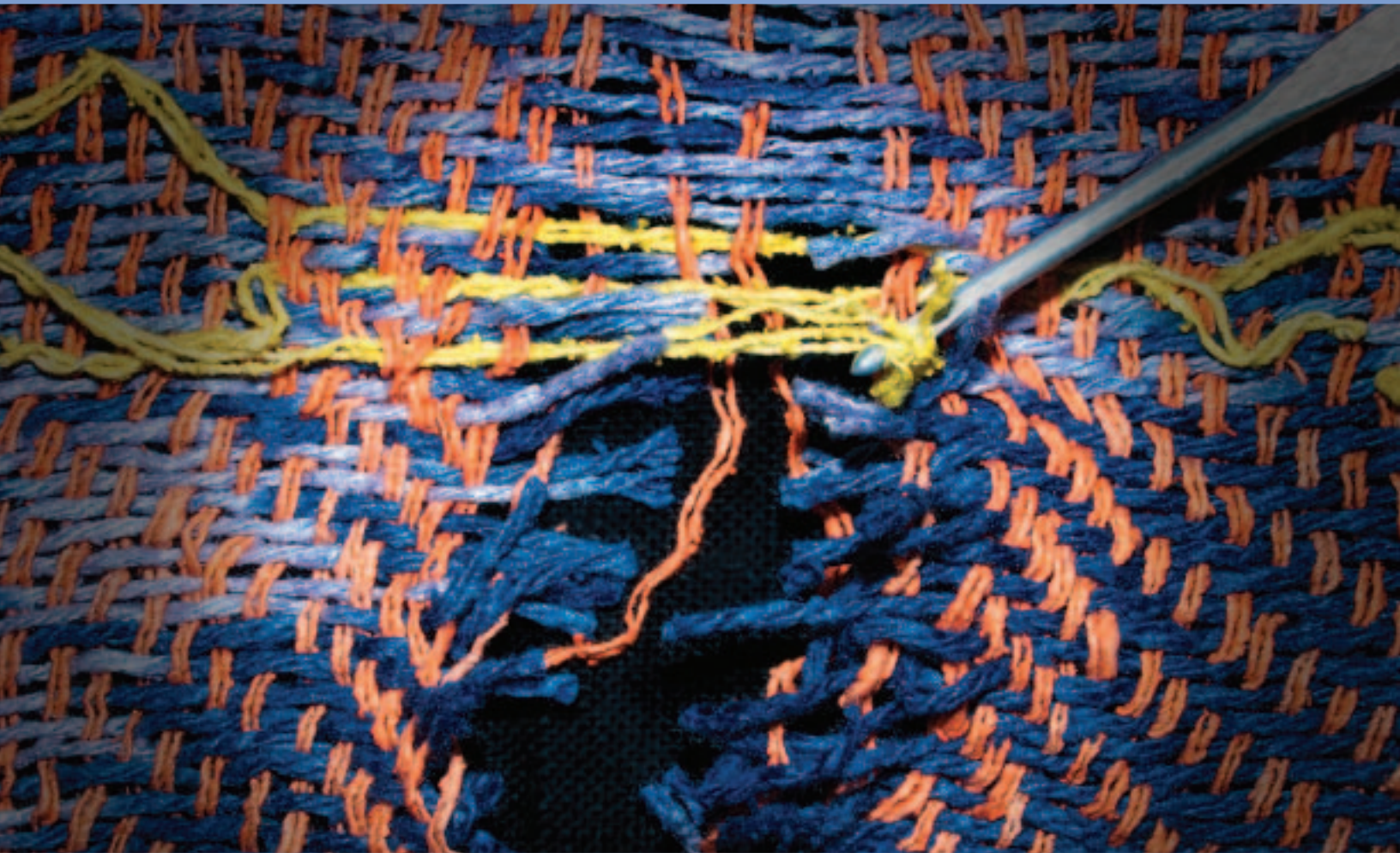


THE NATIONAL CENTER FOR  
**Victims of Crime**

# REPAIRING THE HARM



*A new  
vision for  
crime victim  
compensation  
in America*

Dear Colleague:

Financial compensation for victims of crime is one of the most important, tangible expressions of society's compassion for those among us who have been harmed by crime. While compensation cannot address all that victims suffer, it can provide a critical ingredient in repairing the harm.

After the terrorist attacks of September 11, 2001, America rallied to provide unprecedented levels of private and government support to the thousands of victims left behind. This swift, generous, and sustained assistance represented a remarkable national commitment to help a particular group of crime victims rebuild their lives. For many of us who regularly work with victims of crime, these actions stood in sharp contrast to both the public and private efforts to help victims of "everyday" crime.

Many comparisons were made between homicide survivors and relatives of people killed in the September 11 attacks. Many questions were asked about the role of financial assistance generally, and more specifically, about the proper scope of a government compensation program. Suddenly Americans became engaged in a new national conversation about the far-reaching impact of crime and the complicated nature of trauma.

Our hope is that this report builds on these conversations and encourages a fresh look at our national response to all victims of crime. We have a rare opportunity to reflect upon our approach to compensating the September 11 victims and explore how to best provide financial assistance to all victims of crime.

We encourage you to use this report to raise awareness about the impact of crime on victims and to promote a new vision for crime victim compensation in America.

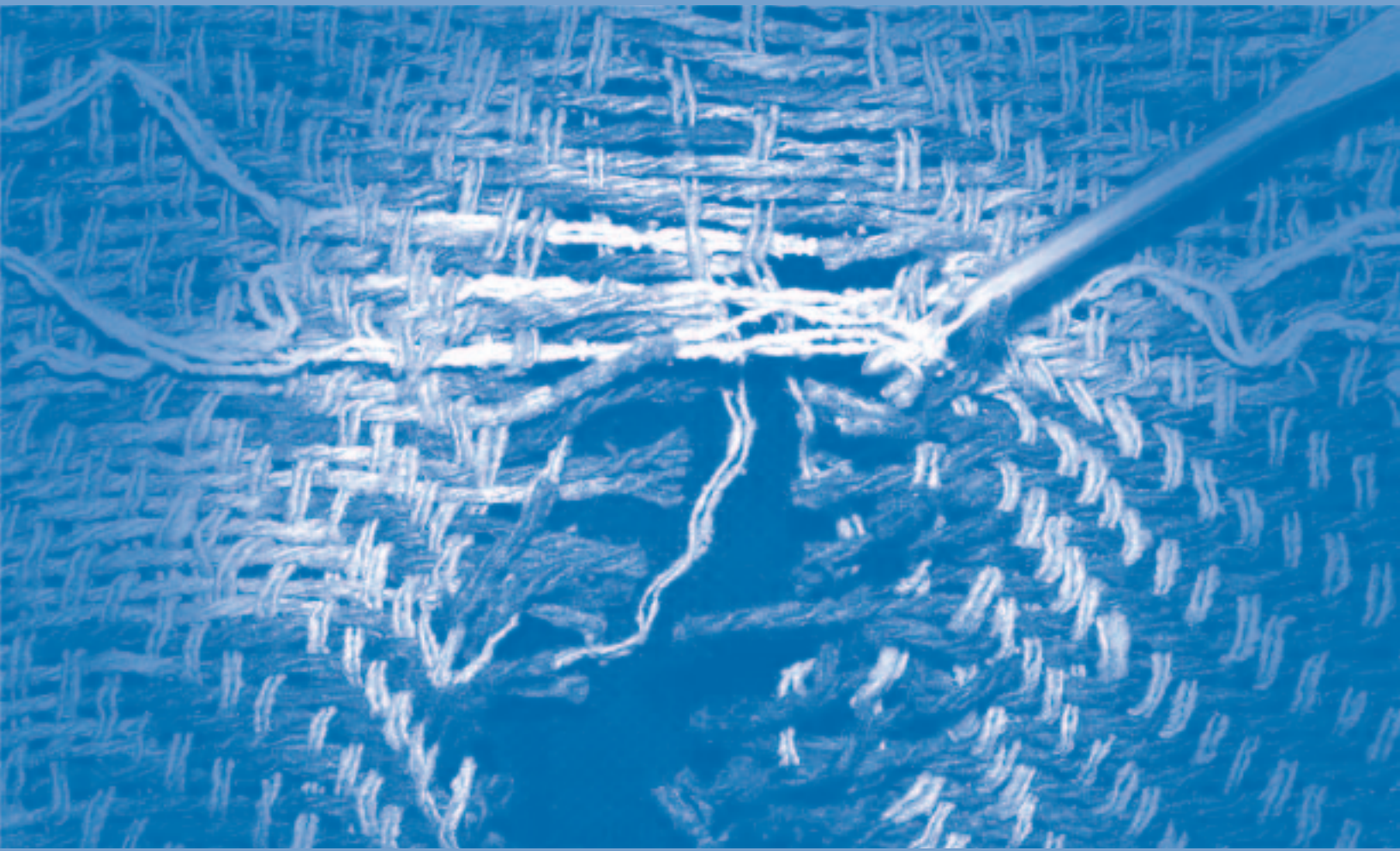
Sincerely,

A handwritten signature in white ink that reads "Susan Herman". The signature is fluid and cursive, with the first name "Susan" being larger and more prominent than the last name "Herman".

Susan Herman, Executive Director  
National Center for Victims of Crime

THE NATIONAL CENTER FOR  
**Victims of Crime**

# REPAIRING THE HARM



Susan Herman  
Michelle Waul

July 2004

*A new  
vision for  
crime victim  
compensation  
in America*

## ACKNOWLEDGEMENTS

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We would like to thank many people for making this report possible. Our colleagues at the National Center for Victims of Crime, Mary Rappaport, Kristi Jones, Cressida Wasserman, Susan Howley, and Anton Popic, provided editorial and research support. Cressida Wasserman also contributed greatly to Section 3: Lessons from Beyond Our Borders. David Austern, Dan Eddy, Lisa Newmark, Laurie Robinson, and Elizabeth Schneider reviewed early drafts of the report and offered valuable comments. We thank Lisa Newmark for her additional analysis of data on compensation rates. We are particularly indebted to the participants of the National Roundtable on Victim Compensation and the authors of the discussion papers. The lively exchange that day provided many insights reflected in this report. We also thank Elaine Harris, a dear friend who wove the fabric featured in the cover photograph. This entire project was made possible by the generous support of the Smith Richardson Foundation and the New York Times 9/11 Neediest Fund, and for that we are most grateful.

## ABOUT THE AUTHORS

---

**Susan Herman** is executive director of the National Center for Victims of Crime in Washington, DC, where she has developed a wide range of innovative programs in the areas of community policing, safe housing for intimidated victims and witnesses, community-based responses to stalking, and prisoner reentry. Under Ms. Herman's leadership, the National Center launched the Stalking Resource Center, the Teen Victim Project, the Dating Violence Resource Center, and the National Crime Victim Bar Association. An internationally recognized victim advocate, she has been the nation's leading proponent of Parallel Justice, a new vision of justice for crime victims that would establish a separate path to justice for victims complementing and expanding upon the criminal justice system's current response to crime.

Previously, Ms. Herman was director of Community Services at The Enterprise Foundation. She also served as director of the Domestic Violence Division of Victim Services (now Safe Horizon) in New York City, special counsel to the Police Commissioner of the New York City Police Department, and director of Mediation Services at the Institute for Mediation and Conflict Resolution. Ms. Herman served as an attorney at the NOW Legal Defense and Education Fund and was an instructor at the NYU School of Law and the NYU Wagner Graduate School of Public Service.

**Michelle Waul** is director of special projects at the National Center for Victims of Crime, where she has managed the development of several new policy and practice initiatives, including the National Roundtable on Victim Compensation and a multi-year demonstration in three cities for the National Center's Parallel Justice Project. Before joining the National Center, she was a research associate with the Urban Institute working to link the research activities of the Justice Policy Center to policy and practice arenas in the field. She managed a national policy conference on the impact of incarceration and reentry on children and families, and co-edited *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities* (Urban Institute, 2003). She also served as project manager for the Reentry Roundtable and coauthored "From Prison to Home: The Dimensions and Consequences of Prisoner Reentry," a policy monograph on prisoner reentry (Urban Institute, 2001). Prior to the Urban Institute, she served as project manager for the Victims of Crime Act program for the State of Illinois.

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# INTRODUCTION

## A New National Conversation on Victim Compensation

On September 11, 2001, the terrorist attacks at the World Trade Center, the Pentagon, and in Shanksville, Pennsylvania, killed nearly 3,000 people and left behind countless others who suffered physical and emotional injuries.<sup>1</sup> The nation responded immediately with a remarkable outpouring of support for these victims. Individuals, businesses, elected officials, and charities joined together to provide assistance. And, in an unprecedented act, Congress created the September 11th Victim Compensation Fund of 2001 (Fund).<sup>2</sup>

The Fund is unique in our nation's history. Supported by tax revenue, the Fund reimbursed victims for immediate out-of-pocket expenses and provided payments for long-term economic and non-economic losses, including pain and suffering. By the December 22, 2003 application deadline, 4,430 victims had filed injury claims and 2,963 survivors of those killed in the attacks had filed claims for compensation.<sup>3</sup> Never before has the federal government attempted to compensate victims of a mass attack. No such program was established for the victims of the bombing in Oklahoma City, the bombing of the U.S.S. Cole, attacks on American embassies overseas, or the first attack on the World Trade Center.

The United States does, however, have a long history of providing compensation to victims of crime. Every state in America has a crime victim compensation program that reimburses victims for their immediate out-of-pocket expenses. Unlike the Fund, which was entirely supported by tax revenue, these pro-



*The important question for our purposes here is whether victims of terror are more or less deserving of government compensation than victims of other crimes. Our philosophy is that a victim is a victim.*

GORDON CAMPBELL  
Safe Horizon

grams are primarily supported by fines and penalties paid by defendants in criminal cases. Victims are entitled to reimbursement for certain expenses incurred immediately following the crime such as healthcare costs, counseling fees, funeral bills, and lost wages for victims unable to work due to an injury. As a general rule, these programs do not compensate victims for non-economic losses, such as pain and suffering.

The September 11 tragedy and the tremendous response that followed raised our collective awareness of the profound personal and societal impact of crime, the needs of individual crime victims, and the role and capacity of government in meeting those needs. The nature and scope of the government response to September 11 victims, particularly in comparison to the state compensation programs, sparked a renewed debate about the role of crime victim compensation in our society.<sup>4</sup> Should all homicide survivors be compensated for pain and suffering as the family members of September 11 victims were? Should all injured crime victims be compensated for projected lost wages and medical expenses without limit, as the injured on September 11 were? Should crime victim compensation be supported by tax revenues with awards reflecting a wider range of losses like the September 11 Victim Compensation Fund, or should it remain a more limited pot of money supporting more modest awards? Reflecting on our national experience with the September 11th Victim Compensation Fund has great potential to inform our public discourse about the future role of crime victim compensation in America.

## **NATIONAL ROUNDTABLE ON VICTIM COMPENSATION**

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In June 2003, the National Center for Victims of Crime convened the National Roundtable on Victim Compensation to sharpen the national conversation and deepen our thinking on how best to compensate victims of crime. Roundtable participants included leading researchers, policymakers, practitioners, victims, and victim advocates. (See Box 1.) Quotations from the Roundtable discussion are featured throughout this report. A set of papers by experts in various fields provided the foundation for the Roundtable discussion.<sup>5</sup> (See Box 2.) The discussion touched on a number of critical and complex questions about how our nation



assists victims in rebuilding their lives in the aftermath of crime—whether the crime is terrorism, homicide, domestic violence, or fraud:

- What is the purpose of victim compensation? Is it a part of achieving justice or a form of charity? Is it a symbolic gesture or intended to make victims financially whole? Is it a form of practical crisis intervention?
- Should compensation be tailored to individual needs or should victims receive set amounts depending on the crime? Should compensation cover both economic and non-economic losses?
- For which crimes should victims be compensated by our government—all crimes or only violent crimes?
- Should compensation programs be funded by tax dollars and other sources, as well as offender fines and penalties?
- What lessons can be drawn from our September 11 experience? What lessons can be drawn from compensation programs in other countries?

*Box 1.*

## National Roundtable on Victim Compensation Participants

### Jim Boden

Office of Management and Budget

### Kelly Brodie

Glenwood Resource Center

### Gordon Campbell

Safe Horizon

### Debbie Deem

Federal Bureau of Investigation

### Lloyd Dixon

Institute for Civil Justice, RAND

### Judith Dixon

Victoria Department of Justice (Australia)

### Dan Eddy

National Association of Crime Victim Compensation Boards

### Carroll Ellis

Fairfax Police Department

### Peter Everett

Blankingship & Keith

### Jo Goodey

Centre for International Crime Prevention, United Nations

### Josh Gotbaum

The September 11th Fund

### Barbara Hart

Pennsylvania Coalition Against Domestic Violence

### Susan Herman

National Center for Victims of Crime

### Carolyn Hightower

Office for Victims of Crime, U.S. Department of Justice

### Sally Hillsman

American Sociological Association

### Mike Lawlor

Connecticut House of Representatives

### Edie Lutnick

Cantor Fitzgerald Relief Fund

### Lisa Newmark

Justice Policy Center, Urban Institute

### Laurie O. Robinson

Jerry Lee Center of Criminology, University of Pennsylvania

### Jack Rosenthal

New York Times Company Foundation

### Elizabeth Schneider

Brooklyn Law School

### Peter Schuck

Yale Law School

### Jane Nady Sigmon

U.S. Department of State

### Rachel Kaganoff Stern

Institute for Civil Justice, RAND

### Marlene Young

National Organization for Victim Assistance

Box 2.

## Discussion Papers for the National Roundtable on Victim Compensation

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

Susan Herman, National Center for  
Victims of Crime

### Meeting Victim Needs: What is the Role of Victim Compensation in Recovery?

Marlene Young, National  
Organization for Victim Assistance

### State Crime Victim Compensation Programs: Nature and Scope

Dan Eddy, National Association of  
Crime Victim Compensation Boards

### Approaches for Compensating Victims of Crime: Lessons from the September 11 Attacks

Lloyd Dixon and Rachel Kaganoff  
Stern, RAND

### Some Thoughts on Compensating Victims

Peter Schuck, Yale Law School

### Compensating Victims of Violent Crime in the European Union

Jo Goodey, Centre for International  
Crime Prevention, United Nations

### *Repairing the Harm: A New Vision for Crime Victim*

*Compensation in America* has been informed by the Roundtable discussion and commissioned papers. Our hope is that this report will encourage new thinking and robust discussion about how to improve victim compensation in America. We hope to spark new research on the role of compensation in meeting the needs of victims, new inquiries at the state and federal levels into current compensation programs and other means of providing financial assistance, and new strategies to improve our society's response to crime victims.

## ROADMAP FOR THIS REPORT

Section 1 documents the rates, consequences and costs of crime for individuals, families, and communities to provide critical context for examining our policy responses. Section 2 outlines the key elements of the current approach to crime victim compensation in America and identifies major shortcomings in the current system. Sections 3 and 4 examine other models of victim compensation: Section 3 focuses on compensation programs in other parts of the world and Section 4 reviews the nature and scope of the federal September 11th Victim Compensation Fund and other financial assistance initiatives for victims of the September 11 terrorist attacks. Section 5 offers a new vision for crime victim compensation in America.

## Introduction Endnotes

- 1 A total of 2,749 people died at the World Trade Center, 184 people died at the Pentagon, and 40 people died at the Pennsylvania crash site. “New York Sets 9/11 Toll at 2,749,” *United Press International*, January 23, 2004.
- 2 Title IV of the Air Transportation Safety and System Stabilization Act. Pub. L. No. 107-42, 115 Stat. 230 (2001).
- 3 Associated Press, “September 11 Fund for Victims Nears Deadline,” *The New York Times*, June 14, 2004.
- 4 For a broader discussion on the purposes of crime victim compensation, see Peter H. Schuck, “Some Thoughts on Compensating Victims,” (Washington, DC: National Center for Victims of Crime, 2003).
- 5 See [www.ncvc.org/victimcomp](http://www.ncvc.org/victimcomp) for a complete set of the papers prepared for the National Roundtable on Victim Compensation.



# 1

## UNDERSTANDING THE CONTEXT

### Rates, Consequences, and Costs of Crime

Millions of Americans become victims of crime each year. While some victims move on with their lives fairly easily, many experience continuing trauma without the services and support they need to repair the harm. Many crime victims suffer lowered academic performance, decreased work productivity, severe loss of confidence, and ongoing psychological trauma.<sup>1</sup> The costs of crime are profound. Understanding the nature of crime in America and the full spectrum of the costs it inflicts on individuals, communities, and society-at-large provides important context for reviewing the role and scope of victim compensation.

#### CRIME IN AMERICA

In 2002, Americans experienced 23 million violent and non-violent crimes.<sup>2</sup> (See Table 1.) This translates into one crime every five seconds in communities across the country. Delving deeper into the numbers reveals a startling portrait of the level of victimization in America. (For a discussion of the crime data used in this report, see Box 3.)

Table 1.

#### Violent and Non-Violent Crime, 2002

TYPE OF CRIME	NUMBER OF VICTIMIZATIONS	RATE PER 1,000 POPULATION
<b>Violent Crimes<sup>A</sup></b>	<b>5,496,810</b>	<b>23.1</b>
Assault	4,581,190	19.8
Robbery	512,490	2.2
Rape / Sexual Assault	247,730	1.1
Purse snatching	155,400	0.7
<b>Homicides<sup>B</sup></b>	<b>16,204</b>	<b>0.1</b>
<b>Non-Violent Crimes<sup>A</sup></b>	<b>17,539,230</b>	<b>159.0</b>
Theft	13,494,750	122.3
Household burglary	3,055,720	27.7
Motor vehicle theft	988,760	9.0

<sup>A</sup> Bureau of Justice Statistics, "Criminal Victimization in the United States, 2002," (Washington, DC: U.S. Department of Justice), Statistical Table 1.

<sup>B</sup> Federal Bureau of Investigation, "Crime in the United States: 2002 Uniform Crime Reports," (Washington, DC: U.S. Department of Justice, 2003), 19.

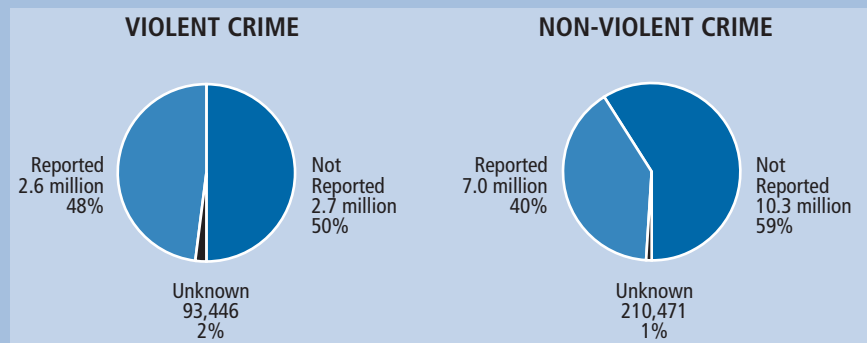
Box 3.

**Two Sources of Crime Data in America**

The two major sources of crime data in America are the Uniform Crime Reports (UCR) and National Crime Victimization Survey (NCVS). Each source uses a different methodology and, therefore, tells a different story. The UCR, compiled by the Federal Bureau of Investigation, reflects only crimes that were reported to the police. The NCVS, based on an annual telephone survey of people ages 12 and older, captures individual victims’ experiences with crime, even if the crime was never reported to the police. Both are important to understanding the story of crime and victimization in America. For this section of the report, we have used data from the NCVS because it includes data about crimes reported and not reported to the police.<sup>9</sup> A substantial number of crimes go unreported every year. In 2002, only 48 percent of violent crimes and 40 percent of property crimes were reported to the police.<sup>10</sup> (See Figure 1.) A recent study found reporting rates are even lower for rape and sexual assault, especially if the perpetrator is an intimate, friend, or acquaintance.<sup>11</sup>

Figure 1.

**Proportion of Violent and Non-Violent Crimes Reported to the Police, 2002**



Source: Bureau of Justice Statistics, “Criminal Victimization in the United States, 2002,” (Washington, DC: U.S. Department of Justice), Statistical Table 91.

It is important to note that the National Crime Victimization Survey does not provide a complete picture of crime and victimization in America. The NCVS tracks only six categories of crime: rape/sexual assault, robbery, aggravated assault, simple assault, burglary, motor vehicle theft, and property theft. It does not collect information on homicide, child abuse, stalking, identity theft, arson, non-fatal drunk driving, and crimes against businesses. Nor does it include information on victims under the age of 12, those who are homeless, or those who live on military bases or in institutional settings, such as prisons or psychiatric hospitals. Furthermore, several researchers believe that the structure and descriptions used in this survey significantly undercount rape and sexual assault.<sup>12</sup>

**Violent Crime**

About 1 in 4 of all crimes in the United States involves violence. More than 5 million violent crimes occurred in 2002—23 violent crimes for every 1,000 people. The crime-specific numbers are staggering: over 4 million assaults, half a million robberies, and nearly a quarter million sexual assaults.<sup>3</sup> And the most violent of violent crimes—homicide—occurs at a higher rate in America than in any other industrialized nation. Homicide rates in this country are three to five times higher than most of Europe.<sup>4</sup> In 2002, there were 16,204 homicides in America.<sup>5</sup>

**Non-Violent Crime**

The great majority of crime in the United States involves theft, household burglary, motor vehicle theft, or other non-violent crime. In 2002, there were 159 non-violent crimes for every 1,000 people, or 17.5 million non-violent crime incidents overall—crimes typically defined as “property” crime. Property crimes are frequently committed against people who have difficulty absorbing the financial impact. For instance, household burglary

rates are nearly twice as high among households earning less than \$7,500 a year as households with annual incomes over \$35,000.<sup>6</sup> In contrast to violent crime rates, property crime is lower in the United States than many European countries and Australia.<sup>7</sup>

Identity theft is one of the fastest growing crimes in the United States. The Internet and information age offer new opportunities to acquire and use personal, identifying information to steal money, open new lines of credit, and create a new identity. A 2003 survey by the Federal Trade Commission estimated that nearly 10 million Americans had been victims of identity theft in the past year.<sup>8</sup>

## CONSEQUENCES FOR CRIME VICTIMS

Crime can have powerful, life-changing repercussions for the health, well-being, and financial stability of victims. Mental illness, suicide, and drug and alcohol abuse are far more common among crime victims than the general public. The trauma of victimization can result in a range of reactions, from an immediate crisis response to longer term emotional and psychological consequences.<sup>13</sup>

### Emotional Impact of Crime

Crime victims often experience fear, anger, confusion, frustration, guilt, shame, and grief in the immediate aftermath of crime. Nearly all victims of serious crime experience these reactions with varying degrees of intensity.<sup>14</sup> Some victims move on with their lives quickly. Others continue to cope with the emotional aftermath of their experience for weeks, months, and years after the crime.

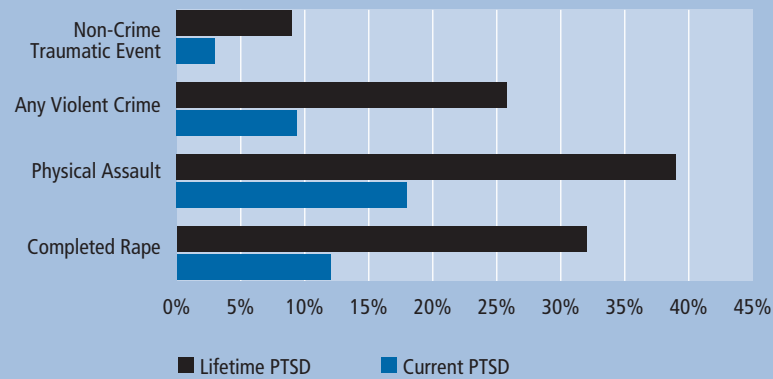
The severity of the trauma is an important determinant of the severity of the social and psychological effects. For instance, experiencing a rape, a life-threatening assault, or an injury from an attack are all associated with an increased risk of Posttraumatic Stress Disorder (PTSD).<sup>15</sup> PTSD, first identified as a condition experienced by soldiers returning from war, is a series of reactions to a traumatic event characterized by recurring and often disabling symptoms of anxiety, flashbacks, avoidance, and hyperarousal.<sup>16</sup>

Research suggests that victims of violent crime are at greater risk of developing PTSD than victims of non-criminal traumatic events such as natural disasters.<sup>17</sup> (See Figure 2.) Nearly 40 percent of physical assault victims report experiencing PTSD symptoms at some point in their lives, and 18 percent report current PTSD

*There is a vast under appreciation of one of the great lessons of 9/11 and that is the impact of trauma. We need to do a better job—whether it is individual crimes or terrorism—of understanding that emotional injuries can be every bit as disabling with long-term consequences as actual physical injuries.*

JACK ROSENTHAL  
New York Times  
Company Foundation

Figure 2.

**Current and Lifetime PTSD Rates for Crime and Non-Crime Victims**

Source: Dean G. Kilpatrick and Ron Acierno, "Mental Health Needs of Crime Victims: Epidemiology and Outcomes," *Journal of Traumatic Stress* 16 (2003).

(within the past 6 months). Rates of lifetime and current PTSD among rape victims are also high—32 percent and 12 percent, respectively. Overall, 25 percent of crime victims experience a lifetime risk of PTSD, and nearly 10 percent currently have PTSD. Among the general population, prevalence of PTSD is estimated to be 3.6 percent.<sup>18</sup>

In general, crime victims are also more likely to experience symptoms of major depression. In a national study of adult women, 55 percent of aggravated

assault victims met the diagnostic criteria for major depression.<sup>19</sup> Likewise, rape victims also experienced major depression at higher rates compared to the general population: 30 percent of rape victims had experienced at least one major depressive episode in their lives, and 21 percent were currently coping with depression. These rates are significantly higher than the general population, where the estimated prevalence rate for experiencing a major depressive episode is 6.5 percent.<sup>20</sup> Research comparing battered women to women who have not been abused shows battered women are five times more likely to attempt suicide, fifteen times more likely to abuse alcohol, four times more likely to abuse drugs, and three times more likely to be diagnosed as depressed or psychotic.<sup>21</sup>

Alcohol and drug abuse is another emotional and behavioral outcome sometimes associated with victimization. A recent study of adolescent girls found that those who experienced physical and/or sexual dating violence exhibited problems with substance abuse such as heavy drinking, smoking, and increased risk of cocaine use.<sup>22</sup> Results of a national study of women found a cyclical relationship between substance abuse and victimization—substance abuse leads to increased risk of assault, and assault leads to increased risk of substance abuse.<sup>23</sup>



## Impact on Secondary Victims

Experiencing psychological symptoms from witnessing a violent or traumatic event or from knowing someone who has been the victim of crime is called “secondary victimization.” Most research looking at how families cope with the trauma suffered by a family member has focused on war veterans. These studies have found that spouses of veterans with PTSD tend to have higher levels of psychological and social dysfunction, experience more family violence, have lower self-esteem, and have poorer coping skills than spouses of veterans without PTSD.<sup>24</sup>

The prevalence of PTSD is high among family members and friends of homicide victims. One study found that nearly 10 percent of those who experienced the murder of a family member or close friend reported current PTSD symptoms, while 22 percent reported lifetime PTSD. Homicide survivors also experience elevated levels of other types of psychological distress such as depression and anxiety as compared to the general population.<sup>25</sup> Merely hearing about the victimization of a neighbor, friend, acquaintance, or co-worker can also result in secondary victimization effects, such as increased anxiety and fear of crime.

*The impact of many crimes does not disappear in a day or two or a week or a month or a year. So while the funds are helpful, they in no way recognize what crime victims live with for the rest of their lives.*

PETER EVERETT  
Blankenship & Keith

## CONSEQUENCES FOR COMMUNITIES

Although we tend to think of the damage caused by crime in terms of individual victims, communities and society-at-large also shoulder an enormous burden. Violent crime can erode the sense of safety and security of an entire community.

Research on crime and communities consistently points to the finding that crime undermines the social and economic fabric of communities.<sup>26</sup> Crime creates a fear of strangers and general alienation from participation in community life. High rates of crime and disorder are associated with higher rates of fear, neighborhood dissatisfaction, and a desire to leave the neighborhood.

For example, one study found that individuals who had been the victim of a crime within one mile of their home were more likely to move away from the neighborhood after the victimization.<sup>27</sup> This can be disruptive for a community because the people who are most able to move generally can provide important human and social capital essential to the well-being of the community.<sup>28</sup> This selective out-migration is often coupled

with selective in-migration as families and individuals with fewer resources are more likely to move into high crime neighborhoods. Businesses also tend to leave high crime communities, forcing residents to do their shopping outside the neighborhood which further erodes a community’s sense of cohesiveness.<sup>29</sup>

## COSTS OF CRIME

Crime also generates a host of tangible and intangible costs.<sup>30</sup> Many crime victims must take off work to attend court hearings. Some are unable to continue in their current job due to crime-related physical injuries or because they are still coping with depression or anxiety in the aftermath of the crime. Still others simply cannot absorb the costs of lost property or damage to their home or car. On a societal level, crime exacts a high price in terms of healthcare services and lost productivity.

### Financial Impact of Crime on Victims

Crime victims must cope with financial losses from damaged or stolen property, medical expenses, and missed work days. Nearly 18 million violent and non-violent crime victimizations (77 percent of all victimizations) resulted in economic losses in 2002.<sup>31</sup> (See Table 2.) A further breakdown shows a disproportionate financial burden

on non-violent victims: 16 percent of the 5.5 million violent crimes and 96 percent of the 17.5 million non-violent crimes produced out-of-pocket financial losses to crime victims.

About 1.4 million violent and non-violent crime victimizations led to missed work days in 2002. (See Table 2.) Of the nearly 400,000 violent crimes that resulted in lost work days, nine percent involved between six and 10 missed days; 14 percent involved 11 or more days; and over half involved an absence of one to five days.<sup>32</sup> (See Figure 3.) While more non-violent crimes

*Table 2.*  
**Victimizations Resulting in Economic Losses and Missed Work Days**

SUSTAINED ECONOMIC LOSSES	VICTIMIZATIONS
Violent Crime	891,510
Non-Violent Crime	16,899,070
<b>TOTAL</b>	<b>17,790,580</b>
MISSED WORK DAYS	
Violent Crime	398,430
Non-Violent Crime	1,002,990
<b>TOTAL</b>	<b>1,401,420</b>

Source: Bureau of Justice Statistics, "Criminal Victimization in the United States, 2002," (Washington, DC: U.S. Department of Justice), Statistical Tables 83 and 89.

resulted in missed work days, the time lost tended to be shorter. Among non-violent crimes resulting in missed work days, 46 percent involved an absence of one to five days, and 44 percent involved missing less than one day.<sup>33</sup> (See Figure 4.)

According to a recent study, victims of intimate partner violence, including rape, physical assault, and stalking, experience substantial lost time in employment and household work. Annually, domestic violence victims miss nearly eight million days of paid work because of the violence in their lives—equal to 30,000 full-time jobs. This violence also results in an annual loss of over five million days in household work.<sup>34</sup>

Identity theft victims spend an average of 30 hours a year resolving problems associated with misuse of their personal information. In total, the Federal Trade Commission (FTC) estimates that Americans spent nearly 300 million hours last year resolving problems associated with identity theft.<sup>35</sup> This translates into 176,000 full-time jobs. The FTC estimates the total cost of identity theft is \$50 billion annually with an average per victim loss of \$4,800.

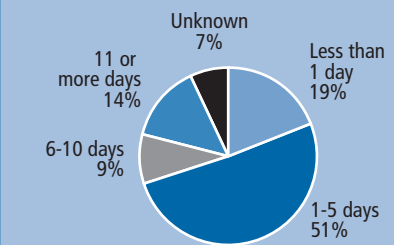
### Financial Burden of Crime on Society

The aggregate cost of crime presents a sobering picture of the financial burden of crime for society. According to a 1996 study by the National Institute of Justice (NIJ), crime is estimated to create \$105 billion in medical expenses, lost earnings, and costs for victim services.<sup>36</sup> Factoring in the intangible costs, such as pain and suffering and a reduced quality of life, brings the total estimated cost of crime to \$450 billion annually. A recent report by the Centers for Disease Control and Prevention estimates that the health-related costs alone of intimate partner violence exceed \$5.8 billion annually, nearly \$4.1 billion of which is for direct medical and mental healthcare services.<sup>37</sup>

The costs associated with a single victimization are equally sobering. The NIJ report found that a single homicide is estimated to cost society nearly \$3 million; a rape results in \$87,000 in economic and non-economic losses, and a household burglary, on average, results in \$1,400 in losses.<sup>38</sup> (See Table 3.)

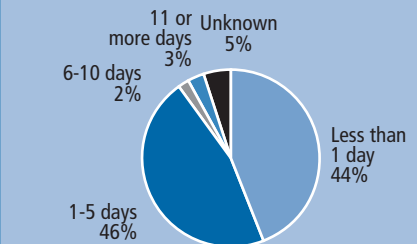
These estimates are an attempt to quantify the true cost of crime by taking into account (1) out-of-pocket expenses such as medical bills and property loss; (2) the cost of reduced productivi-

Figure 3.  
**Violent Crime Victims' Missed Work Days**



Source: Bureau of Justice Statistics, "Criminal Victimization in the United States, 2002," (Washington, DC: U.S. Department of Justice), Statistical Table 89.

Figure 4.  
**Non-Violent Crime Victims' Missed Work Days**



Source: Bureau of Justice Statistics, "Criminal Victimization in the United States, 2002," (Washington, DC: U.S. Department of Justice), Statistical Table 89.

*Table 3.*  
**Estimated Costs of Crime, 1996**

TYPE OF CRIME	TOTAL PER CRIME COSTS
<b>Violent Crime</b>	
Homicide	\$2,940,000
Rape / Sexual Assault	87,000
Assault	
with injury	24,000
without injury	2,000
Robbery	
with injury	19,000
without injury	2,000
<b>Property Crime</b>	
Motor vehicle theft	\$3,700
Household burglary	1,400
Theft	370

Source: Ted R. Miller, Mark A. Cohen, and Brian Wiersema, "Victim Costs and Consequences: A New Look," (Washington, DC: National Institute of Justice, 1996).

ty at home, work, and school; and (3) non-economic losses such as increased fear, pain and suffering, and diminished quality of life. The estimates are averages that represent a range of crime experiences from attempted crimes with minimal consequences to extremely violent crimes requiring extensive medical and mental health care and resulting in significant loss in quality of life.

## CONCLUSION

Crime directly affects millions of Americans each year, a significant portion of whom remain psychologically, physically, and financially unstable. (See Box 4.) These costs are borne not only by individual victims, but also by their families, communities, and society-at-large. Society also suffers additional costs. Crime generates mistrust of people, both strangers and intimates, and alienation from community life. Crime causes businesses and residents alike to leave dangerous neighborhoods in search of safer

communities. And, according to several studies, damage to the social and economic fabric of communities creates the conditions that fuel even more crime.<sup>39</sup> Helping individual victims repair the harm caused by crime is an important investment with additional benefits for their families, communities, and society. Crime victim compensation is an essential part of repairing the harm.<sup>40</sup>

*Box 4.*  
**Costs and Consequences of Crime**

INDIVIDUAL COSTS OF CRIME	SOCIETAL COSTS OF CRIME
<ul style="list-style-type: none"> <li>• Direct property losses</li> <li>• Medical and mental health care</li> <li>• Lost workdays or school days</li> <li>• Diminished/lost quality of life                             <ul style="list-style-type: none"> <li>&gt; PTSD</li> <li>&gt; Depression</li> <li>&gt; Anxiety</li> <li>&gt; Drug and alcohol abuse</li> <li>&gt; Fear of crime</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Community instability and disorder</li> <li>• Medical and mental health care</li> <li>• Lost productivity</li> <li>• Fear of crime</li> <li>• Victim services and other social services</li> <li>• Criminal justice system costs</li> <li>• Increased crime</li> </ul>

## Section 1 Endnotes

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# 2 CRIME VICTIM COMPENSATION IN AMERICA

Victim compensation, one of the earliest forms of victim assistance, enjoys a long history.<sup>1</sup> The first system of state-sponsored victim compensation was established over 4,000 years ago in the Babylonian Code of Hammurabi. Principles of compensation and restitution can also be found in various ancient texts, including the Bible, Talmud, Koran, and every body of secular law from around the world.<sup>2</sup> The first modern day compensation programs were established in New Zealand and Great Britain in 1964. The United States soon followed with programs in California, New York, Hawaii, Massachusetts, and the Virgin Islands. Today, all 50 states, the District of Columbia, and most industrialized countries around the world have victim compensation programs.

The U.S. federal government first dedicated resources to victim services and compensation in the mid-1980s, following a series of recommendations by the Task Force on Victims of Crime appointed by President Ronald Reagan.<sup>3</sup> In 1984, Congress passed the Victims of Crime Act (VOCA), which provides federal funding to all 50 states, the District of Columbia, and U.S. territories for victim assistance services and compensation programs.<sup>4</sup> These compensation programs are run by state governments with funding from both state and federal sources.<sup>5</sup> All programs conform to similar guidelines regarding eligibility, claim submission requirements, and reimbursable expenses. There are notable differences, however, among programs. This section outlines the key elements of state compensation programs, highlights differences across states, and identifies critical shortcomings in the crime victim compensation system in America. (A brief description of other sources of compensation available to crime victims is also provided. See Box 5.)



Box 5.

## Other Sources of Compensation: Restitution and Civil Actions

Restitution and civil lawsuits offer two other means of financial redress for crime-related losses.

### RESTITUTION

A criminal court may order a perpetrator to reimburse certain expenses incurred by a victim, a victim's survivors, or a third party who has provided services or other assistance to the victim. Restitution can cover a range of crime-related expenses, including medical expenses, lost wages, counseling expenses, lost or damaged property, and funeral expenses. Every state has legislation giving criminal courts the authority to order restitution. Restitution is mandatory in more than one-third of states.<sup>10</sup> At the federal level, restitution is mandatory in all violent crime cases.<sup>11</sup>

While many victims are awarded restitution by criminal courts, many fail to receive any money.<sup>12</sup> Despite state and federal legislation, restitution is one of the most unenforced victim rights within the criminal justice system.<sup>13</sup> Furthermore, restitution is not an option for the many victims whose perpetrators are never arrested and prosecuted.

### CIVIL ACTIONS

Every crime victim has the right to file a civil lawsuit against the perpetrator or other responsible parties. A civil lawsuit can result in compensation for economic and non-economic losses, as well as punitive damages. Crime victims have successfully sued and recovered damages from perpetrators for their intentional harm, as well as from third parties for inadequate security and negligence, including negligent hiring and supervision and premises liability. For many crime victims, a civil suit is not an option because the perpetrator may not have been identified or have the resources to pay a civil judgment, and a responsible third party may not exist.

## WHO IS ELIGIBLE?

While some variation in eligibility requirements exists across the states, nearly all programs have the same core criteria. To qualify for compensation, a victim must generally:

- **Report the crime to the police.** Nearly all states require victims to report the crime to the police before starting the compensation claim process.<sup>6</sup> Most states require victims to report the crime within 72 hours, but some allow longer time frames ranging from 90 days in New Jersey to up to one year in Washington. Five states (California, Texas, Utah, Vermont, and Wyoming) do not specify a deadline for reporting the crime to police, indicating only that it must be within a reasonable time frame.<sup>7</sup>
- **File a timely claim with the compensation program.** Most states impose deadlines for filing a compensation claim ranging from one to two years after the crime. Two states (Utah and Vermont) have no deadline for filing a claim.<sup>8</sup> Most programs can waive the filing deadline for good cause.

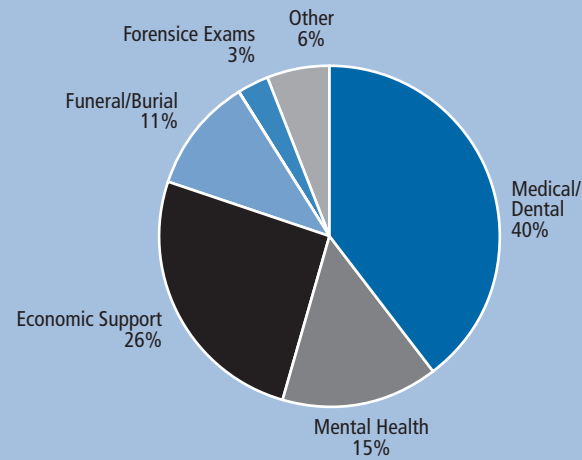
- **Cooperate with police and prosecutors.** All states require cooperation with the criminal justice system as a condition of receiving compensation. Most programs allow waivers for victims who decline to cooperate because of legitimate fears for their health or safety.
- **Sustain costs or losses not covered by other collateral sources.** State compensation programs operate as the payers of last resort for crime-related expenses. Compensation will only cover costs not covered by private insurance, other public benefit programs (e.g., Medicaid and Social Security), restitution, and civil damage awards. However, compensation programs will generally pay insurance co-payments and deductibles.
- **Not be implicated in the crime.** In determining eligibility, all states assess whether the victim was implicated in the crime. Some states deny awards outright for any contributory misconduct, while others reduce the award by a certain percentage. In some states, victims with a criminal record are not eligible for compensation at all.<sup>9</sup> In cases of homicide, the eligibility of the surviving family member rests on the eligibility of the victim. For instance, if the victim was killed while committing a crime, the surviving family member would not be eligible to receive compensation.

## WHAT IS COVERED?

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All compensation programs provide a comparable menu of core benefits for crime victims. For instance, all state programs provide coverage for:

- Medical and dental care
- Mental health counseling for victims and family members of homicide victims and, in some states, for family members of other crimes
- Lost wages for victims unable to work due to a crime-related injury
- Lost support for dependents following the death of a crime victim
- Funeral and burial costs

*Figure 5.***Victim Compensation Claim Expenses Paid, 2002<sup>17</sup>**

Source: National Center for Victims of Crime, 2004. Analysis of Office for Victims of Crime State Compensation Program Report data, 2002.

The great majority of compensation payments fall into these benefit categories. (See Figure 5.) Forty percent of expenses paid in 2002 were for medical or dental expenses. One-quarter of payments were for economic support for lost wages or loss of support. Mental health treatment accounted for 15 percent of awards and funeral expenses made up 11 percent.

In recent years, a number of states expanded their coverage. Some states now pay for relocation expenses for victims who are in imminent physical danger or are experiencing emotional trauma from the crime. A few states have focused particularly on helping domestic violence victims relocate. For example, 20 percent of Florida's compensation spending supports relocating domestic violence victims.<sup>14</sup> Other states' benefits include transportation (to medical providers, court hearings, and funerals), short-term replacement services (for household work or child care), crime-scene clean-up, physical and occupational therapy, home modifications, and attorney fees incurred from the claims process.

Hawaii, Tennessee, and the Virgin Islands also offer payments for non-economic losses, often referred to as "pain and suffering." Hawaii calls this payment an "acknowledgement award."<sup>15</sup> Hawaii describes these awards as "symbolic in nature," and not intended to quantify the physical and emotional losses suffered, but rather to acknowledge the "victim's suffering." Awards in the three jurisdictions range from \$550 to \$5,000, depending on the severity of the crime.<sup>16</sup> In Tennessee, pain and suffering payments are restricted to victims of sexual assault.

## HOW IS IT FUNDED?

State crime victim compensation programs are funded by both state and federal sources of revenue. Federal funding provides 35 percent of the benefits paid, while states provide the remaining 65 percent. In total, an estimated 90 percent of both state and federal funding combined comes from fines and court fees paid by offenders.<sup>18</sup>

Federal funding for state compensation programs comes from the Crime Victims Fund (CVF). The CVF was established by the 1984 Victims of Crime Act (VOCA) and is wholly supported by fines, penalty assessments, and bond forfeitures collected from federal offenders. Each state receives a federal grant from the CVF equal to 60 percent of its total state compensation awards from the previous year.<sup>19</sup> For example, if a state spends \$1 million in state funds to compensate crime victims for their losses, it will receive a federal grant of \$600,000 to supplement its efforts. States can use up to five percent of a VOCA compensation grant for administrative costs.

Federal VOCA compensation allocations to the states generally have been increasing since 1986. (See Figure 6.) In 2003, the VOCA compensation fund provided \$164 million to states, ranging from a high of \$44 million to California to a low of \$135,000 to North Dakota. The median CVF payment to states in 2003 was \$1.1 million. Since 1986, the CVF has paid out over \$1.2 billion to states for compensation programs.

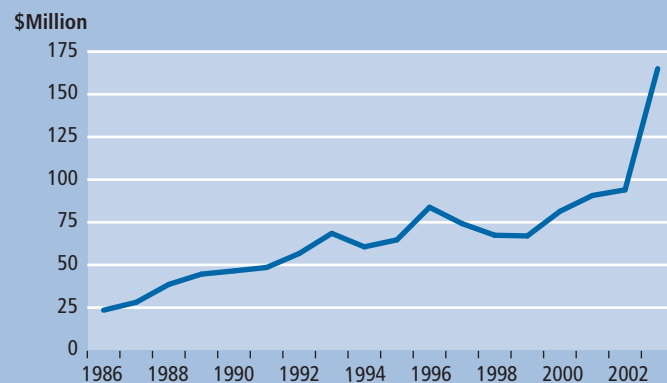
Most of state funding for compensation programs is also generated from offender fines. Three-quarters of states fund their programs solely with fines and penalties levied against offenders. Six states rely on a combination of tax dollars and offender fines, while only seven states depend entirely on general revenue for the state portion of funding. (See Figure 7.)

*The VOCA Fund is supported by federal fines paid largely by financial crime offenders and businesses. With millions of dollars coming from these offenders, it is really unfortunate that these funds do nothing to assist the victims of financial crimes.*

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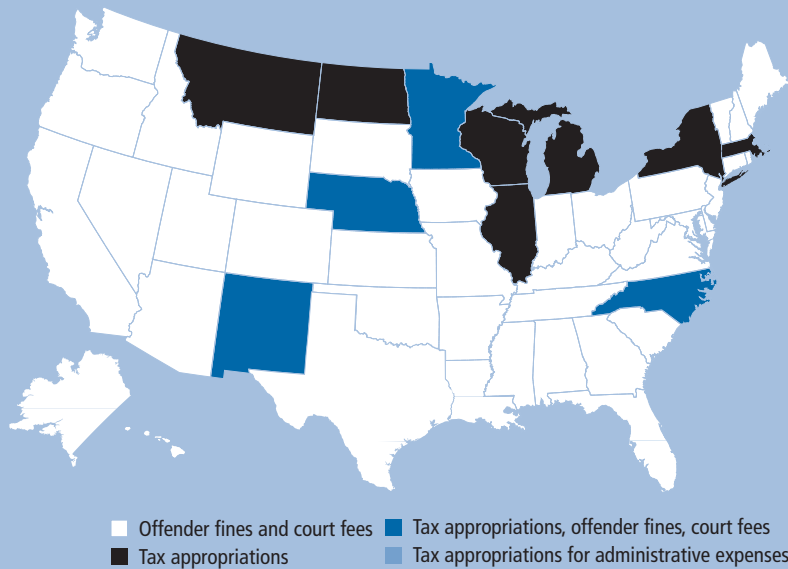
Figure 6.

### VOCA Compensation Allocations to the States, 1986-2003



Source: National Center for Victims of Crime, 2004. Analysis of Office for Victims of Crime state compensation program report data, 1986-2002.

Figure 7.  
State Funding Sources for Compensation Programs, 2001



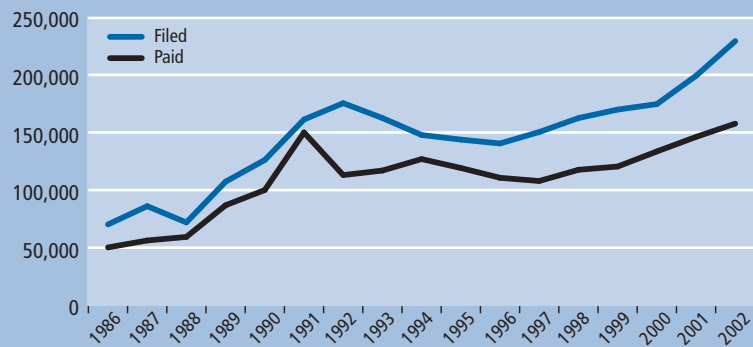
Source: National Center for Victims of Crime, 2004. Analysis of data in Lisa Newmark et al., "National Evaluation of State Victims of Crime Act Assistance and Compensation Programs: Trends and Strategies for the Future," (Washington, DC: Urban Institute, 2003), 29-31.

## WHAT IS AWARDED?

Nationally, the number of compensation claims filed and awarded tripled between 1986 and 2002. (See Figure 8.) In 2002, compensation programs paid a total of 157,700 claims to crime victims across the country totaling \$454 million. There was tremendous variation across the states in the number of claims paid, ranging from a low of 60 awards in Nebraska to a high of 52,370 awards in California. (See Figure 9.) In fact, California alone accounted for one-third of all claims paid in 2002. Five states (California, Texas, Colorado, New York, and Florida) accounted for 60 percent of all compensation claims awarded in 2002, even though these five states only accounted for 40 percent of reported violent crimes that year.<sup>20</sup>

All but two states impose caps on the maximum payout award.<sup>21</sup> These caps vary from a low of \$10,000 in several states to a high of \$220,000 in Washington.<sup>22</sup> The average maximum payout is about \$35,000. Few victims, however, receive awards close to the maximum.

Figure 8.  
VOCA Compensation Claims Filed and Paid, 1986-2002



Source: National Center for Victims of Crime, 2004. Analysis of Office for Victims of Crime state compensation program report data, 1986-2002.

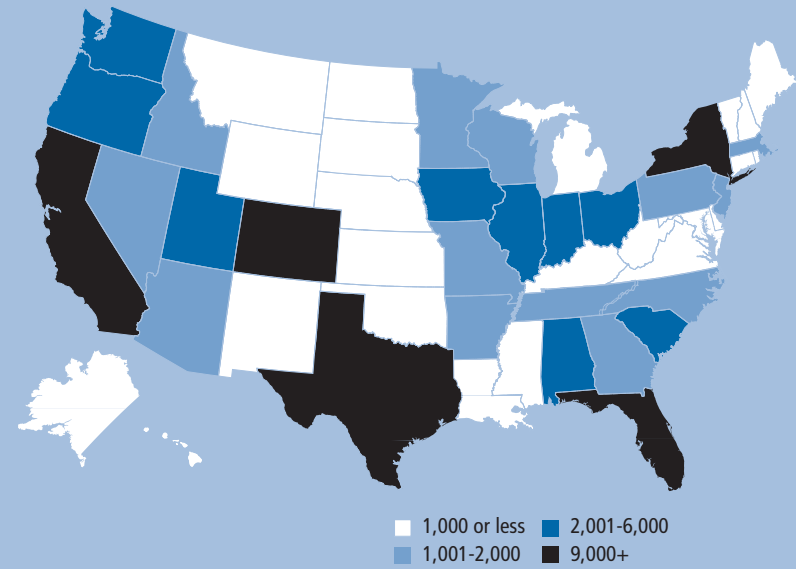
The average award per claim in 2002 was \$2,900, ranging from a low of \$260 in Nevada to a high of \$8,000 in New Jersey. (See Figure 10.)

Nearly half (45 percent) of the paid claims were for assaults, nearly a quarter for child abuse cases, and 10 percent for the families of homicide victims. Until recently, federal guidelines only

allowed compensation for victims of violent crime who had suffered a physical injury and for surviving family members of homicide victims.<sup>23</sup> As of 2001, however, states are allowed to use VOCA funds to compensate victims of non-violent crimes, although they are still required to give priority to victims of violent crime.<sup>24</sup>

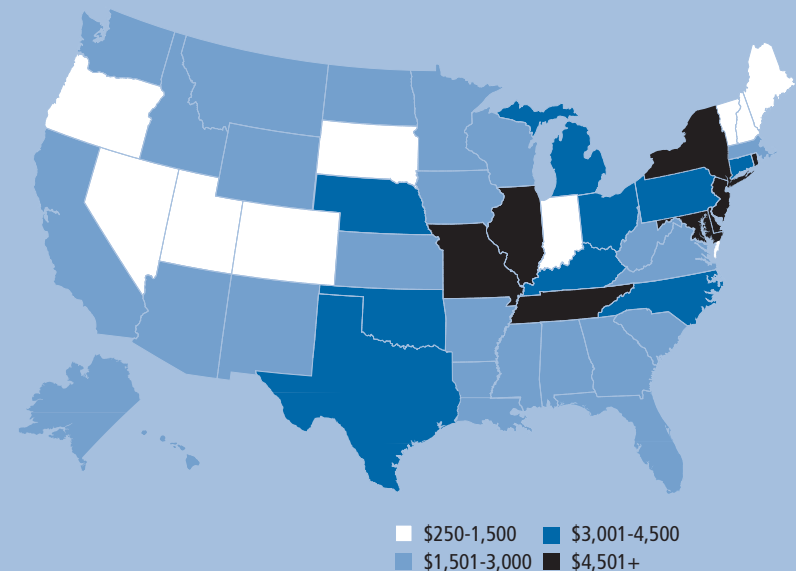
More compensation claims are filed than result in payment. Nationally, an average of 24 percent of claims are denied.<sup>25</sup> Claims are denied for a number of reasons. According to a survey of compensation administrators, the most frequently cited single reason for denying a claim is contributory misconduct.<sup>26</sup> In other words, it is determined that the victim probably engaged in illegal or culpable behavior at the time of the crime. Contributory misconduct accounted for an average of 28 percent of denied claims across the states in 1999. Other reasons for denying a claim included failing to comply with filing deadlines and paperwork requirements (16 percent), submitting a claim for an ineligible crime or ineligible expense (16 percent), or for losses covered by other sources (15 percent).

Figure 9.  
Total Claims Paid by State, 2002



Source: National Center for Victims of Crime, 2004. Analysis of Office for Victims of Crime state compensation program report data, 2002.

Figure 10.  
Average Compensation Award by State, 2002



Source: National Center for Victims of Crime, 2004. Analysis of Office for Victims of Crime state compensation program report data, 2002.

## DISCUSSION

Since the first American crime victim compensation program was established in 1965, compensation has become an important component of our nation's efforts to help crime victims rebuild their lives. While substantial progress has been made to make the system

more responsive to victims' needs, significant shortcomings still exist, including underutilization, inadequate outreach, limited coverage, and over-reliance on offender fines and penalties.

Table 4.

### Number of Victims Potentially Eligible for Compensation, 2002

<b>VIOLENT VICTIMIZATIONS</b>	<b>5.4 MILLION</b>
Reported to the Police	2.7 million
Physical Injury	1.4 million
without Health Insurance	406,000
Incurred Medical Expenses	395,770
Economic Losses	891,510
Lost time from work	398,430
<b>NON-VIOLENT VICTIMIZATIONS</b>	<b>17.5 MILLION</b>
Reported to the Police	7.1 million
Economic Losses	16.9 million
Lost time from work	1.0 million

Source: Bureau of Justice Statistics, "Criminal Victimization in the United States, 2002," (Washington, DC: U.S. Department of Justice), Statistical Tables 1, 91, 75, 78, 77, 83, and 87.

### Underutilization

While the number of compensation claims has been increasing, these claims still represent only a fraction of the total number of violent crimes in this country. In 2002, compensation applications (229,300) represented a mere 4 percent of violent crime victimizations (5.4 million). Although not all 5.4 million violent victimizations would be eligible for compensation, the current application numbers suggest that compensation is being underutilized. Adding the 17.5 million victims of non-violent crime into the analysis makes the underutilization rate even greater. Presented below are two ways of examining program coverage:

**1. National Victimization Estimates.** The National Crime Victimization Survey (NCVS) provides a sense of the magnitude of potentially eligible victims. (See Table 4.)

- Of the 5.3 million violent victimizations in 2002, 2.7 million victims met the threshold requirement for compensation eligibility by reporting their victimization to the police. It is reasonable to conclude that many more victims might report the crime to police if they knew financial assistance was available.<sup>27</sup>
- Over 1.4 million violent victimizations resulted in a physical injury, and in over 400,000 of those, victims had no medical insurance. Nearly 400,000 victimizations also resulted in out-of-pocket medical expenses.



- Over 890,000 victimizations resulted in economic losses, and 398,000 involved lost wages from missed work days.
- Of the 17.5 million non-violent crime victims potentially eligible to receive compensation, 7.1 million met the threshold criteria by reporting the crime to the police. Nearly 17 million of these resulted in economic losses—14 percent of which resulted in economic losses of \$1,000 or more. Over one million involved lost wages from missed work days.

Although the above numbers cannot be added to calculate a total estimate, these “slices” of the potential applicant pool do suggest that the number of eligible victims is larger than the current utilization of the program.<sup>28</sup> More important, these estimates would be even higher if more victims reported to the police and if the full range of financial losses were accounted for by the NCVS data (e.g., mental health counseling).

**2. Claims Paid as a Percent of Reported Violent Crime.** Another way of assessing utilization of compensation is to examine the number of compensation claims as a proportion of reported violent crime across states. Table 5 compares the number of reported aggravated assaults to the number of compensation claims paid to aggravated assault victims. Nationally, aggravated assaults accounted for 45 percent of all claims paid in 2002.

Across the country there is wide variation in compensation rates for aggravated assault. In Michigan, for example, there were over 36,000 aggravated assaults reported to the police and 267 compensation claims paid for the same crime. In other words, compensation claims awarded to aggravated assault victims represented one percent of the total reported aggravated assaults in Michigan. The proportion of claims paid to crimes ranged from a low of 1 percent in Michigan, Nebraska, and Louisiana to a high of 69 percent in Utah. The median across the states was 8 percent. Many factors influence this variation in utilization of compensation across the states, including staffing and funding levels. The stark reality remains, however, that many victims of reported violent crime are not accessing compensation.

Neither of these measures—national victimization estimates nor claims paid as a percentage of reported crimes—can provide a precise estimate of eligible victims. Neither addresses issues such as contributory misconduct, prevalence of psychological harm, or access to collat-

Table 5.

**Compensation Claims Paid as a Percent of Violent Crime<sup>30</sup>**

	REPORTED AGGRAVATED ASSAULTS <sup>A</sup>	AGGRAVATED ASSAULT CLAIMS PAID <sup>B</sup>	PAID CLAIMS AS % OF CRIMES		REPORTED AGGRAVATED ASSAULTS <sup>A</sup>	AGGRAVATED ASSAULT CLAIMS PAID <sup>B</sup>	PAID CLAIMS AS % OF CRIMES
Michigan	36,551	267	1%	Alabama	12,250	920	8%
Nebraska	3,612	36	1%	Wisconsin	6,708	518	8%
Louisiana	20,910	289	1%	Texas	77,306	6,088	8%
Maryland	26,668	440	2%	New Hampshire	1,224	97	8%
Tennessee	29,938	619	2%	Mississippi	5,283	425	8%
Arizona	17,889	458	3%	Montana	2,735	246	9%
New Mexico	10,644	291	3%	Alaska	2,681	259	10%
Kentucky	5,845	196	3%	Ohio	17,906	1,862	10%
Missouri	20,946	703	3%	Oregon	6,643	694	10%
Massachusetts	22,110	753	3%	West Virginia	3,968	489	12%
Oklahoma	13,309	456	3%	Maine	826	104	13%
Pennsylvania	28,814	1,017	4%	Nevada	6,364	809	13%
Georgia	24,491	880	4%	Minnesota	7,032	901	13%
Indiana	13,434	510	4%	California	136,143	20,490	15%
Illinois	49,713	1,965	4%	District of Columbia	5,568	939	17%
New Jersey	17,370	751	4%	Washington	12,545	2,166	17%
North Carolina	24,573	1,128	5%	Idaho	2,511	492	20%
Delaware	3,269	185	6%	Iowa	6,012	1,189	20%
Connecticut	6,565	389	6%	Rhode Island	1,837	381	21%
New York	57,042	3,524	6%	Wyoming	1,026	226	22%
Florida	90,331	5,677	6%	South Dakota	710	169	24%
Arkansas	8,969	580	6%	North Dakota	274	75	27%
Kansas	7,449	490	7%	Hawaii	1,534	487	32%
South Carolina	22,320	1,565	7%	Colorado	9,849	4,233	43%
Virginia	11,945	863	7%	Vermont	423	278	66%
				Utah	3,154	2,165	69%

Sources:

A: Federal Bureau of Investigation, "Crime in the United States: 2001 Uniform Crime Reports" (Washington, DC: U.S. Department of Justice, 2002).

B: Office for Victims of Crime, State Compensation Program Reports, 2002.

eral sources of compensation, such as insurance or Medicaid. These measures do, however, suggest that compensation programs could be reaching many more victims. A recent evaluation by the Urban Institute found that compensation program administrators agree—81 percent said they believe they are receiving too few claims.<sup>29</sup>

**Inadequate Outreach**

Why aren't more victims applying for compensation? One critical reason is simply a lack of awareness about victim compensation. Crime victim compensation is not a household name like other government programs such as Worker's Compensation or Social

Security. No national studies have been conducted about the level of awareness of compensation among the general population; however, two surveys shed light on the issue. In an Urban Institute survey of compensation claimants, the vast majority of respondents (about 90 percent) reported that they were unaware of the program before they became a victim of crime.<sup>31</sup>

Perhaps more important than the lack of awareness among the general public is the fact that crime victims are unaware that they may be eligible for compensation. To illustrate, only 7 percent of crime victims who call the National Center for Victims of Crime Helpline report that they knew about victim compensation before the call. When compensation administrators were asked in the Urban Institute study why eligible victims may not apply, 56 percent answered that victims do not know about compensation.<sup>32</sup>

To address this issue, most states (83 percent) require criminal justice officials to inform victims of the availability of compensation.<sup>33</sup> Two-thirds of these states require law enforcement officers to inform victims; half require prosecutors to do so. All victim service organizations that receive federal VOCA assistance funding must inform their clients about compensation. The Urban Institute evaluation of VOCA, however, found that clients of these programs “were largely unaware or misinformed about victim compensation.”<sup>34</sup> In fact, only 45 percent of VOCA assistance clients had heard of victim compensation.<sup>35</sup> Furthermore, most referrals to compensation programs came from prosecutors, with law enforcement and victim services a distant second and third.<sup>36</sup>

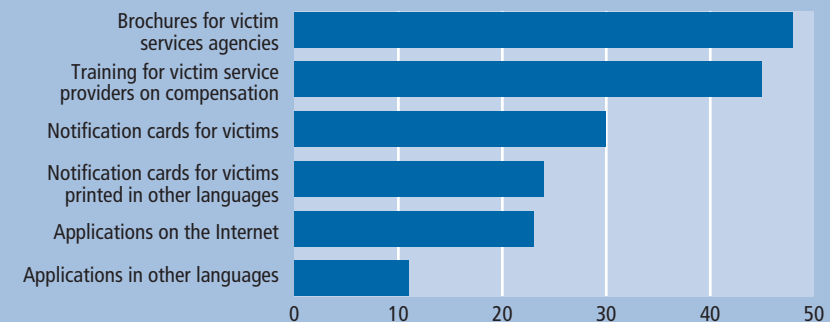
State compensation programs also engage in outreach efforts to inform victims about compensation benefits. Most state programs report providing brochures for victim services agencies (48 states) or training victim service providers on compensation (45 states). (See Figure 11.) Fewer state programs (30 states) provide notification cards to victim services to distribute to victims. Fewer still have taken steps to remove

*Victim compensation . . . is simply not a household word compared to other government programs like unemployment compensation or Worker’s Compensation.*

LISA NEWMARK  
Justice Policy Center,  
Urban Institute

Figure 11.

**Number of State Compensation Programs Using Selected Outreach Strategies, 1999**



Source: Lisa Newmark et al., “National Evaluation of State Victims of Crime Act Assistance and Compensation Programs: Trends and Strategies for the Future,” (Washington, DC: Urban Institute, 2003), 252-53.

language and other access barriers for victims. Less than half of states provide non-English outreach materials or make their applications available on the Internet. Only 11 states offer applications in other languages.

## Limited Coverage

The American victim compensation system limits coverage through eligibility restrictions and filing deadlines. Reimbursement restrictions on economic and non-economic losses impose further limits.

**Eligibility Restrictions.** Until recently, federal guidelines stipulated that federal compensation funding could be used to reimburse only victims of violent crime. These guidelines were modified in 2001 to encourage states to provide compensation to victims of non-violent crime, while still giving priority to victims of violent crime.<sup>37</sup> As described earlier in this report, many victims of non-violent crime experience significant out-of-pocket losses and trauma. Although a few states have recently expanded their coverage to include victims of fraud and theft, the majority of states have not. All states exclude people who were implicated in the crime that led to their claim. Seven states, however, further limit the pool of eligible victims by excluding victims with a criminal record even though their past criminal behavior may have nothing to do with their current victimization.

**Filing Deadlines.** Time limits for filing an application also unnecessarily limit the reach of compensation benefits. The Urban Institute study found that 16 percent of denied claims were rejected either because they had failed to meet filing deadlines or had submitted incomplete applications.<sup>38</sup> The trauma of crime makes it difficult for many victims to confront the application process. Additionally, crime-related expenses, such as counseling or lost wages due to court appearances, are often incurred long after a crime. Finally, many victims learn of compensation only after the deadline has passed.

**Economic Losses.** Compensation is further restricted by limited coverage of economic losses. Even after taking into account other sources of compensation, two-thirds of the respondents in the Urban Institute claimant survey reported that they sustained unrecovered losses. The out-of-pocket losses ranged from \$5 to \$700,000 with a median loss of \$600 and average loss of \$5,700.<sup>39</sup> Medical expenses, transportation costs, lost wages, and replacement

*Little attention has been paid to the fact that victim compensation is a form of victim assistance in meeting financial, physical, emotional and social needs of victims, and has played a vital role in victim recovery.*

MARLENE YOUNG  
National Organization for  
Victim Assistance

of lost property were the most frequently cited unrecovered out-of-pocket losses. Many compensation programs also do not reimburse for economic losses for the replacement of services the victim provided before the crime, such as child care, household repairs, or care for an elderly parent.

**Non-Economic Losses.** States have the discretion to provide compensation for non-economic losses. In fact, the federal guidelines for the VOCA compensation program state that federal funds can be used to reimburse victims for pain and suffering.<sup>40</sup> Only three jurisdictions, however, recognize non-economic hardship experienced by victims. Hawaii, Tennessee, and the Virgin Islands provide payments to acknowledge pain and suffering. Embracing this principle across the country would signify an important step in acknowledging the depth of the impact of crime.

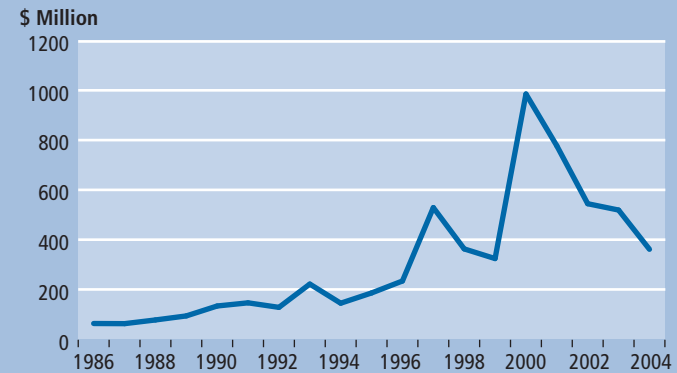
### Over-Reliance on Offender Fines and Penalties

Crime exacts a high price on our quality of life, our families, and our communities. Annually, crime is estimated to create \$105 billion in medical expenses, lost earnings, and costs for victim services and police response. Factoring in the intangible costs, such as pain and suffering and a reduced quality of life, brings this estimate to \$450 billion.<sup>41</sup> Finally, the costs associated with operating our nation's criminal justice system (police, courts, and corrections) totaled over \$167 billion in 2001.<sup>42</sup> Providing victims with practical financial assistance as they rebuild their lives is an important national priority that currently lacks federal tax dollars dedicated to the task. Relying on offender fines and penalties to compensate victims has great symbolic value as a form of indirect restitution, but it is not sufficient to fund this critical social priority nor is it appropriate to rely exclusively on offenders to meet victims' needs.

Approximately 90 percent of combined state and federal funding for compensation programs is generated from fines, court fees, and bond forfeitures paid by offenders.<sup>43</sup> Only thirteen states con-

Figure 12.

### VOCA Crime Victims Fund Deposits, 1986-2004



Sources:

1986-2001: National Association of Crime Victim Compensation Boards. ([http://www.nacvcb.org/articles/VOCACap0104\\_2.html](http://www.nacvcb.org/articles/VOCACap0104_2.html)) [Accessed 4/14/04].  
2002-2004: National Association of Crime Victim Compensation Boards, "Compensation and Assistance Find Common Ground at Conference," *Crime Victim Compensation Quarterly* 3 (2003).

*The resources that many state compensation programs are working with have dwindled. Recently, deposits into the Federal Fund have been far below what they were a few years ago. If there are fewer federal dollars available from the Fund, we're going to have to look beyond the offenders to the taxpayers, or to some other dedicated funding streams, for support.*

DAN EDDY  
National Association  
of Crime Victim  
Compensation Boards

Box 6.

### New Directions from the Field

Our analysis of the victim compensation system complements much of the discussion and recommendations from *New Directions from the Field*, a comprehensive plan by the U.S. Department of Justice for improving and expanding victim services.<sup>47</sup> This report's recommendations on victim compensation underscored the need to expand mental health and medical coverage, improve outreach efforts to inform victims about the availability of compensation, explore using compensation funds for pain and suffering payments, and expand the funding base.

tribute tax dollars to their compensation programs.<sup>44</sup> As applications rise and incoming revenues fluctuate according to outcomes in the criminal justice system, many states have had to increase their offender fees to meet the funding needs of the program or reduce costs or both.<sup>45</sup>

Federal funding available through the Crime Victims Fund (CVF) has also fluctuated significantly over the years from a low of \$62.5 million in 1987 to a high of \$985.2 million in 2000. (See Figure 12.) Deposits to the CVF from penalty assessments paid by offenders have varied according to the outcomes of federal court cases. In flush years, the CVF has kept some funding in reserve. For the last four years, however, collections have been steadily declining. The funding available for FY2004 is little more than half of what is needed to fund victim assistance and compensation at their current levels.<sup>46</sup> This means not only that the reserve is severely strained, but also that the federal funding stream is increasingly unstable.

## CONCLUSION

The current system of compensation in America has four critical shortcomings:

- Too few American crime victims access compensation.
- Too few American crime victims know that they may be eligible for compensation.
- Too many victims are excluded from coverage, and the benefits that are available do not meet many of the needs of eligible victims.
- The federal contribution to state compensation programs is inappropriately limited to offender fines and penalties, when the social imperative for compensation should require contributions from taxpayers as well.

As the following sections outline, our experience with the September 11th Victim Compensation Fund and our knowledge of compensation programs in other countries demonstrate that many of these shortcomings can be overcome.

## Section 2 Endnotes

- 1 Office for Victims of Crime, *New Directions from the Field: Victims Rights and Services for the 21st Century*, (Washington, DC: U.S. Department of Justice, 1998), 325.
- 2 Peter Schuck, “Some Thoughts on Compensating Victims,” (Washington, DC: National Center for Victims of Crime, 2003).
- 3 See President’s Task Force on Victims of Crime, “Final Report,” (Washington, DC: GPO, 1982).
- 4 The Victims of Crime Act (VOCA) program provides funding to the states through two major formula grant programs: victim assistance and victim compensation. VOCA assistance funding supports community-based organizations providing direct services to crime victims, including crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation.
- 5 State compensation programs are housed in a variety of governmental agencies, including independent agencies, criminal justice agencies, social services agencies, worker’s compensation bureaus, and financial administration agencies. See Dan Eddy, “State Crime Victim Compensation Programs: Nature and Scope,” (Washington, DC: National Center for Victims of Crime, 2003), 2-3.
- 6 Some states allow domestic violence victims to satisfy the reporting requirement by filing for an order of protection. Some states also allow child abuse victims to report to child protective services rather than the police.
- 7 National Association of Crime Victim Compensation Boards, “Crime Victim Compensation Program Directory 2004,” (Washington, DC: NACVCB, 2004), 5.
- 8 Ibid.
- 9 Arkansas, Louisiana, Missouri, Ohio, and Rhode Island require a claim be denied when the victim has a criminal record. In Florida and North Carolina, discretion is given to the administrative agency. Eddy, “State Crime Victim Compensation Programs,” 8-9.
- 10 Office for Victims of Crime, “Ordering Restitution to the Crime Victim,” (Washington, DC: U.S. Department of Justice, 2002), 1.
- 11 The Mandatory Victim Restitution Act, Title II of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 (1996), 18 U.S.C. § 3663A (1996).
- 12 Office for Victims of Crime, “Restitution: Making it Work,” (Washington, DC: U.S. Department of Justice, 2002), 1.
- 13 Office for Victims of Crime, *New Directions from the Field: Victims Rights and Services for the 21st Century*, (Washington, DC: U.S. Department of Justice, 1998), 357.
- 14 Eddy, “State Crime Victim Compensation Programs,” 10.
- 15 State of Hawaii, Department of Public Safety, Crime Victim Compensation Commission Application Form. (<http://www.ehawaii.gov/psd/cvcc/pdfs/CompleteApplication.pdf>) [Accessed 5/18/04.]
- 16 Hawaii pays up to \$800 for an acknowledgement award; Tennessee pays up to \$3,000 to victims of sexual assault for pain and suffering; and the Virgin Islands pays \$550 to \$5,000 for pain and suffering depending on the severity of the crime.
- 17 Data for the District of Columbia is missing.
- 18 Eddy, “State Crime Victim Compensation Programs,” 3.
- 19 42 USC § 10602.
- 20 Federal Bureau of Investigation, “Crime in the United States: 2002 Uniform Crime Reports,” (Washington, DC: U.S. Department of Justice, 2003).
- 21 New York has no overall cap on the maximum award and no cap on reimbursement of medical expenses. New York does impose caps on other types of expenses. Iowa has no overall cap, but does impose caps on categories of expenses. The categorical caps vary by type of crime and relationship of the claimant to the victim. National Association of Crime Victim Compensation Boards, “Crime Victim Compensation Program Directory 2004,” 5.
- 22 Ibid.
- 23 At a minimum, VOCA guidelines mandated that states cover victims with physical injuries. Some states defined injury more broadly and also covered victims with mental health needs in the absence of a physical injury. See Dale G. Parent, Barbara Auerbach, and Kenneth E. Carlson, “Compensating Crime Victims: A Summary of Policies and Practices,” (Washington, DC: U.S. Department of Justice, 1992), 19.
- 24 Final Program Guidelines for VOCA Crime Victim Compensation Grant Program. *Federal Register*, Vol. 66, No. 95, May 16, 2001, 27161-62. “Section IV (1) (b) Coverage of Other Crimes. VOCA places priority on violent crime, but it does not prohibit coverage of non-violent crime. States may choose to broaden the range of compensable crimes to include those involving threats of injury or economic crime where victims are traumatized but not physically injured. In doing so, they may include payments to victims for compensable expenses for these crimes on the state’s certification of funds expended for the compensation program.”
- 25 This is the average denial rate across states for the last five years (1998-2002). National Center for Victims of Crime, 2004. Analysis of Office for Victims of Crime 2002 state compensation program report data, 1998-2002.
- 26 Lisa Newmark et al., “National Evaluation of State Victims of Crime Act Assistance and Compensation Programs: Trends and Strategies for the Future,” (Washington, DC: Urban Institute, 2003), 29-31.

- 27 Half of all violent crimes are not reported to the police. There are several reasons why crime victims do not make a police report. According to the NCVS, many victims do not report because they believe the crime was not important enough, not important to the police, nothing could be done, or that there was a lack of proof that a crime occurred. For more data on this topic, see Timothy C. Hart and Callie Rennison, "Reporting Crime to the Police, 1992-2000," (Washington, DC: U.S. Department of Justice, 2003). See also, Marsha E. Wolf et al., "Barriers to Seeking Police Help for Intimate Partner Violence," *Journal of Family Violence* 18 (2003): 121-29.
- 28 The minimum compensation requirements are additive: a victim must report the crime to the police **and** have incurred losses not covered by another source **and** not contributed to the crime. The nature of the NCVS data makes it impossible to add or subtract categories of victims to produce a final estimate. For instance, we know that 2.7 million violent victimizations were reported to the police, but we do not know how many of those victimizations resulted in injuries or economic losses. We also do not know how many more victims would report to the police if they knew that assistance was available. The NCVS also does not collect information on non-physical injuries and treatment, a major source of expenses for crime victims.
- 29 Newmark et al., "National Evaluation," 25.
- 30 Comparing paid claims to reported crimes provides an inexact but instructive estimate of program coverage. Two caveats about this analysis should be noted:
1. This is not a perfect one-to-one comparison. Crimes and claims may not occur in the same year. The time between when a crime occurs and a compensation claim is paid varies across states. The national average is between four to six months. (Newmark et al., "National Evaluation," 28.) To account for this lag, we have used 2001 crime data and 2002 compensation claim data.
  2. States count claims in two different ways. Over half of states (61 percent) count one claim per crime, while 39 percent of states count one claim per victim (primary and indirect victims, such as children or other family members, are all counted as separate claims). This means that the proportion of claims to crimes may be higher for the 20 states which count each beneficiary as a separate claim. This analysis found that those 20 states are fairly evenly distributed above and below the median proportion of claims to crimes (8 percent): 11 states which count one claim per beneficiary fall below the median while 9 states are above the median. The 20 states are AK, CA, CO, GA, IA, KS, KY, MA, MT, NE, NH, NY, NC, OK, PA, SC, SD, VT, VA, and WV.
- 31 Newmark et al., "National Evaluation," 110.
- 32 Ibid., 274-75.
- 33 Ibid., 26.
- 34 Ibid., 199.
- 35 See note 4 for a description of VOCA assistance programs.
- 36 Newmark et al., "National Evaluation," 26.
- 37 Final Program Guidelines for VOCA Crime Victim Compensation Grant Program, Federal Register, Vol. 66, No. 95, May 16, 2001, 27161-62.
- 38 Newmark et al., "National Evaluation," 270.
- 39 The responses on out-of-pocket losses included two large amounts: \$100,000 and \$700,000. Newmark et al., "National Evaluation," 109.
- 40 Final Program Guidelines for VOCA, *Federal Register*, 27162.
- 41 Ted R. Miller, Mark A. Cohen, and Brian Wiersema, "Victim Costs and Consequences: A New Look," (Washington, DC: National Institute of Justice, 1996), 1.
- 42 Lynn Bauer and Steven D. Owens, "Justice Expenditures and Employment in the United States, 2001," (Washington, DC: U.S. Department of Justice, 2004), 1.
- 43 Eddy, "State Crime Victim Compensation Programs," 3.
- 44 Newmark et al., "National Evaluation," 11-16.
- 45 Eddy, "State Crime Victim Compensation Programs," 3-6.
- 46 National Association of Crime Victim Compensation Boards, "Compensation and Assistance Find Common Ground at Conference," *Crime Victim Compensation Quarterly* 3 (2003).
- 47 Office for Victims of Crime, *New Directions from the Field: Victim's Rights and Services for the 21st Century. Strategies for Implementation—Tools for Action Guide*, (Washington, DC: U.S. Department of Justice, 2000).







# 3

## LESSONS FROM BEYOND OUR BORDERS

Government-funded compensation for crime victims has become a standard feature of the criminal justice landscape in many parts of the world. Despite differences in crime rates, legal systems, economic conditions, and social welfare traditions, 30 countries including the United States now have victim compensation systems.<sup>1</sup> (See Box 7 for a list of these countries.) These systems vary considerably in scope and character. This section highlights distinctive features of programs beyond our borders.

Most victim compensation systems in other parts of the world share the following elements with the United States:<sup>2</sup>

- Victims must report the crime to the authorities and must not have contributed to the crime that resulted in their injury to be eligible for compensation;
- Victims must comply with specified time limits for reporting and filing claims; and
- Awards are capped by category or by the total sum any individual victim may receive.

Important differences, however, exist between programs in America and those in other countries. The following discussion provides a more in-depth look at compensation programs in Great Britain and Australia. It also highlights notable features of other European programs and offers lessons about compensation in America.

### Box 7.

#### Countries with Victim Compensation Systems

Australia	France	Norway
Austria	Germany	Philippines
Belgium	Hong Kong-SAR	Poland
Bermuda	Republic of Ireland	Portugal
Canada	Israel	Spain
Colombia	Italy	Sweden
Cyprus	Japan	Switzerland
Czech Republic	Luxembourg	United Arab Emirates
Denmark	The Netherlands	United Kingdom
Finland	New Zealand	United States

Source: Office for Victims of Crime, "International Crime Victim Compensation Program Directory," (Washington, DC: U.S. Department of Justice, 1999).

## GREAT BRITAIN

The British Criminal Injuries Compensation program covering England, Wales, and Scotland is widely regarded as one of the most generous in Europe.<sup>3</sup> In fact, Great Britain pays out more in compensation than all other European programs combined.<sup>4</sup> Awards totaling £270 million or about \$480 million were paid out to about 40,000 victims in 2001-2002.<sup>5</sup>

### Awards for Economic and Non-Economic Losses.

Compensation awards in Great Britain cover both economic and non-economic losses. Awards can include three elements:

- A base award determined by the impact of the crime and severity of injuries;
- A payment for lost earnings or lost earning capacity, if the victim has been out of work for at least 28 weeks; and
- An award for “special expenses” such as medical treatment not covered by the National Health Service, residential or home-based care, and home modifications to accommodate for injuries.<sup>6</sup>

The base award is intended to compensate victims for their non-economic losses; it is an explicit acknowledgement of the pain and suffering caused by the crime.<sup>7</sup> Most compensation claimants only receive the base award.<sup>8</sup> Fewer victims receive compensation for out-of-pocket expenses, such as lost earnings or health-related expenses. These costs are typically covered by the government unemployment and healthcare programs.

Calculation of the base award (for non-economic losses) is structured much like the Worker’s Compensation program in the United States. The award is determined by a set schedule of payments based on the impact of the crime. The award (called the “tariff” in Great Britain) schedule has two parts. The first is a list of 25 compensation levels, ranging from a minimum of £1,000 (about \$1,800) to a maximum of £250,000 (about \$442,000). (See Table 6.) Under certain circumstances, the maximum award can be increased. The second part is a list of 400 injury descriptions, each assigned one of the 25 compensation levels based on severity of the injury. (See Table 7.)

The award schedule begins with injuries that are not related to a specific part of the body, such as fatal injuries, mental illness, physical abuse, and sexual assault. For instance, in homicide cases, an

*Table 6.*  
**British System Compensation Levels<sup>10</sup>**

LEVEL	AMOUNT
1	£1,000 / \$1,800
2	£1,250 / \$2,200
3	£1,500 / \$2,600
4	£1,750 / \$3,100
5	£2,000 / \$3,500
6	£2,500 / \$4,400
7	£3,300 / \$5,800
8	£3,800 / \$6,700
9	£4,400 / \$7,700
10	£5,500 / \$9,700
11	£6,600 / \$11,600
12	£8,200 / \$14,500
13	£11,000 / \$19,400
14	£13,500 / \$23,800
15	£16,500 / \$29,100
16	£19,000 / \$33,600
17	£22,000 / \$38,900
18	£27,000 / \$47,700
19	£33,000 / \$58,300
20	£44,000 / \$77,800
21	£55,000 / \$97,200
22	£82,000 / \$144,900
23	£110,000 / \$194,400
24	£175,000 / \$309,300
25	£250,000 / \$442,000

*Table 7.*  
**British System Sample List of Injuries and Compensation Levels**

INJURY	LEVEL	AMOUNT
<b>HOMICIDE</b>		
One qualifying claimant	13	£11,000 / \$19,400
Each qualifying claimant if more than one	10	£5,500 / \$9,700
<b>MENTAL ILLNESS</b>		
Disabling, temporary mental anxiety for at least 6 weeks	1	£1,000 / \$1,800
Permanent seriously disabling mental illness	18	£27,000 / \$47,700
<b>PHYSICAL ABUSE OF ADULTS</b>		
Intermittent serious abuse resulting in injuries	5	£2,000 / \$3,500
Severe abuse over a period of 3 or more years	12	£8,200 / \$14,500
<b>SEXUAL ASSAULT WITH PENETRATION</b>		
By one attacker	13	£11,000 / \$19,400
By two or more attackers	14	£13,500 / \$23,800
Resulting in permanent disabling mental illness	18	£27,000 / \$47,700
<b>HEAD &amp; NECK</b>		
Minor burns to the head	5	£2,000 / \$3,500
Severe burns to the head	15	£16,500 / \$29,100
Severe burns to the face	18	£27,000 / \$47,700
<b>UPPER LIMBS</b>		
Dislocated shoulder	4	£1,750 / \$3,100
Fractured wrist with substantial recovery	9	£4,400 / \$7,700
Loss of one arm	20	£44,000 / \$77,800

Source: Criminal Injuries Compensation Authority, "Criminal Injuries Compensation Scheme 2001," (London: Criminal Injuries Compensation Authority, 2001).

immediate family member is eligible for a fixed award of £11,000 (about \$19,400) as a bereavement payment. (Eligible victims may also receive dependency payments, awards for loss of parental services, and reimbursement of funeral expenses.) The schedule then details specific injuries to the head and neck, arms, torso, and legs. For instance, a crime victim who sustained a dislocated shoulder would be eligible for an award of £1,750 (about \$3,100).

Awards under the British system tend to be higher than the American system. The average compensation award in Great Britain is £6,000 (about \$10,600); the median award is £2,000 (about \$3,500).<sup>9</sup> In most cases, this award is only for pain and suffering, as other costs tend to be paid through other government

programs. By comparison, the average award under the American system was \$2,900 in 2003.

**Administrative Simplicity.** The British program is notable for its transparency and administrative simplicity. Victims can consult the award schedule to learn precisely what they are eligible to receive. Victims can claim more than one injury. Assuming they are eligible, victims will receive the full tariff payment for the most serious injury and a prorated payment for other injuries.

According to a 2001 survey of British compensation claimants, 88 percent found the application form easy to understand; 72 percent were satisfied with the explanation of the award; and 59 percent thought the handling of their claims was good or very good.<sup>11</sup>

**Recent Reforms.** The system in Great Britain has also adapted to changing needs and societal attitudes. For example, victims of domestic violence can now receive compensation for mental injury, in the absence of physical injury.<sup>12</sup> Recent reforms expanded coverage to same sex partners who seek bereavement awards and victims who contract HIV/AIDS as a result of a violent crime. The program also raised the compensation level for victims of sexual assault and child abuse: the minimum compensation award in rape cases is now £11,000 (about \$19,400).<sup>13</sup>

## VICTORIA, AUSTRALIA

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Much like in the United States, victim compensation in Australia is administered by each of its eight states. The following discussion highlights compensation in the state of Victoria, Australia's second largest state with a population of 4.6 million. Victoria developed a compensation system that coordinates access to financial assistance with counseling services to help victims recover from the impact of crime.

The Victims of Crime Assistance Tribunal (VOCAT) of Victoria was created in 1997 to award compensation for victims of violent crime. Eligibility requirements are similar to those found in U.S. programs. Victims must report crimes to the police or explain why the crime was not reported. VOCAT is also the payor of last resort. Like American victims, victims in Victoria must recover expenses from other government programs first before applying for compensation.

**Awards for Economic and Non-Economic Losses.** VOCAT can make awards for both economic and non-economic losses. (See Table 8.) Primary victims can receive up to AU\$60,000 (about \$42,000) for counseling and medical expenses, including up to AU\$20,000 (about \$14,000) for lost income. Primary victims are also eligible for an additional award of up to AU\$7,500 (about \$5,000) for pain and suffering, called “Special Financial Assistance.” The payment is based on the severity of the crime and resulting injuries. It serves as a “symbolic expression by the State of the community’s recognition of the grief, distress or trauma experienced by victims of violent crime.”<sup>14</sup>

Witnesses and homicide survivors are eligible only for compensation covering economic losses. They can receive up to AU\$50,000 (about \$35,000) for counseling, medical, and funeral expenses. Witnesses (see Secondary Victim in Table 8 below) are eligible for up to AU\$20,000 (about \$14,000) in lost income. Homicide survivors (see

Related Victim in Table 8 below) can receive compensation for loss of support for up to two years after the death.

**Flexibility in Meeting Victim Needs.**

In Victoria, all categories of victims are eligible for compensation for “additional expenses to assist in the recovery from the act of violence.”<sup>16</sup> This gives VOCAT discretion to fund a variety of non-traditional inter-

Table 8.

**VOCAT (Victoria, Australia) Eligible Applicants and Awards Levels**

ELIGIBLE APPLICANT	AWARD <sup>15</sup>
<p><b>Primary Victim:</b> People injured, killed, or experiencing any significant adverse effect as a result of a violent crime.</p>	<p>Up to AU\$60,000 / US\$42,000 for:</p> <ul style="list-style-type: none"> <li>• Counseling and medical expenses</li> <li>• Loss of income (up to AU\$20,000 / US\$14,000)</li> <li>• Replacement clothing</li> <li>• Additional expenses to assist recovery</li> </ul> <p>Up to AU\$7,500 / US\$5,000 for pain and suffering</p>
<p><b>Secondary Victim:</b> People injured as a result of witnessing an act of violence or finding out that an act of violence was committed against their child.</p>	<p>Up to AU\$50,000 / US\$35,000 for:</p> <ul style="list-style-type: none"> <li>• Counseling and medical expenses</li> <li>• Loss of income (up to AU\$20,000 / US\$14,000)</li> <li>• Additional expenses to assist recovery</li> </ul>
<p><b>Related Victim:</b> Homicide survivors defined as family members, dependents, or someone in an intimate relationship with the deceased.</p>	<p>Up to AU\$50,000 / US\$35,000 for:</p> <ul style="list-style-type: none"> <li>• Counseling, medical, and funeral expenses</li> <li>• Compensation for distress</li> <li>• Loss of support from the deceased (for up to two years)</li> <li>• Additional expenses to assist recovery</li> </ul>

Source: Victoria Department of Justice, “What Are My Rights? Additional Entitlements for Victims of Crime,” (Melbourne: Victoria Department of Justice).

ventions tailored to an individual's recovery. For example, a victim can request support for a vacation to relieve stress or job training to provide opportunities for new employment. VOCAT also allows flexibility in applying for additional assistance. Victims must file an initial application within two years of the crime, but can return to VOCAT within six years of the original award to request additional assistance. In the case of child victims (under the age of 18 years), a victim has until his or her 24th birthday to file a claim for additional compensation.

**Counseling and Referral to Services.** The Victoria Department of Justice operates the Victims Referral and Assistance Service (VRAS) in conjunction with its compensation system.<sup>17</sup> VRAS runs a centralized telephone referral service to facilitate access to counseling and other support services from government and community-based agencies. Eligible victims can receive five free counseling sessions with a registered psychologist, social worker, or grief counselor of the victim's choice. Violent crime victims (who have reported to the police) and their family members are eligible for the free counseling sessions, regardless of whether they seek compensation. Victims who want more counseling sessions can request funds from VOCAT. Trained VRAS victim advocates (who are government employees) help eligible victims file a compensation claim with the Victims of Crime Assistance Tribunal.

*Victim-centered justice in European jurisdictions is predominantly a needs-based response, and, as such, can be interpreted in the framework of a moral duty rationale. Reflecting the development of the welfare state across large parts of Europe, state compensation has been framed as a means of assisting some of the most vulnerable members of society.*

JO GOODEY  
Centre for International  
Crime Prevention,  
United Nations

## CONTINENTAL EUROPE<sup>18</sup>

**Expanded Coverage and Benefits.** Victim compensation in Europe, as in the United States, is typically restricted to victims of violent crime. A few countries, however, also provide compensation for victims of non-violent crime. For example, Finland, France, and Sweden allow victims facing exceptional financial hardship to receive compensation for stolen property, even if the crime was unconnected to a violent assault. France applies the same rule in cases of exceptional psychological hardship.<sup>19</sup> In Sweden, relatives who visit victims in the hospital can get compensation for lost earnings.<sup>20</sup>

**Victim-Sensitive Process.** While some state programs in America have generous time limits, many impose a 72-hour deadline for reporting to the police and a one to two year time limit on filing claims for compensation. In contrast, some European countries give victims much longer to make decisions about reporting



the crime and filing a claim.<sup>21</sup> Victims in the Netherlands, for example, can submit documentation from a medical or mental health service provider in lieu of a police report. In France, victims have three years to file a claim for compensation, a time limit that may be further extended where the applicant's situation has deteriorated or "for any other legitimate reason." Crime victims in Finland have 10 years from the date of the crime to file a compensation claim. In Norway, there is no time limit on filing a claim for compensation.<sup>22</sup>

Other victim-sensitive rules include special treatment of victims of rape and sexual assault. In France, for example, victims of sexual violence do not have to document their inability to work (as required in other cases) in order to get compensation for lost wages.<sup>23</sup>

**Compensation for Non-Economic Losses.** With a few exceptions, victim compensation systems in the United States do not cover non-economic losses. By contrast, the concept of pain and suffering is incorporated into many European compensation systems. Some countries also provide compensation for "moral damages" or "violation of personal integrity." In Denmark, Sweden, and Finland, moral damages are payable whenever a crime is viewed as particularly offensive. In France and some other countries, moral damages are only paid in cases of sexual assault and abuse.<sup>24</sup>

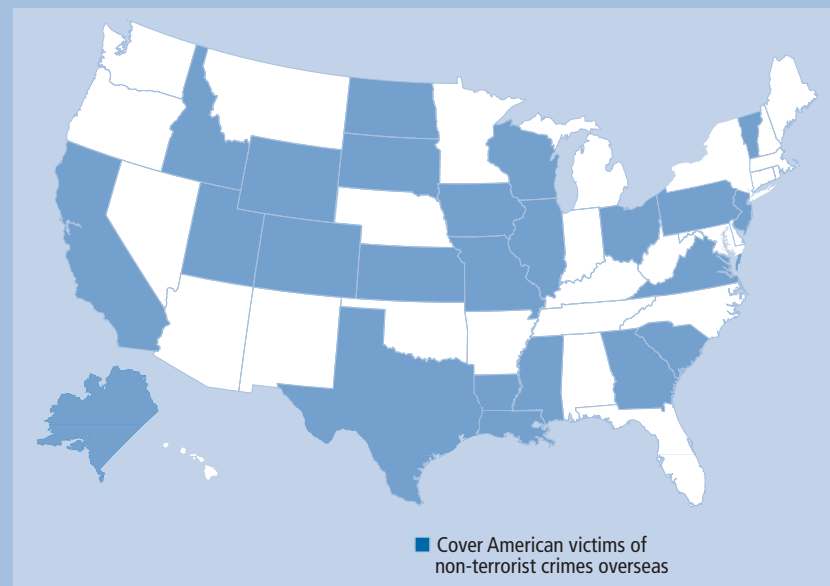
Box 8.

### Compensation for American Victims Overseas

Nearly all states offer compensation benefits to residents who are victims of terrorism while traveling in another country. The Office for Victims of Crime also runs a special compensation program for victims of terrorism overseas. Access to compensation benefits for American victims of non-terrorist crimes abroad, however, is less comprehensive. U.S. compensation programs are not required to provide compensation to Americans for crimes they experience overseas that are not terrorist acts. Only half of state compensation programs offer benefits to victims of violent crimes occurring outside the United States. (See Figure 13.) Residents of these states are eligible to receive all the benefits they would receive if the crime had occurred within the United States.

Figure 13.

### Compensation Programs that Cover American Victims of Non-Terrorist Crimes Overseas



Source: National Association of Crime Victim Compensation Boards, "Crime Victim Compensation Program Directory 2004," (Washington, DC: National Association of Crime Victim Compensation Boards, 2004).

## DISCUSSION

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Approaches adopted by other countries to compensate crime victims can inform our discussion about ways to improve victim compensation in America. First, several countries, including Great Britain and Australia, make payments for non-economic losses. Although some version of non-economic loss is recognized in Hawaii, Tennessee, and the Virgin Islands, this concept has not taken hold throughout the American system. International compensation practices demonstrate greater recognition of non-economic losses, underscoring that these payments do not have to be the sole province of civil courts. Second, the Victoria model highlights the value of integrating compensation into an overall system of victim assistance. In America, most compensation and victim assistance programs function independently and victims suffer from this fragmentation.<sup>25</sup> Third, the British system of creating a tariff to calculate awards provides a good example of a process that is transparent, predictable, and accessible.

The systems we have discussed from beyond our borders have shown commendable sensitivity to victims. Longer deadlines for filing claims, special provisions for rape victims, recognizing financial hardship from stolen property, and allowing relatives of victims to file for lost wages for hospital visits demonstrates an impressive responsiveness to special circumstances. American systems can learn from these examples as we strive to develop a victim compensation system that is more victim-centered, user-friendly, humane, and effective.

### Section 3 Endnotes

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- 2 Commission of the European Communities, "Green Paper: Compensation to Crime Victims," (Brussels: The European Commission, 2001), 11-18.
- 3 Jo Goodey, "Compensating Victims of Violent Crime in the European Union with a Special Focus on Victims of Terrorism," (Washington, DC: National Center for Victims of Crime, 2003), 6.
- 4 Home Office, "Compensation and Support for Victims of Crime," (London: Victims Unit, Home Office, 2004), 4.
- 5 Criminal Injuries Compensation Authority, "Annual Report and Accounts, 2001/2002," (London: Criminal Injuries Compensation Authority, 2003), 6.
- 6 Criminal Injuries Compensation Authority, "Guide to the Criminal Injuries Compensation Scheme," (London: Criminal Injuries Compensation Authority, 2001), 37.
- 7 Home Office, "Compensation and Support for Victims of Crime," 32.
- 8 Home Office, "Compensation for Victims of Violent Crime: Possible Changes to the Criminal Injuries Compensation Scheme," (London: Home Office, 1999), 7.
- 9 Home Office, "Compensation and Support for Victims of Crime," 34.
- 10 Represents exchange rates current as of May 2004.
- 11 Criminal Injuries Compensation Authority, "Annual Report 2001/2002," 23.
- 12 Christian Bochmann and Kai-Uwe Griesheim, "Compensation Practices of States of the European Union Connected to Crimes Against Women," (Helsinki: European Institute for Crime Prevention and Control, 1999), 15.
- 13 Criminal Injuries Compensation Authority, "Annual Report and Accounts 2000/2001," (London: Criminal Injuries Compensation Authority, 2002), 8.
- 14 Victims of Crime Assistance Tribunal program documentation, Victoria Department of Justice Web site, (<http://www.justice.vic.gov.au/CA2569020010922A/Homepage?OpenForm>) [Accessed 3/19/04.]
- 15 Represents exchange rates current as of May 2004.
- 16 Victoria Department of Justice, "What Are My Rights? Additional Entitlements for Victims of Crime," (Melbourne: Victoria Department of Justice).
- 17 Victims Referral and Assistance Service, "A Model for Early Intervention and Integrated Services for Victims of Crime," (Melbourne: Victims Referral and Assistance Service, 2002).
- 18 For a discussion of the philosophical underpinnings of crime victim compensation in the European Union, see Jo Goodey, "Compensating Victims of Violent Crime in the European Union with a Special Focus on Victims of Terrorism," (Washington, DC: National Center for Victims of Crime, 2003).
- 19 Commission of the European Communities, "Compensation to Crime Victims," 13.
- 20 Julia Mikaelsson and Anna Wergens, "Repairing the Irreparable: State Compensation to Crime Victims in the European Union," (Umeå: Swedish Crime Victim Compensation and Support Authority, 2001), 141.
- 21 Ibid.
- 22 Office for Victims of Crime, "International Crime Victim Compensation Program Directory."
- 23 Mikaelsson and Wergens, "Repairing the Irreparable," 69.
- 24 Commission of the European Communities, "Compensation to Crime Victims," 15.
- 25 For a discussion of the need for coordination among U.S. victim service providers and compensation programs, see Lisa Newmark et al., "National Evaluation of State Victims of Crime Act Assistance and Compensation Programs: Trends and Strategies for the Future," (Washington, DC: Urban Institute, 2003), xxix-xxxiv.



# 4

## LESSONS FROM SEPTEMBER 11

Within 11 days of the September 11 terrorist attacks, Congress developed an unprecedented plan to provide financial assistance for the surviving victims and established the September 11th Victim Compensation Fund of 2001 (Fund).<sup>1</sup> Never before had the U.S. government acted so quickly and so generously on behalf of a discrete group of crime victims. In one sense, the establishment of this Fund can be viewed as a unique historical event, because the circumstances that gave rise to the Fund—the terrorist attacks themselves—were without precedent. Yet, the Fund can also be compared to other efforts by government to compensate crime victims for their losses.

Similar to the state victim compensation system, the September 11th Victim Compensation Fund was designed to provide financial assistance to help victims recover from the aftermath of crime. By assessing our experience with the Fund, we can draw lessons to inform future efforts to reform our nation's general approach to crime victim compensation. The events of September 11 also gave rise to many other innovative approaches to financial assistance. This section discusses the Fund in-depth and briefly outlines additional particularly creative responses to the victims of the September 11 attacks.

### SEPTEMBER 11TH VICTIM COMPENSATION FUND

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The legislation authorizing the September 11th Victim Compensation Fund, the Air Transportation Safety and System Stabilization Act, was primarily focused on protecting the airline industry from collapse by providing loans and placing caps (equal to the airlines' level of insurance coverage) on liability payments from lawsuits. The provision establishing the Fund was added in response to questions raised about the fairness of capping awards from civil suits.<sup>2</sup> The legislation allowed victims to apply for compensation from the federal government if they waived their right to sue the air-



lines and any other party whose negligence may have contributed to the harm except the terrorists themselves.<sup>3</sup> It also called for the appointment of a Special Master to oversee the Fund and administer the payouts.

The government acted swiftly to establish the Fund. On November 27, 2001, U.S. Attorney General John Ashcroft appointed Kenneth Feinberg, an attorney with extensive experience mediating complex disputes, to run the Fund.<sup>4</sup> The interim procedures regarding eligibility, award amounts, and the application process were released on December 21, 2001.<sup>5</sup> After a comment period, the final rules were released on March 13, 2002.<sup>6</sup> The first award letter was issued on July 25, 2002; the award was accepted by the claimant on July 30, and paid on August 22.

### **Eligibility and Scope**

Eligibility for the Fund was limited to those who were killed or physically injured at the World Trade Center, the Pentagon, and the Pennsylvania crash site. Victims claiming injury had to have been at the World Trade Center or Pentagon within 12 hours of the attacks, suffered a physical injury, and been treated by a medical professional within 72 hours of the injury or rescue.<sup>7</sup> Rescue workers were eligible for the Fund if they had been at the site within 96 hours of the attacks. Individuals with emotional injuries, but no physical trauma, were not eligible for compensation through the Fund.

### **Economic and Non-Economic Losses**

The Fund was meant to serve as an alternative to the tort system and, as such, was to some extent designed to operate like the civil justice system, with awards structured to compensate for individual losses. The Fund compensated victims for both economic (e.g., reimbursement for actual out-of-pocket expenses) and non-economic losses (e.g., pain and suffering).

The specific payout levels were determined by the Fund's Special Master who set the payments for pain and suffering in cases of a death at \$250,000 per victim plus an additional \$100,000 for a surviving spouse and each surviving dependent. The September 11th Fund also compensated victims for a wide range of economic losses. Individual's economic losses were calculated based on a formula that took into account the victim's projected lifetime earnings, health and retirement benefits, and the cost of replacement of serv-

ices (i.e., the cost of replacing services the injured or deceased victim provided their household on a regular basis, such as elder care, child care, or home repairs). Injured victims also received compensation for economic and non-economic losses based on the nature of the injury and the long-term prognosis.

Awards to families of victims who died in the attacks ranged from \$250,000 to a high of \$7.1 million.<sup>8</sup> (See Table 9.) Awards to injured victims ranged from \$500 to a high of \$8.7 million. The total award was reduced by the receipt of other sources of compensation, such as life insurance, worker’s compensation, pension funds, Social Security, and death benefit programs. Charitable contributions, however, were not deducted from the award amount. The fund will pay out nearly \$7 billion to September 11 victims and families.<sup>9</sup>

Table 9.

**September 11th Victim Compensation Fund Claims and Awards**

**CLAIMS**

Death Claims	2,963
Personal Injury Claims	4,430
Total Claims	7,393

**AWARDS**

Death Awards	\$250,000 to \$7.1 million
Average Award	\$2 million
Personal Injury Awards	\$500 to \$8.7 million
Total Expected Payout	\$6.9 billion

Source: September 11th Victim Compensation Fund Web site. ([www.usdoj.gov/victimcompensation](http://www.usdoj.gov/victimcompensation)).

**Program Design and Process**

The Special Master developed a two-track system for applying to the Fund. All claimants filled out a 30-page application form that included many pages of complicated instructions and required substantial supporting documentation. For Track A, a claims evaluator reviewed the claims and notified claimants of their award amount within 45 days. Claimants could then either accept the award or request a review hearing with the Special Master or his designee to present additional evidence. Claimants choosing Track B went directly to a hearing with the Special Master or his designee. Once the Special Master ruled in either track, the decision was final and no further appeal was allowed. The deadline for submitting an application to the Fund was December 22, 2003.

The Special Master and his staff conducted a comprehensive outreach campaign to ensure all eligible claimants were aware of the Fund. They held numerous public meetings; met with groups of September 11 victims; ran newspaper advertisements; sent letters to individual victims and group notices through various victims’ groups; and administered a Web site with continually updated information. These efforts yielded a remarkably high rate of

*We tried a lot of different approaches to reach out to people about the Fund. We sent mailings and followed up with people whom we hadn’t heard from to ask whether we could help out in any way. We tried to make this a very hands-on and personal program.*

DEBORAH GREENSPAN  
September 11th Victim  
Compensation Fund

Box 9.

### Charitable Response to September 11

An estimated two-thirds of all American households contributed money to aid victims impacted by the attacks.<sup>12</sup> By mid-October 2001, over \$1 billion had been received from individuals, corporations, and foundations. Thirty-five of the largest charities reported raising nearly \$2.7 billion since September 11.<sup>13</sup> These funds provided a wide range of assistance to both primary and secondary victims:<sup>14</sup>

- \$1.25 billion in cash assistance for families and individuals;
- College scholarships to cover an estimated 70 percent of financial need for nearly 5,000 children of victims;
- Trauma and grief counseling for 15,000 people for up to 5 years;
- Health insurance for 14,000 people;

- Employment services for 12,000 people; and
- School-based assistance for 25,000 children.

Congress passed legislation relieving charities of their legal obligation to make a finding of financial need before distributing tax-exempt charitable funds to families. This made it easier for charities to disburse funds. Charities used different criteria for distributing the funds. Some used a flat rate per family while others factored in the number of dependents or used other factors. Most families received support from more than one charity. There was little coordination of benefits among charities.<sup>15</sup> A survey of World Trade Center families (excluding police, firefighters, and other emergency workers) found that 98 percent had received cash assistance from charities averaging \$90,000 per family.<sup>16</sup>

participation in the program. Of the families eligible to file a claim on behalf of a deceased family member, 98 percent (2,963 claims) had done so by the deadline.<sup>10</sup> Although it is unclear how many injury victims were eligible for compensation through the Fund, over 4,400 injury claims were filed as well.<sup>11</sup>

## DISCUSSION

The establishment of the federal September 11th Victim Compensation Fund represents a remarkable national commitment to meet the needs of these victims. (See Box 9 for a discussion of the nation's charitable response and Box 10 for a brief overview of a few state financial assistance initiatives for September 11 victims.) It is estimated that the Fund will pay out nearly \$7 billion in financial assistance to help the victims of the September 11 attacks. In contrast to state crime victim compensation programs, the regulations governing the Fund did not create explicit caps on the overall amount of the awards. Unlike the federal VOCA funding, the Fund did not rely on fines and penalties collected from federal defendants. All of the money came from tax revenue, clearly reflecting a powerful national commitment.



Although there were many reasons for the legislation, the result for the September 11 victims is undeniable: the federal government made an unprecedented commitment of resources to help people rebuild their lives in the aftermath of these crimes. We have an opportunity to learn from this experience. The Fund had both strengths and limitations that can inform our future efforts to compensate all victims of crime.

## Eligibility and Scope

The September 11th Victim Compensation Fund's broad definition of eligible victims stands in sharp contrast to state compensation programs that disqualify many victims of crime. State compensation programs often narrowly define survivors of homicide as immediate family members, while the September 11th Fund made awards to a potentially broader group which included unmarried partners and others as designated by a will. Also, unlike some state programs that exclude victims with criminal records, the Fund had no such limitation.

The Fund, however, also established certain eligibility limits that were widely criticized.<sup>17</sup> For instance, victims who suffered serious emotional or psychological injuries, but not physical harm, were not eligible to receive compensation for the significant economic and non-economic losses they suffered. Another provision that drew criticism was the requirement that, to be eligible for compensation, injured victims must have sought medical treatment within 72 hours of the attacks. Many people did not seek medical atten-

*Box 10.*

### State Financial Assistance for September 11 Victims

States adopted several innovative approaches to improve access for victims of the September 11 attacks to a range of existing government programs:<sup>19</sup>

**WORKER'S COMPENSATION.** Worker's Compensation laws provide a mechanism for employees who are injured or disabled on the job to receive compensation to prevent litigation against an employer. These laws also provide payments to dependents of employees killed because of a work-related accident or illness. Most survivors of people working in the World Trade Center who were killed while at work or attempting to leave work were eligible to receive Worker's Compensation death benefits and reimbursement for funeral expenses.<sup>20</sup> These benefits were also made available for employees who were injured at work or attempting to leave work, even if they did not work at the World Trade Center. In the aftermath of September 11, New York and New Jersey both streamlined the processing of worker's compensation claims associated with the attacks.<sup>21</sup> For example, New York issued emergency death certificates to expedite claims processing.

**UNEMPLOYMENT INSURANCE.** By law, applicants are not eligible to collect unemployment benefits until one week after losing their job. New York waived this one-week waiting period for anyone who lost their job because of the September 11 attacks, including industries that announced layoffs in the weeks and months following the attacks.

**MEDICAID.** In the days following September 11, New York City established a new program called Disaster Relief Medicaid (DRM).<sup>22</sup> DRM was a temporary program to provide quick access to healthcare services for a broad range of people impacted by the terrorist attacks. The program featured a simplified and expedited application process, higher income eligibility guidelines,<sup>23</sup> and new immigrant eligibility rules making more New Yorkers eligible for coverage than under traditional Medicaid. Within four months of its launch, nearly 350,000 people enrolled in the program. DRM enrollees received four months of fee-for-service Medicaid benefits with the possibility of transitioning to permanent enrollment in Medicaid.

tion right away, and many injuries—both physical and psychological—did not manifest within that timeframe.<sup>18</sup>

## Coverage of Losses

Compared to state crime victim compensation programs, the September 11th Victim Compensation Fund was also notably generous in its range of reimbursable losses. Life-long economic losses were compensated, sometimes totaling millions of dollars per victim, while state compensation programs only cover short-term expenses and the most generous programs cap awards at \$220,000. The Fund also made awards for non-economic losses, which only three states currently do. In these jurisdictions, the maximum award for non-economic losses is \$5,000. Under the September 11th Victim Compensation Fund, \$250,000 was awarded for each victim in death cases with another \$100,000 for each dependant. For injured victims, reimbursements for non-economic losses were not capped at all.

*One lesson from countries that have an ongoing struggle with terrorism is that they have ongoing compensation programs for terrorism. They don't have incident-specific programs like the September 11th Victim Compensation Fund. These countries have found that it is more effective for them to put a permanent program in place, rather than attempt to respond to terrorism losses incident by incident.*

RACHEL KAGANOFF STERN  
Institute for Civil Justice,  
RAND

## Program Design and Process

The September 11th Fund process was fast, predictable, and responsive.<sup>24</sup> In addition, the Special Master and his staff used many outreach strategies to contact and educate victims—efforts that stand in sharp contrast to the limited outreach activities of state crime victim compensation programs.

Notwithstanding these positive elements of the September 11th Fund process, the design of the federal program had many shortcomings. First, in order to access the Fund, victims had to relinquish their right to file a civil lawsuit against anyone whose negligence contributed to the harm except the terrorists themselves and countries that supported them. No state crime victim compensation program requires such a trade-off. This limitation means that victims applying to the Fund could not have their day in court; they could not seek to hold someone accountable for the losses they suffered, learn more through the discovery process about the events leading up to the attacks, or seek to shed light on policies and practices that, if changed, could decrease the likelihood of future death and injury.

Furthermore, the application itself was so complicated that victims needed the assistance of an attorney to fill it out. Because the

application called for a complex calculation of future economic losses, the services of a forensic economist were advisable, as well.

Moreover, the December 22, 2003, deadline for filing applications put unwarranted pressure on many victims who were still struggling with grief and the challenges of daily life.<sup>25</sup> An October 2003 survey by the National Center for Victims of Crime found that nearly 9 out of 10 (87 percent) of the 356 survey respondents eligible to apply to the Fund supported extending the deadline.<sup>26</sup> The top reasons for supporting an extension were needing more time (1) to heal emotionally; (2) to collect the back-up documents required by the Fund; and (3) to manage more pressing concerns, such as employment, housing, and other family matters. Unlike most statutory deadlines, the provision establishing the Fund did not include language to extend the deadline. This rigidity resulted in unnecessary hardship for the victims and families.

The unique role of the Special Master was problematic as well. The Special Master was required to design and administer the Fund; he was also the final authority on each award. The law made no provisions for external review or judicial appeal. This concentration of broad responsibility and unreviewable authority led to a program overly identified with an individual person.<sup>27</sup>

In addition to the September 11th Victim Compensation Fund, private and government sources assembled an impressive and unprecedented set of responses, including assistance from charities and enhanced access to worker's compensation, unemployment, Medicaid, and tax relief. (See Boxes 9-11 for a brief description of these efforts.) Reviewing this historic range of responses provides a unique opportunity to envision a comprehensive crime victim compensation system for America. (See Box 12 for additional opportunities for expanding tax relief for all crime victims.)

*Box 11.*

### **Tax Relief for September 11 Victims**

The federal government enacted the Victims of Terrorism Tax Relief Act of 2001, providing significant income tax relief for the families of victims killed on September 11.<sup>28</sup> The Act also extended these benefits to survivors of victims killed in the Oklahoma City bombing (who could file amended returns) and the anthrax attacks. The tax relief:

- **WAIVED PAYMENT OF INCOME TAXES.** The Act waived income tax liability for a victim who died in one of the attacks for both the year of the attack and the previous year. It ensured a minimum benefit of \$10,000 was available to the family of each victim.
- **WAIVED PAYMENT OF ESTATE TAXES.** The Act greatly increased the amount of victims' estates which would not be subject to estate taxes. Under the Act, the first \$8.5 million of an estate of a victim who died in one of the attacks is protected from the federal estate tax, and the first \$3 million is protected from state estate taxes as well.
- **EXCLUDED DEATH BENEFITS FROM INCOME.** Employer-paid death benefits are normally considered taxable income. Under this provision of the Act, death benefits were excluded from income determinations for victims of terrorism.
- **WAIVED TAXATION OF DEBT FORGIVENESS.** Normally, the forgiveness of a debt by a creditor, such as a credit card debt or student loan, is considered a taxable transaction. The new law provides that debt forgiveness for a deceased victim of the September 11, Oklahoma City, or anthrax attacks is not taxable.
- **FACILITATED PAYMENTS BY CHARITABLE ORGANIZATIONS.** The Act made it easier for tax-exempt charitable organizations and private foundations to provide financial assistance to the victims of the September 11 and anthrax attacks.

*Box 12.*

### **Tax Relief for Crime Victims: Additional Opportunities**

In addition to the provisions discussed above, the tax code could be further amended to assist all crime victims by:

- **EXPANDING CRIME-RELATED HEALTHCARE DEDUCTIONS.**<sup>29</sup> Currently, healthcare expenses not reimbursed by insurance or other sources can be deducted from taxable income. The expenses can only be deducted, however, if they exceed 7.5 percent of adjusted gross income. The taxpayer must also itemize these deductions. In 1985, Rep. Charles E. Schumer (now in the Senate) proposed legislation to allow the deduction of crime-related medical expenses without first having to meet a certain threshold and without itemizing deductions. This legislation could be reintroduced.
- **ALLOWING ALL CRIME-RELATED LOSSES TO BE DEDUCTED.**<sup>30</sup> Currently, any uncompensated losses sustained during the taxable year can be deducted. This includes losses due to theft that were not compensated by insurance or other means. This provision is subject to deduction limits. To be eligible, losses must be deducted in the year in which the crime occurred, and the deductions must be itemized. This provision could be modified to allow crime victims to deduct crime-related losses without a ceiling and without itemizing their deductions.
- **EXCLUDING RESTITUTION FROM TAXABLE INCOME.** Whether restitution payments are subject to income tax is an unsettled point in the law. Restitution is essentially an award of compensatory damages by a criminal court.<sup>31</sup> Currently, victims do not pay taxes on victim compensation benefits or damages awarded through civil suits. This same rationale could apply to exclude restitution from taxable income.

## Section 4 Endnotes

- 1 The Air Transportation Safety and System Stabilization Act was signed into law by President Bush on September 22, 2001. [Pub. L. No. 107-42, 115 Stat. 230 (2001)]
- 2 Lisa Belkin, “Just Money,” *The New York Times*, December 8, 2002.
- 3 Air Transportation Safety and System Stabilization Act, Pub. L. No. 107-42, 115 Stat. 230 (2001).
- 4 Diana B. Henriques and David Barstow, “Mediator Named to Run September 11th Fund,” *The New York Times*, November 27, 2001.
- 5 September 11th Victim Compensation Fund of 2001, 66 Federal Register at 66, 274.
- 6 September 11th Victim Compensation Fund of 2001, 67 Federal Register at 11, 233. [Codified 28 C.F.R. § 104 (2002)]
- 7 The 72-hour deadline for seeking treatment by a medical professional was waived for rescue workers.
- 8 Payment statistics were regularly reported and updated on the Fund’s official Web site. (<http://www.usdoj.gov/victimcompensation>) [Accessed 6/24/04.]
- 9 Clyde Haberman, “The Price of Life After 9/11,” *The New York Times*, June 18, 2004.
- 10 Closing statement from the Special Master, Mr. Kenneth R. Feinberg, on the Shutdown of the September 11th Victim Compensation Fund. ([http://www.usdoj.gov/victimcompensation/closing\\_statement.pdf](http://www.usdoj.gov/victimcompensation/closing_statement.pdf)) [Accessed 6/24/04.]
- 11 *Ibid.*
- 12 U.S. General Accounting Office, “September 11: More Effective Collaboration Could Enhance Charitable Organizations’ Contributions in Disasters,” (Washington, DC: GAO, 2002), cover page.
- 13 *Ibid.*, 2.
- 14 Tom Seessel, “Responding to the 9/11 Terrorist Attacks: Lessons from Relief and Recovery in New York City,” (Report prepared for the Ford Foundation, 2003), 7.
- 15 U.S. General Accounting Office, “More Effective Collaboration,” 20-23.
- 16 *Ibid.*, 12.
- 17 See for example, Elizabeth M. Schneider, “Grief, Procedure, and Justice: The September 11th Victim Compensation Fund,” *DePaul Law Review* 53 (2003): 457-500 and Lisa Belkin, “Just Money.”
- 18 One study found that within two months after the September 11 attacks, among people living below 110th Street in Manhattan, approximately 67,000 had manifested symptoms of acute PTSD and 87,000 had depression. (See Schneider, “Grief, Procedure, and Justice,” 469-472.) Additionally, over 100 firefighters had their claims rejected by the Fund because their respiratory symptoms did not manifest until after the December 22, 2003 deadline to file claims. (See Graham Rayman and Niamalika Henderson, “Controversies Persist; All Not Over for 9/11 Fund,” *Newsday*, June 14, 2004.)
- 19 For a fuller discussion on the range of government responses designed to assist victims of the September 11 attacks, see Lloyd Dixon and Rachel Kaganoff Stern, “Approaches for Compensating Victims of Crime: Lessons from the September 11th Attacks,” (Washington, DC: National Center for Victims of Crime, 2003).
- 20 The maximum death benefit paid to surviving dependents was \$20,857 (tax free) per year in New York and \$30,816 per year in New Jersey. In both states, benefits are paid for life or until the spouse remarries. Children are entitled to death benefits until they turn 21 (or 23 if they are a full-time student). A flat payment of \$50,000 is made to the estate of an employee without dependents in New York. New Jersey does not make a similar payment. Both states also made available up to \$6,000 to cover funeral expenses. See Dixon and Kaganoff Stern, “Approaches for Compensating Victims of Crime,” 8-9.
- 21 New York Committee for Occupational Safety and Health, “World Trade Center Catastrophe Victim Compensation Fact Sheet,” September 28, 2001. (<http://www.nycosh.org/wtc-compensation.html>) [Accessed September 26, 2003.]
- 22 Michael Perry, “New York’s Disaster Relief Medicaid: Insights and Implications for Covering Low-Income People,” (Washington, DC: Kaiser Commission on Medicaid and the Uninsured, 2002).
- 23 *Ibid.*, iii. Income eligibility for DRM was increased from 87 percent of the federal poverty level for parents and 50 percent for single adults to 133 percent for parents and 100 percent for singles.
- 24 According to a body of research known as “procedural justice,” the quality of the process in applying for compensation, for example, is very important in determining how the outcome is perceived. For instance, victims’ satisfaction with the police and the courts is more determined by the procedural quality of the treatment by these government entities than by the outcome. For a discussion on these issues, see Tom R. Tyler, et al., *Social Justice in a Diverse Society*, (Boulder, CO: Westview Press, 1997), 75-102 and Jan J.M. van Dijk, “Crime and Victim Surveys,” in *International Victimology: Selected Papers from the 8th International Symposium*, (Canberra: Australian Institute of Criminology, 1996).
- 25 Schneider, “Grief, Procedure, and Justice,” 458.
- 26 National Center for Victims of Crime, “New Survey Shows Widespread Support for 9/11 Fund Extension,” (Washington, DC: National Center for Victims of Crime, 2003).
- 27 Schneider, “Grief, Procedure, and Justice,” 477.
- 28 Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-37.
- 29 Internal Revenue Code, Section 213.
- 30 Internal Revenue Code, Section 165.
- 31 For more on this argument, see Linda Trang, “The Taxation of Crime Victim Restitution: An Unjust Penalty on the Victim,” *Loyola of Los Angeles Law Review* 35 (2002): 1319-353.





# 5

## LOOKING TO THE FUTURE

### A New Vision for Victim Compensation

Today, every state in America provides compensation for victims of crime. This is a remarkable achievement, a testament to the increasing recognition of society's obligation to repair the harm experienced by victims of crime. The events of September 11 and the enactment of the federal Victim Compensation Fund, which provided victims of the attacks unprecedented levels of compensation, provide a rare opportunity to ask whether our society has done all it can to help crime victims rebuild their lives. In reflecting on that experience, the American approach to compensation generally, and comparisons to policies in other countries, we have concluded that far more can be done. In this section, the National Center for Victims of Crime provides a framework for improving and strengthening the system of victim compensation in America. We begin by defining the philosophical underpinnings of an ideal victim compensation system.

**First, the state has a responsibility to pay compensation to crime victims.** The government has a unique relationship with crime victims because of its obligation to provide for public safety and control crime. When a crime is committed, there is both an offender and a victim. The state has a responsibility not only to hold the offender accountable, but also to help repair the harm suffered by the victim. One important way to fulfill this obligation is through financial assistance that represents a public acknowledgment of the wrong done to victims of crime, recognizes the harm experienced by victims, and helps alleviate the financial consequences of the crime.

**Second, compensation is critical to helping individual victims rebuild their lives.** While the investigation and prosecution of crime increases individual victims' well-being, these actions





alone are insufficient to address the full impact of crime on victims. This report has documented the enormous emotional, physical, and financial toll that crime exacts on victims. Victims stay home at night. They restrict themselves to certain neighborhoods. They move in search of safer surroundings. They abuse drugs and alcohol to cope with their pain. Some lose jobs because they have crime-related disabilities or because they missed work to attend court hearings. The losses suffered by individual victims have widespread ripple effects throughout our society. Assisting victims with crime-related expenses can help them get their lives back on track and return more quickly to productive roles in the community.

**Third, payment of compensation to crime victims is in the public interest.** When the emotional, physical, and financial needs of the millions of Americans who become victims of crime every year are not addressed, the entire country suffers. Doing more to help individual crime victims recover would improve the physical and mental health of the community, increase productivity, decrease crime, and reduce the social alienation caused by crime. Beyond these very practical consequences, this public statement that victims' needs "matter" to society-at-large would reaffirm fundamental values of civilized society, build public confidence in the justice system, and reweave the social fabric of communities torn by crime.

## COMPENSATION FOR CRIME VICTIMS: CORE PRINCIPLES

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The National Center for Victims of Crime proposes a new vision of victim compensation that would reflect the following ten core principles:

1. **All victims should be eligible for compensation unless implicated in the crime.** Virtually every state compensation program now excludes large numbers of crime victims. Victims of non-violent crime are ineligible under most state statutes, even though federal regulations were changed in 2001 to expand eligibility to victims of non-violent crime. In most respects, however, the losses suffered by victims of violent and non-violent crimes are comparable. For instance, both miss work because of court appearances, and both experience crime-related trauma requiring counseling or long-term health care. With rare exception, however, victims of non-violent

crime do not recover these expenses. In addition, several states exclude victims who have criminal records. Unless actually implicated in the crime that led to their claim, all victims of violent and non-violent crime should be eligible to receive compensation benefits. It is neither fair nor reasonable to divide victims into categories of deserving and undeserving.

- 2. Compensation should recognize all types of economic losses.** Currently, states delineate allowable expenses, such as medical and mental health treatment, funeral expenses, or lost wages. Some states reimburse victims for relocation, crime scene clean up, and transportation costs. Others do not. While it is helpful for both victims and compensation program officials to define categories of approved expenses, the United States should move toward a system where any crime-related expense could be covered, as in Australia, rather than restricting reimbursements to pre-approved categories. If a crime victim can demonstrate that a particular economic loss is directly related to a crime, the victim should be able to seek compensation for that expense. This should include crime-related emergency day care and job training, as well as replacement services.
- 3. Compensation should recognize non-economic losses.** Currently only two states and the Virgin Islands recognize crime victims' non-economic losses. While Tennessee and the Virgin Islands provide payments for pain and suffering to victims of sexual assault, Hawaii provides all crime victims an "acknowledgement" payment to symbolize the non-quantifiable harms suffered by victims. Similarly, when Congress established the federal September 11th Victim Compensation Fund, it mandated that these victims receive payment for non-economic losses. In several European countries and Australia, compensation awards are calculated to include both economic and non-economic losses. Because any victim of crime can experience non-economic losses, compensation programs should provide payments to acknowledge those losses.
- 4. Compensation programs should recognize victims' ongoing losses and not impose filing deadlines.** While a crime may occur in an instant, its impact may last a lifetime. Ongoing economic losses may be continuous or sporadic, but if they are crime-related, compensation programs should rec-

ognize them regardless of the passage of time. For example, victims often experience ongoing mental health or crime-induced substance abuse problems that continue for many years or manifest long after the victimization occurred.

If limits must be set, the overall amount of compensation per victim can be capped. But, as in Utah and Vermont, no filing deadlines should be established for consideration of legitimate crime-related expenses. Victims should also be able to apply for additional compensation as new needs arise. As long as a police report has been filed within a reasonable period of time, there is no reason to deny compensation to a victim who can meet the standards of eligibility.

5. **All victims should be informed about compensation and how to apply for it.** If victims do not know about victim compensation programs, they are effectively deprived of the opportunity to apply for the compensation to which they may be entitled. America must do far more to promote public awareness of compensation programs. People who come in contact with victims should be more prepared to provide information on compensation. Law enforcement officers should give every victim who reports a crime information about how to file for compensation. Victims should also be given copies of the complaint report which provides the basis for a compensation application. Victim advocates, healthcare professionals, and employers should all be responsible for providing victims information about compensation. Programs already mandated to inform victims about compensation should be held accountable for doing so. Many states use automated notification to inform victims of critical criminal justice proceedings. The same technology could be applied to informing victims about compensation.

Efforts should also be made to reach victims who do not initially report the crime to law enforcement. Many victims who may not otherwise understand the importance of reporting may then decide to notify the police. As exemplified by the September 11th Victim Compensation Fund, when every effort is made to reach victims and provide them with assistance throughout the process, a higher percentage of victims apply for compensation. Americans generally understand the availability of worker's compensation and unemployment benefits. They should also know that victim compensation is available to them as well, should they need it.

- 6. The federal funding base for victim compensation should be broadened to include tax revenues and other sources of funding.** If compensation programs are expected to conduct more outreach and cover more victims, additional funds must be made available. The current funding base is unnecessarily restricted, unstable, and jeopardizes the ability of our victim compensation system to meet victims' needs. Instead of relying exclusively on court-ordered fines that fluctuate according to outcomes in the criminal justice system, tax revenues and other funding streams (e.g., civil penalties, licensing fees, and income tax check-off) should be used to supplement the Crime Victims Fund, established by VOCA, and better reflect a national commitment to victims of crime. The governmental obligation to help victims rebuild their lives is as important as providing the funds for the operation of the criminal justice system. Since the impact and costs of crime is felt by our entire society, every American should contribute to repairing the harm caused by crime.
- 7. The victim compensation process should be fair, respectful, efficient, and easy to understand.** Victims' perception of justice is shaped by their interaction with government officials, including law enforcement officers, prosecutors, judges, and social service providers. For many, the quality of this process is as important as the final outcome. A compensation process that is fair and responsive to victims' needs has more than symbolic value; it makes victims feel less marginalized and contributes to their emotional recovery. The process should be simple and transparent, and compensation should be awarded quickly. In addition, assistance should be available for crime victims who need help with the application process.
- 8. Tax relief should be provided as additional financial assistance for helping victims recover from the harm caused by crime.** The Victims of Terrorism Relief Act of 2001 passed by Congress after September 11 provided generous tax relief to survivors of the attacks. Similar relief measures should be adopted for all victims of crime. Victims should be allowed to deduct crime-related healthcare expenses and uncompensated costs and restitution payments should not be taxed.
- 9. Compensation should be part of a broader system of support for victims of crime.** Although compensation plays

*One of the areas for further research is on the issue of victim satisfaction. The central theme here is respectful and fair treatment as an underlying principle for any victim compensation system.*

LAURIE O. ROBINSON  
Jerry Lee Center of  
Criminology, University  
of Pennsylvania

*In my experience with the Oklahoma City bombing, money does make people feel better. But it is absolutely crucial that services accompany whatever money is available or we will never help people move forward with their lives.*

NANCY ANTHONY  
Oklahoma City  
Community Foundation

a critical role, financial assistance alone cannot fully repair the harm caused by crime. In the immediate aftermath of crime, victims may need safety planning, crime-scene clean-up, health care, and practical assistance with problems such as repairing broken windows or damaged locks. Victims also sometimes need ongoing support, long-term therapy, advocacy with criminal justice or social service agencies, and assistance with relocating, job training, child care, or housing. Compensation that includes reimbursement for out-of-pocket expenses and an acknowledgment of the harm victims have suffered can help victims with many of these needs, but it cannot address all of them. A broad societal commitment to helping victims rebuild their lives should provide multiple supports to victims, only one of which is a comprehensive system of financial compensation.

**10. State and federal legislators and policymakers should initiate a comprehensive examination of the United States system of crime victim compensation.** Our hope is that this report will encourage new thinking and robust discussion about how to improve victim compensation in America. We hope to spark new research on the role of compensation in meeting the needs of victims, new inquiries within state and federal government into current compensation programs and other means of providing financial assistance, and new strategies to improve our society's response to crime victims.

## CONCLUSION

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The United States has made enormous progress over the last thirty years in recognizing our obligation to victims of crime. During this period, we have developed greater understanding of the profound and far-reaching impact of crime. The events of September 11 highlighted not only the devastation of crime, but also new ways to provide a generous and compassionate communal response to its victims. Our commitment to victims of the September 11 attacks led to an unprecedented sustained national effort to help them rebuild their lives. Our nation brought urgency, creativity, and resources to the task. A properly designed and adequately funded victim compensation system would fulfill an important societal obligation within the pursuit of justice. This report highlights many opportunities to improve our system of crime victim compensation in America. We must continue to do everything we can to repair the harm.





THE NATIONAL CENTER FOR  
**Victims of Crime**

The National Center for Victims of Crime is the nation's leading resource and advocacy organization dedicated to serving individuals, families, and communities harmed by crime. Working with local, state, and federal partners, the National Center:

- Provides direct services and resources to victims of crime across the country;
- Advocates for laws and public policies that secure rights, resources, and protections for crime victims;
- Delivers training and technical assistance to victim service organizations, counselors, attorneys, criminal justice agencies, and allied professionals serving victims of crime; and
- Fosters cutting-edge thinking about the impact of crime and the ways in which each of us can help victims of crime rebuild their lives.

*Forging a national commitment to help victims of crime rebuild their lives.*



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