cost Elements	Delaware	Maryland	Washington ^a	New York
Salaries and Wage Employment Costs/Fringes	66% (57,775)	36% (120,000)	43% (59,709)	83% (616,413)
Contractual Services	7% (5,902)	1% (1,914)	33% (45,398)	9% (67,093)
Travel	7% (6,521)	2% (2,220)	1% (1,501)	2% (14,862)
Rental/Leasing	9% (4,659)	—	5% (7,141)	—
Communications	—	3% (4,260)	2% (3,366)	—
Other ^b	1% (1,049)	8% (10,453)	8% (10,759)	6% (40,845)
Total	100% (87,943)	100% (139,252)	100% (139,094)	100% (739,213)
Number of Paid Staff	5 FT, 5 PT	10 FT	5 FT	51 FT

^a Annualized data based on 7 months' information.

^b Includes such items as equipment, supplies, motor vehicle operation, etc.

The effect of these different accounting procedures is to decrease the comparability of cost data, since indirect cost elements will be included in some budgets and excluded from others. Total reported administrative costs can thus be seen primarily as a rough indicator of program magnitude. Table 5.3 displays administrative costs for 13 of the 18 state programs for which data were available. In addition, the table shows the number of claims decided and the cost per claim. Like costs, claim tabulations are subject to variations in accounting rules, since the mix of cases eligible for consideration, and hence the complexity of the award process, varies from state to state. Despite these variations, only Delaware significantly exceeds the average cost per claim (by 2.2 standard deviations).

In addition to the influence of external factors such as availability of funds from the state government or the need for administrative expenditures generated by claims volumes, administrative expenses for victim compensation programs may also be affected by the internal workings of the program---some programs may have adopted procedures or even administrative structures which enhance their efficiency, and thus they would require less administrative funds than other programs to accomplish the same amount of work.

Table 5.3

Administrative Costs and Claims Decided

	Admin. Costs	Claims Decided	Cost Per Claim		Admin. Costs	Claims Decided	Cost Per Claim
Montana	6,029	32	501	Maryland	139,122	407	342
North Dakota	18,416	46	400	Washington	155,925	1041	150
Minnesota	52,500	510	103	Pennsylvania	180,000	361	499
Hawaii	56,944	228	250	Ohio	377,749	656	576
Michigan	58,727	750	78	California	428,797	5791	74
Oregon	82,422	137	601	New York	739,317	4539	163
Delaware	87,942	93	946				

average cost per claim = \$360, standard deviation = \$260.

One aspect of program costs which is often used as a measure of program efficiency is the percent of the total victim compensation budget which is devoted to administrative concerns, as opposed to benefits payments. Generally, programs which exhibit lower percentages are considered more efficient, as they require fewer administrative funds to dispense their benefits, where benefits can be considered an indication of the amount of program work. Table 5.4 shows administrative costs/total budget for eighteen victim compensation programs.

Table 5.4

Administrative Costs as a Percentage of Total Budget

State	Administrative Costs	Total Cost	% Administrative
California	428,797	5,454,086	9
Maryland	139,122	1,607,711	9
Michigan	58,727	551,912	11
Minnesota	52,500	400,000	13
Washington	155,925	1,139,535	14
Wisconsin	71,116	472,133	15
New Jersey	185,780	1,104,826	17
New York	739,317	5,052,395	17
North Dakota	18,416	102,741	18
Hawaii	56,944	283,813	20
Alaska	73,884	359,577	21
Virginia	31,076	134,345	23
Ohio	377,749	1,314,020	29
Delaware	87,942	242,139	36
Montana	16,029	44,311	36
Oregon	82,422	215,207	38
Pennsylvania	180,000	452,104	40
Florida	175,162	233,133	79

As Table 5.4 indicates, there is considerable variation in this feature across all victim compensation programs, ranging from 9 percent in California and Maryland to 79 percent in Florida. This variation may be the result of several factors, including the precise processing procedures used, possible processing "shortcuts" which might be employed, or legislative constraints on either the benefits payments allowed or the administrative costs appropriated. Unfortunately, the available information on these programs precludes a thorough investigation of the impact of those factors. It is possible, however, to examine the effects of other features which program designers had thought to have a potential impact on administrative costs.

One feature which was expected to result in wide variations in administrative costs was the organizational placement of the victim compensation program. (For a discussion of these placements see Section 3.2). Specifically, it had been argued that programs operating from existing agencies and programs based in the judicial system would have lower administrative costs. Based on the information available, this conclusion does not appear to be supported. Table 5.5 indicates the relationship of placement to the administrative costs as a percentage of total budget:

Table 5.5**Administrative Costs as a Percentage of Total
Budget by Program Placement**

New Agency		Existing Agency		Court	
California	9%	Washington	14%	Ohio	29%
Maryland	9%	Wisconsin	15%		
Michigan	11%	Virginia	23%		
Minnesota	13%	Montana	36%		
New Jersey	17%	Oregon	38%		
New York	17%	North Dakota	18%		
Hawaii	20%				
Alaska	21%				
Delaware	36%				
Pennsylvania	40%				
Florida	79%				
average:	26.3%	average:	24.0%	average:	29%

Given the wide variations in administrative costs/total budget within placements, the differences among these average values are clearly negligible. Other possible indicators of program efficiency, such as the administrative costs per decision made, are similarly unrelated to the program placement.

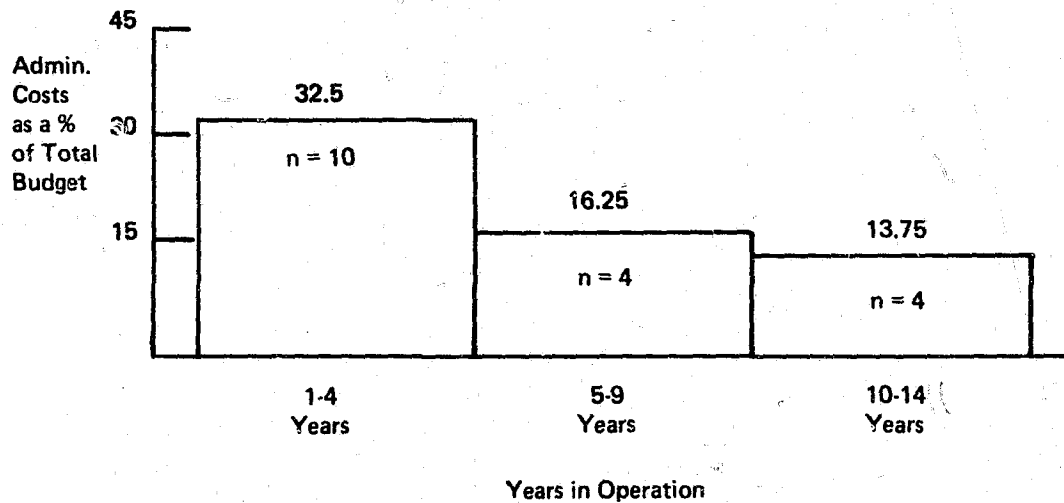
One interesting feature of administrative costs which is suggested by Table 5.5 is the influence of the number of years of program operations. Table 5.6 presents the same information as the preceding table, with years of program operation indicated. For consistency, years of operation is defined as the number of years since passage of the victim compensation legislation, using 1979 as the base year.

Table 5.6
Administrative Costs as a Percentage of Total Budget
by Program Placement and Years in Operation

Years in Operation	New Agency		Existing Agency		Court	
1-4	Michigan	11%	Wisconsin	15%	Ohio	29%
	Delaware	36%	Virginia	23%		
	Pennsylvania	40%	Montana	36%		
	Florida	79%	Oregon	38%		
			North Dakota	18%		
	average:	42%	average:	26%	average:	29%
5-9	Minnesota	13%	Washington	14%		
	New Jersey	17%				
	Alaska	21%				
	average:	17%	average:	14%		
10-14	California	9%				
	Maryland	9%				
	New York	17%				
	average:	12%				

While there is not enough information available in any one category to make any conclusive observations, the above table may indicate a trend: with the exception of Florida, administrative costs among program placements do not appear to differ dramatically, and, as a whole, the administrative costs as a percentage of the total budget appear to decrease after an initial start-up period during which the flow of awards will lag costs expended on case processing. This latter point is illustrated by Figure 5.1 which shows the averages of administrative costs as a percentage of total budget for programs grouped by three categories of years in operation.

Figure 5.1
Administrative Costs as a Percentage of Total Budget by Years in Operation



This increasing efficiency in operation with program age may well be expected. In the initial stages, almost every program of this type will have a very low claims volume, causing the administrative costs to appear disproportionately high. As claims volumes grow, the efficiency of the program is likely to reach an equilibrium plateau as procedures become routine. Table 5.7 depicts the experience of New York State, which provides an example of this process within a single program:

Table 5.7

New York State Incurred Costs

Awards	FY 1967	FY 1968	FY 1969	FY 1970	FY 1971	FY 1972 (est.)
Grants	\$1,500	\$55,665	\$386,585	\$678,000	\$1,243,174	\$1,765,080
Adm. Costs	33,000	199,000	236,000	270,000	328,000	421,064
Total	\$34,500	\$254,665	\$622,585	\$948,000	\$1,571,174	\$2,186,144
Admin. Costs % of Total Budget:	96%	78%	40%	28%	21%	19%

SOURCE: Edelhertz and Geis, *Public Compensation to Victims of Crime*, p. 68.

Thus it would appear that programs may expect to allocate a substantially greater share of their total budget to administration during the first few years of operation. However, the absolute amount of funds necessary for program administration may increase over time as claims volumes grow.

5.2.2 Benefits

As noted in Chapter 2, most victim compensation programs provide for both lump sum and protracted award payments, and offer benefits in such categories as (1) loss of support or earnings, (2) medical expenses, and (3) funeral expenses. In addition, some programs offer payments for attorneys' fees and replacements of such essential items as eyeglasses, hearing aids, and other prosthetic devices. Jurisdictions face varying kinds of crime problems and may differ in compensation awarded for a particular kind of loss. These differences are reflected in the expenditure patterns of the state programs, two of which are shown in Table 5.8. Just as state accounting practices differ for administrative costs, the categories of benefit expenditure are also only approximately comparable. Thus the differences shown between New York and Washington reflect not only the different crime rates of those two states, but also different compensation policies and different classes of compensation.

Table 5.8
Awards Paid in New York and Washington
(1977-1978)

	New York ^a	Washington ^b
Medical expenses	34% (1,471,055)	47% (459,897)
Time loss	17% (729,328) ^c	17% (162,778)
Disability awards and pensions	14% (604,575) ^d	19% (187,887)
Pension to survivors	21% (918,796)	9% (90,053)
Immediate payment to survivors	1% (46,670)	3% (28,122)
Funeral expenses	11% (469,144)	2% (35,686)
Other	2% (73,509)	4% (35,686)
Total	100% (4,313,077)	100% (983,610)

^aNew York Legislative Commission on Expenditure Review, *Crime Victim Compensation Program, Program Audit*, April 1979, p. 60.

^bState of Washington, Biennial Budget Estimate, General Justification Material, Department of Labor and Industries, Victims of Crime Compensation/Adjudication, 1979.

^cThis figure is lump sum payments for earnings/support loss due to personal injury.

^dThis figure is all protracted payments for earnings/support loss due to personal injury.

In view of the range of variables on which victim compensation schedules may differ--covered losses, eligibility rules, upper and lower limits on payments--one would expect to observe substantial differences in the amounts expended under the various state plans. Table 5.9 shows this to be the case, with the highest benefit expenditure budget exceeding the lowest by a factor of two hundred. Much of this difference, however, is a simple reflection of the size of the states involved. When we look at expenditures per capita, the range is substantially less dramatic. The average expenditure in these eighteen states is \$.18 per resident per year, with half the states spending \$.12 per capita or less. Three quarters of the states spend amounts in the range of four to forty cents per resident.

Table 5.9
Benefits Expenditures by 18 Victim Compensation Programs
with State Population, Violent Crime Rate and
Volume of Cases Closed

	Benefit Expenditures	1975 State Population (1000)	UCR Violent Crime Rate per 100,000 Population	Decisions Closed
Montana	28,282	748	218.0	32
Florida	47,971	8,357	686.8	—
North Dakota	84,325	635	67.1	46
Virginia	103,269	4,967	290.0	—
Oregon	132,785	2,288	455.8	137
Delaware	154,197	579	382.1	93
Hawaii	226,869	865	224.8	228
Pennsylvania	272,104	11,827	282.8	361
Alaska	285,673	352	443.2	—
Minnesota	347,500	3,926	193.8	510
Wisconsin	401,017	4,607	131.5	—
Michigan	493,185	9,157	584.7	750
New Jersey	919,046	7,316	392.0	—
Washington	983,610	3,544	374.9	1,041
Ohio	1,242,753	10,759	406.7	656
Maryland	1,468,289	4,098	693.8	407
New York	4,313,078	18,120	831.8	4,539
California	5,025,289	21,185	706.0	5,791

Most of the differences in per capita expenditure for victim compensation appear to reflect differences in state government expenditures generally, rather than specific aspects of the victim compensation programs. To quantify the relationship between compensation budgets and program characteristics, we constructed a regression equation describing the eighteen states on which data were available.⁵ The variables considered were per capita state budget, maximum limits, minimum limits, victim notification procedures, and crime rates. In this equation, per capita state budget contributed by far the largest share of the effect. By itself this variable accounts for three quarters of the total variation in victim compensation benefit expenditures. On the average, per capita state budgets for victim compensation increase about \$.17 for each additional \$1,000 of total state per capita expenditures.

Of the program variables which were available for all 18 states--maximum compensation, minimum compensation and procedure for notifying victims--only the statutory maximum compensation appears to be related to the total benefits paid, with an expenditure increase of about \$.01 per capita associated with each additional \$5,000 in the maximum. There is no clear relationship between the crime rate and state spending for victim compensation in these states.

It must be emphasized that these results describe only the distribution of budgets among states. They are in no sense prescriptive, nor do they provide any information about the causal factors which determine where state expenditure levels will be set. One may safely indicate that these data suggest the availability of a relatively broad range of legislative options, and seem to suggest that budgets can be set to reflect the availability of funds (as indicated by total state budgets per capita). Within any program's budget constraints, adjusting the definition of compensated events and the schedule of award amounts seems to provide sufficient leverage to maintain fiscal control over total expenditures.

Lamborn has noted this relationship between the level of funding available and the restrictions on eligibility and benefit levels:

Proponents of crime victim compensation programs have expressed a desire in principle to minimize expenditures and have recognized the greater likelihood of adoption of a program if its cost is low. Legislators have demonstrated less

⁵ For this analysis, the figure used for North Dakota benefit expenditures represents the amount actually disbursed during 1977-1978, rather than the amount of benefits paid plus benefits reserved (but not yet paid) for claims already awarded.

interest in expansive than in limited programs, presumably because of the difference in cost, and administrators have proven reluctant to press for expansion of benefits beyond the point of estimated legislative receptivity. Some of the restrictions on benefits have been instituted for the expressed purpose of minimizing expenses.⁶

New York provides an example of some of the specific policies which have been implemented in an effort to control costs. Edelhertz and Geis observed that the provision requiring that applicants demonstrate serious financial hardship was motivated by concerns over cost, and a fear that the true cost of program operations would quickly rise once the program was actually implemented. They also cited the experience of Hawaii, where early attempts to pass a victim compensation statute failed, "largely because of the bi specification of \$25,000 as the maximum on awards, an amount some legislators believed too high.⁸ When the legislation was resubmitted two years later with a maximum limit of \$10,000, Edelhertz and Geis note that it was enacted without significant opposition.

Most programs establish upper limits on benefits, although in some programs these limits extend only to income loss and not to medical expenses. Similarly, provisions for minimum loss criteria are found in most states. Generally, these criteria are based on legislators' concerns over the possible administrative costs of processing a large number of small, and presumably nominal, cases. Typical limits and their rationales are examined in greater detail in Chapter 2.

As yet there appears to be little conclusive evidence concerning the true impact of program restrictions and criteria on the funds expended for benefit payments. Difficulties in estimating these costs are compounded by the fact that one of the most plentiful sources for comparative information--the experiences of state programs with differing eligibility criteria--may be rendered less useful by the limited number of states available for these comparisons and the factors in addition to eligibility which can affect those states' benefits levels.

⁶Leroy Lamborn, "The Scope of Programs for Governmental Compensation of Victims of Crime," University of Illinois Law Forum (1973): 22.

⁷Edelhertz and Geis, Public Compensation to Victims of Crime, p. 32.

⁸Ibid., p. 131.

Several estimates of the potential effects of eligibility criteria have been made on a national level, however. One of the most recent and comprehensive of these estimates was recently completed by Garofalo and McDermott, building on the earlier work of Garofalo and Sutton which was conducted under the auspices of the National Criminal Justice Information and Statistics Service. As the findings of that study may provide some insight into the possible effects of these criteria in state level programs, they are reported below.

Using data from the National Crime Survey (NCS) and the Uniform Crime Reports (UCR), Garofalo and McDermott prepared an estimate of the potential costs of a national crime victim compensation program. Three levels of eligibility criteria were developed, based on the eligibility criteria commonly employed by state level compensation programs. Specifically, these three levels were:

- \$100 minimum net medical cost and/or 10 days unreimbursed work loss;
- \$50 minimum net medical cost and/or 5 days unreimbursed work loss; and
- no minimum loss criteria.

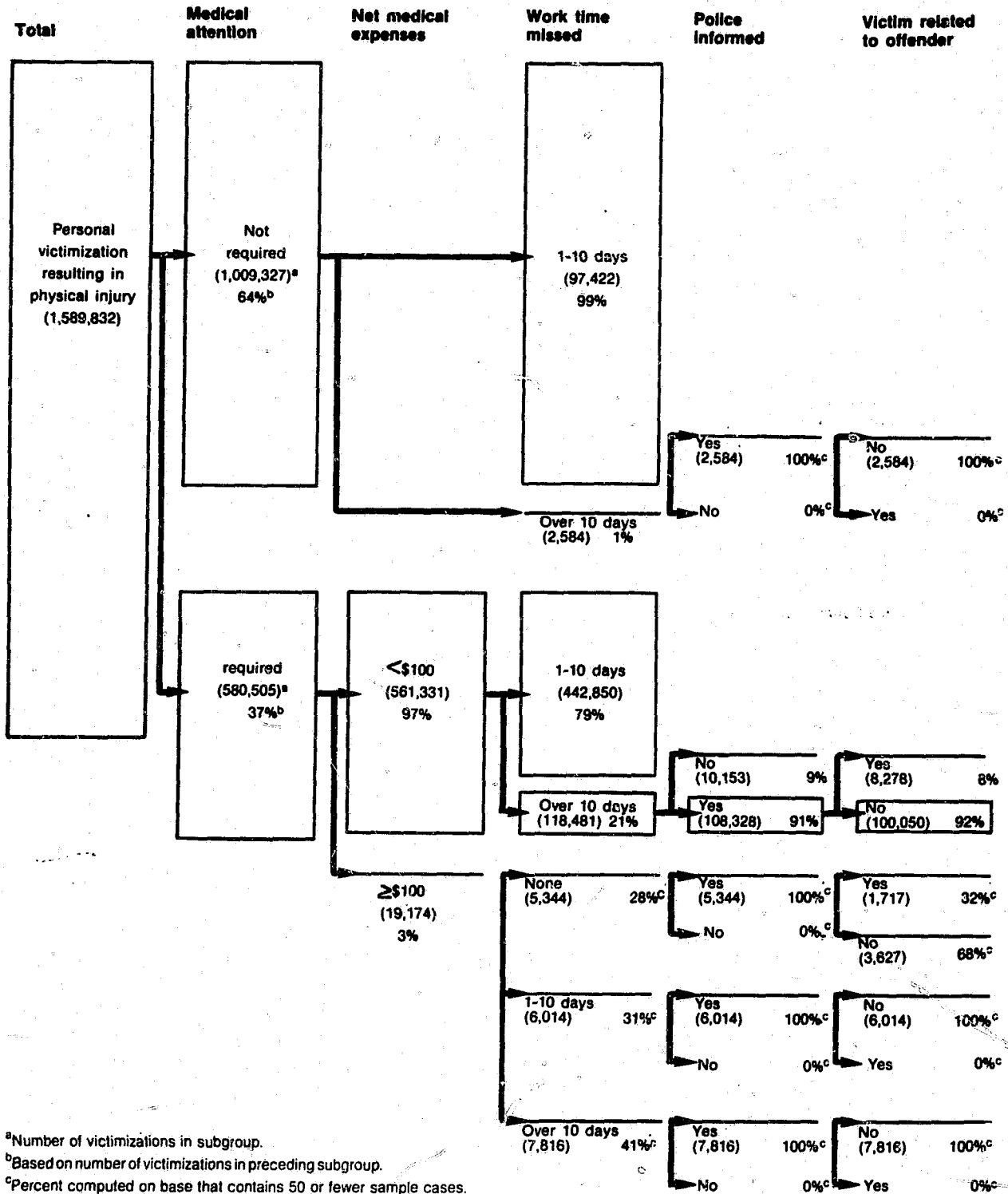
Using NCS data on medical expenses and time lost from work to estimate the number of victims who would meet these eligibility criteria, and modifying the costs incurred by these eligible victims by accounting for probable payments from collateral sources such as workers' compensation or sick pay, Garofalo and McDermott have established estimates of compensation costs under varying eligibility criteria. These are illustrated in Table 5.10. As the table demonstrates, eligibility criteria have a much more dramatic impact on the number of claims submitted to the program than on aggregate compensation costs. As Garofalo and McDermott concluded, "dropping the minimum loss requirements . . . results in a 12 percent increase in total program cost . . . but it also results in a 187 percent increase in the number of victimizations covered by the program Lowering or dropping minimum loss requirements, then, acts to extend coverage without greatly increasing costs."

A second finding which may be of interest in determining the potential impacts of eligibility criteria on benefit payments is the chart developed by Garofalo and Sutton displaying the filtering effect that common eligibility criteria may have on the number of individuals eligible for victim compensation. This chart is reproduced in Figure 5.2. To the extent that a

⁹ Garofalo and McDermott, "National Victim Compensation--Its Cost and Coverage," Law and Policy Quarterly 1 (October 1979): 456-457.

Figure 5.2

Determination of Victim Eligibility for Compensation
According to Popular Statutory Criteria, United States, 1974



SOURCE: Garofalo and Sutton, *Compensating Victims of Violent Crimes*, p. 34.

state's victimization characteristics match those of the national sample employed by Garofalo and Sutton, the percentages developed and presented in Figure 5.2 may provide useful, although very general, guidelines for state victim compensation programs.

Table 5.10
Estimated Numbers of Eligible Victimizations and Estimated Total Cost of
A National Victim Compensation Program for Three Minimum Loss Criteria^a

	\$100 Minimum Net Medical Cost/10 Days Work Loss^b	\$50 Minimum Net Medical Cost/5 Days Work Loss^b	No Minimum Loss Required^b
Estimated Total Program Cost (in millions)	\$194.7	\$204.1	\$213.4
Estimated Number of Eligible Victimizations	157,000	225,000	395,000

^aEstimates on numbers of assaults are based on one-year average estimates derived from 1974-1976 National Crime Survey Data. Data on homicides are based on annual average homicides from 1974-1976 Uniform Crime Report Data.

^bAssumes the enforcement of two additional criteria: the crime must have been reported to the police; and the crime must not have been committed by a relative of the victim.

SOURCE: James Garofalo and M. Joan McDermott, "National Victim Compensation—Its Cost and Coverage," *Law and Policy Quarterly* 1 (October 1979): 448.

Eligibility criteria can only set the outer boundaries for potential benefit expenditures, however. Within the parameters established by these criteria, total benefit payments will generally rise over the years as more individuals become aware of the program and as more protracted payment claims are added to the payment obligations of victim compensation programs. Of these two factors the increase in claims volume will have the stronger effect by far. The gradual rise in benefits expenditures which programs experience is illustrated in Table 5.11 containing information obtained from the Washington Crime Victim Compensation Division and the New York State Crime Victims Compensation Board.

Table 5.11
Benefit Expenditures in Washington and New York

Fiscal Year	Washington		New York	
	Claims Received	Benefits Paid	Claims Received	Benefits Paid
1968	—	—	196	55,665
1969	—	—	519	386,585
1970	—	—	929	678,220
1971	—	—	1594	1,243,171
1972	—	—	1896	1,407,277
1973	—	—	1762	1,848,500
1974	—	—	2065	1,835,000
1975	697	214,383	2341	2,871,337
1976	1015	946,823	3119	2,979,225
1977	1044	723,149	4250	3,228,667
1978	1041	983,610	5489	4,313,078

In most states, the number of claims awarded as protracted payments is relatively small; however, the cumulative effect of these payments can be significant. In Washington, for example, protracted payments have increased at a steady rate.

Table 5.12

**Washington Crime Victim Compensation Program
Protracted Payments as Percentage of Total Benefits**

Fiscal Year	Pension Payments	Percentage of Total Benefits
1975	\$ 7,575	3.5%
1976	64,107	6.8%
1977	91,360	12.6%
1978	116,047	11.8%
1979 ^a	146,900	13.5%
1980 ^a	190,800	15.4%
1981 ^a	233,200	16.8%

SOURCE: Washington State, Biennial Budget Estimate, Victims of Crime Compensation, 1979.

^a estimate

While the continued increases experienced in Washington are unique to some extent because Washington places no upper limit on benefit payments for protracted claims, they are indicative of the influence that pension/protracted payments may exert on the overall level of benefits in state victim compensation programs. Based on the experience of existing programs, Garofalo and McDermott have estimated that "of the protracted claims that are new in any given year, 70 percent will remain the next year, 50 percent in the third year, 30 percent in the fourth year, 20 percent in the fifth year, 10 percent in the sixth year, 5 percent in the seventh year, and none in the eight subsequent year.¹⁰ Generally, however, within individual programs it is likely that the effect of these protracted benefits payments would stabilize after a period of time, as the number of protracted claims closed each year approaches the number added.

5.3 Funding of Victim Compensation Programs

In addition to concerns over the total expenditures for victim compensation, legislators and program operators have expressed a parallel concern over the possible sources of revenue for the victim compensation effort. In general, programs have relied on two major funding options: general tax revenues of the state and special surcharges levied on convicted offenders. In addition, several other supplementary funding sources have been considered and adopted by compensation programs, including special charges to the victim upon filing of the claim and various methods of recovering funds directly from the offender.

¹⁰ Ibid., p. 458.

5.3.1 Major Sources of Funding

Most victim compensation programs rely on general state revenues for the support of the victim compensation effort. The advantage of this arrangement is, of course, the relative degree of security it offers the compensation program. However, reliance on general revenues alone may offer some disadvantages. Administrative costs are of course tied to the levels appropriated by the state; where those appropriation levels are low, the victim compensation program has no recourse but to maintain a lower level of service than its claims volume would seem to demand. Reliance on general revenues may also affect the benefit payments of compensation programs. If insufficient amounts are allocated to the program, applicants whose claims are accepted may be forced to wait for their benefit payments until additional monies can be appropriated or until the program receives its funds for the next fiscal year. An extreme example of this unfortunate possibility is cited by Edelhertz and Geis, who noted that in Hawaii, annual appropriations are made in response to awards already made.¹¹ This procedure "builds in" substantial payment delays for many victims.

General revenues are not the only source of funding for a substantial number of compensation programs, however. Many supplement their general funds with revenues generated by fines or surcharges levied on convicted offenders, presumably based on the theory that criminals bear a special responsibility for easing the plight of the crime victim. These funds are either placed in a special account intended for the exclusive use of the compensation program, or are placed in the state's general funds, with an unspoken understanding that the revenues are intended to support the compensation effort. The specific measures for generating these funds and the states which employ these methods are summarized in Table 5.13.

As the table indicates, states have developed a wide variety of surcharge mechanisms. Some impose these charges on all felony convictions, while others extend this charge to both felony and misdemeanor convictions. In states such as Tennessee, these charges are even imposed on traffic offenders.

The impact of these additional charges also varies from state to state. Blackmore notes that Florida, Virginia, and Delaware are able to support their entire victim compensation effort from funds generated by these methods.¹² This also the intent in Tennessee, which imposes one of the highest penalty assessments of all states using this methods of funding. Other states such as Maryland use the funds only as a supplement to their

¹¹ Edelhertz and Geis, Public Compensation to Victims of Crime, p. 273.

¹² Blackmore, "Paying the Price of Crime," p. 59.

Table 5.13
Special Funding Provisions of U.S. Victim Compensation Programs

California	\$10 penalty assessment for each felony conviction; \$5 penalty assessment for each misdemeanor. Encourages courts to fine convicted violent offenders. Proceeds deposited in the Indemnity Fund.
Connecticut	\$10 charge imposed against all persons convicted of any crime or certain motor vehicle offenses. Funds are placed in the Criminal Injuries Compensation fund.
Delaware	10 percent additional penalty is levied on every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses; court may also order persons convicted of crimes resulting in personal injury or death to pay a compensating fine. Monies are deposited in the Victim Compensation Fund.
Florida	5 percent surcharge imposed on all fines or civil penalties; 5 percent surcharge on bail bonds.
Maryland	\$10 additional cost imposed on the court costs of all persons convicted of any crime. Motor vehicle offenses are not included. All sums are paid into the state's general funds.
Indiana	\$10 criminal court cost for all Class A misdemeanors and felonies. Funds are deposited in a Violent Crime Victims Compensation Fund.
Kansas	\$1 fee assessed on every civil and criminal case filed with the district court. Funds deposited in the state general fund.
Montana	6 percent of the fines assessed and bails forfeited on all offenses involving violation of a state statute or city ordinances relating to motor vehicles. Funds placed in a crime victims compensation account in the earmarked revenue fund.
Ohio	\$3 addition to court costs for all persons convicted of any offense other than non-moving traffic offenses. Funds are deposited in the reparations special account.
Pennsylvania	\$10 additional costs imposed on all persons pleading guilty or nolo contendere or convicted of any crime. Monies deposited in the state General Fund.
Tennessee	\$21 privilege tax on all convicted offenders; offenders unable to pay will have the \$21 deducted from any earnings they may make while in prison; \$2 privilege tax on all persons convicted of moving traffic violations. Funds deposited in special account.
Texas	\$15 additional court cost imposed on persons convicted of a felony; \$10 additional court cost imposed on persons convicted of a misdemeanor punishable by imprisonment or fine of over \$200. All funds are deposited in a special Compensation to Victims of Crime Fund.
Virginia	\$10 additional cost imposed on all persons convicted of treason, a felony, or a Class 1 or Class 2 misdemeanor. All sums deposited in Criminal Injuries Compensation Fund.

general revenue funds. Table 5.14 lists the amounts of funds generated by the Maryland surcharge and the associated benefits expenditures since 1969.

Table 5.14

Funds Collected in Maryland

Fiscal Year	Funds Collected	Awards Paid
1969	118,949	—
1970	135,439	328,000
1971	121,970	614,283
1972	84,254	1,036,605
1973	90,000	893,287
1974	104,964	771,766
1975	118,064	1,577,644
1976	131,522	1,700,589
1977	131,981	1,248,360
1978	268,262	1,468,289

One disadvantage of this method is that its success is highly dependent on the efforts of other agencies--usually the courts--to collect the additional funds. Some programs have experienced difficulty in gaining the requisite cooperation. California, for example, generated very low levels of revenue through its penalty assessments because courts were not consistent in collecting the funds.¹³ This same problem has been noted in other states as well.

One source of additional funds used primarily by court-based victim compensation programs is the imposition of a small (\$5-\$10) filing fee. While these fees are generally too small to be considered a major funding source for programs, they can help to offset some of the costs of administration. More extensive use of filing fees has also been proposed as one method to defray some of the administrative expenses associated with small victim compensation claims.

Additional sources of program funds which have been used with varying degrees of success include (1) offender restitution and (2) state recovery of compensation payments from victims who successfully institute a civil action against the offender (subrogation). Generally, these have not been successful methods of obtaining funds, either because offenders lack the resources to make such payments or because of the difficulty and cost of suing the offender in civil court.

¹³ Edelhertz and Geis, Public Compensation to Victims of Crime, pp. 81-82.

A new source of program funding is the so-called Son-of-Sam provision passed by New York State in 1977. This law is intended to prevent criminals from profiting from their crimes by selling the rights to their story to the media or the press. Instead, the law requires that any funds which would be provided to the offender on the basis of such a transaction must be deposited in a special escrow account, and that the victims injured by the individual in question may receive payments from that account. The offender may also draw on the account for legal defense purposes. The 1977-1978 Annual Report noted that:

The law has already resulted in the establishment of an escrow account for the benefit of the victim-hostages of a Brooklyn bank robber, whose crime story was used as the basis of the popular motion picture "Dog Day Afternoon."¹⁴

However, this law has not resulted in substantial payments to victims. The New York State Legislative Commission on Expenditure Review states that as of 1978, "only one escrow account had thus far been established and . . . the only monies paid out of that \$45,416 account have been for legal defense purposes and not for victims."¹⁵

Other proposals for generating revenues include turning over to the compensation program (1) the proceeds from police department sales of unclaimed property,¹⁶ and (2) monies earned by convicted criminals while they are employed in prison industries programs.

It would appear that in most states, these additional sources of revenue will remain at relatively low levels. States may use these approaches to supplement their compensation budgets, but for the most part the burden of support for victim compensation will rest with the state's general revenues.

¹⁴ New York Crime Victims Compensation Board, 1977-1978 Annual Report, p. 31.

¹⁵ New York Legislative Commission on Expenditure Review, Crime Victim Compensation Program, Program Audit, April 1979, p. 64

¹⁶ New York Crime Victims Compensation Board, 1977-1978 Annual Report, p. 35.

¹⁷ Ibid., p. 36.

5.3.2 Federal Funding

In 1965 the first attempt to pass a federal crime victim compensation statute was made. Since that time, crime victim compensation bills have been introduced in every session of Congress. In 1978 it appeared that a compensation bill would finally be enacted when the House and Senate agreed on a compromise measure; on the last day of the 1978 session, however, the bill which had been passed by the Senate was rejected in the House by a narrow margin. In January 1979 yet another attempt was made when a modified version of the previous measure was introduced.

Federal bills introduced over the last twelve years have generally shared one common feature: they offer some form of federal assistance to state programs which conform with the standards established in the legislation. The proposed amount of these subsidies usually varies from 25 to 75 percent of the state awards. Understandably, states are most enthusiastic about the concept of federal support for crime victim compensation. Passage of such legislation certainly would do much to promote the development of crime victim compensation programs in additional states, and to encourage the uniformity of benefits, procedures, and requirements among states. Federal measures, however, are plagued by the same constraint that has delayed crime victim compensation in many states--the issue of cost. This same concern is likely to influence future attempts to pass federal crime victim compensation legislation and will affect the nature of any federal programs which may eventually be implemented.

CHAPTER 6: EVALUATION

6.1 Introduction

Since the first victim compensation program was introduced in the United States, the idea of crime victim compensation appears to have met with growing acceptance and popularity. Each year more states are added to the list of those who have considered or implemented victim compensation programs, and each year there are renewed attempts to institute a federal program in support of victim compensation.

Much of this interest and support is based on decision-makers' qualitative judgments about crime victims' state of need, the "rightness" of victim compensation programs, or the presumed ability of these programs to meet the needs of victims. During the early years of victim compensation in this country, program designers and decision-makers could base their decisions on little else--there was not a sufficient body of experience to enable more informed judgments. Now, with substantial numbers of jurisdictions implementing crime victim compensation programs and with many well-established programs in operation, the opportunity exists for programs to conduct a more quantitative and informed assessment of their operations and impacts. This assessment would not only benefit those programs already in operation, but would provide a more definitive body of experience to guide new programs. Specifically, the evaluation of victim compensation programs can facilitate the effective administration of programs, help to improve program services to crime victims, enhance the formulation of appropriate policies and procedures, support programs' efforts to justify their funding requests, and promote the development of more effective and efficient programs in the future.

6.2 Evaluation Approaches

As yet there have been relatively few attempts to evaluate state victim compensation programs. If conducted at all, these evaluations have generally focused on program processes--the number of victims served, the amount of money awarded, the time required to handle a claim, the development of the program budget, and so on. While these assessments, termed process evalua-

tions, can be extremely useful in their own right as a management tool, they do not answer programs' concerns about the effects they may have on the victims of crime and the community as a whole. Evaluations which focus on program effects--impact evaluations--provide this second kind of information. These evaluations help decision-makers determine whether programs are having the effects they are intended to have, and can pinpoint the areas which appear to be working well or suggest improvements for those aspects which are not performing as intended.

Every evaluation must address three major concerns: determining program objectives, establishing measures of program effects, and data collection and analysis. Approaches in these areas are examined below.

6.2.1 Determining Objectives

Evaluations generally compare a program's intended activities and effects with its actual activities and effects. Thus, the initial step in any evaluation is to determine what the program is intended to accomplish--to determine its objectives. Most frequently, statements of program objectives can be found in sources such as the enabling legislation of the program, subsequent legislative initiatives, hearings held concerning the establishment or operation of the program, and statements of the program operators. Unfortunately, in the case of victim compensation programs, these sources rarely articulate program objectives in a formal fashion, and those objectives which have been noted are often contradictory or too vague to be of any real value for use in program evaluations.

Instead of a statement of program objectives, these sources more commonly set forth the rationales for victim compensation programs and describe the various activities and requirements of the program. Rationales for victim compensation were examined in Section 1.2, while the services and requirements of compensation programs were explored in detail in Chapters 2, 3, and 4. Combining the implicit statements of these rationales with the explicit facts on program operations, the following general objectives for victim compensation programs might be suggested:

- to demonstrate the state's concern for the plight of the crime victim;
- to reduce or eliminate the financial impact of a criminal injury on innocent victims of crimes and their dependents;
- to increase public cooperation with and support for the criminal justice system; and

- to contain and limit the expenditures involved in the victim compensation effort.

A major problem with these objectives is, of course, that they are somewhat contradictory; achievement of the fourth objective will often undermine programs' efforts to accomplish the other three. Although most states have established no firm priorities concerning these objectives, it would appear that, in many cases, the objective of expenditure containment takes precedence over the others. Also, since this latter objective is rarely one which is made explicit to the public, the program may find that, by achieving this objective, public expectations for program operations are not met.

A very few states such as New York and Florida have added yet another objective to their program:

- to minimize the negative emotional consequences and physical inconvenience resulting from innocent victims' criminal injuries by providing advocacy and assistance.

This advocacy goal is relatively new and has not yet been adopted by most states, although interest in this objective is growing.

As noted above, these are only general objectives for victim compensation programs which have been developed on the basis of victim compensation rationales and operating experience. A number of more specific supplementary or short-term objectives could also be developed for each of these general objectives.

- To demonstrate the state's concern for the plight of the crime victim:
 1. to provide some minimum level of compensation to eligible crime victims; and
 2. to ensure that the general populace is aware of the existence of the crime victim compensation program.
- To reduce or eliminate the financial impact of a criminal injury on innocent victims of crime and their dependents:
 3. to cover the unreimbursed medical expenses of innocent crime victims incurred as a result of a criminal injury;

4. to cover the unreimbursed income losses of innocent crime victims incurred as a result of a criminal injury;
 5. to cover the loss of support incurred by dependents of innocent crime victims killed or disabled as a result of a criminal injury;
 6. to provide payments for funeral expenses for the survivors of innocent victims of crime;
 7. to ensure that innocent victims injured as a result of criminal incident are aware of the program; and
 8. to ensure that innocent victims injured as a result of a criminal incident make use of the program.
- To increase public cooperation with and support for the criminal justice system:
 9. to increase crime reporting rates;
 10. to increase victim cooperation with police; and
 11. to increase victim cooperation with prosecutors.
 - To contain and limit the expenditures involved in the victim compensation effort:
 12. to control the number of crime victims able to receive compensation; and
 13. to control the amount of benefits given to individual crime victims.

The contradictions inherent in the general objectives become even more apparent at this level. However, not every program will embrace all of these secondary objectives, and many programs will have several others in addition to those on this list. The priority given to objectives is also likely to vary among programs.

In addition to establishing objectives which relate to the program impact, victim compensation programs may also wish to establish certain process or service objectives that will assist in the evaluation of their administrative effectiveness. Such objectives may be to reduce the processing time for cases to some specific level, to conduct some number of public speaking

engagements, or to maintain claims backlogs below some specified point. Again, the particular objectives chosen will depend on the characteristics and needs of each individual program.

6.2.2 Measures and Data Collection

Once programs have articulated specific objectives, they must (1) determine the measures or criteria which reflect the degree to which they have achieved their objectives and (2) collect the data relating to each measure. In this section, both process measures, which reflect the program service delivery and administration, and impact measures, which reflect the program's influence on clients and the community will be discussed. Data collection procedures for each will also be examined.

Process Measures. To assess the degree to which a program is meeting its established service or process objectives, information may be collected on a number of factors. The following partial list illustrates the kinds of measures which may be used.

- Volume of Work: number of claims filed; number of inquiries made.
- Productivity: number of awards made; average processing time per claim; number of outstanding claims; and time lapsed from decision to payment.
- Costs: average cost per claim; average cost per award; ratio of administrative costs to benefits paid; and amounts of benefits awarded.
- Clients and Awards: demographic characteristics of clients; types of awards made; reasons for no-award decisions; and source of referrals.

Data on these factors can be very useful in helping programs to determine the relative quality of their efforts over the years and can pinpoint problems in the internal program administration which may be amenable to correction.

Information relating to program processes may be collected by the program as a matter of routine, although the form in which it is collected and the ease of extracting this information after it has been collected vary from program to program. A few programs may make use of sophisticated management information systems, but most will rely on relatively simple manual records. In some states, the information needed may be extremely decentralized--client information kept in one set of records, payments and financial information in

another, and workload information in yet another. However, if the information is collected as a matter of course, the major burden will only be to restructure and summarize the data.

Impact Measures. The criteria used to assess program impact depend on the program objectives. Unlike process measures, the focus of these criteria will be on factors outside the program itself. For example, to measure the program's impact in demonstrating the state's concern for crime victims, measures such as the percentage of the population which is aware of the compensation program or changes in citizen perceptions concerning the adequacy of the state's response to crime victims might be used. On the other hand, states might choose to measure their success in reducing or eliminating the financial impacts of criminal injuries by examining the number of potentially eligible victims who actually apply and the number who receive awards, the ratio of award payments to actual victim losses, and the increase in program usage shown by changes in the number of applications filed over time. Finally, states could examine the program's impact on victim cooperation by measuring changes in reporting rates, changes in conviction rates for crimes involving victims who received compensation, or changes in the number of compensated victims who attend such procedures as line-ups or trial testimony. At best, this list must be considered only partial.

Most impact evaluations will require special data collection efforts, although some of the information necessary for these assessments may be collected as a matter of routine, such as number of program applications or benefits paid to applicants. The burden implied by this special effort may appear less awesome when one considers the fact that impact assessments, unlike process evaluations, need not be carried out every year. In addition, the impact evaluation need not consider every possible area of impact each time it is conducted. The several sources of data which programs may use are examined below.

● Applicant Surveys. In part, evaluation information can be obtained by follow-up surveys of applicants, conducted either by telephone or by mail. Through those client surveys, programs can obtain information on applicants' satisfaction with the compensation program, the amount of compensation actually received as opposed to the amount claimants felt they needed or deserved, and claimants' willingness to cooperate with the criminal justice system. Claimants' assessments of the ease of the application process and the accessibility of the victim compensation staff, offices, and services might also be solicited.

¹Duncan Chappell and L. Paul Sutton, "Evaluating the Effectiveness of Programs to Compensate the Victims of Crime," in Israel Drapkin and Emilio Viano, eds., Victimology: A New Focus, Volume II, Society's Reaction to Victimization (Lexington, MA: D.C. Heath and Company, 1974), p. 216.

CONTINUED

2 OF 3

it finds that the claimant's financial resources will be and expectancy of income including future earning power, and age, life expectancy, physical or mental condition, allowable under paragraph (2) if considering the claimant who possesses net financial resources in excess of those (i) the Board may award reparations to a claimant (3) Notwithstanding paragraph (2):

[the general personal property exemptions statute of this State].

(iv) any other property exempt from execution under (iii) one motor vehicle; and

(ii) the claimant's equity, up to \$30,000, in his home;

(i) one year's earnings;

cial resources: determined by the Board by deducting from his total financial resources do not exceed ten per cent of his net financial resources. A claimant's net financial resources do not include the present value of future earnings and shall be (2) Reparations may not be awarded if the claimant's (v) the claimant's resources.

and

(iv) the claimant's income and potential earning capacity;

dependents;

(iii) the special needs of the claimant and his dependents;

family;

(ii) the usual living expenses of the claimant and his family;

(i) the number of claimant's dependents;

ant factors, including:

ship. In making its finding the Board shall consider all relevant factors, including:

for himself and his dependents without undue financial hardship, and education maintain his customary level of health, safety, and education. A claimant suffers financial stress only if he cannot suffer financial stress as the result of economic loss otherwise funds that unless the claimant is awarded reparations he will (g) (1) Reparations may be awarded only if the Board finds that the extent the Board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims.

(2) to the extent the Board deems reasonable because is based is recovered from other persons, including collateral (1) to the extent the economic loss upon which the claim reduced or denied

(1) Reparations otherwise payable to a claimant shall be

less procedural details. This Act does not include elaborate requirements for public notice and hearings relating to the rule making function of the Board, because the kind of penalties to be expected under this Act do not have an identifiable interest in procedural rules.

1 Section 2. [Application for Reparations; Awards; Limitations on Awards.]

2 (a) An applicant for an award of reparations shall apply

3 in writing in a form that conforms substantially to that prescribed by the Board.

4 (b) Reparations may not be awarded unless the claim is

5 filed with the Board within one year after the injury or death

6 upon which the claim is based.

7 (c) Reparations may not be awarded to a claimant who is

8 the offender or an accomplice of the offender, nor to any

9 claimant if the award would unjustly benefit the offender or

10 accomplice. [Unless the Board determines that the interests

11 of justice otherwise require in a particular case, reparations

12 may not be awarded to the spouse of, or a person living in the

13 same household with, the offender or his accomplice or to

14 the parent, child, brother, or sister of the offender or his

15 accomplice.]

16 The victims of a large percentage of crimes are relatives by blood or marriage of the offender or his accomplice, or live in the same household with him. The award of reparations in these cases involves serious questions of policy. Among those questions are the cost of the program, the possibility of fraud and collusion, and other social judgments. The unjust enrichment language at the end of the first sentence of subsection (c) may or may not alone provide adequate protection. The bracketed language at the end of subsection (c) should be included or omitted in an amending State according to the legislative appraisal of the questions of policy involved.

17 (d) Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the Board finds there was good cause for the failure to report within that time.

18 (e) The Board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of reparations.

● General Population Surveys. A second data collection effort which programs might find helpful is a survey of the general population. This approach could assist in determining the percentage of the population which is aware of the victim compensation program and the number of individuals who would have been eligible and yet did not apply. It may also be desirable to determine the possible impact of compensation on victim cooperation with the criminal justice system. Police and prosecutors may be asked to assess the cooperation of a number of individuals, some of whom received victim compensation and some of whom did not, without informing them as to which actually received compensation.²

● Existing Records and Statistics. In addition to survey information, the evaluation may seek information which can be obtained from existing records and statistics. For example, police department incident reports could be examined and compared with program records to gain an estimate of the number of eligible crime victims who actually applied for compensation. However, such estimates may be constrained by the types of information contained in these reports--specifically, information on the possible future financial losses suffered as a result of the criminal injury. Estimates of the number of potentially eligible applicants may also be made from existing crime statistics such as the FBI Uniform Crime Reports (UCR). As programs generally require police reporting as an eligibility criteria, the UCR data should provide a fairly reliable indicator of the number of violent crime victims who would meet that requirement. However, as UCR data do not provide information on other characteristics of these victims, such as minimum losses, financial status, or extent of injury, programs may find it extremely difficult to estimate the number of potentially eligible victims in their state based solely on existing crime statistics.

Some attempts have been made to use National Crime Survey (NCS) statistics to estimate eligible victims, since the NCS victimization surveys solicit information on such areas as extent of injury and time lost from work. Estimates based on these data are also limited, however. NCS data are available only on a national level or on 26 selected cities, reducing their usefulness for state-level estimations. In addition, use of NCS data requires that several assumptions be made concerning cause of time lost from work, the extent of compensation from collateral sources, and so on.³

² Ibid., p. 217.

³ For a complete discussion of the means of estimating eligible victims from NCS data, see National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice, Compensating Victims of Violent Crimes: Costs and Coverage of a National Program, by James Garofalo and L. Paul Sutton (Washington, D.C.: Government Printing Office, 1978).

Finally, programs may wish to consult existing data such as the UCR to determine the possible impact of the victim compensation effort on reporting behaviors. For example, Doerner et al. used data obtained from the UCR to assess compensation program effects on reporting by comparing four states with operative victim compensation programs and ten states which had not enacted a victim compensation bill. The four states selected for study had enacted compensation programs in the years 1967 or 1968. For those programs, UCR violent crime rates for the seven years preceding their implementation were compared with violent crime rates for the six years following implementation. It was hypothesized that states with operating crime victim compensation programs would have (1) relatively higher known violent crime rates due to greater reporting of violent crimes to police, and (2) a relative increase in the percentage of reported crimes which are violent in nature, since the programs compensate the victims of violent but not property crimes. However, Doerner et al. were unable to support their hypotheses regarding the effect of crime victim compensation programs on reporting behavior. Based on their findings, they suggested that programs must be extremely cautious in interpreting increases in reporting rates, which are likely to be influenced by a host of other variables.

6.3 Future Directions

Victim compensation programs have now been instituted by a majority of the states, and it would appear that many more will follow suit. The diversity of operations, criteria, and structures represented by these programs presents a unique opportunity to determine which of these factors works best and under what conditions. Concerns over which are best have typically focused on the issues of cost and efficiency, and this must certainly continue to be a focal point of any future research. Yet programs must also investigate the positive and negative impacts that victim compensation may have on the victims of crime and the community as a whole. Specifically, programs may wish to examine the effects of such features as program placement, eligibility criteria, exclusionary criteria, different outreach and publicity approaches, staff backgrounds, and various claims processing options in terms of cost and impact.

A second area for future examination is the growing victim advocacy and assistance movement and the potential interaction of advocacy and compensation. In July 1979 New York passed pioneering legislation in the field of victim compensation which mandates the Crime Victims Compensation Board to "actively speak for and advocate the rights and interests of crime victims

⁴William G. Doerner, Mary S. Knudten, Richard D. Knudten, and Anthony C. Meade, "An Analysis of Victim Compensation Programs as a Time-Series Experiment," Victimology 1 (Summer 1976): 295-313.

throughout the state."⁵ Other states are considering expansion of their programs in this direction. An important area for new research and evaluation should thus be to investigate the current needs of crime victims, the extent to which these needs are met by existing compensation efforts, and the potential impact that a new advocacy role might have on compensation program operations and victims' needs.

Finally, the question of the federal role in victim compensation must be examined. As noted earlier, several attempts to institute a federal program in support of crime victim compensation have been initiated without success. Should such a program be instituted, it is likely that existing state programs may have to modify their choice of policy options in order to receive federal subsidies and that new programs would develop along a much more narrow range of options. An inquiry into the possible impact of federal legislation on existing state programs and on victim compensation in the United States as a whole would be a valuable undertaking, whether as an evaluation initiated before such legislation is passed or one which occurs after the implementation of a federal program.

⁵ New York, Assembly Bill 2366-A (1979).

APPENDICES

APPENDIX A: Uniform Crime Victims Reparations Act

UNIFORM CRIME VICTIMS REPARATIONS ACT

PREFATORY NOTE

This Act establishes a state-financed program of reparations to persons who suffer personal injury and dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or to apprehend criminals. Reparations are measured by economic loss such as medical expenses, loss of earnings, and costs incurred in obtaining services as a substitute for those the victim would have provided. Throughout, the emphasis is on the victim rather than the perpetrator of the crime.

The civil and criminal liability of the offender is not covered by this Act, save for provisions directing the offender to reimburse the State. The actual financial return to the State through this mechanism is not anticipated to be large, and a realistic appraisal is that the costs of the program will be borne by the State and its citizens. A variety of limitations and exclusions stated in the Act are designed to limit those costs. The suggested maximum allowance of \$50,000 per victim, the exclusion of motor vehicle accidents (with some exceptions), and elimination of pain and suffering as an element of awards are illustrations.

Probably the most perplexing policy choice to be made by any state instituting a program of this sort relates to the relevance, if any, of the financial condition of the victim. Some would further reduce costs by denying reparations to victims able to bear the economic loss caused by crime. Others would conclude that the victim's losses should be borne by the State irrespective of his financial resources. This Act is drafted to accommodate either choice, but the clear preference is to eliminate any "financial needs" or "financial stress" test as a condition precedent to receipt of benefits. For those states taking the other view, the Act contains a provision including this condition but defining it in terms of financial hardship or stress rather than "need." The objective of that definition is to ensure that the program is not an unnecessary substitute for welfare but is a program to protect against substantial changes in life style caused by losses through crime.

A kindred issue is that of allocation of criminally caused loss through personal injury among competing sources of payment such as insurance, workmen's compensation and Social Security. This

Act reflects the policy choice that these programs are primary. Implementation of that policy occurs in two ways. First, insurers are not entitled to claim reimbursement from the State for their expenditures. Second, victims who have been paid, or who are entitled to be paid, by insurers will have their claims against the State fund reduced by the amount of available insurance. In somewhat overly simplistic terms, the policy of the Act is to preclude double recovery for any criminal incident.

Administration of the Act is entrusted to a three-man Board whose members will serve full or part time, depending upon the expectable workload in any state. The Act includes procedural details which will be seen to parallel provisions of the Uniform Administrative Procedures Act. Any State legislature in a state having such an administrative procedures act will be well advised to eliminate the duplicate provisions herein.

UNIFORM CRIME VICTIMS REPARATIONS ACT

SECTION 1. [Definitions.]

(a) As used in this Act, the words and phrases in this Section have the meanings indicated.

(b) "Board" means the Crime Victims Reparations Board created under Section 3.

(c) "Claimant" means any of the following claiming reparations under this Act: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them.

(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 an 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) workmen'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 for disability.

(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 capacity to commit the crime under the laws of this State. 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.

(f) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.

(g) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.

(1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of \$500 for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless other accommodations are medically required.

(2) "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.

(3) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(4) "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to his dependents, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

(5) "Dependent's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and not

85 subtracted in calculating dependent's economic loss.
86 (h) "Non-economic detriment" means pain, suffering, in-
87 convenience, physical impairment, and other non-pecuniary
88 damage.
89 (i) "Victim" means a person who suffers personal injury or
90 death as a result of (1) criminally injurious conduct, (2) the
91 good faith effort of any person to prevent criminally injurious
92 conduct, or (3) the good faith effort of any person to appre-
93 hend a person suspected of engaging in criminally injurious
94 conduct.

COMMENT

The words "criminally injurious conduct" are used throughout this Act rather than the simple word "crime" because if the word "crime" were used, it would need to be given an artificial meaning. The reason is that not all crimes will result in reparations under this Act, and those crimes which are reparable fall under the definition here given for "criminally injurious conduct."

The definitions of "economic loss" and its components are derived, with essential modifications, from the Uniform Motor Vehicle Accident Reparations Act.

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1 SECTION 2. [Award of Reparations.] The Board shall
2 award reparations for economic loss arising from criminally
3 injurious conduct if satisfied by a preponderance of the evi-
4 dence that the requirements for reparations have been met.

1 SECTION 3. [Crime Victims Reparations Board.]

2 (a) A Crime Victims Reparations Board is created [in the
3 executive branch], consisting of three members appointed by
4 the Governor [with the advice and consent of the Senate]. At
5 least one member shall be a person admitted to the bar of this
6 State.

7 (b) The term of office of each member shall be [6] years
8 and until his successor is appointed and qualified, except that
9 of the members first appointed one each shall be appointed
10 to serve for terms of [2], [4], and [6] years. A person ap-
11 pointed to fill a vacancy shall be appointed for the remainder
12 of the unexpired term.

13 (c) The Governor shall designate a member who is admit-
14 ted to the bar of this State to serve as chairman at the pleas-
15 ure of the Governor.

16 (d) Members shall [serve full time, receive an annual salary
17 prescribed by the governor within the available appropriation
18 not exceeding [] dollars,] [serve part time, and receive
19 [] dollars per diem,] and be reimbursed for actual ex-
20 penditures incurred in performance of their duties in the same
21 manner as State officials generally.

1 SECTION 4. [Powers and Duties of the Board.]

2 (a) In addition to the powers and duties specified else-
3 where in this Act, the Board has the powers and duties speci-
4 fied in this section.

5 (b) The duty to establish and maintain a principal office
6 and other necessary offices within this state, appoint em-
7 ployees and agents as necessary, and prescribe their duties
8 and compensation.

9 (c) The duty to adopt by rule a description of the organi-
10 zation of the board stating the general method and course of
11 operation of the Board.

12 (d) The duty to adopt rules to implement this Act, includ-
13 ing rules for the allowance of attorney's fees for representation
14 of claimants; and to adopt rules providing for discovery
15 proceedings, including medical examination consistent with
16 Section 9 and 10. Rules shall be statements of general appli-
17 cability which implement, interpret, or prescribe policy, or
18 describe the procedure or practice requirements of the Board.

19 (e) The duty to prescribe forms for applications for repa-
20 rations.

21 (f) The duty to hear and determine all matters relating to
22 claims for reparations, and the power to reinvestigate or re-
23 open claims without regard to statutes of limitations or peri-
24 ods of prescription.

25 (g) The power to request from prosecuting attorneys and
26 law enforcement officers investigations and data to enable the
27 Board to determine whether, and the extent to which, a claim-
28 ant qualifies for reparations. A statute providing confiden-
29 tiality for a claimant's or victim's juvenile court records does
30 not apply to proceedings under this Act.

31 (h) The duty, if it would contribute to the function of the
32 Board, to subpoena witnesses and other prospective evidence,
33 administer oaths or affirmations, conduct hearings, and re-
34 ceive relevant, nonprivileged evidence.

35 (i) The power to take notice of judicially cognizable facts
36 and general, technical, and scientific facts within their spe-
37 cialized knowledge.

38 (j) The duty to make available for public inspection all
39 Board decisions and opinions, rules, written statements of pol-
40 icy, and interpretations formulated, adopted, or used by the
41 Board in discharging its functions.

42 (k) The duty to publicize widely the availability of repa-
43 rations and information regarding the filing of claims therefor.

COMMENT

This section and section 8 contain details which are redundant in a state having an adequate Administrative Procedures Act. Incorporation of these details in this Act ought not to be taken as encouragement to repetitious legislation. Each state must tailor the Act to its situation, by eliminating needless procedural details.

This Act does not include elaborate requirements for public notice and hearings relating to the rule making function of the Board, because the kinds of beneficiaries to be expected under this Act do not have an identifiable interest in procedural rules.

1 SECTION 5. [Application for Reparations; Awards; Limitations on Awards.]

2 (a) An applicant for an award of reparations shall apply
3 in writing in a form that conforms substantially to that pre-
4 scribed by the Board.

5 (b) Reparations may not be awarded unless the claim is
6 filed with the Board within one year after the injury or death
7 upon which the claim is based.

8 (c) Reparations may not be awarded to a claimant who is
9 the offender or an accomplice of the offender, nor to any
10 claimant if the award would unjustly benefit the offender or
11 accomplice. [Unless the Board determines that the interests
12 of justice otherwise require in a particular case, reparations
13 may not be awarded to the spouse of, or a person living in the
14 same household with, the offender or his accomplice or to
15 the parent, child, brother, or sister of the offender or his
16 accomplice.]
17

COMMENT

The victims of a large percentage of crimes are relatives by blood or marriage of the offender or his accomplice, or live in the same household with him. The award of reparations in these cases involves serious questions of policy. Among those questions are the cost of the program, the possibility of fraud and collusion, and other social judgments. The unjust enrichment language at the end of the first sentence of subsection (c) may or may not alone provide adequate protection. The bracketed language at the end of subsection (c) should be included or omitted in an enacting State according to the legislative appraisal of the questions of policy involved.

18 (d) Reparations may not be awarded unless the criminally
19 injurious conduct resulting in injury or death was reported to
20 a law enforcement officer within 72 hours after its occurrence
21 or the Board finds there was good cause for the failure to re-
22 port within that time.

23 (e) The Board, upon finding that the claimant or victim
24 has not fully cooperated with appropriate law enforcement
25 agencies, may deny, reconsider, or reduce an award of repara-
26 tions.

27 (f) Reparations otherwise payable to a claimant shall be
28 reduced or denied

29 (1) to the extent the economic loss upon which the claim
30 is based is recouped from other persons, including collateral
31 sources, and

32 (2) to the extent the Board deems reasonable because
33 of the contributory misconduct of the claimant or of a vic-
34 tim through whom he claims.

35 [(g) (1) Reparations may be awarded only if the Board
36 finds that unless the claimant is awarded reparations he will
37 suffer financial stress as the result of economic loss otherwise
38 reparable. A claimant suffers financial stress only if he cannot
39 maintain his customary level of health, safety, and education
40 for himself and his dependents without undue financial hard-
41 ship. In making its finding the Board shall consider all rele-
42 vant factors, including:

- 43 (i) the number of claimant's dependents;
44 (ii) the usual living expenses of the claimant and his
45 family;
46 (iii) the special needs of the claimant and his de-
47 pendents;
48 (iv) the claimant's income and potential earning ca-
49 pacity; and
50 (v) the claimant's resources.

51 (2) Reparations may not be awarded if the claimant's
52 economic loss does not exceed ten per cent of his net finan-
53 cial resources. A claimant's net financial resources do not
54 include the present value of future earnings and shall be
55 determined by the Board by deducting from his total finan-
56 cial resources:

- 57 (i) one year's earnings;
58 (ii) the claimant's equity, up to \$30,000, in his home;
59 (iii) one motor vehicle; and
60 (iv) any other property exempt from execution under
61 [the general personal property exemptions statute of this
62 State].

63 (3) Notwithstanding paragraph (2):

64 (i) the board may award reparations to a claimant
65 who possesses net financial resources in excess of those
66 allowable under paragraph (2) if, considering the claim-
67 ant's age, life expectancy, physical or mental condition,
68 and expectancy of income including future earning power,
69 it finds that the claimant's financial resources will be-

70 come exhausted during his lifetime; or
71 (ii) the Board may (A) reject the claim finally, or (B)
72 reject the claim and reserve to the claimant the right to
73 reopen his claim, if it appears that the exhaustion of
74 claimant's financial resources is probable, in which event
75 the Board may reopen pursuant to an application to re-
76 open if it finds that the resources available to the claim-
77 ant from the time of denial of an award were prudently
78 expended for personal or family needs.]

COMMENT

Inclusion of a requirement of economic need or financial stress on the part of the victim appears to be accountable only as a cost-reduction factor. While the argument that the State ought not bear the loss of persons rich enough to care for themselves has appeal, in essence it reads a welfare concept into a program not related to welfare. Inclusion of the test will unquestionably increase administrative costs by requiring elaborate investigations into the resources of each claimant. Any savings produced by a needs test may thus be dissipated in the cost of administering that test. On balance, then, elimination of any requirement of financial stress seems wise. If the test is included, however, a real threat to the integrity of the program is posed because a strict "needs" requirement will limit benefits of the program to persons already on welfare and thus be merely an exercise in bookkeeping. The details suggested in the criterion for economic stress are designed to prevent that result.

191
1 [(h) Reparations may not be awarded if the economic
2 loss is less than [\$100].]

81 ALTERNATIVE A

82 [(i) Reparations for work loss, replacement services
83 loss, dependent's economic loss, and dependent's replace-
84 ment services loss may not exceed \$200 per week.]

85 ALTERNATIVE B

86 [(i) Reparations for work loss, replacement services
87 loss, dependent's economic loss, and dependent's replace-
88 ment services loss may not exceed the amount by which the
89 victim's income is reduced below \$200 per week.]

COMMENT

Alternative A should be adopted in a State which desires a maximum weekly limit on reparations but does not incorporate the financial stress test of subsection (g). Alternative B should be adopted in a State which enacts subsection (g).

90 [(j) Reparations payable to a victim and to all other
91 claimants sustaining economic loss because of injury to or
92 death of that victim may not exceed [\$50,000] in the ag-
93 gregate.]

1 SECTION 6. [Notice to Attorney General; Function of At- 2 torney General.]

3 Promptly upon receipt of an application for reparations,
4 the Board shall forward a copy of the application and all sup-
5 porting papers to the [Attorney General], who in appropriate
6 cases may investigate the claim, appear in hearings on the
7 claim, and present evidence in opposition to or support of an
8 award.

1 SECTION 7. [Informal Disposition; Contested Case.]

2 Unless precluded by law, informal disposition may be made
3 of a claim by stipulation, agreed settlement, consent order, or
4 default. A claim not so disposed of is a contested case.

1 SECTION 8. [Contested Cases; Notice; Hearing; Records.]

2 (a) In a contested case, all parties shall be afforded an op-
3 portunity for hearing after reasonable notice.

4 (b) The notice of hearing shall include:

5 (1) a statement of the time, place, and nature of the
6 hearing;

7 (2) a statement of the legal authority and jurisdiction
8 under which the hearing is to be held;

9 (3) a reference to the particular sections of the statutes
10 and rules involved; and

11 (4) a short and plain statement of the matters asserted.
12 To the extent that the board is unable to state the matters
13 at the time the notice is served, the initial notice may be
14 limited to a statement of the issues involved. Thereafter
15 upon application a more definite statement shall be fur-
16 nished.

17 (c) Every interested person shall be afforded an opportu-
18 nity to appear and be heard and to offer evidence and argument
19 on any issue relevant to his interest, and examine witnesses
20 and offer evidence in reply to any matter of an evidentiary
21 nature in the record relevant to his interest.

22 (d) A record of the proceedings shall be made and shall
23 include:

24 (1) the application and supporting documents;

25 (2) all pleadings, motions, and intermediate rulings;

26 (3) evidence offered, received, or considered;

27 (4) a statement of matters officially noticed;

28 (5) all staff memoranda or data submitted to the Board
29 in connection with its consideration of the case; and

30 (6) offers of proof, objections, and rulings.

31 (e) Oral proceedings or any part thereof shall be tran-
32 scribed on request of any party, who shall pay transcription

costs unless otherwise ordered by the Board.

(f) Determinations of the Board shall be made in writing, supported by findings of fact and conclusions of law based exclusively on the record, and mailed promptly to all parties.

SECTION 9. [Evidence of Physical Condition.]

(a) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under this Act in which that condition is an element.

(b) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the Board may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person to file with the Board a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(c) On request of the person examined, the Board shall furnish him a copy of the report. If the victim is deceased, the Board, on request, shall furnish the claimant a copy of the report.

(d) The Board may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

SECTION 10. [Enforcement of Board's Orders.] If a person refuses to comply with an order under this Act or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the Board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the Board may petition the [] Court for an appropriate order, but the Court may not find a person in contempt for refusal to submit to a medical or physical examination.

SECTION 11. [Award and Payment of Reparations.]

(a) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

(b) The Board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under Section 15.

SECTION 12. [Attorney's Fees.] As part of an order, the Board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the State to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

SECTION 13. [Subrogation; Actions; Allocation of Expenses.]

(a) If reparations are awarded, the State is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is or, if readily available to the victim or claimant would be, a collateral source.

(b) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the Board prior written notice of the proposed action. After receiving the notice, the Board shall promptly (1) join in the action as a party plaintiff to recover reparations awarded (2) require the claimant to bring the action in his individual name, as a trustee in behalf of the State, to recover reparations awarded, or (3) reserve its rights and do neither in the proposed action. If, as requested by the Board, the claimant brings the action as trustee and recovers reparations awarded by the Board, he may deduct from the reparations recovered in behalf of the State the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

(c) If a judgment or verdict indicates separately economic

23 loss and non-economic detriment, payments on the judgment
24 shall be allocated between them in proportion to the amounts
25 indicated. In an action in a court of this State arising out of
26 criminally injurious conduct, the judge, on timely motion,
27 shall direct the jury to return a special verdict, indicating
28 separately the awards for non-economic detriment, punitive
29 damages, and economic loss.

1 SECTION 14. [*Manner of Payment; Non-assignability and*
2 *Exemptions.*]

3 (a) The Board may provide for the payment of an award
4 in a lump sum or in installments. The part of an award equal
5 to the amount of economic loss accrued to the date of the
6 award shall be paid in a lump sum. An award for allowable
7 expense that would accrue after the award is made may not
8 be paid in a lump sum. Except as provided in subsection (b),
9 the part of an award that may not be paid in a lump sum shall
10 be paid in installments.

11 (b) At the instance of the claimant, the Board may com-
12 mute future economic loss, other than allowable expense, to a
13 lump sum but only upon a finding by the Board that:

14 (1) the award in a lump sum will promote the interests
15 of the claimant; or

16 (2) the present value of all future economic loss other
17 than allowable expense, does not exceed [\$1,000].

18 (c) An award for future economic loss payable in install-
19 ments may be made only for a period as to which the Board
20 can reasonably determine future economic loss. The Board
21 may reconsider and modify an award for future economic loss
22 payable in installments, upon its finding that a material and
23 substantial change of circumstances has occurred.

24 (d) An award is not subject to execution, attachment, gar-
25 nishment, or other process, except that an award for allowable
26 expense is not exempt from a claim of a creditor to the extent
27 that he provided products, services, or accommodations the
28 costs of which are included in the award.

29 (e) An assignment or agreement to assign a right to repa-
30 rations for loss accruing in the future is unenforceable,
31 except (1) an assignment of a right to reparations for work
32 loss to secure payment of alimony, maintenance, or child sup-
33 port; or (2) an assignment of a right to reparations for allow-
34 able expense to the extent that the benefits are for the cost of
35 products, services, or accommodations necessitated by the in-
36 jury or death on which the claim is based and are provided or

37 to be provided by the assignee.

1 SECTION 15. [*Tentative Awards.*] If the Board determines
2 that the claimant will suffer financial hardship unless a tenta-
3 tive award is made, and it appears likely that a final award will
4 be made, an amount may be paid to the claimant, to be deduct-
5 ed from the final award or repaid by and recoverable from the
6 claimant to the extent that it exceeds the final award.

1 SECTION 16. [*Reconsideration and Review of Board Deci-*
2 *sions.*]

3 (a) The Board, on its own motion or on request of the
4 claimant, may reconsider a decision making or denying an
5 award or determining its amount. The Board shall reconsider
6 at least annually every award being paid in installments. An
7 order on reconsideration of an award shall not require refund
8 of amounts previously paid unless the award was obtained by
9 fraud.

10 (b) The right of reconsideration does not affect the finality
11 of a Board decision for the purpose of judicial review.

12 (c) A final decision of the Board is subject to judicial re-
13 view on appeal by the claimant, the [Attorney General], or
14 the offender [in the same manner and to the same extent as
15 the decision of a state trial court of general jurisdiction].

1 SECTION 17. [*Reports.*] The Board shall prepare and trans-
2 mit [annually] to the Governor and the Legislature a report
3 of its activities, including the name of the claimant, a brief
4 description of the facts, and the amount of reparations award-
5 ed in each case, and a statistical summary of claims and awards
6 made and denied.

1 SECTION 18. [*Uniformity of Application and Construc-*
2 *tion.*] This Act shall be applied and construed to effectuate
3 its general purpose to make uniform the law with respect to
4 the subject of this Act among those states enacting it.

1 SECTION 19. [*Severability.*] If any provision of this Act
2 or the application thereof to any person is held invalid, the
3 invalidity does not affect other provisions or applications of
4 the Act which can be given effect without the invalid provision
5 or application, and to this end the provisions of this Act are
6 severable.

1 SECTION 20. [*Title.*] This Act may be cited as the Uniform
2 Crime Victims Reparations Act.

APPENDIX B: Sample Police Outreach Letter

Sample of letter sent by one local law enforcement agency to victims
who received physical injuries
(according to crime reports)

Police Department

Minnesota

Dear

According to our report, number dated
your were the victim of

Minnesota Law authorizes under the authority of the Minnesota
Crime Victims Reparations Board, 702 American Center Building,
Kellogg and Robert Streets, St. Paul, Minnesota 55101, that any person
who is a victim of a crime or his survivor is entitled to reparations
for personal injuries or death suffered as a result of a crime committed
against him.

The application must be submitted within one (1) year from the date
of the incident. Application forms must be secured from the Reparations
Board at the above address, or by calling the Board at (612) 296-7080.

If this department can be of any assistance to you in this matter,
please do not hesitate to contact us.

Respectfully yours,

Chief of Police

**APPENDIX C: Sample Compensation Applications Forms:
Washington, Maryland, New York, Kentucky, Minnesota, and
North Dakota**

WASHINGTON APPLICATION FORM

* COMPLETE AND MAIL TO:
CRIME VICTIMS COMPENSATION DIVISION
DEPARTMENT OF LABOR AND INDUSTRIES
OLYMPIA, WASHINGTON 98504
TELEPHONE (206) 753-6318



APPLICATION FOR BENEFITS BY VICTIM

MAIL CANARY PAGE TO OLYMPIA.
 RETAIN WHITE PAGE FOR YOUR RECORDS.

VICTIM'S NAME				TELEPHONE NUMBER				SOCIAL SECURITY NUMBER			
RESIDENCE ADDRESS						CITY		STATE		ZIP CODE	
SEX <input type="radio"/> MALE <input type="radio"/> FEMALE	MARITAL STATUS <input type="radio"/> SINGLE <input type="radio"/> MARRIED <input type="radio"/> SEPARATED <input type="radio"/> DIVORCED	DATE OF BIRTH MO. DAY YR.		HEIGHT	WEIGHT LBS.	DATE OF INJURY MO. DAY YR.		TIME OF INJURY : : AM PM			
ADDRESS OR LOCATION WHERE INJURY OCCURRED (INCLUDE COUNTY)											
CRIME REPORTED TO:				NAME OF LAW ENFORCEMENT AGENCY				NAME OF LAW ENFORCEMENT OFFICER			
DATE WHEN REPORTED MO. DAY YR.		TIME WHEN REPORTED : : AM PM		WHO NOTIFIED LAW ENFORCEMENT AGENCY?		NAME		ADDRESS			
NAME(S) AND ADDRESS(ES) OF SUSPECTED OFFENDER(S)											
1.											
2.											
NAME(S) AND ADDRESS(ES) OF WITNESS(ES) TO CRIME											
1.											
2.											
WAS VICTIM RELATED TO OR ACQUAINTED WITH SUSPECTED OFFENDER PRIOR TO THE COMMISSION OF THE CRIME? <input type="radio"/> YES <input type="radio"/> NO IF YES, EXPLAIN RELATIONSHIP OR CIRCUMSTANCES UNDER WHICH VICTIM AND SUSPECTED OFFENDER BECAME ACQUAINTED: DESCRIBE WHAT HAPPENED (USE ADDITIONAL SHEET IF NECESSARY)											
INDICATE SOURCE(S) ARE MEDICAL OR LOSS OF INCOME BENEFITS AVAILABLE FROM ANY SOURCE OTHER THAN CRIME VICTIM'S ACT? <input type="checkbox"/> WORKMEN'S COMPENSATION <input type="checkbox"/> SOCIAL SECURITY <input type="checkbox"/> HEALTH AND WELFARE SERVICE <input type="checkbox"/> COUNTY MEDICAL BUREAU <input type="checkbox"/> BLUE CROSS <input type="checkbox"/> WASHINGTON PHYSICIANS SERVICE <input type="checkbox"/> MEDICARE <input type="checkbox"/> ARMED SERVICES <input type="checkbox"/> OTHER (SPECIFY SOURCE)											
EMPLOYMENT STATUS IMMEDIATELY PRIOR TO INJURY: <input type="radio"/> GAINFULLY EMPLOYED FOR SALARY, WAGES OR OTHER REMUNERATION <input type="radio"/> NOT GAINFULLY EMPLOYED FOR SALARY, WAGES OR OTHER REMUNERATION											
IF EMPLOYED, EMPLOYER'S NAME				ADDRESS				TELEPHONE NUMBER			
ATTENDING PHYSICIAN OR DENTIST NAME				ADDRESS				TELEPHONE NUMBER			
IS VICTIM HOSPITALIZED? <input type="radio"/> YES <input type="radio"/> NO DATE ADMITTED: MO. DAY YR.				NAME OF HOSPITAL ADDRESS							
DESCRIBE PARTS OF BODY INJURED AND TYPE OF INJURIES:											
HAVE YOU HAD PREVIOUS INJURIES OR PHYSICAL PROBLEMS WITH THIS (THESE) AREA(S) OF YOUR BODY? <input type="radio"/> YES <input type="radio"/> NO IF YES, EXPLAIN											
HAVE YOU RECOVERED FROM THIS INJURY? <input type="radio"/> YES <input type="radio"/> NO DID YOU LOSE TIME FROM WORK? <input type="radio"/> YES <input type="radio"/> NO IF YES, HAVE YOU RETURNED TO WORK? <input type="radio"/> YES <input type="radio"/> NO DATE RETURNED: MO. DAY YR.											
I AM APPLYING FOR BENEFITS UNDER THE CRIME VICTIM'S ACT. I HAVE READ FULLY THE INFORMATION ENTERED IN THIS APPLICATION FORM AND I SWEAR TO THE TRUTH AND ACCURACY OF EACH ENTRY.											
SIGNED _____ DATE OF SIGNATURE _____											
I AUTHORIZE AND REQUEST ANY PERSON HAVING SUCH INFORMATION, INCLUDING ALL PAST LAW ENFORCEMENT RECORDS CONCERNING ME, TO RELEASE IT TO EITHER THE WASHINGTON DEPARTMENT OF LABOR & INDUSTRIES, CRIME VICTIMS DIVISION, OR THE WASHINGTON ATTORNEY GENERAL'S OFFICE. THIS RELEASE SHALL APPLY TO ALL POSSESSORS OF INFORMATION WHICH MIGHT BE RELEVANT TO MY CLAIM, INCLUDING, BUT NOT LIMITED TO, PRIVATE AND GOVERNMENTAL PHYSICIANS AND HOSPITALS; LOCAL AND FEDERAL LAW ENFORCEMENT AND PROSECUTOR'S OFFICES; LOCAL AND FEDERAL COURT PERSONNEL; ANY EMPLOYER; AND ANY PRIVATE COMPANY OR GOVERNMENTAL AGENCY WHICH IS PROVIDING, OR MAY PROVIDE, MEDICAL OR MONETARY BENEFITS. I AGREE AND CERTIFY THAT NO PERSON SHALL INCUR ANY LEGAL LIABILITY TO ME BY RELEASING ANY INFORMATION PURSUANT TO THIS AUTHORIZATION.											
A REPRODUCTION OF THIS SIGNED AUTHORIZATION SHALL BE TREATED IN THE SAME FASHION AS THE ORIGINAL.											

U-600-1 (5-78)

DATE	SIGNATURE
------	-----------

MARYLAND APPLICATION FORM

CRIMINAL INJURIES COMPENSATION BOARD
Personal Injuries Claim Form

CICB-2

Type or Print with Ball Point Pen and Answer all questions fully.

Telephone No. _____

1. Claimant's Name _____
Last First M.I.
Victim's Name (if other than claimant) _____
2. Address _____
Street City County State Zip
3. Date of Birth _____
Month Day Year
4. Male _____ Female _____
5. Single Married Separated 5.A. Dependents: Names, Relationship and Age
Widow Divorced Widower _____

6. Social Security Number _____
7. Particulars of circumstances when you were injured:
- (a) Date and time of occurrence _____ A.M. P.M.
- (b) Location _____
- (c) Name of Offender(s) _____
- (d) Names and addresses of Witnesses:

- (e) Description of incident in your own words: _____

8. Particulars of police action:
- (a) Date when incident was reported to police _____
- (b) By whom it was reported, if known _____
- (c) To which Police Department _____
City or County District State
- (d) Has the offender been arrested _____
Yes No
- (e) Has warrant for offender's arrest been issued _____
Yes No
- (f) Has prosecution been started _____
Yes No
- (g) Name of Court _____
Disposition

9. Particulars of personal injuries:

- (a) What injuries did victim suffer? _____

- (b) Name and address of victim's private physician _____

- (c) If you received hospital treatment
(1) Name and address of hospital _____

(2) Period of treatment:
In-Patient from _____ to _____
Out-Patient from _____ to _____
- (d) If your injuries required dental treatment, please give name and address of your dentist: _____

10. Particulars of earnings lost as a result of injuries:

- (a) Period of absence from work: From _____
To _____
- (b) Amount of earnings you have lost during absence _____

- (c) Name and Address of employer (s):

NAME
ADDRESS KIND OF WORK
- (d) If no employer, please give full particulars of income and its source:

- (e) Are you receiving any pension or Social Security?

CICB2

11. Particulars of sums received or applied for as reimbursement for expenses incurred by you as a result of your injuries.

CHECK THE FOLLOWING:

a. Blue Cross	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	No. of Policy and Amount
	No <input type="checkbox"/>		
b. Blue Shield	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	No. of Policy and Amount
	No <input type="checkbox"/>		
c. Workmen's Compensation	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	Amount
	No <input type="checkbox"/>		
d. Disability Benefits	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	Amount
	No <input type="checkbox"/>		
e. Unemployment Ins.	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	Claim Number
	No <input type="checkbox"/>		
f. Medicare	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	Claim Number
	No <input type="checkbox"/>		
g. Medicaid	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	Claim Number
	No <input type="checkbox"/>		
h. Major Medical Policies	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	Name of Co. - Policy No.
	No <input type="checkbox"/>		
i. Accident and Health Policies	Yes <input type="checkbox"/>	If Yes <input type="checkbox"/>	Name of Co. - Policy No.
	No <input type="checkbox"/>		
j. Social Services Benefits	Yes <input type="checkbox"/>		
	No <input type="checkbox"/>		

12. Particulars of out of pocket expenses.

If you incurred any out of pocket expenses as a direct result of your injuries, please list them below and give the cost.

13. Please use this space for any further matters you wish to bring to the notice of the Board.

SUBROGATION

The claimant hereby covenants that no release has been or will be given in settlement or for compromise with any third party who may be liable in damages to the claimant and the claimant, in consideration of any payment and/or award by the CRIMINAL INJURIES COMPENSATION BOARD in accordance with the Annotated Code of Maryland, Article 26A, hereby subrogates the State of Maryland to the extent of any such payment and/or award to any right of cause of action accruing to the claimant against any third person and agrees to accept any such payment and/or award pursuant to the provisions of the Statute and authorizes the State of Maryland to sue in the name of the claimant, but at the cost of the State of Maryland, pledging full cooperation in such action and to execute and deliver all papers and instruments and do all things necessary to secure such right of cause of action.

Claimant: _____

AUTHORIZATION

I hereby authorize any hospital, physician, or other person who attended or examined _____; any undertaker or other person who rendered services; any employers of the victim; any police or other municipal authority or agency, or public authority; any insurance company or organization, having knowledge thereof, to furnish to the MARYLAND STATE CRIMINAL INJURIES COMPENSATION BOARD, or its representative, any and all information with respect to the incident leading to the victim's personal injury or death, and the claim made herewith for benefits. A photocopy of this authorization will be considered as effective and valid as the original.

Claimant: _____

CONSENT

I HEREBY CONSENT that, if an award is made, out of pocket expenses, including indebtedness reasonably incurred for medical, or other expenses necessary, as a result of the injury, upon which the claim is based, and unpaid at the time the decision is made, and also attorney's fees as allowed by the Board, shall be paid by the Comptroller directly to such person, or persons, as the case may be.

Claimant: _____

_____ being duly sworn for himself (her-self) deposes and says he is the claimant named in the foregoing claim; that he has read the same and knows the contents thereof; that the same is true to his (her) knowledge except as to matters alleged to be on information and belief and as to those matters he believes to be true.

Claimant: _____

Sworn to before me this _____ day of _____, 19____

STATE OF MARYLAND: SS
City of _____
County of _____

Notary Public

My Commission expires _____

NOTE: All claimants must sign: if claimant is a minor, claim may be signed by his or her parents or guardian.

TO: OFFICE OF THE SECRETARY
CRIMINAL INJURIES COMPENSATION BOARD
1124 N. Eutaw Street, Room 601
Baltimore, Maryland 21201

CICB-3

STATE OF MARYLAND
CRIMINAL INJURIES COMPENSATION BOARD

In The Matter of the Claim of

CASE NO.

NOTICE OF APPEARANCE

before the

CRIMINAL INJURIES COMPENSATION BOARD

SIRS:

PLEASE TAKE NOTICE THAT _____, Claimant
above named, hereby appears in the above-entitled proceeding, that I
have been retained as attorney for the said Claimant herein, and that I
hereby request service upon me of a copy of all subsequent written
communications or notices to said party in this proceeding (other than
subpoenas and subpoenas duces tecum).

Dated: _____ Maryland
_____, 19____

Yours, etc.,

Attorney for

Office & P.O. Address

Telephone Number

ATTENTION ATTORNEYS: Please review the claim form for completion of all
questions, signatures and notary seals prior to submission.

CRIMINAL INJURIES COMPENSATION BOARD
1123 N. Eutaw Street
Suite 601
Baltimore, Maryland 21201

CICB-4

AFFIDAVIT OF FINANCIAL RESOURCES

Claimant's Name _____
Claim Number _____
Telephone Number _____

I. ALL MONTHLY INCOME

Such as;	Description	Name of Investment or Payer	Monthly Income
Pensions, Emplmt,			
Annuities,			
Savings, Rents,			
Disabilities,			
Welfare or S.S.I.			
Alimony or child support, etc.			

II. ASSETS

	Description	Name-Location-Payer	Amount Value
Savings,			
Stocks, Bonds			
Life Ins. proceeds			
Real Property			
Other			

III. LIABILITIES

	Description	Lending Institution	Balance	Monthly Payment
Mortgage				
Personal Loans				
Other				

IV. MONTHLY LIVING EXPENSES

Rent-Mortgage	
Utilities	
Food	
Clothing	
Transportation	
Life Ins. Premiums	
Medical-Dental	
Entertainment & Misc.	
Tuition for Schools	
Alimony or child support	

Date _____
STATE OF MARYLAND
COUNTY OF _____

Claimant's Signature _____
SS: _____

_____ being duly sworn for himself(herself)
deposes and says that he is the claimant named in the foregoing claim;
that he has read the same and knows the contents thereof; that the same
is true to his (her) own knowledge.

Sworn to before me this _____
day of _____, 19____

NEW YORK APPLICATION FORM

CRIME VICTIMS COMPENSATION BOARD
CLAIM FORM

DO NOT WRITE IN THIS SPACE

CLAIM NO. _____
Board _____
Member _____
Inv. _____
County _____

Claimant's Name _____

Claimant's Social Security Number _____

Claimant's Address _____
(No.) (Street)

(City) (State) (Zip)

Telephone No. _____ Office Telephone No. _____

Claimant's Relationship to victim _____

Victim's Date of Birth _____ Male ☐ Female ☐
(Mo., Day, Yr.)

Victim's Name _____
(To be completed if different than claimant)

Type of Claim: Personal Injury ☐ Death ☐

Victim's Address _____

Brief description of crime _____

Brief description of injuries _____

Date of Crime _____ Location of Crime _____
(Mo./Day Yr.) (Street Address)

County _____ City _____

Name of Perpetrator (if known) _____

Police Precinct where crime was reported _____

Police Complaint No. (U.F. 61 Number) _____
(May be obtained at Police Pct.)

Source from which you heard of this agency _____

(Claimant's Signature)

CLAIMANT'S AFFIDAVIT

PERSONAL INJURY CLAIM _____

DEATH CLAIM _____

1. Name of Claimant _____
2. Address of Claimant _____
3. Social Security Number _____
4. Telephone Number (Home) _____
5. Claimant's Date of Birth _____
6. Particulars of Crime _____

Date of Crime _____ Time _____ am
pm

Location of Crime _____

U.F. 61 Number (Police Complaint Number) _____

Description of Crime in Victim's or Claimant's Words _____

7. Particulars of Police Reporting:

Date and Time When Incident Reported to Police _____

To Which Police Agency Reported? _____

Precinct

8. What Injuries Did Victim Sustain? _____

9. Name and Address of First Treating Doctor _____

10. Name and Address of First Treating Hospital _____

11. Name and Address of Treating Dentist (if any) _____

12. Possible Insurance Coverage Available:

- (a) Blue Cross -- Yes _____ If Yes _____
No _____
- (b) Blue Shield -- Yes _____ If Yes _____
No _____
- (c) Workmen's Compensation -- Yes _____
No _____ Name of Company - Policy No. _____
- (d) Disability Benefits -- Yes _____
No _____ Name of Company - Policy No. _____
- (e) Medicare -- Yes _____
No _____ Claim Number _____
- (f) Medicaid -- Yes _____
No _____ Claim Number _____
- (g) Major Medical -- Yes _____
No _____ Name of Company - Policy Number _____
- (h) Accident & Health -- Yes _____
No _____ Name of Company - Policy Number _____
- (i) Unemployment Insurance -- Yes _____
No _____
- (j) Welfare -- Yes _____
No _____
- (k) Veteran's Administration -- Yes _____
No _____ Amount _____
- (l) Union, Company or Fraternal Death Benefits -- Yes _____
No _____
Name and Amount _____
- (m) Life Insurance -- Yes _____
No _____
Name and Amount _____
- (n) Pensions -- Yes _____
No _____ Name of Company _____

13. Social Security and/or Railroad Retirement Benefits Available to Claimant and/or Dependents

14. Known and Anticipated Out-of-Pocket Expenses

15. Dependency: Spouse, children or other person dependent for his or her principal support upon the crime victim

<u>Name</u>	<u>Address</u>	<u>Relationship to the Victim</u>	<u>Age</u>
-------------	----------------	-----------------------------------	------------

16. (a) Name and Address of Victim's Employer (if any)

(b) Was victim absent two continuous weeks or more as a result of the injuries sustained in the crime? Yes _____ No _____

(c) Victim's Occupation _____

(d) Remarks _____

17.

AFFIDAVIT OF FINANCIAL RESOURCES

I. INCOME

Pensions,
Annuities,
Savings, Rents,
Social Security,
Public Funds

DESCRIPTION

NAME OF INVESTMENT
OR PAYER

MONTHLY
INCOME

II. ASSETS

Savings, Stocks,
Bonds, Proceeds
from Life
Insurance, Real
Property

DESCRIPTION

NAME, LOCATION,
OR PAYER

AMOUNT
VALUE

III. LIABILITIES

Mortgage,
Loans,
Personal Loans
Other

DESCRIPTION

LENDING
INSTITUTION

BALANCE
OWED

MONTHLY
PAYMENT

IV.

Estimates of Monthly Living Expenses

DEATH VICTIM ONLY

Rent
Utilities
Food
Clothing
Transportation
Life Insurance Premiums
Medical and Dental
Entertainment and Miscellaneous
Tuition for Schools
Alimony or Child Support

18. Late Filing Statement (if required)

Balance of form to be used on Death Claims and Personal Injury Claims where victim is other than claimant:

19. Name of Victim _____

Social Security Number _____

Address of Victim _____

Date of Birth _____

20. Date of Death _____

(Obtain Copy of Death Certificate)

21. Victim's Marital Status _____

22. Victim's Earnings for last year _____

23. Amount Contributed to or on Behalf of Claimant(s) _____

24. Funeral Director

Name _____

Address _____

Paid By _____

(Obtain Bills for Funeral Expense)

25. Particulars of any other sums received _____

26. Remarks _____

State of New York

:
ss

County of _____

:

being duly sworn for himself (herself)
deposes and says that he is the claimant named in the foregoing claim; that
he has read the same and knows the contents thereof; that the same is true
to his (her) own knowledge.

Sworn to before me this _____
day of _____, 19____.

Notary Public

AUTHORIZATION

I hereby authorize any hospital, physician, or other person who attended or
examined _____;

Victim's Name

any undertaker or other person who rendered services; any employers of the
victim; any police or other municipal authority or agency, or public auth-
ority; any insurance company or organization; or any other person, firm,
agency or organization, having knowledge thereof, to furnish to the New
York State Crime Victims Compensation Board, or it's representative, any
and all information with respect to the incident leading to the victim's
personal injuries or death, and the claim made herewith for benefits. A
photocopy of this authorization shall be considered as effective and valid
as the original.

Claimant

Address

Subscribed and sworn to this _____
day of _____, 19____.

Notary Public or Authorized Signature

SUBROGATION

The claimant hereby covenants that no release has been or will be given in settlement or for compromise with any third party who may be liable in damages to the claimant and the claimant, in consideration of any payment and/or award made by the Crime Victims Compensation Board in accordance with the Executive Law of the State of New York, Article 22, hereby subrogates the State of New York to the extent of any such payment and/or award to any right or cause of action accruing to the claimant against any third person and agrees to accept any such payment and/or award pursuant to the provisions of the statute and authorizes the State of New York to sue in the name of the claimant, but at the cost of the State of New York, pledging full cooperation in such action and to execute and deliver all papers and instruments and do all things necessary to secure such right or cause of action.

I HEREBY AUTHORIZE AND DIRECT that if an award is made, out-of-pocket expenses including indebtedness reasonably incurred for medical, or other expenses necessary, as a result of the injury, upon which the claim is based, and unpaid at the time the decision is made, and also attorneys fee as allowed by the Board, shall be paid by the Comptroller directly to such person, or persons, as the case may be.

Claimant

Subscribed and sworn to this _____
day of _____, 19 _____

Notary Public or Authorized Signature

KENTUCKY APPLICATION FORM

COMMONWEALTH OF KENTUCKY

CRIME VICTIMS COMPENSATION BOARD

113 E. THIRD, FRANKFORT, KENTUCKY 40501 (502)564-2290

CLAIM

FORM

NOTICE TO NEEDY RESIDENTS OF KENTUCKY

If you are the innocent victim of a crime within the past six months in which you suffered bodily injury, Kentucky's Crime Victims Compensation Fund may reimburse you for part of your resulting medical expense and loss of earnings. If a crime victim is killed, the State may also help an innocent victim's family or needy dependents. The Fund cannot assist you if payment is available to you from other sources, such as insurance, disability funds or from the criminal.

The Fund cannot pay for property damage or theft.

TO THE VICTIM OF CRIME:

The following questions will help determine whether you may be eligible for payment from Kentucky's Crime Victim Compensation Fund:

Answer
YES or NO

1. Did the crime occur within the last six months? _____
2. Are you a resident of Kentucky? _____
3. Did the crime injure you bodily? _____
4. Is at least one of the following true:
 - A. The crime cost you unreimbursed expenses of \$100 or more for medical care or other necessary expenses. _____
 - B. You lost as much as two continuous weeks of earnings. _____
5. Did the injury result from something other than an automobile or vehicle accident? _____
6. Was the crime reported to officers of the law within 48 hours or did you have good cause for not doing so? _____
7. Have you cooperated with law enforcement agencies? _____
8. Were you an innocent victim who did not serve as an accomplice or commit a crime in connection with the incident at which you were injured? _____
9. If you do not receive funds from the Crime Victims Compensation Fund, will you suffer serious financial hardship as a result of expenses or loss of earnings from this injury? _____

If the correct answer to all the above questions is "YES", there is a good possibility you may be eligible for payment from Kentucky's Crime Victims Compensation Fund. If so, you should

answer all questions on the following pages
sign your name before a notary public, and
mail this claim form to Crime Victims Compensation Board, 113 East Third Street, Frankfort, Kentucky 40501.

TO THE FAMILY OR DEPENDENTS OF THE VICTIM OF CRIME:

The following questions will help determine whether you as the family or dependents of a crime victim may be eligible for payment from Kentucky's Crime Victims Compensation Fund:

Answer
YES or NO

1. Did the crime occur within the last six months? _____
2. Are you a resident of Kentucky? _____
3. Is the victim deceased? _____
4. Are you the surviving spouse, parent or child of an innocent victim who died as a direct result of a crime or were you dependent on an innocent victim who died as a direct result of a crime? _____
5. Did the victim's death result from something other than an automobile or vehicle accident? _____
6. Was the crime reported to officers of the law within 48 hours or did you have good cause for not doing so? _____
7. Have you cooperated with law enforcement agencies? _____
8. Was the deceased victim an innocent person who did not serve as an accomplice or commit a crime in connection with the fatal incident? _____
9. If you do not receive funds from the Kentucky Crime Victims Compensation Fund, will you suffer serious financial hardship as a result of lost support from the deceased crime victim? _____

If the correct answer to all the above questions is "YES", there is a good possibility you may be eligible for payment from Kentucky's Crime Victims Compensation Fund. If so, you should

answer all questions on the following pages
sign your name before a notary public, and
mail this claim form to Crime Victims Compensation Board, 113 East Third Street, Frankfort, Kentucky 40501.

10. Claimant's Name _____
11. Address _____
City _____ State _____ Zip Code _____
12. Telephone Numbers _____
13. What is your relationship to the victim:

14. Are you filing this claim as a crime victim, a family or dependent survivor of a crime victim? _____ A parent or guardian of a crime victim who is a minor (under 18)? _____ A guardian, curator or committee of a crime victim who is incapacitated or incompetent? _____
15. Who was the victim of the crime? _____
Name _____ and _____ Address _____
16. Date of victim's birth _____
17. Victim's Social Security Number _____
18. Who committed the Crime? _____
19. Where did crime occur? _____
Street Address _____ City _____ County _____
20. When did the crime occur? Date _____ Approximate time _____
Month _____ Day _____ Year _____
21. Describe the crime (tell what happened). _____

22. What physical injury did the victim sustain? _____

 Has the victim fully recovered from this injury? _____
23. Name and address of any witnesses to the crime:

24. Name and address of law enforcement agency or officer to whom the crime was reported:

25. List name and address of any other persons you believe may have information about the crime:

26. Name and address of doctors and/or hospitals that treated the victim for injuries from the crime:

27. A. List the victim's medical expense or other necessary expense as a result of the crime.
 \$ _____ for _____ Paid to _____

- B. For what dates did the victim lose earnings as a result of the crime?

 Dollar amount of lost wages _____
 Name and address of employer _____

- C. If this claim is from crime victim's family or dependent rather than from the crime victim, how much financial support did you lose as a result of the victim's death? _____
 What was the nature of the support? _____
- D. List any further medical expense or other necessary expense, loss of earnings or loss of financial support you expect as a result of the crime.

- E. Was any part of above expense or loss paid or reimbursed by other sources such as insurance, welfare agencies, medicare, medicaid, social security, veterans' benefits, workmen's compensation, unemployment insurance, the criminal, etc.? _____ Is any expected? _____
 If yes, list amount and source _____

28. The Crime Victims Compensation Fund can make payment only to persons who would suffer severe financial hardship if not assisted by the Fund.

A. List any information you believe will help the Board understand your financial need. _____

B. Are you willing voluntarily to permit our investigator to review your most recent income tax return? _____

C. List the total amount of property tax you paid for most recent year. \$ _____

29. What is the victim's relationship to the criminal? _____

30. What is your relationship to the criminal? _____

31. Would you be willing to swear to a warrant and to appear and testify in the prosecution of this case? _____

I hereby swear that all the above statements are true to the best of my knowledge and belief. If I receive payment from the Crime Victims Compensation Fund, I promise to repay that fund if I receive payment for the same items from the criminal, from insurance or from any other government agency.

CLAIMANT'S SIGNATURE _____
Date _____

Sworn and subscribed to before me this

_____ day of _____, 197__.

Notary Public _____

My commission expires _____

1. Name of claimant: LAST FIRST M.I.

Street Address _____ City _____ State _____ Zip _____

Date of Birth	Social Security Number
---------------	------------------------

Telephone (include area code): Home _____ Work _____

2. Status of claimant (check one of the below):
- ☐ Victim of crime
- ☐ Dependent of deceased victim of a crime. (Specify relationship to victim: _____)
- ☐ Representative of estate of deceased victim or crime
- ☐ Purchaser of services for the victim of crime
- ☐ Other (Describe: _____)

3. If claimant is not the victim, state the victim's name and address, social security number, and birthdate:

- 4. Description of incident giving rise to this claim:**

- a. Date of incident: _____

- b. Nature of the incident (briefly describe): _____

- c. Law enforcement agency and officer to whom incident was reported:

- d. **Physical injuries and economic loss sustained by victim (briefly describe):**

- e. Doctor(s) and/or hospital(s) providing treatment (names-addresses)

I, _____, do hereby swear that I have read the instructions and information on the reverse side of this form.

I further swear that the information set forth above is true and correct to the best of my knowledge and belief.

I hereby authorize the above named hospital(s), doctor(s), law enforcement agency(ies) and my employer to release all records and information relating to the incident described on this form, to allow copies to be made of all relevant records and documents and to answer any inquiries relating to the incident.

I hereby acknowledge and agree that all or any part of any reparations awarded to me may be paid directly to suppliers of goods or services for those goods or services the reparations have been awarded.

I understand that upon receipt of the form the Crime Victims Reparations Board may conduct an investigation into the validity of the facts set forth above and of other facts relevant to this claim, and I hereby consent to such an investigation.

Subscribed and sworn to before me

this _____ day of _____, 19____

INSTRUCTIONS AND INFORMATION

1. The purpose of this form is to initiate the filing of a claim with the Minnesota Crime Victims Reparation Board. All information requested on the reverse side should be provided.
2. The oath on the reverse side must be taken before a notary public. Minnesota law 299B.16 provides that any person who makes a false claim to the Crime Victims Reparations Board is guilty of a gross misdemeanor.
3. After the form has been completed and the oath has been taken before a notary public, the form should be sent to the following address:

Minnesota Crime Victims Reparations Board
702 American Center Building
160 East Kellogg Blvd.
St. Paul, MN 55101

4. Upon receipt of this form the Crime Victims Reparations Board will cause an investigation to be undertaken into the validity of the claim. This investigation may include discussions with law enforcement officials and inspection of their records, inspection of medical records, and any other inquiry relevant to the claim.

MINNESOTA APPLICATION FORM

SUPPLEMENTARY FORM
MINNESOTA CRIME VICTIMS REPARATIONS BOARD
702 American Center Bldg.
Kellogg at Robert
SAINT PAUL, MINNESOTA 55101
(612) 296-7080

1. Name of claimant: _____

Street Address

City

Slate

Zip

Telephone (include area code): Home: _____ File # _____
Work: _____

2. Status of claimant (check one of the below):
- ☐ Victim of crime
- ☐ Dependent of a deceased victim of a crime
(Specify relationship to victim _____)
- ☐ Representative of estate of deceased victim of crime
- ☐ Purchaser of services for victim of crime
- ☐ Other (Describe: _____)

3. If claimant is not the victim, list the victim's name and address:

4. I claim the following economic loss:

A. General expenses

(1) Medical and related expenses:

Creditor

Purpose of expense

Amount

Subtotal

(2) Expenses for substitute child care and household services:

Creditor

Purpose of expense

Amount

Subtotal _____

B. Where the victim has suffered personal injury

(1) Loss of income:

<u>Source</u> Name & Address of Employer	<u>Loss per period</u> (specify period)	<u>No. of</u> <u>periods</u>	<u>Total loss from</u> <u>that source</u>

Subtotal (Total loss of income from all sources) _____

C. If the victim has died

(1) Expenses for funeral and burial or cremation:

<u>Creditor</u>	<u>Purpose of expense</u>	<u>Amount</u>

Subtotal _____

(2) Loss of support:

<u>Source</u>	<u>Loss per period</u> (specify period)	<u>Total loss from</u> <u>that source</u>

Subtotal (Total loss of support from all sources) _____

(3) Total economic loss

(sum of all subtotals in A and B or A and C above) _____

(a) List names, addresses, ages and relationships of all dependents of deceased.

5. I have received or have readily available the following collateral sources:

Amount

Source

Economic loss
covered (specify)

Payment from the offender

Social security

U.S. Veterans' Administration

Medicare

Medicaid

Workmen's Compensation

Employer's wage continuation
program
(name of employer:

Insurance proceeds
(name of company:

Prepaid health care or disability
program
(name of source:

Other benefits from federal,
state, or local governments
(including welfare)
(name of source:

Donation or gift
(name of source:

LIST
Name & Address
Supplier of services, i.e.,
Hospitals, Doctors, etc.,
and amounts charged

RECAPITULATION
Name & address of
Insurance Carriers & how
much was paid on Hospitals
Doctors, etc., accts. by
collateral sources

Balanced owed,
and whether paid
by Claimant
or others

Loss of
Wages
(net)
& period
of time
lost from
work

List
insurance
Coverage
or
Welfare
Unemployment
payments
for loss
of time

PLEASE LIST SEPARATELY

Other sources of aid:
(specify):

6. Total collateral sources

Subtract total 6 from total C(3)

Total claimed (If greater than \$25,000, only \$25,000 can be claimed)

I, _____, hereby request reparations for economic loss in the amount of _____. I hereby swear that I have read the instruction sheet attached to this form and that I have complied with the instructions thereon. I further swear that the information provided is true and correct to the best of my knowledge and belief.

I further acknowledge and agree that the State of Minnesota is subrogated, to the extent of any reparations awarded to me, to all the claimant's rights to recover benefits or advantages for economic loss from a source which is, or if readily available to the victim or claimant would be, a collateral source.

Dated: _____

Subscribed and sworn to before me

This _____ day of _____, 19____.

Notary Public

NORTH DAKOTA APPLICATION FORM

SEND COMPLETED FORM TO:
Crime Victims Reparations
Workmen's Compensation Bureau
Highway 83 North - Russel Building
Bismarck, North Dakota 58505

DECLARATION OF ELIGIBILITY

NAME _____ PHONE _____
Last First Middle
ADDRESS _____ ZIP _____
Street City State

This declaration is to determine whether you are eligible to be considered for compensation under the North Dakota Uniform Crime Victims Reparations Act. Check the statements which apply in your case. If you cannot truthfully check all statements, you are not eligible for compensation under the Act, and an application for benefits would be denied.

- ____ 1. This claim is being filed within one year of the incident.
- ____ 2. The victim suffered bodily injury (this includes psychological disorder) (or death) as a result of the criminal actions of another.
- ____ 3. The injury (or death) was not the result of an automobile accident.
- ____ 4. The incident occurred in North Dakota.
- ____ 5. The incident was reported to law enforcement officials within 72 hours, or would have been reported within that time except for a valid reason.
- ____ 6. The claimant (and/or victim) cooperated with law enforcement officials during their investigation and prosecution.
- ____ 7. Economic loss (medical expenses, wage loss, other) totals (or will total) \$100.00 or more and has not been (or will not be) totally paid by other sources.
- ____ 8. The claimant (and/or victim) was not an accomplice to and did not commit a crime in connection with this incident.

I hereby swear that all of the above statements to which I have attested are true, and understand that I will be guilty of a class A misdemeanor for any false statement I have made in connection with this declaration of eligibility.

Dated this ____ day of _____, 19 ____.

Claimant or Representative-Signature

How were you informed of the Crime Victims Reparations Act? _____

CRIME VICTIM CLAIM FORM

The Crime Victims Reparations Act reimburses for economic loss due to physical injury or death resulting from a criminal attack. It does not provide restitution for property loss or damage. After you submit a claim, the information you provide will be verified through discussions with law enforcement officials, inspection of records, and any other inquiry relevant to your claim. The victim may be required to submit to mental or physical examination or autopsy. Any claimant who makes a false claim or statement in connection with a claim is guilty of a class A misdemeanor.

- Dated this _____ day of _____, 19____

*If additional space is needed, please use the reverse side of this form.

SEND COMPLETED FORM TO:
Crime Victims Reparations
Workmen's Compensation Bureau
Highway 83 North - Russel Building
Bismarck, North Dakota 58505

STATEMENT OF ECONOMIC LOSS

NAME OF CLAIMANT _____ PHONE _____
Last First Middle

ADDRESS _____ ZIP _____
Street City State

I claim the following economic losses due to a criminal attack:

MEDICAL

Supplier of Service (Name and Address)	Purpose	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

LOSS OF INCOME

Source of Income (Name & Address)

Period of Loss _____

Actual Net Weekly Wage Loss _____

Average Number of Days Worked per Week _____

OTHER EXPENSES

Did you incur OTHER economic loss as a direct result of this incident? If so, explain including purpose, amount, and name of creditor: _____

FUTURE EXPENSES

I anticipate future expenses in the following areas and in the following amounts:

Expenses	Amount
_____	_____
_____	_____

COLLATERAL SOURCES

I have received or will receive benefits from collateral sources (such as insurance companies, sick-leave pay from employer, etc.) as follows:

Source	Purpose	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated this _____ day of _____, 19____.

Claimant or Representative-Signature

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20531

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF JUSTICE
JUS-426



SPECIAL FOURTH-CLASS RATE
BOOK

END