

## *Policy Paper Series*

### **Crime Victim Compensation**

#### ***Context and Overview.***

The Office for Victims of Crime (OVC) was formed by the U. S. Department of Justice in 1983, and Congress formally established the office in 1988 through an amendment to the Victims of Crime Act of 1984 (VOCA). OVC administers two major formula grant programs – victim compensation and victim assistance. OVC now disburses grants to every state, the District of Columbia, the Virgin Islands and Guam to support victim compensation programs.<sup>1</sup> Since 1986 about 854 million dollars in compensation funds have been distributed. VOCA dollars account for an average of 29% of the funding distributed by state victim compensation programs. The annual allotment for compensation programs has increased 350% since inception. The two VOCA funding streams provide significant assistance to victims of stalking, sexual assault and domestic violence.<sup>2</sup>

VOCA victim compensation funds may be used to pay for violent crime-related medical or dental costs, mental health counseling, funeral and burial costs, and lost wages of the victim or loss of support,<sup>3</sup> but federal dollars cannot be used to pay for property damage or losses except for personal medical devices.

Recently, OVC published a comprehensive plan for improving services and compensation for victims of violent crime; it contains 18 recommendations for upgrading state crime victim compensation programs.<sup>4</sup>

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<sup>1</sup> Puerto Rico has recently set up a compensation program and will soon be receiving funds also.

<sup>2</sup> Urban Institute's NIJ-funded National Evaluation of State VOCA Compensation and Assistance Programs. (Forthcoming, 2000).

<sup>3</sup> Compensation programs pay for victims' lost wages due to the violence and the loss of support by the survivors of fatalities (victims of homicides or drunk driving fatalities). Compensation funds do not pay for the loss of support where the obligor is the perpetrator of domestic or sexual violence or stalking. Thus, if the perpetrator flees or is incarcerated, compensation programs do not now pay for lost support due by the perpetrator to the victim.

<sup>4</sup> Office for Victims of Crime. (August, 1998). New Directions From the Field: Victims' Rights and Services for the 21<sup>st</sup> Century. Washington, DC: USDOJ/OVC.

## ***Solutions and New Directions.***

- **State programs should add categories of eligible expenses that will meet the compensation needs of abused and stalked adults.**

The losses sustained by victims of violence against women are substantial. If victims are to achieve safety and restoration, the range of eligible expenses must be expanded. States have begun to enlarge the categories of compensable expenses. In a handful of states, domestic violence victims may receive relocation expenses. One state provides for 3 months of rental costs for dislocated victims. A few states pay for property loss, beyond medical devices, or pain and suffering.<sup>5</sup> Nonetheless, most victims of domestic, sexual and stalking violence are not able to recover the costs or losses sustained from the violence. Bridge housing, emergency transportation, security mechanisms, crime scene clean-up and childcare may not be eligible expenses, yet these may be the most critical costs confronted by victims dislocated and injured by violence against women. Destroyed necessities, such as work clothing, school books and business equipment, are not covered. State programs should expand compensation to incorporate some of these in the array of eligible expenses.

- **State compensation programs should create catastrophic injury or permanent disability funds beyond compensation caps and duration limits for preliminary compensation awards.**

States vary in the maximum amount of funds to be paid out to a crime victim. Most states authorize awards up to \$15,000 to \$25,000; but the median amount distributed per victim is approximately \$2500.<sup>6</sup> Some states authorize payment for catastrophic injuries or permanent disability above the cap for regular compensation. Most provide for supplemental awards to cover expenses after initial awards are made.

- **State compensation programs should pay the costs of rape kits and forensic examinations and not seek recoupment from the public or private health insurance of victims. Recoupment should, however, continue to be sought from any award of civil damages.**

Since the state compensation program is the payor of last resort, after insurance, medicaid/medicare, other public benefits programs, restitution, civil damage

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<sup>5</sup> Personal communication with Dan Eddy, Executive Director of the National Association of Crime Victim Compensation Boards.

Ibid. Footnote 2.

<sup>6</sup> Ibid. Footnote 2.

awards and other sources of recompense, crime victims are required to submit claims to primary sources of compensation, as well as to the state program. The state compensation program will usually pay the amount of an eligible claim upfront, reduced by any amount already received from other sources. When compensation is anticipated from a collateral source, the program utilizes subrogation procedures to recover costs subsequently paid by collateral sources.

Fourteen states are the primary payors of the costs of forensic medical exams for sexual assault victims, the rest are secondary payors. Whichever arrangement the state program adopts for payment of the costs of rape examinations, the fact that a rape victim will have to disclose to her health insurance provider that she has been sexually assaulted is unacceptable to many sexual assault survivors. Victims may not want to reveal the rape to their primary care physicians or have the rape included in medical records. They may fear that their husbands will discover the fact of the rape or that persons handling medical claims for employers will not be discreet. They may suspect that insurance databases will reveal victimization to other prospective insurance providers, potentially rendering victims ineligible for insurance or at risk of being charged with higher premiums.

In seven states the program picks up the full costs without seeking full or partial payment from the victim's public or private health insurance.<sup>7</sup> In all other states, rape victims who do not want to make insurance claims must pay these costs out-of-pocket.<sup>8</sup>

- **State compensation programs should expand the types of victims eligible to receive counseling benefits.**

Children who witness violence, but who are not themselves physically abused, should have access to medical, mental health and counseling services essential for their healing and restoration.<sup>9</sup>

- **State compensation programs should expand the class of eligible providers to include non-clinical providers of counseling and health services for stalking, domestic violence and sexual assault victims.**

State compensation programs define the class of eligible providers quite narrowly. Medical, mental health and other licensed clinical services (i.e., the

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<sup>7</sup> Ibid. Footnote 5.

<sup>8</sup> States receiving formula grants under the Violence Against Women Act must furnish the Violence Against Women Office of the U.S. Department of Justice with assurances that rape victims do not have to pay the costs of forensic exams. Compliance standards do not currently disapprove the practice of recoupment.

<sup>9</sup> Ca. has expanded the definition of who is eligible for crime victim compensation to children who witness domestic violence crimes or have been victims of parental kidnapping. Gov. Code Section 13960.

programs most often eligible) may not be accessible to or tailored specifically to the treatment needs of victims of domestic and sexual violence or stalking. Particularly, victims who are not English-speaking or literate, who are hearing impaired, lesbian, minority, immigrant or older women may prefer the restorative opportunities in programs that are culturally competent.<sup>10</sup> Non-traditional health and counseling programs providing competent and effective services to victims should be considered eligible providers.

- **Compensation programs should exempt victims from the time requirements for filing claims when injuries or losses are not reasonably discovered until after application deadlines or after award periods have expired.**

Some injuries are not discovered during the period for application or for payment of compensation awards. Some perpetrators continue controlling and intimidating conduct after application and award periods have expired, preventing victims from making claims. Programs should permit extensions or allow claims to be reopened to reimburse eligible expenses up to the maximum state allotments.

- **Compensation programs should extend the time for reporting to law enforcement or other appropriate agency.**
- **Compensation programs should expand the class of agencies to which reporting is permissible.<sup>11</sup>**
- **Compensation programs should redefine cooperation to include participation in community programs that assist stalking victims and survivors of domestic and sexual violence.**

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<sup>10</sup> Most compensation programs will pay only licensed providers. Some pay for counselors who are not licensed both in recognition of the fact that victims may not have access, geographical or financial, to licensed providers. Few licensed providers have adequate specialized training on victimology related to violence against women. Nor have they accommodated their practice methodologies to maximize the healing, critical thinking, strategic planning and safety planning required by women victims. For these crime victims, prevention of recurrence is as important as recovery. Licensure should not be the determining eligibility qualification for health and counseling services to these victims of crime. Other standards for competent practice should be devised both for licensed and uncredentialed providers.

<sup>11</sup> For example, Iowa and New Jersey accept temporary restraining orders in lieu of police reports as verification that a crime occurred and as evidence of cooperation. Ohio considers reports to child protective services agencies as meeting the reporting requirement. Pennsylvania accepts reporting to local domestic violence or sexual assault programs.

- **Compensation programs should eliminate or narrowly define unjust enrichment.**
- **Compensation programs should reduce the number of denials based on contributory conduct by establishing and closely monitoring guidelines for assessment of exclusion criteria as to this class of victims.**

The approval rate for payment is about 70% of the applications received by state programs. Claims have been denied based on the potential for unjust enrichment of the perpetrator or by virtue of a victim not reporting in a timely fashion or to an authorized agency, not demonstrating requisite cooperation with law enforcement or prosecution, not separating from the domestic perpetrator or evidencing contributory conduct. In most states these factors do not present the hurdle to awards that they once may have. Most of the eligibility factors are now interpreted more liberally in favor of victims.<sup>12</sup>

- **State compensation programs should review the state's criminal code on stalking and eliminate the eligibility requirement of physical injury or contact where these are not essential elements in the law.**

In a handful of states, the requirement that the victim must have sustained physical or personal injury excludes some stalking victims from eligibility for compensation.<sup>13</sup>

- **State compensation programs should develop and implement strategies to process claims, including emergency awards, expeditiously.**

The average time for processing claims is lengthy; some states process in as little as 5 weeks and on the far extreme a few take at least 1 1/2 years from application to award with the majority of state programs taking at least 3 months.<sup>14</sup>

- **State compensation programs should ascertain why victims of sexual assault, domestic violence and stalking are so significantly underrepresented in the class of successful applicants. Corrective measures should be taken to enhance appropriate disbursements to these victims.**

It is beyond dispute that the costs to these victims are significant and that their numbers among victims of violent crime are high, yet distributions to compensate

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<sup>12</sup> Ibid. Footnote 2.

<sup>13</sup> Ibid. Footnote 5.

<sup>14</sup> Ibid. Footnote 2. Note, however, that states define claims processing components and count processing time in different ways. Thus, the figure derived from an average across all states, nearly 7 months, masks more than it reveals.

their losses are disproportionately low. Most payments are made for medical and dental expenses, and most claims were for non-familial assault. Adult sexual assault-related claims accounted for 3% and domestic assault for 7%.<sup>15</sup>

- **States should design and target outreach campaigns to battered women, sexual assault survivors and victims of stalking.**

Public education that is culturally inviting should be developed. Vehicles for communication should be expanded, e.g. to faith organizations, local radio talk shows, community cable programming, women's and minority social clubs. Outreach efforts should be undertaken in concert with crime victim specialists in law enforcement and prosecution departments and with community-based victim advocacy agencies.

- **State compensation programs should establish policies and procedures related to maintaining both the privacy of applicants and the confidentiality of records, addresses and communications of victims.**
- **No records of the program should be disclosed to other state agencies, law enforcement, courts, perpetrators, their agents or third parties.**<sup>16</sup>
- **Applicants should be informed about the parameters and limitations of privacy and confidentiality protections.**
- **Verification and recoupment processing should be conducted with utmost discretion.**

Although state compensation programs assure victims that the application and program records are confidential, in order to pursue the requisite verifications, the program must make a number of inquiries of law enforcement, courts, employers, as well as insurance carriers. Thus, although the records are held in strictest confidence, the verification and recoupment processes put the rape and the victim in the public domain repeatedly. Victims who have relocated to confidential addresses may fear that their whereabouts will be disclosed to persons who may share this information with perpetrators, whether inadvertently or intentionally. This may deter some victims of domestic and sexual violence and stalking from making claims.

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<sup>15</sup> Ibid. Footnote 2. Forensic exams and rape kits are not included in this calculation of funds disbursed to sexual assault survivors.

<sup>16</sup> It is understood that a limited exception to the non-disclosure rule applies to program or fiscal audits by the state and VOCA and appropriate research.

***Resources.***

**Battered Women's Justice Project**

1801 Nicollet Ave. So., Suite 102  
Minneapolis, MN 55403-3745

612-824-8768 or 800/903-0111, ext. 1 (phone)  
612-824-8965 (fax)

**National Association of Crime Victim Compensation Boards**

P. O. Box 16003  
Alexandria, VA 22302

703/370-2996 (phone and fax)

**National Sexual Violence Resource Center**

PA Coalition Against Rape  
125 North Enola Dr.  
Enola, PA 17025

877/739-3895 (phone)  
717/728-9781 (fax)  
[www.nsvrc.org](http://www.nsvrc.org)

**National Stalking Resource Center**

National Center for Victims of Crime  
2000 M St., NW, Ste. 480  
Washington, DC 20036

202/467-8700 (phone)  
202/467-8701 (fax)  
[www.ncvc.org](http://www.ncvc.org)

## ***References.***

Office for Victims of Crime. (August, 1998). New Directions From the Field: Victims' Rights and Services for the 21<sup>st</sup> Century. Washington, DC: USDOJ/OVC.

Newmark, L. et al. (2000). National Evaluation of State VOCA Compensation and Assistance Programs. Washington, DC: Urban Institute. [www.urban.org](http://www.urban.org)

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