The 1981 Oklahoma Crime Victim Compensation Act

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NOTES AND COMMENTS

THE 1981 OKLAHOMA CRIME VICTIM COMPENSATION ACT

I. INTRODUCTION

The tremendous increase in protective rights available to criminal offenders requires a corresponding societal response to the rights of innocent victims of crime. Today's system of criminal prosecution, which virtually excludes the victim, has led to increased victim apathy in crime prevention and compounds the increasing ineffectiveness of the criminal justice system. In the United States the reported violent crime rate has risen by more than 130% in the last twenty years, and the overall crime rate has increased even more precipitously. In 1980 Oklahoma law enforcement officials reported that an average of twenty-one aggravated assaults, three rapes, and one murder occurred every twenty-four hours.

Steps are now being taken to alleviate the inequitable treatment received by victims in Oklahoma's criminal justice system. Due primarily to the efforts of Muskogee County District Attorney Michael C. Turpen, in the 1981 session the Oklahoma Legislature passed several pieces of legislation designed to aid victims of crime. The Crime Vic-

1. See Crime and the Law 32-34 (R. Diamond & A. Alligood eds. 1971) (This report provides a brief synopsis of some of the major Supreme Court cases that have expanded the rights and protections of the offender).
2. The overall crime rate has increased 233% over the last 20 years. Federal Bureau of Investigation, U.S. Dept of Justice, Uniform Crime Reports (1959-1980).
3. Oklahoma Bureau of Investigation, Crime in Oklahoma 20, 24, 28 (1980 Annual Report). This report also revealed that a total of 293 persons were murdered, 7,818 feloniously assaulted, and 1,067 forcibly raped or threatened with rape. The number of reported violent crimes (murder, rape, robbery, and felonious assault) for the year 1980 increased 6.2% over those reported for 1979.
4. Michael C. Turpen, as president of the Oklahoma District Attorneys Association, drafted a slate of seven proposed pieces of legislation to aid victims of violent crime. With the endorsement of the Oklahoma District Attorneys Association, six of these proposals were presented during the 1981 legislative session, and five were passed. See notes 5-9 infra.
VICTIMS' RIGHTS

Victim Compensation Act\(^5\) was one of five victims’ rights bills enacted. Passage of the four remaining bills, along with the victim compensation Bill, represents significant progress in the area of victims’ rights in Oklahoma. One bill provides for a victim-witness coordinator in counties with populations of over sixty thousand.\(^6\) Another prohibits convicted felons who gain notoriety, from receiving benefits from the sale of books, movie rights, or interviews concerning their crimes.\(^7\) A third law requires the Oklahoma Pardon and Parole Board to publish notices of parole review of inmates in the county where the crime was committed.\(^8\) The fourth law increases the penalty for discouraging witnesses from testifying.\(^9\)

On October 19, 1981, the Oklahoma Crime Victim Compensation Act\(^10\) became effective, and Oklahoma joined the majority of states which, since 1965, have enacted compensatory legislation for victims of crime.\(^11\) This Comment will examine the specific provisions of the new

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\(^6\) OKLA. STAT. ANN. tit. 19, § 215.15a (West Supp. 1981-1982) (amending OKLA. STAT. tit. 19, § 215.15 (Supp. 1980)). The victim-witness coordinator will be responsible for protecting witnesses from harm arising out of their cooperation with law enforcement and prosecution efforts. The victim-witness coordinator will also provide the following services: informing the victim of financial assistance and other social services available as a result of being a witness or a victim of crime; notifying witnesses of the availability of witness reimbursement; directing him to a secure waiting area during court proceedings; aiding in the expeditious return of stolen property when no longer needed as evidence; interceding with employers of victims and witnesses to minimize an employee’s loss of pay due to court appearances; and making all above services available to families of homicide victims. Id.


Oklahoma Act and compare it with similar laws in force in other states. The experiences of states with earlier victim compensation statutes can provide invaluable guidance as Oklahoma implements its own victim compensation program.

The discussion will begin by focusing on the history of compensation for victims of crime. Common theories which have been used to justify government-established victim compensation programs will be examined briefly. The major portion of the paper will be devoted to an interpretation of Oklahoma's Crime Victim Compensation Statute. Statutory guidelines for administering and funding the program will be explained. Eligibility requirements and compensable losses set out in the Statute will be outlined, and issues surrounding these important areas presented. Limitations on compensation provided by the Statute will be examined. The procedure required to obtain compensation and methods of paying compensation claims, as provided by the Act, will be discussed along with the problem of fraudulent claims. Finally, an explanation of the need for publicizing the program will conclude the analysis of the Oklahoma Crime Victim Compensation Act.

II. HISTORY OF VICTIM COMPENSATION

Early English common law provided for the payment of compensation to the victim by the offender or the offender's kin, but as the sovereign's power increased, the English government began to claim an

(1) 12 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 451, 453 (2d ed. 1968) traces the beginnings of this system:

From the very beginning . . . some small offences could be paid for. . . . The offender could buy back the peace that he had broken. . . . A complicated tariff was elaborated. Every kind of blow or wound given to every kind of person had its price. . . . Gradually more and more offences became emendable. . . .
increasing share of this compensation. As criminal law further evolved, crime became recognized as an injury against society rather than the individual, so that the focus was on the offender to the exclusion of the victim.\textsuperscript{13} Eventually, the victim's only remedy became a civil action in tort against the offender.\textsuperscript{14}

It was not until the early 1960's that public interest groups began to debate the need for government compensation of victims.\textsuperscript{15} In 1964 New Zealand became the first government to establish a government-funded victim compensation program.\textsuperscript{16} The following year California enacted legislation to establish the first state victim compensation scheme,\textsuperscript{17} and in 1966 New York became the second state to promulgate a victim compensation statute.\textsuperscript{18} Other states soon followed the lead established by California and New York. At present, thirty-four states have enacted victim compensation schemes.\textsuperscript{19}

Generally, victim compensation programs reimburse victims for...
medical expenses incurred as a result of physical injuries received during a criminal attack. The victim is also reimbursed for wages lost during the hospitalization and recuperation period following the physical injury. If a victim is killed, most states allow for financial assistance to the victim's dependents. Property losses resulting from criminal acts are not addressed by victim compensation programs. The fund from which the victim compensation expenditures are made is usually derived from the state budget or from fines imposed on convicted criminals. 20

Numerous factors account for the relatively recent recognition of the forgotten victims in the criminal justice system. These factors can be grouped into two general areas of concern. One centers around the seemingly gross disparity between the many rights afforded to offenders in the criminal justice system and the few rights afforded to the typical victim. 21 "We have ignored crime victims too long while we, as a society, have fed, clothed, housed and educated the criminal." 22 A second, fundamental consideration is that traditional remedies available to victims are wholly inadequate to provide for the needs of most victims. The three traditional remedies available to the victim are restitution from the offender, civil tort action against the offender, and private insurance.

A. Restitution

Much has been written about the positive aspects of a program in which the offender is required to make restitution to his victim. 23

21. "Priorities which devote millions to convicted criminals, and only thousands to innocent victims must be re-examined and rejected." Younger, Commendable Words: A Critical Evaluation of California's Victim Compensation Law, 7 J. BEV. HILLS B.A. 12, 15 (Mar./Apr. 1973); see Carrington & Younger, supra note 15.
23. See, e.g., Barnett, Justice of Restitution, 25 AM. J. JURIS. 117 (1980); Bridges, Gandy & Jorgensen, A Case for Creative Restitution in Corrections, 43 FED. PROB. 28-35 (Sept. 1979) states: Restitution "satisfies society's need for punishment while providing the offender an opportunity to become proactively engaged in making amends to victims of crime and society at large. By fulfilling self-initiated restitutional contracts, the offender 'pays his debt' by voluntarily rendering positive social acts rather than simply 'doing time.'" Id. at 35; Campbell, Probation Conditioned on Repayment: What is the Fair Procedure? 1979 DET. C.L. REV. 241-60; Galaway, Henzel, Ramsay & Wanyama, Victims and Delinquents in the Tulsa Juvenile Court, 44 FED. PROB. 42 (June 1980); Laster, supra note 13, at 71, explains: "A system of restitution, if properly handled, could serve to keep the criminal-victim relationship alive long after the original offense so as to impress upon the mind of the criminal that he has injured a human being, not some impersonal entity known as the state." Id.
While restitution is regarded by many writers as a needed component of the criminal justice system, it is often described as inadequate to meet the needs of most victims. Restitution is unsatisfactory primarily because it is available only in the unlikely instance that the offender is apprehended. In the rare event that the assailant is apprehended, he must be found guilty by proof beyond a reasonable doubt. Finally, if the offender is found guilty, with only a remote possibility of earning enough money in the prison system, it is unlikely that he will have the financial resources to make reparation. Moreover, most restitution programs are limited to property crimes. Violent crimes are excluded because legislators fear that the criminal might resent being forced to compensate and might further retaliate against the victim.

B. Civil Action in Tort

Although the victim of crime may sue his assailant in a civil tort action, this option is also generally considered inadequate to meet the needs of victims. Commentators point out that the major disadvantage of the civil suit remedy, as with restitution, is that the criminal usually escapes apprehension. If and when the offender is apprehended, he must be found guilty by proof beyond a reasonable doubt. Finally, if the offender is found guilty, with only a remote possibility of earning enough money in the prison system, it is unlikely that he will have the financial resources to make reparation.

25. Federal Bureau of Investigation, U.S. Dep't of Justice, Uniform Crime Reports 219 (1977) (out of 1,855,890 known offenses in 2,559 cities, the total arrest rate was only 19.7% in 1976); President's Comm'n on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 20 (1967) (of 1,905 crimes committed in Los Angeles only 25% resulted in arrests or other clearances).
28. Brooks, supra note 24, at 493. The author reveals:
In New Jersey's newest and most modern prison "the budget allows only 45 to 58 cents a day, depending on the job." Striking prisoners at the New Mexico State Penitentiary included in their list of demands the "payment of the minimum wage ($1.60 an hour) for all work done in the prison."
30. McAdam, supra note 26, at 349.
32. Brooks, supra notes 24, at 480; see notes 25-26 supra and accompanying text.
hended, he is usually judgment-proof.\textsuperscript{33} Even if the offender is appre-
hended, convicted, and has sufficient assets to justify a tort action, it may be difficult to introduce the criminal conviction into evidence in the civil action.\textsuperscript{34} Additionally, the tort action will be expensive and time-consuming to the victim.\textsuperscript{35} There is also a possibility that the criminal offender will exhaust any funds he might have in defending himself in the criminal case.\textsuperscript{36} Finally, if the offender is incarcerated for the crime, the chances are unlikely for satisfying any civil judgment obtained by the victim.\textsuperscript{37} Understandably, only a small percentage of victims ever recover civil awards for injuries from their criminal assailants.\textsuperscript{38}

C. \textit{Private Insurance}

A third alternative to state-supported victim compensation programs is private insurance. But this alternative has also been rejected as being insufficient to provide for the vast majority of victims.\textsuperscript{39} Most attacks occur in high-crime, low-income districts.\textsuperscript{40} Insurance is more expensive in these areas,\textsuperscript{41} and is unaffordable for most residents in low-income districts. Yet these are also the people who can least afford

\begin{thebibliography}{99}
\bibitem{33} See Lamborn, \textit{supra} note 31, at 38.
\bibitem{34} See \textit{OKLAHOMA EVIDENCE CODE}, OKLA. STAT. tit. 12, §§ 2403, 2803 (22) (Supp. 1980); F. Read, \textit{OKLAHOMA EVIDENCE HANDBOOK} 233 (1979); \textit{4 J. WEINSTEIN \& M. BERGER, WEIN-
STEIN'S EVIDENCE} 277 (Supp. 1980). See also \textit{RESTATEMENT (SECOND) OF JUDGMENTS} §§ 68,
\bibitem{35} "The victim 'will have to go through all the anxiety of two processes: the criminal case, where he must appear as a witness . . . and a civil court, to which he must take his claim for damages.'" Brooks, \textit{supra} note 24, at 481 (quoting \textit{M. FRY, ARMS OF THE LAW} 125 (1951)). The Brooks article further explains:

\begin{quote}
[I]t has long been a shortcoming of our system that the victim of tort in his action against the tortfeasor frequently is not even entitled to rely on the probative value of the tortfeasor's prior criminal conviction for the same conduct, so that the victim incurs the full expense of a complete civil suit, unless he can sue \textit{in forma pauperis}, or with legal aid, in which case the community at large bears an unnecessary expense.
\end{quote}

\textit{Id.} (quoting \textit{Mueller, Compensation for Victims of Criminal Violence: A Round Table}, \textit{8 J. PUB. L.} 218, 234 (1959)).
\bibitem{36} Brooks, \textit{supra} note 24, at 481.
\bibitem{37} \textit{Id.} at 480.
\bibitem{39} Brooks, \textit{supra} note 24, at 500; Comment, \textit{supra} note 15, at 719-22; Comment, \textit{supra} note 29, at 841.
\bibitem{41} Comment, \textit{supra} note 40, at 330.
\end{thebibliography}
the economic loss resulting from personal injuries or death. 42 A final consideration is that insurance coverage typically excludes payment for injuries sustained by reason of the illegal or intentional act of another person. 43

Restitution, civil relief, and private insurance fall short of providing necessary relief for victims. The availability of a government-funded program does not depend upon apprehension, conviction, and solvency of the criminal offender. Thus, compared to the availability of the three traditional sources of victim aid, government-funded programs offer greater potential relief to more victims.

III. THEORIES FOR JUSTIFYING GOVERNMENT-FUNDED VICTIM COMPENSATION

Although one survey indicated that legislators favor a program in which the offenders assume the burden of compensating the victims, 44 by necessity, most victim compensation programs must be underwritten by the state to some degree. 45 Since most victim compensation programs are at least partially funded by the taxpayers, the theoretical just-

42. Mueller, Compensation for Victims of Criminal Violence: A Round Table, 8 J. PUB. L. 191, 234 (1959). That article explains: “Victims of crime quite frequently belong to a population stratum which can least afford the economic loss from crime. Although relief for the expense of necessary hospitalization is usually available without cost to the indigent victim of violent crime, some economic loss will remain even in these cases.”

43. Starrs, A Modest Proposal to Insure Justice for Victims of Crime, 50 MINN. L. REV. 285, 301-02 (1965) describes the practices of insurance companies:

Unfortunately, a considerable number of life and accident policies are written with benefits excluded where the injury or death was suffered through “any violation of the law,” through the “illegal acts of any person,” by “homicide,” through “the intentional act of any person,” or from “assault or battery” or “felony.” Even without exclusions in explicit terms, the words “accident” or “accidental means,” which are found in the insuring clause of accident policies and in the double indemnity endorsements to life policies, have been construed to exclude injuries or death caused by the criminal act of a third person.

44. Hoelzel, supra note 20, at 492.

45. H. Edelhertz & G. Geib, Public Compensation to Victims of Crime 274 (1974) (“There is no basis for concluding that no more than a small portion of the cost of compensating crime victims can be raised by such devices. In the last analysis, taxpayers must pay the costs.”); Covey, Alternatives to a Compensation Plan for Victims of Physical Violence, 69 DICK. L. REV. 391, 404 (1965) (basing compensation on fines presupposes the identification, apprehension, conviction, and solvency of the offender). Compare Carrow, Office of Development, Testing and Dissemination, Nat’l Inst. of Justice, U.S. Dep’t of Justice, Crime Victim Compensation: Program Models 5-7 (1980) (Most states finance their victim compensation programs through their general fund, thus giving the funds the security of a complete appropriation.) with Hoelzel, supra note 20, at 492 (Some states establish a separate fund into which offenders pay a part of their fines on restitution. The legislature then supplants this fund each year so that the board can pay all its awards.).
tifications underpinning the process become important. Three major rationales have been advanced to justify state financial support for victims of crime: the "social contract" theory, the "social welfare" theory, and the "shared risk" theory.

Some scholars argue that the state is under a financial obligation to the victim since the state failed to protect the victim from harm. Proponents of this theory point out that the state not only fails to halt crimes of violence but also denies certain individual actions that might be thought of as self-protective. These commentators explain that the state has a "social contract" with its citizens to provide protection from criminal attack. When it fails to prevent a criminally induced injury, the state has breached its contract and must compensate the victim for the injury caused by its default.

This theory has been criticized because it is doubtful that any government could halt all crimes of violence. Also, it seems tenuous to presume that a government's default on its social contract is the cause of every victimization. A program committed to such a theory could lead to repressive police tactics, not so much for the protection and safety of the public, but in an attempt to reduce the state's financial burden. Wholesale implementation of this theory could impinge on the liberties of all citizens. Perhaps, for these reasons, courts do not accept the social contract theory that would force states to compensate victims merely because a crime occurred within their jurisdictions.

46. Brooks, supra note 24, at 486. The author explains that a state should have a theoretical justification so that subsequent questions can be solved by reference to the theoretical framework undergirding the program. For example, a determination must be made regarding whether victims will have a right to payments or only a privilege. Without an underlying rationale, allowing or denying appeals might be more difficult to justify. "In other words, the lack of a theoretical justification still leaves one with difficult questions to answer whereas a theoretical justification pretty well carries with it a mandate for handling subsequent considerations." Id.; see McAdam, supra note 26, at 349 ("Because a program of victim compensation necessarily involves the redistribution of tax money, the state's role in this process must be justified.").

47. Comment, supra note 29, at 839.

48. See Hoelzel, supra note 20, at 487; McAdam, supra note 26, at 351; Comment, supra note 15, at 718.

49. Brooks, supra note 24, at 479. Examples of actions prohibited by some states which could be termed self-protective include retaliation against the offender and using force to defend one's home.

50. Id. "Whether any government could [halt all crimes of violence] absolutely seems doubtful. Whether being a victim necessarily depends upon a government 'defaulting' its obligations also seems doubtful, at least to many." Id. at 480.

51. McAdam, supra note 26, at 352.

52. Id. at 351, stating:

This rejection [of the state's duty to compensate] seems to stem from a reluctance to recognize that the state attempts to do more than provide a general condition of public
The second theory that has been propounded, popularly known as the “social welfare” theory, is based on the premise that society has a moral obligation to preserve the innocent victim’s dignity, security, and comfort. It fulfills this obligation by helping the victim provide a livelihood for himself and his family when he is precluded from so doing by a criminally inflicted injury. This view avoids making compensation from the state a legal right which victims could then demand.

So long as compensation is a moral right, it remains something that the state ought to do but not something that the state has to do. If compensation payments are awarded as a matter of grace, as contrasted to the victim having a legal claim upon the state for compensation, then the administrative procedures, especially appeals procedures, can possibly be quite different.

Many legislatures have preferred this view since it presents state compensation as a matter of grace rather than as a legal right.

Some authorities have criticized this theory as another extension of the welfare state. They argue that this approach would foster dependence upon governmental paternalism and would therefore weaken individualism. Others question whether it is fair to single out victims of crime for compensation while neglecting other equally deserving victims, for instance, those of natural disasters.

order. The argument is that it would be ludicrous to charge the state with the responsibility of protecting its citizens from attack at all times and in all places.


53. Comment, supra note 29, at 839.

54. Brooks, supra note 24, at 483. The author illustrates his position: Why are we so sure by now that the State ought to accept special responsibility for the victims of violence? One answer, if there were time, would be to take a whole string of individual cases and challenge anyone to deny that in these cases the community ought to provide some compensation where it is not provided at all, or at any rate, to provide much more generous compensation.

Id. (quoting the Earl of Langford, 245 PARL. DEB., H.L. (5th ser.) 247 (1962)); McAdam, supra note 26, at 351; Comment, Compensation for Victims of Violent Crimes, 26 U. KAN. L. REV. 227, 228 (1978).

55. Brooks, supra note 24, at 484 (emphasis in original).


57. Brooks, supra note 24, at 484; Hoelzel, supra note 20, at 487.

58. E.g., Brooks, supra note 24, at 483-90.

59. Id. at 486-87, stating: Why alleviate the suffering of victims of crimes of violence and not, for instance, that of the farmer who while working in his field, is struck by lightning and rendered a helpless invalid? The question is not an easy one to answer. It is not enough to say “First things
The third rationale on which a victim compensation program could be based has been called the "shared risk" theory. The basic notion behind this rationale is that the state should use a part of the taxes collected to insure its citizens against crime. Thus, by contributing tax dollars, all citizens share in the cost as well as the risk of victimization. The basic theory behind Oklahoma's victim compensation program is not clearly articulated in the Statute. But the "shared risk" theory appears to be the most formidable justification for a compensation program. One of the risks all citizens must bear for the benefits of living in a pluralistic society is the ever-present possibility of being victimized. The "risk sharing" theory merely recognizes this inevitability and advocates apportioning collective tax dollars to reimburse those who are criminally victimized.

IV. INTERPRETATION OF THE STATUTE

Research into victim compensation programs throughout the nation, and a study of recommendations of those intricately connected with the programs, allows full appreciation of Oklahoma's new program. Throughout, it is obvious that careful consideration and research went into the drafting of the Oklahoma Statute. The following analysis will point out the advantages of the Oklahoma Statute and will offer suggestions for its successful implementation in Oklahoma. The discussion will focus on the administration, sources of funding, eligibility requirements, compensable losses, limitations on compensation, procedures established, payment of the award, and fraudulent claims under the new Oklahoma compensation program.

To assist the reader in understanding the analysis to follow, a brief example of the operation of the statutory provisions and procedures is helpful. First, once a party has been victimized, he or she must report the crime to the police within seventy-two hours and file a timely claim.
with the Victims Compensation Board. Administrative investigators will then screen the claim to ensure the eligibility of the victim and validity of the claim. The claim is then presented to the three-member Board. This Board has the authority to determine the amount of compensation necessary to reimburse the victim for expenses associated with his injury. The Board can settle a claim with or without a hearing. If the Board determines that a hearing is necessary to settle the claim, or if the claimant so requests, the Board is delegated the powers necessary to conduct an administrative hearing, such as requiring production of records, ordering the claimant to submit to physical or mental exams, and issuing subpoenas to witnesses.

A. Administration

The Oklahoma statute establishes a Board consisting of three members, appointed by the Governor and confirmed by the Senate, to administer the victim compensation program. By structuring the governing body of the compensation program separate from the judiciary, Oklahoma appears to have profited from the experiences of other compensation programs. There is an overwhelming preference among officials of other states, for an independent administrative board rather than a court-administered program. Advantages of the new specialized agency are its potential informality, its expertise in the field, and an absence of stultifying precedents since a new agency can avoid the transfer of improper attitudes that existing agencies may perpetuate.

61. OKLA. STAT. ANN. tit. 21, § 142.4 (West Supp. 1981-1982). The appointment system is designed so that three Board members will serve staggered four year terms to ensure that there will always be an experienced person in office. The section specifically provides: “Of the first members appointed, one shall be appointed for a term of two (2) years, one shall be appointed for a term of three (3) years, and one shall be appointed for a term of four (4) years.” Subsection 142.4(B) provides that a chairman is to be elected each year by the Board membership. Subsection 142.4(A) requires that at least one member of the Board be a person admitted to practice law in Oklahoma. Subsection 142.5(D) provides that offices, support staff, and secretarial services will be provided by the District Attorneys Training Coordination Council. According to the principal draftsman of the victim compensation Statute, Michael C. Turpen, Board members will serve part-time on a voluntary basis.

62. "The majority of programs ... provide for the appointment of a new board and assign that board duties concerned with victim compensation only. This approach is justifiable because victim compensation involves issues totally different from those considered by worker's compensation or welfare boards." Comment, supra note 54, at 251-52.

63. See Floyd, Massachusetts' Plan to Aid Victims of Crime, 48 B.U.L. REV. 360, 363 (1968) (The nature of a compensation program would necessitate the flexibility of an administrative proceeding rather than the inherent rigidity of judicial processes); Comment, supra note 15, at 725 (“Court administration of a victim compensation program would place yet another burden on the state's already overtaxed judiciary.”).

64. Brooks, Compensating Victims of Crime: The Recommendations of Program Adminstra-
Also, one obvious drawback to a court-operated system is the existing overload on court dockets, requiring long delays in processing claims. Furthermore, courts lack the ability to investigate claims.

The Oklahoma Statute provides general guidelines for the operation of the compensation program, but delegates to the Board the necessary authority to define and implement the program. For example, the Board has authority to regulate its own procedures and prescribe forms necessary to carry out the purposes of the Statute. Additionally, the Board is solely responsible for budgeting and expending monies from the Crime Victims Compensation Fund and for publicizing the compensation program. Because the concept of compensation is a new one, the operation of the program relies on flexibility to adapt to unanticipated contingencies. It has been said therefore, that delegation of the power to formulate rules to the board is wise because that body can be more flexible than the legislature.

The Oklahoma Crime Victim Compensation Act requires the

65. One study indicated that a civil case could take from 288 to 811 days from date of filing to disposition. T. Church, Jr., A Carlson, J. Lee & T. Tan, Justice Delayed 22 (1978); see, e.g., National Institute of Law Enforcement and Criminal Justice, U.S. Dep't of Justice, Reducing Court Delay (1973); Selected Readings: Court Congestion and Delay (G. Winters ed. 1971); Neubauer, Reducing Delay in the Courts, 62 Judicature 111 (1978).

66. See H. Edelhertz & G. Geis, supra note 45, at 127. The authors, noted researchers in the area of victims compensation, express many reservations about utilizing the courts to decide claims. In discussing a program which uses the judicial model they commented:

The principal [disadvantage with the judicial model] is the lack of any central responsibility for operation of the program. No . . . official has as his main responsibility the duty to see that all eligible victims of crime are made aware of their rights under the statute and are helped to obtain the relief to which they may be entitled.

67. Okla. Stat. Ann. tit. 21, §§ 142.5-6 (West Supp. 1981-1982). Some of the other powers delegated to the Board include: (1) The power to regulate its own procedures, id. § 142.6(1); (2) the power to adopt rules and regulations to implement the provisions of the statute, id. § 142.6(2); (3) the power to define any term not defined in the statute, id. § 142.6(3); (4) the power to prescribe forms necessary to carry out the purposes of the statute, id. § 142.6(4); (5) the power to conduct hearings, with all attendant powers to subpoena witnesses, require the production of records and other evidence, administer oaths and other affirmations, receive relevant evidence, id. § 142.5(C), reinvestigate or reopen claims without regard to statutes of limitation, id. § 142.5(B), request access to any data necessary to assist the Board in making determinations of eligibility for compensation, id. § 142.6(5), take judicial notice of general, technical and scientific facts within their specialized knowledge, id. § 142.6(6), and order a claimant to submit to a mental or physical exam, id. § 142.9(B); (6) the power to settle a claim without a hearing by stipulation, agreed settlement, consent order, or default, id. § 142.8(C); (7) the power to award compensation for economic loss arising from criminally injurious conduct, id. § 142.5(A); (8) the power to budget and expend monies from the Crime Victims Compensation Revolving Fund to implement the provisions of the statute, id. § 142.17; (9) the power to publicize the availability of compensation and information regarding the filing of claims, id. § 142.6(7).

68. Lamborn, supra note 15, at 667 ("In light of the newness of the concept of compensation,
Board to prepare an annual report of its activities. The report must include the amount of compensation awarded as well as a statistical summary of claims and awards made and denied. The requirement of an annual report is consistent with other well-established victim compensation programs. This annual report can be a valuable device in assessing the performance of the program and in providing data from which adjustments can be made to improve its future operation.

B. Funding

The Oklahoma statute provides that funding for compensating victims of crime will come from a revolving fund not subject to fiscal year limitations. The revolving fund is to be financed through compensation assessments imposed on felons and misdemeanants. The amount of the assessment will depend on the type of crime committed by the offender.

For purposes of levying an assessment, crimes are broken down into three major categories: those felonies involving "criminally injurious conduct" (such as rape, murder, physical assault), all other felonies, and misdemeanors. The statute indicates that a victim compensation assessment of between $25 and $10,000 will be levied for each felony involving "criminally injurious conduct" for which the offender is convicted. Under this category the court may determine the assessment based on factors such as the severity of the crime, the prior crimi-

70. Id.
72. Id.
74. Id. § 142.18(A) Thus, in addition to court costs and fines that may be imposed for a particular offense, the judge must impose a victim compensation assessment over and above the other charges.
75. "Criminally injurious conduct" is defined by the statute as conduct that results in personal injury or death to a victim and which is punishable by fine, imprisonment, or death. Okla. Stat. Ann. tit. 21, § 142.3(5) (West Supp. 1981-1982).
76. Of course, the conviction can logically result from an adjudication or a guilty plea. Interview with Michael C. Turpen, Muskogee County District Attorney and principal draftsman of the Victim Compensation Act (9-10-81). The statutory language regarding the amount of the assessment reads as follows: "[A]ny person convicted or pleading guilty to a felony involving criminally injurious conduct shall be ordered to pay a victim compensation assessment of at least Twenty-five Dollars ($25.00), but not to exceed Ten Thousand Dollars ($10,000.00), for each crime for which he was convicted." Okla. Stat. Ann. tit. 21, § 142.18 (West Supp. 1981-1982).

http://digitalcommons.law.utulsa.edu/tlr/vol17/iss2/4
nal record, and the ability of the defendant to pay, as well as the economic impact of the assessment on the dependents of the defendant.  

A $20 victim compensation assessment for each non-violent felony and a $5 assessment for each misdemeanor will be levied by the court in addition to any fine, penalty, and forfeiture imposed on and collected from offenders convicted of a felony not involving criminally injurious conduct and those convicted of a misdemeanor offense, respectively.  

The Oklahoma statute further provides that any bond posted for an offense upon which a fine is levied must include a sufficient amount to cover the victim compensation assessment.

In addition to the fines levied against offenders, another source of potential revenue for the Victims Compensation Revolving Fund exists as a result of other legislation benefiting victims of Oklahoma crimes mentioned earlier in this Comment. The law prohibits notorious felons from receiving proceeds from the sale of book, television, or movie rights concerning the crimes they have committed. The statute instead directs that these proceeds be used to provide for the defense of the offender, if no other source is available, and satisfy any civil judgment awarded to the offender’s victim. If, after five years, no civil judgment is awarded to the victim, then the proceeds must be channeled into the Victims Compensation Revolving Fund to benefit other victims.

Although the salary of the compensation program’s administrator will be paid from legislated funds, the Oklahoma statute specifically

78. Id. § 142.18(B). Again, the conviction can arise from a court adjudication or a guilty plea. See note 76 supra.

An additional source of revenue for the Fund is the transfer of any money over three years old in the Oklahoma Department of Corrections Restitution Fund. Interview with Charles W. Wood, Administrator of the Oklahoma Crime Victims Compensation Board (1-29-82).


The OCVCB, Rules & Regulations provide that the Administrator of the Board shall be responsible for the administration of the rules, regulations, policies, and procedures promulgated by the Board, pursuant to the Administrative Procedures Act. Okla. Stat. tit. 75, §§ 301-327
excludes appropriated funds from the revolving fund from which vic-
tim compensation awards are drawn. 82 This is significant because it
indicates that the Oklahoma victim compensation Statute will be self-
sustaining rather than fully supported through public funding. A few
states involved earlier in victim compensation also arranged for their
programs to be self-sustaining. 83 One program administrator has as-
serted that taxing every criminal would provide ample funding for a
victim compensation program. 84

C. Eligibility

The first section of the Oklahoma Crime Victim Compensation
Act provides that “it is the legislative intent to compensate victims of
criminal acts who suffer bodily injury or death in the amount of ex-
penses actually incurred as a direct result of the criminal acts of other
persons.” 85 While this opening statement provides a thumbnail sketch
of the group of persons to whom the Statute is directed, the Act con-
tains other provisions that more closely delineate those eligible to re-
ceive benefits. The Oklahoma Statute provides some guidelines for
determining eligibility and allows the governing Board to promulgate
more detailed regulations concerning the requirement. 86

1. Persons Eligible

The threshold eligibility requirement concerns the status of the
victim. Under the Oklahoma Statute only one of the following individ-
uals may apply for compensation: The victim who has experienced
personal injury as a result of criminally injurious conduct; 87 a depen-
dent of a deceased person, whose death was the result of a criminal
attack; or a person authorized to act on behalf of the victim or the

(1971 & Supp. 1980). In addition, the Administrator shall be responsible for the employment,
supervision, and evaluation of Board employees. Finally, the Administrator shall keep the Board
appraised of all relevant matters and shall seek its advice as is deemed necessary.
83. As of 1979, Florida, Virginia, and Delaware reportedly supported their entire programs
from funds generated through fines and surcharges upon convicted offenders. Blackmore, Paying
the Price of Crime, POLICE MAGAZINE, July, 1979, at 59.
84. Hoelzel, supra note 20, at 493 (Hoelzel quotes Keith Jordan, an assistant attorney general
who works with the Tennessee victim compensation program as stating: “taxing every criminal
offender would be the best answer... we would be awash in money if we could tax them all.”).
86. Id. § 142.6(2).
87. Id. § 142.3(13) (In the event of the victim's death his estate would be the recipient of the
compensation.).
dependent of a deceased victim. 88

2. In-state Location Requirement

Several issues typically arise with regard to the statutory classification of eligible claimants. One issue concerns the eligibility of an out-of-state citizen who is victimized in a state with a compensation plan. Another issue concerns whether a citizen from a state with a compensation program can be compensated in his home state if the injury occurs while that citizen is out-of-state.

The Oklahoma statute specifies only that it is intended to assist those persons “within the state” who are victims of crime. 89 This designation, as opposed to an in-state residency requirement, would allow even visitors to recover, provided the crime occurs within Oklahoma boundaries. However, the wording of the statute seems to indicate that an Oklahoma resident injured out of the state would not be covered by the Oklahoma compensation program. Some other states have also used victim compensation statutes which have a location requirement rather than one which emphasizes residency. 90 Confining the eligibility to victims of only those crimes which occur within the state simplifies administration because the information and evidence concerning the crime are usually located within the state. 91

3. Contributory Responsibility of the Victim

A major issue concerning the eligibility of the victim centers around the possibility of contributory actions by the victim. Some programs have a provision similar to a comparative negligence rule which denies benefits to the degree the victim caused the misconduct that led

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88. Id. § 142.3(3).
89. Id. § 142.1.
90. The residency requirement is designed for cost control purposes. It reflects the policy that only state residents should be eligible to receive state aid, since only those who contribute to the program through taxes should be compensated. Comment, supra note 54, at 233.
91. Id. See also Comment, Crime Victims Compensation Act-Article 8309-1: Texas Compensates Victims of Crime, 32 Baylor L. Rev. 247, 250-51 (1980). A residency requirement may violate the Privileges and Immunities Clause of the United States Constitution:

The United States Supreme Court has held that the Constitution places “the citizens of each state upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states are concerned.” A state can discriminate between residents and nonresidents only when it can show a sufficiently unique link between a legitimate state interest served and the discrimination practiced, and the actual impracticability of less restrictive alternatives.

Id. at 250 (citing Paul v. Virginia, 75 U.S. (8 Wall) 168 (1868) and Toomer v. Witsel, 334 U.S. 385 (1948)).
to his injuries.\textsuperscript{92} But the determination of both the degree of victim responsibility and the corresponding reduction in the amount of the award has been difficult, costly, and time-consuming for administrators.\textsuperscript{93}

It is suggested that, despite the cost, the degree of victim responsibility should be an important consideration in determining eligibility. After all, the intent of the program is to aid “innocent victims” and irresponsible incitement should not be supported by a government program.\textsuperscript{94} Under the Oklahoma statute, the Board may either deny compensation altogether to a claimant who is an offender or diminish the award by the degree of responsibility attributed to the claimant by the Board.\textsuperscript{95}

4. Victims Who Are Members of the Offender’s Household

A highly controversial issue concerns compensation for victims who are members of the offender’s family. Many jurisdictions exclude from eligibility members of the offender’s “household” who are victims.\textsuperscript{96} One rationale for this exclusion is that it prevents collusion and unjust enrichment by the offender when members of his household are compensated, since his burden of support will be lightened.\textsuperscript{97} Another rationale is that an administrative finding of facts would be more difficult in cases involving members of the same family or household.\textsuperscript{98} Some commentators have noted that the relationship is seized upon by legislators as an opportunity to cut costs by excluding persons who seem to be less deserving.\textsuperscript{99}

\textsuperscript{92} Comment, supra note 54, at 238; see \textit{Alaska Stat.} \S 18.67.130(b)(3) (Supp. 1981); \textit{Del. Code Ann. tit. 11, \S 9006(b) (1979); Mass. Gen. Laws Ann. ch. 258A, \S 6 (West Supp. 1981).}

\textsuperscript{93} Lamborn, \textit{The Scope of Programs for Governmental Compensation of Victims of Crime}, 1973 U. Ill. L.F. 21, 82-83; Brooks, supra note 64, at 463 (In spite of the difficulty in establishing a degree of responsibility, twenty program administrators polled unanimously believed that victim responsibility should be considered in setting the award.).

\textsuperscript{94} One commentator explains:

A provision based upon the contributory negligence principle is consistent with the risk sharing theory, which in turn is based upon the assumption that victims are randomly chosen as objects of criminal violence. Contributory misconduct removes the element of randomness and makes the victim responsible for his or her own misfortune; the victim therefore is not as deserving of aid.

Comment, supra note 54, at 239 (footnotes omitted).


\textsuperscript{96} Brooks, supra note 64, at 465-66; McAdam, supra note 26, at 361 (In 1976, 13 out of 14 states excluded recovery to victims whose injuries were caused by family members.); Comment, supra note 54, at 239.

\textsuperscript{97} Edelhertz—Part I, supra note 13, at 13.

\textsuperscript{98} Brooks, supra note 64, at 465-66.

\textsuperscript{99} H. Edelhertz & G. Geis, supra note 45, at 269 (“A high proportion of assaults and...
This provision has received sharp criticism based on the contention that the exclusion bars a large group of innocent victims in order to prevent a few fraudulent claims. It has been noted that it is incongruous for a meritorious case involving relatives to receive no consideration while a less deserving victim receives compensation only because his attacker was a stranger. Consider, for example, the plight of dependent children who would be ineligible for a compensation award following the murder of one parent by the other. Commentators have suggested that stringent proof requirements and careful investigation be used to eliminate fraudulent suits rather than completely disallowing claims by family members.

The draftsmen of the Oklahoma compensation Statute followed this latter suggestion, opting for a more flexible standard instead of the total household exclusion. The Oklahoma Statute allows for the compensation to be awarded unless the award would "unjustly benefit the offender or his accomplice." This allows the Board decisionmakers to evaluate each victim's claim on the basis of its own facts, instead of established presuppositions.

5. Dependents Who are Eligible

The Oklahoma Act defines "dependent" as a natural person wholly or partially dependent upon the victim for care and support, including a child of the victim born after the death of the victim. This killings are committed in domestic settings, and elimination of such claims will directly lower the program costs.

100. McAdam, supra note 26, at 362.
101. Brooks, supra note 64, at 466.

[M]ethods can be devised in order to make sure than an intra-family offender does not indirectly benefit from his/her crime. It has been suggested that where a child is the victim, a trust be established to oversee the expenditure of the compensation funds. The generally accepted provisions that require victim cooperation with law enforcement are helpful here because as long as the victim knows the related offender and is required to prosecute before recovery can be granted, an offender who might yet indirectly benefit from his crime would pay a considerable price for it at the bar of justice.

104. Id. § 142.3(6).
description, commonly referred to as the “functional description,” lim-
its compensation to persons who are actually dependent on the victim,
while excluding those who are related to the victim but who are not
dependent.105 Based on the statutory language, dependents could be
either extended family members or totally unrelated as long as they are
dependent on the victim for care or support. An alternative description
of dependency, used by compensation programs in other states, is
called the “relationship test.” It defines a dependent by certain catego-
ries of listed relatives such as spouse, parent, or child.106 Because of its
flexibility, the functional test has been praised as the most rational of
the two tests, even though the relationship test involves greater admin-
istrative ease.107

In reviewing the Oklahoma Statute, it is important to note that a
dependent can recover only upon the death of the victim.108 This pro-
vision circumvents the problems that arise in handling claims and
awarding compensation when both the injured victim and his depen-
dents are allowed to file compensation claims.109

6. Financial Need Requirement

Another controversial issue regarding eligibility has been the pre-
requisite imposed by many states that the victim be financially
needy.110 The need requirement is justified by its proponents as a cost
control measure. Essentially, money can be saved by denying compen-
sation to those people who could manage without it.111

This requirement has been unpopular with commentators as well

105. Comment, supra note 54, at 231. According to the proposed OCVCB, RULES & REGULA-
TIONS a dependent includes a child of the victim born after the death of the victim where the death
occurred as a result of criminally injurious conduct. OCVCB, RULES & REGULATIONS, supra note
81, Rule 2.

106. Comment, supra note 54, at 231.

107. Id. (“The functional test appears to be the most rational in that it limits compensation to
persons who are actually dependent on the victim, while excluding those who are related to the
victim but who are not dependent.”).


109. Comment, supra note 54, at 232 (A major difficulty would be allocating a compensation
award between the victim and the victim's dependent based on the two separate claims. Another
consideration would be the added cost of compensating for the needs of both the victim and the
dependent.).

110. Hoelzel, supra note 20, at 488-89 (In the spring of 1980, 11 out of 27 states with victim
compensation statutes required financial hardship as a prerequisite to recovery).

111. Comment, supra note 29, at 845; Comment, supra note 54, at 238. But see Lamborn,
supra note 93, at 50 (Lamborn argues that wealthy taxpayers contribute more to the fund out of
which the awards are made and consequently, it is inconsistent to cut them out of the program).
as program administrators. It has been criticized for giving the victim compensation program a "welfare" image that it does not deserve and for operating inequitably. The New York Board has noted that, in some cases, persons with particularly meritorious claims have been denied compensation because they have been unable to establish hardship, while in other cases, persons who have established hardship have been compensated for less meritorious claims.

It has also been charged that the financial need test adds substantially greater costs to the administration of the program because it compels difficult investigation and adjudication efforts. One experienced

112. See, e.g., Brooks, supra note 64, at 464 (In 1979, 15 out of 18 administrators polled did not believe that victim need should be a prerequisite to the awarding of compensation.); Lamborn, supra note 93, at 57 (Requiring that the applicant establish hardship as a prerequisite to recovery has been widely condemned.)

113. The need requirement causes the public to confuse the compensation program with charity resulting in a hesitancy on the part of those victimized to come forth and apply for compensation and a corresponding deterrent to crime reporting. McAdam, supra note 26, at 355-56.

114. Id. at 355.

115. Edelhertz—Part II, supra note 102, at 110-11. The hardship requirement was discussed in each of the first four annual reports prepared by the New York Board. The fourth annual report commented on the hardship requirement as follows:

The most difficult problem still continues to be determining the question of serious financial hardship. Many of the elderly people who are retired, who have worked many years, have been frugal and have saved money to take care of them in their declining years represent one group that the Board feels should be reimbursed for their medical expenses. However, the [New York] statute makes no distinction and, therefore, with substantial savings the statute does not permit an award to these elderly persons. Another segment of our society is the middle income man who has supported his family, has been gainfully employed and is not only a respectable but a responsible citizen. This claimant feels that having been a law-abiding citizen who has worked hard and paid taxes he is entitled to receive his unreimbursed medical expenses and his loss of earnings within the limitations allowed by the statute. The Board continues to feel that these two classes of individuals should be compensated.

Id. at 111-12 (quoting from the [1970] New York Crime Victims Compensation Board Annual Report); Comment, supra note 91, at 252.

116. Edelhertz—Part II, supra note 102, at 110, 116, 122. The New York Board, in determining hardship, has to weigh such factors as the applicant's resources, the age of the claimant, the physical and mental condition of the claimant, how frugally the claimant has conducted his financial affairs, the manner of living to which the claimant has been accustomed, the claimant's educational or vocational plans subsequent to the crime, the genuineness of the claimant's stated need, and the sincerity of his whole claim. By their nature, many of these considerations must be subjective because they defy precise measurement. Making these judgments carefully requires close attention to the verification forms provided by the claimant which consumes much of the decisionmaker's time. See Lamborn, supra note 93, at 60. The Chief Investigator of the New York program believes elimination of the hardship requirement would increase the program's cost by only 10% per year. This estimate is based on the belief that insurance covers the losses of many of the more wealthy victims, that they are more likely not to apply for benefits when losses are small, and that crimes of violence more frequently involve the poor. Moreover, the substantial costs of investigation and adjudication of "serious financial hardship" would be eliminated.

Id. (footnotes omitted).
program administrator has stated that the need requirement has actually done little to lower costs.\textsuperscript{117} The Victim Compensation Board in New York has found the need requirement very difficult to administer and that it often produces substantial inequities.\textsuperscript{118} Appreciating the many reasons against such a measure, a majority of programs, including Oklahoma's,\textsuperscript{119} do not require a showing of financial need.\textsuperscript{120}

7. Minimum Loss Requirement

Some jurisdictions impose a minimum loss requirement of $100 to prevent the filing of trivial claims which would cost more to process than the claim itself.\textsuperscript{121} However, the minimum loss requirement has been criticized. Some commentators argue that the programs should attempt to encompass as many persons as possible\textsuperscript{122} and since there has to be an initial investigation of claims to determine eligibility anyway, the claim might as well be approved as denied.\textsuperscript{123} The minimum loss requirement appears unfair to those people living on a subsistence level, for whom an amount less than $100 might be a substantial sum. Appropriately, it has been asserted that "the burden of loss is relative and it is relatively larger for those who are most likely to become victims of crime."\textsuperscript{124}

\begin{itemize}
\item \textsuperscript{117} Hoelzel, \textit{supra} note 20, at 489 ("The financial means test is really a political concession, because the legislature sees it as reducing costs appreciably, but it actually has little effect") (quoting Richard Godegast, the assistant executive secretary of the California program; see H. Edelhertz & G. Geis, \textit{supra} note 45, at 271-72).
\item \textsuperscript{118} H. Edelhertz & G. Geis, \textit{supra} note 45, at 271, explains:
\begin{quote}
Needs tests can result in substantial inequities. For example, the New York board attempted to ameliorate the harshness of its requirements by not counting savings as assets up to the amount of a claimant's annual income. The result: A person with a $25,000 annual income and $23,000 in savings could qualify for help, but one with a $6,000 annual income but $6,500 in the bank might not.
\end{quote}
\item \textsuperscript{119} OKLA. STAT. ANN. tit. 21, § 142.10 (West Supp. 1981-1982).
\item \textsuperscript{120} Hoelzel, \textit{supra} note 20, at 488-89 (16 out of 27 states did not have a financial need requirement as of the spring of 1980).
\item \textsuperscript{121} Brooks, \textit{supra} note 64, at 461-62; Hoelzel, \textit{supra} note 20, at 489 (17 states imposed a $100 minimum loss requirement as of the spring of 1980).
\item \textsuperscript{122} Edelhertz—\textit{Part I}, \textit{supra} note 13, at 45 (The largest percentage of claims are rejected for failing to meet the minimum standard).
\item \textsuperscript{123} Brooks, \textit{supra} note 64, at 462 (New York has handled difficulties with trivial claims by conducting preliminary investigations by phone and letter prior to accepting claims). An initial investigation is required to establish other requirements such as verification that the crime in fact occurred, that the claimant reported the crime and filed a claim within the time limit and that the claimant actually incurred the financial losses he claimed. \textit{See also} Edelhertz—\textit{Part I}, \textit{supra} note 13, at 45.
\item \textsuperscript{124} Brooks, \textit{supra} note 64, at 462 ("[T]he incidence of crime being what it is, a minimum loss requirement would prevent compensation being paid to those who are most in need and for whom no loss is 'trivial'.")
\end{itemize}
Noted researchers in the area of victim compensation have concluded that removing all minimum loss requirements results in only a 12% increase in the total program cost, but results in an 187% increase in the number of people compensated. Oklahoma has not established a minimum loss requirement for its compensation program and, consequently, can be expected to benefit more victims.

8. Reporting Requirement

The majority of states have required that the crime be reported to police within a specified number of days. One of the justifications for the prompt reporting requirement is that this will discourage fraudulent applications for compensation. Another purpose for the requirement is to encourage swift notification of police so that the offender can be pursued while clues and evidence are fresh. This will enhance crime detection and prevention. Prompt crime reporting will facilitate complete police reports and increase the accuracy of the crime profile in the state. If the victim of a crime has an opportunity to receive financial aid from the state, he might be more inclined to report the crime.

Oklahoma has followed the majority of states by including a reporting requirement. Under the Oklahoma statute the victim or dependents cannot recover compensation unless the crime is reported within seventy-two hours after its occurrence. However, the Oklahoma

125. Hoelzel, supra note 20, at 489; see Edelhertz—Part II, supra note 102, at 122 (financial need requirement serves as a basis for victim dissatisfaction with both the substance and procedure of the program).
126. Hoelzel, supra note 20, at 489, 492 (24 out of 27 states surveyed in 1980 required the victim to report the crime within 2 to 5 days).
127. Brooks, supra note 64, at 453 ("The time deadline in reporting the crime to the police has the dual objectives of controlling fraudulent filings of claims for compensation and aiding the police by bringing to their attention the commission of crimes."); Lamborn, supra note 15, at 665.
128. McAdam, supra note 26, at 353; Comment, supra note 54, at 234.
129. Comment, supra note 54, at 234.
130. Brooks, supra note 24, at 496, stating:

As things now stand, there is often insufficient incentive for the victim to come forward and make his injury officially known. . . .

. . . [F]or the individual who may have already suffered loss of income as a result of not being able to work following a criminal attack it is simply more realistic not to risk losing more time off the job by pressing a grievance. To correct this problem, there would have to be better incentives than now usually exist to cause the victim to want to report his case to the police." . . . [T]he profit motive might operate here, as it does elsewhere in society, to stimulate better law enforcement.”

Id.; McAdam, supra note 26, at 353. See also the discussion pertaining to the importance of publicizing the victim compensation program infra notes 275-83 and accompanying text.
statute includes substantial flexibility by providing that this requirement can be waived if the Board finds that there was good cause for the failure to report within the seventy-two hour period.\textsuperscript{132}

9. Deadline for Filing Claim

As with the reporting requirement, a majority of states have denied compensation to victims unless a claim is filed within an established period after the injury or the victim's death.\textsuperscript{133} The justification for this time limitation has been explained as follows:

The provision acts reasonably to exclude claimants who are not prompt in making claims on the theory that they are less deserving and have indicated a lack of need by not seeking aid within the period. The provision also makes evidentiary sense in that it insures current evidence will be available, making the determination of claims easier and preventing fraud.\textsuperscript{134}

The Oklahoma statute, following the majority of other states,\textsuperscript{135} requires that the claim for compensation be filed within one year after the injury or death upon which the claim is based.\textsuperscript{136} Allowing a victim

\begin{itemize}
  \item Presumably, good cause could be shown where the victim’s injuries were extensive enough to require a period of convalescence or temporary incapacity due to the emotional trauma caused by the crime. Note, The Minnesota Crime Victims Reparations Act: A Preliminary Analysis, 2 WM. Mitchell L. Rev. 187, 208 (1976).
  \item Hoelzel, supra note 20, at 489, 492; Comment, supra note 54, at 235. One commentator reasons:
    \begin{itemize}
      \item Starting the period anew upon the death of the victim . . . makes sense because the victim’s death will drastically alter the situation as far as dependents are concerned.
      \item When the victim dies the expectation that the victim will return to work ceases, and the necessity for compensation to pay expenses and provide support appears for the first time.
    \end{itemize}
  \end{itemize}

\textsuperscript{132} Id.; see, e.g., Brooks, supra note 64, at 453 (“It is suggested that a short, definite time period be specified, with the compensation board given the discretion to waive it for good cause.”).

\textsuperscript{133} Hoelzel, supra note 20, at 490 (19 out of 27 states surveyed in 1980 required claims to be filed within 6 months to one year. Six of the states allowed up to 2 years for filing the claim. Two states required the claim to be filed within less than 6 months).

\textsuperscript{134} Comment, supra note 54, at 235.

\textsuperscript{135} See Hoelzel, supra note 20, at 490 (19 out of 27 states surveyed in 1980 required claims to be filed within 6 months to one year. Six of the states allowed up to 2 years for filing the claim. Two states required the claim to be filed within less than 6 months).

\textsuperscript{136} OKLA. STAT. ANN. tit. 21, § 142.10(A)(1) (West Supp. 1981-1982). According to the proposed OCVCB, RULES & REGULATIONS, the procedure for obtaining compensation is as follows: The victim may secure a copy of the Official Victims Compensation Application Form from the local district attorney's office or the Board offices in Oklahoma City. If needed, assistance in completing the form will be available by the Victim-Witness Coordinator, by the district attorney's staff in districts that have no Victim-Witness Coordinator, or by the Board staff in Oklahoma City. Pursuant to the statute, the form must be completed, appropriate documentation attached, signed, and received by the Board within 1 year of the incident. The staff of the Board shall log the application as being received and begin a thorough review and verification process. The Board and staff may conduct investigations and request additional information from the vic-
a full year to file a claim is justifiable because injuries may be latent and thus not be readily ascertainable until months after their infliction.  

10. Kinds of Crimes Which Will Be Compensable

The final limitation on eligibility that will be discussed is through the definition of "crime." States have generally defined the crimes for which compensation will be awarded in one of two ways. Some states allow compensation only to victims of certain listed crimes, such as murder, assault, kidnapping, or rape. This approach reduces the danger of fraud and facilitates the administrative determination of eligibility. Other states utilize a broad, generic definition of crime.

The advantages of [the list] approach are three: First, it is easy to determine eligibility, and reduces the need for numerous determinations as to whether someone is or is not eligible under the law. Second, the list could easily be restricted, should experience deem it desirable to do so. Third, the dangers of fraud would be lessened if there is a delineation of compensable offenses.

Id.
instead of listing the compensable crimes. Most administrators favor the broader definition. The generic definition has the advantage of flexibility, eliminating the inequity that would occur if an equally deserving victim were denied compensation simply because he was injured by an offense that was not on the list of compensable crimes. The Oklahoma compensation statute uses the generic definition of compensable crime, describing it as “[c]riminally injurious conduct . . . that results in personal injury or death to a victim which is punishable by fine, imprisonment or death.”

As a cost-saving measure the Oklahoma Statute specifically excludes compensation for victims of motor vehicle collisions caused by the negligent maintenance or operation of the vehicles. Only if it can be conclusively established that physical injury was intentionally inflicted by means of a motor vehicle will the victim be eligible for recovery from the Victims Compensation Fund. By taking this approach the Oklahoma Legislature has followed the majority of other states with victim compensation statutes.

There are three rationales for excluding injuries caused by the negligent maintenance or operation of motor vehicles. Perhaps the foremost is the need for conserving the compensation funds for intentionally inflicted injuries. Allowing victims of the vast number of negligently caused automobile accidents to recover would create an enormous drain on compensation funds. A second rationale offered for the exclusion is the difficulty involved in establishing whether a motor vehicle incident is a crime or merely an accident. A third reason is that most states have compulsory liability insurance that would compensate the victim of a negligently inflicted motor vehicle injury.

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142. Brooks, supra note 64, at 460 (10 out of 19 program administrators polled favor a generic definition of crime).
143. Comment, supra note 54, at 229.
144. Drobny, supra note 140, at 211.
146. Id.
147. Hoelzel, supra note 20, at 492.
148. McAdam, supra note 26, at 361 & n.85 (Given the volume and cost of automobile accidents, estimated at 10.8 billion in 1971, the states have opted for economy.). In Oklahoma during 1980 there were 77,660 reported traffic accidents in which 25,030 persons were killed or injured. Between 1969 and 1980 in Oklahoma traffic accidents increased 22%, automobile related deaths increased 8%, and injuries increased 12%. ACCIDENT RECORDS DIVISION, OKLAHOMA DEP'T OF PUBLIC SAFETY, OKLAHOMA TRAFFIC ACCIDENT FACTS (1980).
149. See Lamborn, supra note 93, at 31 (“Is the mere occurrence of a collision sufficient evidence that some driver broke the law? Which driver?”).
150. Id. at 30-31.
D. **Compensable Losses**

In structuring the Oklahoma Crime Victim Compensation Program the draftsmen relied heavily on the experiences of earlier state programs and the advice of program administrators. The Oklahoma statutory provisions which designate the kinds of losses to be compensated provide good examples of this reliance.

1. **Economic Losses for Which Compensation is Available**

The Oklahoma Statute allows for compensation to victims or their dependents for medical expenses, lost earnings, loss of services of a family member, and funeral expenses. The Official Victims Compensation Form lists examples of medical expenses, such as doctors' exams, dental work, hospital treatments, hospital room costs, artificial limbs, prescriptions not supplied in hospital, and eyeglasses. Most other states allow recovery for similar categories of incurred expenses.

Specifically, under the Oklahoma statute the victim is eligible to collect a maximum of $10,000 for payment of medical bills, rehabilitation, occupational training, any other remedial treatment, replacement costs of the services of the victim himself lost due to the victim's injury, loss of earning, and funeral, cremation, or burial expenses up to $750. If the victim dies, qualified dependents of the deceased victim are eligible under the Oklahoma statute to receive an aggregate maximum of $10,000 for loss of purely financial support from the deceased victim and payments reasonably expended to obtain replacement services in lieu of those once supplied by the deceased victim.

151. **OKLA. STAT. ANN. tit. 21, § 142.3(1)(11)(12) (West Supp. 1981-1982).** The Official Victims Compensation Form lists examples of medical expenses, such as doctors' exams, dental work, hospital treatments, hospital room costs, artificial limbs, prescriptions not supplied in hospital, and eyeglasses.


154. *Id. § 142.3(11).*

155. *Id. § 142.3(12) which defines work loss as:*

loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

156. *Id. § 142.3(1).*

157. A dependent may file a claim only if the victim dies. *Id. § 142.3(3)(b); see notes 87-88 supra and accompanying text.*

158. *Id. § 142.3(7) which provides:*

"Economic loss of a dependent" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim.

159. *Id. § 142.3(8) (less expenses of the dependent avoided by reason of the victim's death, unless already subtracted under the financial support section). The Official Victims Compensa-
2. No Compensation for Pain and Suffering

The Oklahoma statute explicitly states that neither the victim nor dependents of the victim can recover for non-economic losses such as inconvenience, physical impairment, non-pecuniary damage, or pain and suffering.\textsuperscript{160} A few states have allowed victims to recover for nervous shock and pain and suffering,\textsuperscript{161} but some of these states' officials are dismayed by the difficulty in administering this aspect of the program.\textsuperscript{162}

Several program administrators have recommended that recovery for pain and suffering not be a part of a compensation program.\textsuperscript{163} It is generally believed that allowing pain and suffering to be an element of recovery may unreasonably complicate and retard the administrative process.\textsuperscript{164} Psychological injuries are easily feigned and allowing recovery might lead to fraudulent claims.\textsuperscript{165} Since awards for pain and suffering in tort actions are meant to punish and deter defendants, it is argued that they are inappropriate in a victim compensation program.\textsuperscript{166}

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


Comment, supra note 15, at 731 ("The length of board hearings would undoubtedly be increased as attorneys argued how much "pain and suffering" was involved, and appeals to the full board on this issue would be a matter of course.").

Lamborn, supra note 93, at 38 explains:

The risk of fraud would be increased, "since psychological disturbances may be subconsciously exaggerated, or even deliberately faked, and claims in respect of them can be supported by medical evidence which may be unreliable but cannot easily be rebutted; moreover, even if such disturbances are genuine, they may not have been caused or aggravated by crime."

\textit{Id.} (citing Compensation For Victims of Crimes of Violence, Cmdn. No. 1406, at 17 (1961)).

Brooks, supra note 64, at 467. This argument might be true in a state where the victim compensation fund is financed solely by tax dollars. But the argument is not as convincing in a...
lowing compensation for pain and suffering may place too great a burden on the program's limited funds.\textsuperscript{167}

3. No Compensation for Property Losses

The Oklahoma Statute does not allow compensation for property losses. Most of the commentators in the field of victim compensation are in accord that this loss should not be addressed by such a program.\textsuperscript{168} Program administrators polled by one researcher overwhelmingly favored the exclusion of property loss compensation from programs.\textsuperscript{169}

There are a number of reasons offered for denying compensation for property loss. One compelling justification is that the consequences of an attack against the person of the victim are far more serious than the consequences of property destruction or theft.\textsuperscript{170} From an economic standpoint, the foremost justification for excluding property loss compensation is the tremendous cost of providing indemnification.\textsuperscript{171}

Another reason advanced for the property loss exclusion is that an individual may easily obtain insurance to cover property loss\textsuperscript{172} and that crimes against the person are more serious than those involving only damage to property.\textsuperscript{173} A final reason for excluding compensation for state that seeks to fund its program largely from criminal assessments, as does Oklahoma. In that case it could be argued that the offenders should in part be punished by paying assessments large enough to fund compensation for pain and suffering.

\textsuperscript{167} Comment, \textit{supra} note 54, at 242-43 ("The cost of compensation for mental distress could be enormous. If the victim is a child, for example, and there is testimony to the effect that the crime has caused permanent or long-term mental injury, the award might be beyond the funding capabilities of the program.").

\textsuperscript{168} Hoelzel, \textit{supra} note 20, at 485 (none of 27 victims compensation programs surveyed allowed recovery for property loss).

\textsuperscript{169} Brooks, \textit{supra} note 64, at 465 (18 administrators preferred to exclude property losses from the compensation program, while 2 favored such a proposal).

\textsuperscript{170} \textit{Id.}

\textsuperscript{171} McAdam, \textit{supra} note 26, at 357; Comment, \textit{supra} note 29, at 848. In 1980 property valued at $106,779,951 was reported stolen in Oklahoma. Of this amount only 30.2\% was recovered. \textit{OKLAHOMA BUREAU OF INVESTIGATION, CRIME IN OKLAHOMA 42} (1980 Annual Report). But see Comment, \textit{supra} note 54, at 244, which reasons that property loss compensation should not be excluded because crime can affect any person's property as well as his physical well-being and the government is in a unique position to insure against both types of losses through the "premium" of taxation.

\textsuperscript{172} McAdam, \textit{supra} note 26, at 357 ("Property is more easily and more frequently insured than is the person."). But arguably, insurance coverage for property is just as unaffordable for the often-victimized, low-income person as is personal insurance coverage.

\textsuperscript{173} "Criminally caused damage to property is never as disastrous as serious injury to the person. Property damage does not destroy a person's only indispensable asset, that is, the ability to earn a living." Childres, \textit{Compensation for Criminally Inflicted Personal Injury}, 39 N.Y.U.L. Rev. 444, 460 (1964) (footnotes omitted).
property loss is the strong likelihood of receiving fraudulent claims.\textsuperscript{174} It would be far easier to lie about property loss than to feign physical injury.\textsuperscript{175}

E. Limitations of Compensation

The intent of the Oklahoma Crime Victim Compensation Statute is to provide compensation "in the amount of expenses actually incurred" upon injury or death occurring as a direct result of criminal acts.\textsuperscript{176} Since the purpose of the Oklahoma Statute is to compensate only actual expenses, the Statute also contains mechanisms by which the compensation fund can be reimbursed or an award reduced to the extent that the victim is compensated from sources other than the state Crime Victims Compensation Fund. This policy is in line with the practices of all other states with victim compensation statutes, and is essentially a means of conserving the fund and preventing the victim from enjoying a double recovery.\textsuperscript{177} In one study, program administrators almost unanimously agreed that double recovery should be avoided,\textsuperscript{178} and all of the program administrators favored providing for repayment of the compensation awards if the claimant were subsequently successful in recovering on a civil judgment.\textsuperscript{179}

\textsuperscript{174} McAdam, supra note 26, at 357; Comment, supra note 29, at 848.

\textsuperscript{175} Brooks, supra note 24, at 501; Comment, supra note 29, at 848 (Self-inflicted personal injury is rare whereas destruction to one's own property is not unusual: "A feigned personal injury will usually require the collusive assistance of an unethical member of the medical profession, whereas the loss of nonexistent property may be easier to document.").


\textsuperscript{177} Hoelzel, supra note 20, at 488 ("The states deduct from every claim the amount that the victim received from 'collateral sources' (such as Blue Cross) so that programs pay only the victim's out-of-pocket expenses. Such deductions save the state money and they prevent the victim from making a 'double recovery.'"). See generally Note, supra note 132, at 222, observing: "Allowing a claimant to recover where he has an adequate existing source would, arguably, allow a profit to be made from the crime at the taxpayers' expense. Yet injustice will arise because one is penalized for having the foresight to obtain private coverage." Id. (footnote omitted). This proposition is further explained in the text of the corresponding footnote:

A possible solution to avoid penalizing those who have purchased insurance would be to deduct the premiums paid on the policy from the amount received thereunder and then to deduct the adjusted amount from the total economic loss. For example, if a policy owner paid $3,000 in premiums for health insurance and received $20,000 on it as a result of the crime, the Board could deduct the premiums from the amount received, leaving $17,000. If the total loss were $25,000 and the claimant had no other collateral sources, the Board could deduct the $17,000 from the $25,000 total loss and $8,000 would be compensable under the program. This may prove to be the most equitable result for the claimant under the circumstances and would prevent undue burdens on the taxpayers.

\textsuperscript{178} Brooks, supra note 64, at 466-67.

\textsuperscript{179} Id. at 464.

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Specifically, the Oklahoma program provides three mechanisms by which the victim’s compensation will be reduced or repaid upon his recouping alternative compensation: a “collateral source” provision,\(^\text{180}\) a “subrogation” provision,\(^\text{181}\) and a “right-of-joinder” provision.\(^\text{182}\) Each of these mechanisms and their implications will be discussed.

1. Collateral Sources

If, at the time of the injury, the claimant receives or can readily receive compensation from a collateral source, his victim compensation award will be diminished to the extent his economic loss is covered by that collateral source.\(^\text{183}\) It is important to note that this provision is not intended to force the claimant to obtain alternative compensation at unreasonable effort and expense before being eligible for a victim compensation award. The statute explicitly states that the Board “shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim.”\(^\text{184}\) For example, if a victim-claimant were receiving public subsistence payments at the time of his injury, he could readily receive medical care through that state-funded program. However, if the victim-claimant were not already receiving subsistence payments at the time of the injury, the compensation statute would force him to obtain that aid as a prerequisite to obtaining victim compensation. In other words, the collateral source provision reasonably seeks to conserve victim compensation funds for those most in need of aid—people in a time of crisis with no readily available source of assets.

The possible “readily available” collateral funds are specified in the statute as follows: Restitution from the offender;\(^\text{185}\) funds available from the U.S. Government or any agency thereof in the form of benefits such as social security, medicare, or medicaid;\(^\text{186}\) funds available from a state or any of its political subdivisions;\(^\text{187}\) funds available from


\(^{181}\) *Id.* § 142.12(A).

\(^{182}\) *Id.* § 142.12(C).

\(^{183}\) *Id.* § 142.10(B)(1).

\(^{184}\) *Id.* § 142.7.

\(^{185}\) *Id.* § 142.3(4)(a).

\(^{186}\) *Id.* § 142.3(4)(b). The deductions for social security have been called unfair because the victim has contributed to those funds through taxes. Comment, *supra* note 54, at 249.

\(^{187}\) **OKLA. STAT. ANN.** tit. 21, § 142.3(4)(b) (West Supp. 1981-1982) (unless the law providing for the benefits or advantages makes them excessive or secondary to benefits under the Act).
an instrumentality of two or more states;\textsuperscript{188} funds available from state-required, temporary, non-occupation disability insurance;\textsuperscript{189} worker’s compensation payments;\textsuperscript{190} wage continuation programs of any employer;\textsuperscript{191} proceeds of an insurance contract, payable to the claimant for loss sustained from the criminally injurious conduct;\textsuperscript{192} and proceeds of a contract providing prepaid hospital and other health care services or benefits for the victim’s disability.\textsuperscript{193} In addition to the enumerated collateral sources, the Oklahoma Statute includes a “catch-all” provision that provides for any circumstance in which the claimant might receive compensation from a source other than those specifically described. In such a case, the claimant must hold in trust an amount equal to the sum collected from the victim compensation fund, and this trust must be deposited in the Victims Compensation Revolving Fund as soon as possible.\textsuperscript{194}

2. Subrogation by the State and Joinder in a Tort Action

If the claimant does not receive compensation from a collateral source until \textit{after} the state has compensated the claimant, the Statute provides that the state will be subrogated to all the rights of the claimant to recover from a collateral source in the amount of the compensation awarded.\textsuperscript{195} Also, if the claimant brings a tort action to recover damages related to the criminally injurious conduct upon which compensation is claimed or awarded, the claimant must give the Board written notice of the action. The Board may then, at its discretion, opt to join in the action as a party plaintiff to recover the compensation awarded.\textsuperscript{196}

\textsuperscript{188} Id.
\textsuperscript{189} Id. § 142.3(4)(c).
\textsuperscript{190} Id. § 142.3(4)(d).
\textsuperscript{191} Id. § 142.3(4)(e).
\textsuperscript{192} Id. § 142.3(4)(f).
\textsuperscript{193} Id. § 142.3(4)(g).
\textsuperscript{194} Id. § 142.12(B).
\textsuperscript{195} Id. § 142.12(A). An example of the subrogation scheme is where a claimant is awarded compensation because he seemingly has no available resource and then is later determined eligible to collect from an insurance policy. In this situation, the state would be entitled to a share of the insurance proceeds to the extent of the compensation award.
\textsuperscript{196} Id. § 142.12(C). A claimant may receive a compensation award to pay medical expenses incurred as the result of a criminally injurious assault. If the claimant later files a civil suit against the offender who inflicted his injuries, the claimant is obligated to notify the compensation Board. The Board can then, in its discretion, join in the action with the claimant-plaintiff to recover the amount of the compensation already paid to the claimant.
F. Procedure Required to Obtain Compensation

1. Filing the Claim

A survey of twenty-seven victim compensation programs in the United States revealed that, in most states, claimants begin the compensation process by completing forms and talking with investigators who then verify the claims submitted.\(^\text{197}\) In New York program administrators found that the original application form, designed to elicit as much information as possible, inhibited claims by potential claimants.\(^\text{198}\) Consequently, the New York Compensation Board drastically simplified the form and began relying on investigators' work and letters to applicants to supplement the original application.\(^\text{199}\) Presumably, the Oklahoma program will be administered in a similar fashion. If so, the program administrators will do well to benefit from the New York experience by utilizing relatively simple forms and relying on investigators to supplement the forms through phone calls, letters, and intake interviews.

Many program administrators in other states have devised procedures to screen applicants to avoid wasting investigators' time on frivolous claims. These administrators require claimants to complete forms specifically designed to establish eligibility as a prerequisite to issuing formal claim applications. This step allows administrators to dispose of many obviously ineligible claims, such as those involving no crime or personal injury, unreported crimes, or claims filed too late.\(^\text{200}\) This screening appears to be an excellent efficiency measure, allowing investigators to spend their limited time processing only valid claims. It would be wise for Oklahoma officials to establish a similar procedure for screening claims as the new program is implemented.

2. Deciding the Claim

Once a legitimate claim has been verified by a program investigator, it is usually submitted to a state's appointed compensation board.\(^\text{201}\) The Oklahoma statute, similar to that of New York, stipu-
lates that the three-member Board will make decisions regarding compensation awards.\textsuperscript{202} The New York Board members realized that they could save valuable time if each member of the Board could make decisions on claims submitted without having to meet as a full Board to dispose of claims.\textsuperscript{203} Therefore, New York allows a Board member to individually rule on a claim on the basis of the papers filed and the investigation report. If the Board member is unable to reach a decision, or the claimant is dissatisfied with the Board member's decision, the claimant can appeal to the full three member Board and a hearing can be held.\textsuperscript{204} This procedure appears to be a viable option for the Oklahoma Board, especially since it is to consist of three part-time volunteers who will be required to hear many applications in a limited time.\textsuperscript{205}

\textit{The Hearing.} The Oklahoma Statute has numerous provisions for powers that can be exercised by the Board in making decisions on claims. Title 21, section 142.5 of the Oklahoma Statutes allows the Board to award compensation if satisfied by a preponderance of the evidence that the requirements for eligibility have been met.\textsuperscript{206} This standard appears to place the burden of proof on the claimant to establish his need. The New York program also utilizes this standard.\textsuperscript{207} The justification offered for implementing this standard was that investigators found themselves spending inordinate amounts of time trying to gather information from uncooperative sources.\textsuperscript{208}

The Oklahoma statute provides that during the course of the hear-
ing, the claimant is entitled to appear and argue on any issue relevant to the claim.\textsuperscript{209} The claimant can “examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to his claim.”\textsuperscript{210} The statute provides that “[i]f the mental, physical or emotional condition of a claimant is material to a claim, the Board upon good cause shown may order the claimant to submit to a mental or physical examination and may order an autopsy of a deceased victim.”\textsuperscript{211} The examination order shall specify the time, place, manner, conditions, scope of the examination or autopsy, and the person by whom it is to be done.\textsuperscript{212} Since, upon filing, the claimant is deemed by the Oklahoma statute to have waived all physician-patient privileges as to communications or records relevant to an issue of the claimant’s physical, mental, or emotional conditions, the Board may also order the claimant to file a detailed written report of the examination or autopsy.\textsuperscript{213} The Board may also require the claimant to supply

\textsuperscript{209} OKLA. STAT. ANN. tit. 21, § 142.8(A) (West Supp. 1981-1982). The proposed OCVCB, RULES & REGULATIONS, supra note 81, Rule 11 and the OKLAHOMA CRIME VICTIMS COMPENSATION BOARD RULES OF PRACTICE BEFORE THE BOARD I (1981) [hereinafter cited as OCVCB, RULES OF PRACTICE] provide precise guidelines for making a personal appearance. Each claimant whose application is to be considered by the Board will be mailed notification of the meeting 14 days in advance. The claimant or his attorney will be allowed to appear, argue, and offer evidence on any issue relevant to the claim. Claimants may also examine witnesses and offer evidence in reply to any evidentiary matter in the record relevant to the claim. A personal appearance is not mandatory.

To appear in person before the Board, the claimant and/or his counsel must complete an Intent-to-Appear form which will accompany the Board meeting notice. The claimant must mail the form to the Board Administrator, at least 10 days prior to the scheduled meeting. If the Board has not received the completed Intent-to-Appear form at least 8 days prior to the scheduled meeting, it shall be presumed that the claimant or counsel will not appear before the Board. If the notice is received within 8 days of the prior scheduled meeting, the Board or Board staff shall make every effort to subpoena witnesses requested by the claimant. OCVCB, RULES OF PRACTICE, supra § V.

\textsuperscript{210} OCVCB, RULES OF PRACTICE, supra note 209, § V. Although the claimant is allowed to have witnesses subpoenaed, the Board will not be responsible for witness fees.

\textsuperscript{211} OKLA. STAT. ANN. tit. 21, § 142.9(B) (West Supp. 1981-1982).

\textsuperscript{212} Id.

\textsuperscript{213} Id. § 142.9(B), (C). The physician-patient privilege is described in OKLA. STAT. tit. 12, § 2503 (Supp. 1980). The compensation statute further prescribes that the report filed with the Board must set out the results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. The Board is also required to furnish a copy of the report to the victim. If the victim is deceased the Board, on request, must furnish a copy to the claimant/dependent. The Official Crime Victims Compensation Form includes a special authorization clause which the claimant signs separately. See also OKLA. STAT. tit. 12, § 2503D(3) (Supp. 1980). This section sets out the exception to the physician-patient privilege that allows the Board to compel disclosure in order to obtain aid:

The privilege under this Code as to a communication relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of his claim or defense or, after the patient’s death, in any proceeding in which any party relies upon the condition as an element of

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any additional medical or psychological reports relating to the injury or death for which compensation is claimed.214 Some commentators contend that it is in the public's best interest for the claimant to be required to submit to a physical or mental examination because such reports will better equip the Board to make its decisions and reduce the potential for fraud.215

During the hearing the Board may subpoena witnesses and compel their attendance, require the production of records and other evidence, administer oaths or affirmations, receive relevant evidence,216 and take judicial notice of general technical and scientific facts within the Board's specialized knowledge.217

Award of Compensation. The Oklahoma statute provides that an award may be made whether or not an offender is prosecuted or convicted.218 This feature is important because a compensable victim can be recognized regardless of whether an offender is ever identified or convicted.219 The primary focus of any victim compensation program is to aid victims in immediate need. The operation of the program should not end on the apprehension or conviction of an offender. Otherwise, the operation of the victim compensation program would be impossibly frustrated because it could take years before claimants would have a chance to receive the compensatory relief envisioned by the program.220 However, if the offender is apprehended and convicted before the claim is settled, evidence of the conviction can be used as conclusive proof that a crime was committed.221

To protect the rights of the suspect the Oklahoma Act grants the Board discretion to "suspend the [compensation] proceedings pending disposition of a criminal prosecution that has been commenced or is

his claim or defense, is qualified to the extent that an adverse party in said proceeding may obtain relevant information regarding said condition by statutory discovery.

216. OKLA. STAT. ANN. tit. 21, § 142.5(C) (West Supp. 1981-1982); see discussion notes 209-10 supra and accompanying text.
217. Id. § 142.6(6).
218. Id. § 142.11.
219. Brooks, supra note 64, at 460 (Compensation may follow criminal conviction, acquittal or be made when there is no apprehension of the attacker, or when the attacker has not technically committed a crime).
220. Comment, supra note 54, at 236.
221. Proof of conviction of the offender cannot provide conclusive evidence that a crime was committed if an application is pending for rehearing of the offender's case, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered. OKLA. STAT. ANN. tit. 21, § 142.11 (West Supp. 1981-1982).
imminent . . . .”222 Program administrators support the suspension of Board action if there is a criminal case pending. They believe that without this measure the accused’s right to a fair trial may be prejudiced.223

Under the Oklahoma Statute the suspension is allowed only if prosecution of the criminal’s case has commenced or is imminent. This seems to represent a balancing of the right of the victim to receive prompt financial aid and that of the suspect to receive a fair, unbiased trial.224 If a claimant is forced to wait until disposition of the defendant’s case, the Oklahoma Legislature has provided that the claimant can receive an emergency award.225

The Board is empowered to deny, withdraw, or reduce an award of compensation upon a finding that the claimant has not cooperated with law enforcement agencies.226 This is in keeping with a basic goal of any compensation program—to encourage victims to support law enforcement and to cooperate with the prosecutor.227

222. Id. See also notes 248-51 and accompanying text, discussing § 142.14 which provides for the award of an emergency advance payment to the victim prior to his evaluation.

223. Brooks, supra note 64, at 452 (Deferral of board action on a claim where a criminal case is pending is preferred by program administrators by a margin of 11 to 7 because: “There are interests of the victim and of the criminal that should be protected. To achieve this it is necessary that the board’s actions do not influence the court’s actions and vice versa that the court’s actions do not influence the board’s actions.”).

224. One recommendation that the Oklahoma Board might consider is to hold a secret hearing on behalf of the victimized claimant if the criminal case is pending or in session. This appears to be a viable option which could further expedite the compensation process. This would protect the interests of the victim by not forcing him to wait so long for the settlement of his claim and at the same time would not interfere with the interests of the accused attacker. On the other hand, by not accepting a criminal conviction as sufficient proof that a crime has occurred and by not deferring action on the claim for compensation for the victim until the criminal case has ended, the victim is not likely to have the same concern that the accused be found guilty. This would best protect the interests of the accused. Such a relationship between the Board’s and the court’s actions would keep their proceedings as separate as possible and minimize the influence that actions of one would have upon the other.


226. Id. § 142.10(C). This authority to reduce or deny an award in cases where the victim-claimant refuses to cooperate with police appears to reinforce one of the purposes of the victim compensation program—to encourage victim cooperation in apprehending and convicting criminals.


One possible by-product of a compensation scheme is better cooperation with law enforcement officials in apprehending the offenders. They can be aided by an early report of the offense, and thus it may be desirable to require the victim to make a report to the proper law enforcement authorities within a short time after the offense as a condition of his ultimate recovery under the scheme.

Id. One study indicated that more crimes might be reported:

When victims who did not report were asked to provide reasons for their inaction, a majority indicated there was little or no payoff in reporting the offense to the police: 33 percent took a fatalistic outlook saying that nothing could be done; another 29 percent
**Informality.** The compensation hearings do not have to be overly formal and legalistic as such proceedings are potentially intimidating to claimants. Commentators recommend that administrators and board members should strive to keep the hearings informal and expeditious.\(^{228}\) One official has stated:

> I believe that the informality of our proceedings is the greatest asset we have got. We sit around a table. There's no oath. There's no pat subpoena of witnesses. There's no rules of evidence. We look at statements of witnesses who are not called. We look at depositions of witnesses who don't give evidence before us. . . . [I]t's this informality, I think, which helps us to arrive at a reasonable conclusion at very small cost.\(^{229}\)

**Involvement of Attorneys.** The Oklahoma Crime Victim Compensation Statute does not address the issue of attorney involvement and does not provide for attorney fees in its list of compensable services. In fact, some authorities have insisted that the compensation process should remain informal enough so that claimants would not feel the need to obtain expensive representation. "Unnecessary formality, in addition to discouraging applications, is also likely to cause applicants to believe, for real or imagined reasons, that representation by counsel is advisable."\(^{230}\)

Scholars recommend that the role of attorneys in processing a claim should be deemphasized.\(^{231}\) Indeed, in the New York program some members observed that at times the attorneys appeared to be inappropriately legalistic for the informal atmosphere the board tried to maintain.\(^{232}\) Having an attorney involved in the process also raises the problem of attorney fees. Who should be responsible for reimburs-

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\(^{228}\) Lamborn, supra note 15, at 671 ("A program responsive to the needs of the victims not only provides financial benefits to those entitled to them, but also maintains an atmosphere of informality, expedition, and dignity.").

\(^{229}\) Id. at 671-72.

\(^{230}\) Id. at 672. The Proposed OCVCB, RULES OF PRACTICE, supra note 209, specifically provides that the claimant may be represented by licensed counsel or may represent himself before the Board. In this paper, when the term "claimant" is used, it can be understood as meaning "claimant" or claimant's counsel.

\(^{231}\) Comment, supra note 71, at 66 n.204 (The Director of the Center for Criminal Justice and Social Policy at Marquette University has stated that he would prefer a law "that is simple enough to lessen the need for an attorney to serve as intermediary in the benefit securing process.").

\(^{232}\) Edelhertz—Part II, supra note 102, at 109.
ing the attorneys? Some commentators feel that the compensation board should pay for the legal services in addition to the claimant's award. But this would place another demand on already limited funds and would inevitably result in reducing the amount of funds available to compensate victims. It seems preferable to structure the compensation procedure so that claimants could feel comfortable enough in the hearings to represent themselves.

3. Review of the Compensation Order

It has been estimated that the compensation procedure takes anywhere from one to ten months, depending on the state. Most programs deny 30-40% of all claims, usually because the claims involve only property losses.

It is recommended that reviews of the compensation decisions be obtained easily to ensure fairness and consistency in awards. The Oklahoma statute provides that “in a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice pursuant to regulations promulgated by the Board.” Presently, a claimant is

233. See Edelhertz—Part I, supra note 13, at 34 (The New York Victim Compensation Board recognizes that claimants have the right to be represented. The Board member who rules on a case sets attorney fees commensurate with the services rendered and having due regard for the financial status of the claimant). But see Comment, supra note 71, at 70 (“The role of attorneys in processing a claim for compensation should be deemphasized, and a statute should be drafted which will altogether lessen the need for legal aid in the benefit-securing process.”).

234. See Edelhertz—Part II, supra note 102, at 108 (attorney fees in compensation cases in New York ranged from $25 to $350).

235. The Oklahoma Crime Victim Compensation Act does not address the attorney involvement issue.

236. Hoelzel, supra note 20, at 488. (Hoelzel based his estimate on a survey of 27 states having victims compensation programs).

237. Id.

238. Lamborn, supra note 15, at 677 (“Even the perfectly fair administrator should also give the appearance of fairness; easy review of his decisions encourages that appearance.”).

239. OKLA. STAT. ANN. tit. 21, § 142.8(B) (West Supp. 1981-1982). According to the proposed OCVCB, RULES & REGULATIONS, the appeals process will operate as follows: In the event an application for compensation is granted for a lesser amount than the original application or altogether denied, the Administrator of the Board shall notify the claimant by certified mail, return receipt requested, within 15 days of the Board’s action, detailing the basis of the Board’s decision. The claimant may appeal in person and by notifying the Administrator of the Board, in writing, by certified mail, return receipt requested, of the intent to appeal within 30 days of the date of the notification letter setting forth the Board’s decision.

Following the receipt by the Administrator of an Intent-to-Appeal notice from the claimant, a hearing shall be held before the Board within 60 days in which the claimant and his counsel may appear personally and present witnesses. The Board shall decide on the appeal within 10 days of the formal hearing, and the applicant will be notified by mail. If the claimant remains dissatisfied with the decision of the Board subsequent to the appeals hearing, the claimant may file a petition with the District Court of Oklahoma County. OCVCB, RULES & REGULATIONS, supra note 81, Rule 13.
asked to submit an application\textsuperscript{240} from which a staff member determines eligibility. The claimant is not required to appear in person before the governing Board. If the award is contested, the claimant can then pursue a personal appeal before the full Board.\textsuperscript{241} If the claimant is dissatisfied with the disposition of his case by the compensation Board he can then appeal the case to district court.\textsuperscript{242}

The Board is given the power to reinvestigate or reopen claims without regard to statutes of limitation.\textsuperscript{243} On its own motion or on request of the claimant, the Board may reconsider a decision granting or denying an award or determining its amount.\textsuperscript{244} The Oklahoma statute stipulates that upon reconsideration of an award the Board cannot require a refund of amounts previously paid to the claimant unless the award was obtained fraudulently.\textsuperscript{245}

G. Payment of the Claim

The maximum amount payable to a victim or dependent under the Oklahoma compensation statute is $10,000.\textsuperscript{246} Although it appears from experience with other programs that $10,000 is an inadequate sum,\textsuperscript{247} this maximum seems to be a reasonable limitation to place on a new program with a unique funding source. Time will establish whether the fines imposed on offenders, which are the major source of funding for the Oklahoma compensation program, will prove to be a viable and realistic source of financing. A decision to increase the max-

\textsuperscript{240} OCVCB, Rules & Regulations, \textit{supra} note 81, Rule 11.
\textsuperscript{241} Okla. Stat. Ann. tit. 21, § 142.8(B) (West Supp. 1981-1982) (Any party may be allowed to request that the hearings in a contested case be transcribed upon payment, by that party, of the transcription costs, unless otherwise ordered by the Board).
\textsuperscript{242} OCVCB, Rules & Regulations, \textit{supra} note 81, Rule 13.
\textsuperscript{243} Id. § 142.5(B).
\textsuperscript{244} The right of reconsideration does not affect the finality of the Board decision for the purpose of judicial review. \textit{Id.} § 142.10(D).
\textsuperscript{245} \textit{Id.} For prior discussion on the availability of lump-sum payments, see notes 258-260 \textit{supra} and accompanying text.
\textsuperscript{246} \textit{Id.} § 142.13(B).
\textsuperscript{247} Comment, \textit{supra} note 54, at 247; Comment, \textit{supra} note 71, at 64-65. As of 1980, fourteen states had recovery limits of more than $10,000, including three states which allowed maximum awards of $45-50,000. Hoelzel, \textit{supra} note 20, at 488. One of the major purposes of programs is to help victims finance medical bills incurred following a criminal attack. It is not unlikely that a victim's injuries could require extensive hospitalization and medical care. The average cost per day of hospitalization alone, was estimated at $175 in 1978 CONG. QUARTERLY, INC., \textit{Health Policy} 20 (1980). Considering that the victim compensation statutes also seek to reimburse victims for physician's services, rehabilitation programs, and work loss, it is easily recognized that $10,000 would be wholly inadequate in many cases.
imum award is one that should be made after reviewing the success of the self-supporting fund system.

1. Emergency Payments

Up to $500 of the $10,000 maximum final award can be advanced to the claimant prior to the disposition of the claim if the Board determines that the claimant will suffer financial hardship. The amount paid is to be deducted from the final award or is to be repaid by the claimant to the extent that it exceeds the final award. The majority of other states' compensation programs allow for emergency awards, but they often place dollar limits on the amounts. These dollar limits (usually $500) have been criticized as unrealistically low in view of the current cost of living.

2. Forms of Payment

Once a claim is established as valid and the amount to be awarded is ascertained, the Compensation Board in Oklahoma is allowed to provide for the payment to a claimant in a lump sum or installments. If the claimant is paid by periodic installments for loss of earnings or replacement services, the installments may not exceed $200 a week. Installments for future economic loss may be made only for a period to which the Board can reasonably determine future economic loss. The Board may also modify this loss upon a finding that a material and substantial change of circumstances has occurred.

Most programs use the periodic payments method despite greater

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249. OCVCB, Rules & Regulations, supra note 81, Rule 12.

250. Comment, supra note 54, at 247 (20 out of 27 states surveyed allowed for emergency payments).

251. Id. Emergency awards, presumably would be used to pay for urgent medical needs, and immediate living expenses like house payments, utilities, and food.

252. Okla. Stat. Ann. tit. 21, § 142.12(C) (West Supp. 1981-1982). Approved claims will be paid in the order of their approval by the Board as funds become available OCVCB, Rules & Regulations, supra note 81, Rule 9. See also Brooks, supra note 64, at 461 (compensation board should have the discretion and flexibility to choose the manner of payment which best fits the individual).


254. Id. § 142.13(D).
expense and more detailed administration.\textsuperscript{255} Installments are the best means of compensation in the event the claimant is irresponsible with a large sum of money. If the claim is found to be fraudulent, installment payments allow the administrators more leverage to correct the situation.\textsuperscript{256} Also, where there is a long-term disability, there is need for administrative supervision to ensure that the funds are utilized for rehabilitation.\textsuperscript{257}

At the request of the claimant, the Board may convert compensation for future economic loss\textsuperscript{258} to a lump sum payment. This will be allowed only if the Board finds that the award in a lump sum will promote the interests of the claimant or that the present value of all future economic loss, other than medical or rehabilitative expenses, does not exceed $1,000.\textsuperscript{259}

Since the lump sum method requires little record-keeping, it lowers administrative costs. But it would appear wise to utilize the periodic-payment method in cases where the future financial needs of the claimant are uncertain or where there is a possibility of fraud.\textsuperscript{260}

3. Execution, Attachment, and Garnishment

The Oklahoma Statute disallows execution, attachment, or garnishment of an award, with one exception. Awards providing for medical or rehabilitative services or funeral, cremation, or burial expenses may be claimed by a creditor for whose products, services, or accommodations the award provides.\textsuperscript{261} This attachment provision is commendable because it prevents general creditors of the victim from attaching compensation intended to replace lost wages and pay medical

\textsuperscript{255} Comment, supra note 54, at 250 (The installment payments method requires record keeping and may require periodic reinvestigation which would take extra time and money).

\textsuperscript{256} Id. ("[T]he board might serve as a guardian to the claimant, closely monitoring payments of benefits.").

\textsuperscript{257} Brooks, supra note 64, at 461 ("Continued review of such cases should contribute to the prevention of unjust enrichment or inadequate compensation.").

\textsuperscript{258} Economic loss would include all expenses other than medical or rehabilitative costs. Okla. Stat. Ann. tit. 21, § 142.3(9) (West Supp. 1981-1982).


\textsuperscript{260} See Comment, supra note 54, at 250 ("[F]uture payments afford the program administrator leverage to correct the situation. In addition, awards may be stopped or adjusted if the claimant dies, remarries, or undergoes a change in financial conditions.").

\textsuperscript{261} Okla. Stat. Ann. tit. 21, § 142.13(E) (West Supp. 1981-1982) ("An award shall not be subject to execution, attachment, garnishment or other process, except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.").
The exception that allows for attachment by creditors who have provided injury-related services has been described as justifiable because those creditors provide the services for which compensation was intended and because attachment is often the only means by which those creditors can be paid for services rendered. The New York experience has been that if the award is made directly to the claimant, the hospital bill will often remain unpaid. For this reason, New York took steps which the Oklahoma administration has also adopted. New York added a consent clause to the initial applications which would allow the Board to make payments directly to the victim's creditors.

4. Assignment of Award

An assignment of future compensation awards by the claimant is unenforceable, with two exceptions. To assure payment of court-ordered alimony, maintenance, or child support, an award for work loss may be assigned. Also, an award for medical, rehabilitative, or burial costs, necessitated by the injury or death, may be assigned to the provider of those services or products.

H. Fraudulent Claims

Fraudulent claims can be reduced by several provisions included in the victim compensation Statute. Commentators have suggested that the requirement that crimes be promptly reported to police will deter many false claimants. Stringent proof requirements by the program administrators will also eliminate false claims. Finally, imposing

262. Comment, supra note 54, at 250-51.
263. Id. (Otherwise, creditors who have provided injury-related services must resort to attachment to obtain the value of goods and services already provided. A blanket prohibition against this remedy would seriously disadvantage creditors and might have a chilling effect on the amount of credit extended to needy victims).
264. Edelhertz—Part I, supra note 13, at 37. The Oklahoma Crime Victims Compensation Application Form also contains a special consent clause that must be signed by the claimant, allowing the compensation Board to pay the supplier of a service for the victim directly.
266. Id. § 142.13(F)(1) ("An assignment by the claimant to any future award under the provisions of this act is unenforceable except . . . an assignment of any award for work loss to assure payment of court ordered alimony, maintenance or child support.").
267. Id. § 142.13(F)(2) ("An assignment by the claimant to any future award . . . is unenforceable, except . . . an assignment of any award for allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.").
268. See discussion in notes 126-32, supra and accompanying text.
269. Brooks, supra note 24, at 502 ("[T]he mere fact that crimes may be staged or simulated is not a sufficient ground for barring recovery by victims of "honest" crime. The remedy lies rather
criminal penalties for fraudulent reports will also act as a strong deter-
rent. 270 Oklahoma has combined all of those factors in its compensa-
tion Statute. Crimes must be reported within seventy-two hours. 271 The claimant has the burden of establishing his injury and proving that it resulted from a criminal act. 272 Lastly, the Oklahoma Act provides that filing a false compensation claim will amount to a misdemeanor punishable by a fine not to exceed $1,000 or by imprisonment in the county jail for a term not to exceed one year or by both fine and impris-
onment. 273 Although Oklahoma has made adequate provisions for dealing with fraud, it is encouraging to note that most compensation programs have reported that in the past fraud has not been a frequent occurrence. 274

V. THE IMPORTANCE OF PUBLICIZING THE VICTIM COMPENSATION PROGRAM

The major criticism leveled at victim compensation programs na-
tionwide has been the states' failure to inform victims of their availabil-
ity. 275 In 1976, one commentator asserted, "In no state has information regarding the program reached a majority of the victims of crime." 276 California and New York, the first two states to enact victim compensa-
tion statutes, provide excellent examples of effective dissemination of such information to the public. In California, every law enforcement agency is required to inform victims about the availability of the pro-
gram and to provide application forms to interested persons. 277 Law enforcement officers are required to provide each victim with literature describing the program and explain where to obtain application forms. 278 New York places a similar duty on its police officers to in-

270. Comment, supra note 102, at 842.
272. Id. § 142.5; see discussion notes 206-17 supra and accompanying text.
273. Id. § 142.16.
274. Edelhertz—Part II, supra note 102, at 102.
275. See, e.g., Lamborn, supra note 15, at 681 ("The programs are of minimal utility unless applications by victims for benefits are facilitated through publicity regarding the nature of the programs and through easy access to them."); Younger, supra note 21, at 13.
276. Note, supra note 132, at 230.
277. Comment, supra note 71, at 53-54.
278. Id. at 54; see, e.g., Brooks, supra note 64, at 456; Hoelzel, supra note 20, at 495; Lamborn, supra note 15, at 669; McAdam, supra note 26, at 365.
form each victim. However, the New York law specifically provides that police officers will not be burdened with potential tort liability for inadvertently failing to inform a victim. Additionally, New York provides booklets and pamphlets in every location where a crime might be reported. In New York it is mandated that all licensed hospitals and physicians be notified of the program’s existence and that the hospitals prominently display posters in their emergency rooms.

In addition to reaching the victims with information about the compensation program, it is necessary to inform the public at large so that the availability of victim compensation might become a matter of common knowledge. It is recommended that all of the above techniques be utilized by Oklahoma officials to encourage participation in the program.

VI. CONCLUSION

National, state, and local governments are moving more and more toward recognizing and providing for victims of crime. For over a decade state legislatures have been acknowledging victims’ rights and legislating programs to secure these rights. This year Oklahoma joined this movement by enacting several important pieces of legislation for victims. The Crime Victim Compensation Act was one of five victims’ rights bills passed into law during the 1981 legislative session. The Oklahoma Crime Victim Compensation Statute combines all of the successful provisions from earlier compensation statutes. It is obvious that much thought and research went into the drafting of the

279. Comment, supra note 71, at 51.
280. Id.
281. Id. at 64; see H. Edelhertz & G. Geis, supra note 45, at 46, explaining:

Shortly after the New York program was inaugurated, the board distributed almost a quarter of a million brochures about its operation to organizations that were believed to be in a position to inform crime victims of their rights under the law. Results were meager. Board members spend much time addressing civic clubs, conventions, and professional groups and appearing on television programs, though they are now convinced that such work takes more time than it is worth in terms of results. They have found too that stories in newspapers about dramatic cases that result in large awards elicit a quick flurry of applications but that this stepped-up pace of activity lasts only briefly.

By far the largest number of claims, the board chairman believes, intuitively he admits, arise from knowledge of the program obtained by word of mouth.

Id.

282. Comment, supra note 71, at 54.
283. Brooks, supra note 64, at 456 (“By making the compensation program generally known and by requiring a reporting to the police of the criminal act as a condition of eligibility for compensation, it seems likely that the gap between reported and committed crime would be reduced.”).
compensation Act. Oklahoma’s victim compensation Statute represents one of the first steps in what will hopefully become a trend in Oklahoma—remedying the inequities of a society that for too many years has focused on the rights of the criminal offender to the exclusion of the rights of the victim.

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