

**A COMPENSATION SYSTEM FOR MILITARY VICTIMS  
OF SEXUAL ASSAULT AND HARASSMENT<sup>®</sup>**

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#### IV. A Military Compensation Board

##### A. Reasons for a Separate Military System

Though military victims of sexual assault and harassment may file for compensation with the state crime victims compensation board in their official state of residence, a separate military crime compensation board would provide military victims with a more efficient, equitable, and expansive system of support than the patchwork state system. Not only are active military members moving every few years to a new state and duty station but also a substantial number of victims are injured outside the United States where no state crime compensation board would have jurisdiction.

As previously discussed, the military is a specialized society with different administrative rules, systems, and institutions designed to fulfill the military's unique mission of fighting wars and strengthening the national security of the United States. Providing a uniform compensation system for victims within this society can better address the specific needs of the military. By coordinating with military institutions, systems, and documents, like TRICARE insurance, VA benefits, court-martial and disciplinary records, and DoD financial and accounting services, the MCB could streamline the processes of accepting, reviewing, and processing military victims' claims. Moreover, a separate military system would allow for the close monitoring of an offender's payment schedule and the garnishing of wages if he or she has not been discharged from the service.<sup>178</sup>

As one cohesive system, the MCB would permit the military to play an active role in providing specific advice to military victims about application procedures in a way that it cannot possibly do for victims subject to fifty different state compensation boards. Furthermore, a single system would facilitate the military's ability to record the number and type of compensation applications. Having this separate military data may prove useful in future surveys and studies attempting to track or evaluate the effects of sexual assault and harassment in the military. Lastly, having the opportunity to apply for compensation within the

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<sup>178</sup> The Defense Finance and Accounting Service processes all court ordered garnishments for military members. *About Garnishment Operations*, DFAS, <http://www.dfas.mil/garnishment/about.html> (last visited July 21, 2014).

military will incentivize more victims to report either formally or informally to the authorities.

## B. A Separate Military Crime Victims Compensation Board

### 1. Organization of the MCB

Organizationally, the MCB should be established under the DoD Office of the Under Secretary of Defense for Personnel and Readiness (Sec Def P&R).<sup>179</sup> The DoD Office of Personnel and Readiness determines and oversees active-duty and reserve military pay and allowances, retired pay, and survivor benefits.<sup>180</sup> Additionally, the office is responsible for oversight and coordination with the Department of VA, Disability, Service member's Group Life Insurance (SGLI), Dependency and Indemnity Compensation (DIC), Department of Labor, Unemployment Compensation for Ex-servicemembers, Monitor Health Care, and other non-compensation benefits for active-duty, reserve and retired members.<sup>181</sup> The office is thus well suited to processing and determining monetary claims.

After the MCB reviews a victim's application and determines the compensation owed, the payment order would be sent to the Defense Finance and Accounting Service (DFAS), the victim, and the perpetrator. The DFAS would wait thirty days, and if no notice of appeal is filed, pay the victim and take action to garnish the perpetrator's pay. To administer appeals, the Sec Def P&R could utilize the services of judges assigned to the Defense Legal Services Agency, which already has an appeal process in place for DFAS claims and security clearances. If the offender is discharged from the service, DFAS should refer the offender's debts to the Treasury Department for collection through the Internal Revenue Service (IRS).<sup>182</sup>

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<sup>179</sup> As the U.S. Coast Guard is organized under the Department of Homeland Security (DHS) and not DoD, either the DoD compensation board would process Coast Guard Claims or the Coast Guard would have its own compensation board within DHS. Efficiency suggests DoD should process the claims, but whether DoD has the authority to do so must first be established.

<sup>180</sup> *Mission*, UNDER SEC'Y OF DEF., PERS. & READINESS, <http://militarypay.defense.gov/ABOUT/MISSION/> (last visited Feb. 18, 2015).

<sup>181</sup> *Id.*

<sup>182</sup> There is precedent for this type of debt collection transference. Pursuant to its Commerce Clause powers, Congress established a similar system to deal with debtors to the Federal Communications Commission (FCC) when it enacted the Debt Collection

## 2. *Submitting a Claim to the MCB*

On August 14, 2013, the Secretary of Defense established a victims' advocacy program to represent victims throughout the justice process.<sup>183</sup> Because a victim's compensation is not part of the military justice process, victim representation should include the claims process and continue until that process is completed.<sup>184</sup>

The Military Crime Victims Compensation Board would hear and determine all claims for awards filed pursuant to its authorizing statute outlined in Appendix A. Like the state compensation boards, the MCB would impose reporting and filing deadlines. As in a majority of states, victims would be required to informally or formally report the incident within seventy-two hours of its occurrence though the MCB could extend this deadline for good cause, especially if the victim's military duties or deployment circumstances hampered the reporting process.<sup>185</sup>

Applying to and receiving funds from the military compensation board, however, would be a post-adjudication process. Unlike the state processes, which generally require filing within one year of the incident, the MCB would require applications to be filed within 90 calendar days of the sentence being announced or other disciplinary action disposing of the allegations. Should the commander decide the complainant's allegations do not merit disciplinary action, the complainant must file an application within 90 calendar days of that decision. Again, the MCB may extend this application timeline for good cause, but it should do so

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Improvement Act of 1996. Pub. L. No. 104-124, 110 Stat. 1321, 1358 (1996). Under the Act, the Department of Treasury may collect FCC referred debts.

<sup>183</sup> Provisions of the National Defense Authorization Act of 2014 (NDAA) also mandate that a report detailing the actions taken "to provide the necessary care and support to the victim of assault, to refer the allegation of sexual assault to the proper investigatory agency, and to provide initial notification of the serious incident when that notification has not already taken place" be submitted within eight days of the unrestricted report of a sexual assault. Memorandum from Deputy Sec'y of Def. for Sec'ys of the Military Departments et al., *Sexual Assault Prevention and Response* (Aug. 14, 2013), available at <http://www.defense.gov/home/features/2013/docs/FINAL-Directive-Memo-14-August-2013.pdf>.

<sup>184</sup> 10 U.S.C. §1044 provides that military legal assistance may be provided to victims of sexual assault. The victim need only report they have been victim of a sexual assault and then choose to have a Special Victims' Counsel (SVC) assigned to them. The SVC will represent them in related legal proceedings and counsel them on available benefits.

<sup>185</sup> A majority of states require victims to report within seventy-two hours or less. *See infra* Appendix B.

sparingly to incentivize the timely resolution of complaints, the quick distribution of funds to victims, and the notification of compensation obligations to offenders within a reasonable amount of time. For other aspects of claim submissions, such as where to submit the claim or the particular nature of a claim's formatting, victims or those acting on their behalf should adhere to all rules outlined in Enclosure 5 of DoD Instruction 1340.2<sup>186</sup> that are not inconsistent with the process previously described.

At this point, it is important to note that the MCB claims system would not replace the VA disability claims system but rather work in tandem with it. First, the MCB has two functions unique unto itself: (1) punishing the perpetrator through a financial obligation based partially on the victim's age and offender's rank (as discussed in section B(3)(a) of Part IV), and (2) providing the victim compensation for his or her pain and suffering. These two functions do not directly overlap with VA objectives. The VA has no responsibility for the first function. And although the second MCB function, to compensate the victim for physical and emotional injuries, does have some overlap with the VA system, this overlap is similar to that between civilian victims' insurance and their compensation payments from a state compensation board. That is, the MCB creates a second place for active-duty soldiers and veterans to receive payments for some of their medical and disability needs. Like the relationship between a state compensation board and a victim's insurance, the MCB would only pay for portions of claims not covered by the VA and vice versa.

In some state compensation board systems, victims of sexual assault may apply for and receive *compensation* for economic losses (paid for from the state board via offender-based and non-offender-based fines, fees, surcharges, etc.) without a conviction,<sup>187</sup> but an offender would only pay *restitution* (paid to the victim directly by the offender) if convicted of a crime. The proposed MCB system combines these separate tracks, ordering the offender to pay *compensation* to either DFAS, who in turn will pay the victim from the U.S. Treasury, or if the offender is discharged, to the Internal Revenue Service. These collections from

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<sup>186</sup> U.S. DEP'T OF DEF., INSTR., 1340.21, PROCEDURES FOR SETTLING PERSONNEL AND GENERAL CLAIMS AND PPROCESSING ADVANCE DECISION REPORTS 10 (12 May 2004) [hereinafter DoD INSTR. 1340.21].

<sup>187</sup> See *supra* notes 131 and 137 and accompanying text.

offenders, based on various factors discussed later in this paper, will constitute the MCB funds used to compensate victims.

This article focuses on military victims who pursue their claims through the adjudicative process. However, as allowed by state compensation boards, a conviction should not be strictly necessary for a military victim to file a need-based compensation application with the MCB. This military victim would not be eligible for pain and suffering damages, and the victim's offender would not be liable for payments. The victim could only receive payment for any related medical costs not covered by other sources. The money for these victims would come from the surplus funds necessarily received when convicted offenders "over pay" into the MCB funds.<sup>188</sup> As will be explained in subsequent sections, even if a *victim* will not be compensated for costs already paid for by military benefits or insurance, a convicted offender will still have to pay those costs to DFAS subject to a certain cap. This system mirrors traditional tort law, which requires tortfeasors to pay the costs of their victims' damages despite any insurance owned by the victim. This prevents a tortfeasor from realizing a windfall due to the victim's foresight. In this context, it also means that extra funds from convicted offenders can be redirected to other victims.

The potential award for pain and suffering will hopefully incentivize victims to take their claims through the adjudicative process instead of simply applying to the MCB for need-based compensation. Victims may also find the extra courage needed to adjudicate their claims knowing their subsequent efforts through the MCB might help other victims. Admittedly, it is not ideal that some offenders escape payment and justice for their wrongs while others are held accountable. However, even offenders who have been through the adjudicative process may be acquitted if the case is not clear-cut. That does not negate the needs of their victims for financial assistance. Of course, appropriate standards of review should be developed for these need-based applications.

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<sup>188</sup> This is not dissimilar from the process set out in 10 U.S.C. § 2772, which commands the Secretary of the military department concerned to deposit in the Armed Forces Retirement Home Trust Fund a percentage of forfeitures and fines adjudged against enlisted members, warrant officers, or limited duty officers. The Armed Forces Retirement Home offers retirees and certain veterans the benefits of a well-run retirement community.

### 3. *The MCB Compensation System*

#### *a. Introduction to MCB Compensation and Its Determination of Pain and Suffering Damages*

The MCB would, for the most part, follow the same DOJ regulations governing what benefits state compensation boards can and cannot offer. That is, like the states, the MCB would not compensate victims for items already paid for by any reimbursement source, including insurance, for damage done to property, or for items unrelated to the crime. Even though victims are not compensated for these expenses, the MCB must still consider those costs when computing the amount of compensation owed by the offender. That is, even if the MCB orders an offender to pay \$20,000 dollars, the victim may only receive \$10,000 for uncompensated needs. The excess funds will be saved for eligible victims who do not go through the adjudicative process or for whom the adjudicative process does not render a conviction.

The MCB should compensate victims' expenses for unreimbursed medical expenses, lost wages due to a crime-related injury, and funeral expenses, if any.<sup>189</sup> Unlike the state compensation boards, however, the MCB would also compensate eligible victims for pain and suffering.<sup>190</sup> While the MCB could, and perhaps should, provide compensation for all victims of crime and not just for victims of sexual assault or harassment, this article focuses specifically on the MCB's treatment of and compensation for sexually-based offenses.

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<sup>189</sup> Victims of Crime Act Victim Compensation Grant Program, No. 95, 66 Fed Reg. 27,158 (May 16, 2001).

<sup>190</sup> It may appear unfair that military victims would have access to pain and suffering damages while many civilian victims do not have access to the same from the state compensation boards. The solution to this apparent inequality remains a topic of concern. Even so, should the military successfully implement a compensation board providing scheduled pain and suffering, the states would hopefully adopt the military's model and begin offering comparable compensation opportunities. This seems increasingly possible as more states reshape their restitution collection policies into effective sources of crime compensation board funding. *See, e.g.,* STATE OF HAWAII DEP'T OF PUB. SAFETY, CRIME VICTIM COMPENSATION COMM'N, FORTY-FIFTH ANNUAL REPORT JULY 1, 2012–JUNE 30, 2013, at 10 (2013) (noting how the Commission collected just \$46,000 in restitution in 2003, and after years of refining its restitution policies, collected \$600,000 in 2013). Again, it is important to remember that, under certain circumstances, civilians may have the opportunity to sue their perpetrator's employer for pain and suffering – an opportunity military victims do not have.

Without a jury to determine the pain and suffering damages, the MCB would need to determine pain and suffering. Deviating from a traditionally jury-based system may seem like a significant or radical legal shift, but the DoD and VA already incorporate a type of pain and suffering scheduling into their disability determinations. Both use a point-based Disability Evaluation System to determine whether a member is fit for duty or eligible for disability pay.<sup>191</sup> Furthermore, on a larger scale, several states have called for scheduled pain and suffering in tort reform,<sup>192</sup> and in England, juries no longer decide tort awards.<sup>193</sup>

Under a scheduled system of pain and suffering, the compensation a victim receives may not make them “whole.” Due to necessary compensatory caps on pain and suffering that the MCB may have to impose, MCB damages may be incapable of giving victims the full amount that they deserve or of completely replacing what a victim has lost. Even so, any pain and suffering damages the victim received would provide the individual with more money than he or she could have likely collected. Additionally, while money may not heal physical and emotional injuries, offering victims the opportunity to apply for pain and suffering damages, which is paid by offenders, would demonstrate the DoD recognizes the suffering of victims and imposes financial consequences on offenders.

When scheduling pain and suffering, the MCB should follow the basic recommendations set forth by Ronen Avraham in his 2006 article entitled *Putting a Price on Pain and suffering Damages: A Critique of the Current Approaches and a Preliminary Proposal for Change*.<sup>194</sup> Avraham calculates pain and suffering by assigning a system of non-binding age-adjusted multipliers to a plaintiff’s medical costs.<sup>195</sup>

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<sup>191</sup> QRMC, *supra* note 51, at 95; *see also* *Integrated Disability Evaluation System (IDES)*, OFFICE OF WOUNDED WARRIOR CARE AND TRANSITION POL’Y, <http://www.med.navy.mil/sites/pcola/SpecialLinks/Documents/IDES%20Overview%20Handout.pdf>. Servicemembers who are no longer on active-duty must rate 30% or more on the scale to be eligible for disability retired pay although the pay is based on the member’s ranking or years of service, whichever is greater. *Id.* Members rated at below 30% receive severance pay. *Id.*

<sup>192</sup> Avraham, *supra* note 177, at 91 (noting four states have debated using “professional courts” composed of doctors and lawyers to determine damages as opposed to juries).

<sup>193</sup> *Id.*; *The Criminal Injuries Compensation Scheme*, Ministry of Justice (U.K.) (2012) (noting compensation amounts are set by Parliament).

<sup>194</sup> Avraham, *supra* note 177.

<sup>195</sup> *Id.* at 90. The multipliers would be nonbinding so that the Board could deviate when justice required. *Id.*

Avraham's system generates greater predictability in compensation awards and could approximate optimal deterrence on a case-by-case basis. Avraham's system, if adjusted for factors particular to the military, could reliably and fairly compensate victims of sexual assault and harassment for their pain and suffering.

1	2	3
Medical Costs	Multiplier	Pain-and-Suffering Damages
\$0–\$100,000	0.5	\$0–\$50,000
\$100,001–\$500,000	0.75	\$75,000–\$375,000
\$500,001–\$1,000,000	1	\$500,001–\$1,000,000
Above \$1,000,000	1.25	Above \$1,250,000

Figure 3. Calculating Pain and suffering Damages<sup>196</sup>

Avraham uses medical costs as his base number, reasoning larger economic losses correlate with a higher severity of injury, “which is in turn what pain and suffering is all about.”<sup>197</sup> As previously noted, however, some injuries caused by sexual assault and harassment may be hard to detect and may not generate the sizeable medical bills that would more accurately represent the victim's suffering.<sup>198</sup> Other latent injuries from sexual assault and harassment will cause medical expenditures only much later in time.<sup>199</sup> The MCB should therefore not rely solely on medical costs to determine the base number.<sup>200</sup> Instead, the MCB should assign a base dollar value to each military sexual offense, such as sexual abuse, rape, aggravated abuse, and so on.<sup>201</sup> A suggested process for determining this base number is explored in subsection (c) of this section.

Moreover, Avraham's multipliers only take into account age “to capture the fact that a younger person living with a disability” must do so

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 111.

<sup>198</sup> See *Effects of Sexual Assault*, *supra* note 58.

<sup>199</sup> *Id.*

<sup>200</sup> A base figure would also be helpful for wrongful death claims, in which there are generally no medical costs involved.

<sup>201</sup> This article does not attempt to provide suggested base numbers. However, state compensation boards like Oregon's that charge floors and ceilings for certain classes of felonies and misdemeanors would likely be informative to the MCB in setting their base numbers.

for a longer period of time.<sup>202</sup> In addition to age, the MCB multipliers should also account for aggravating factors, such as physical injuries, disfigurement, and disability; the intensity and longevity of the victim's emotional distress; lack of offender remorse; and the offender's rank. The offender's rank should be considered as it directly correlates with how much he or she is capable of paying to the victim. For instance, in 2012, a sergeant first class (E-7) with 20 years of service makes \$4,256 a month while a colonel (O-6) makes \$11,735.<sup>203</sup> Of course, those dismissed or discharged from the service for their offenses will no longer receive pay. Even so, the offender's previous earning capabilities, to a certain extent, reflect not only the offender's current ability to reimburse the victim (perhaps from savings) but also the offender's future earning potential.

While this system of base numbers and multipliers naturally creates a range of floors and ceilings for the pain and suffering element of compensation awards, the authorizing document for the MCB could also address monetary caps for other areas of relief, such as child care, lost wages, therapy, etc., either as individual categories or as a whole. Admittedly, restricting compensation awards has inherent problems: it may be unable to accommodate eggshell victims, it could prevent those with legitimately large claims from collecting, and it could throw a wrench in the idea of tailoring deterrence. The unfortunate financial reality, however, is that offender's salaries are naturally limited and thus so too must be the ultimate compensation awards to victims. Even so, as military victims may receive VA and other benefits that cover service-related medical costs after they are discharged from the service, limiting the total amount of collectable compensation reduces the risk of this unfairness.

*b. Determining Compensation Floors and Ceilings*

To determine what caps seem reasonable, it is helpful to look to state precedent. Ten states allow victims to recover \$50,000 or more in compensation awards.<sup>204</sup> Of these ten, only five allow victims to collect \$50,000 or more if their injuries are catastrophic or total and

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<sup>202</sup> Avraham, *supra* note 177, at 110.

<sup>203</sup> 2012 *Enlisted Pay Chart*, MILITARY.COM, <http://www.military.com/military/benefits/0,15465,2012-1pt6-Pct-Military-Pay,00.html#epay> (last visited July 16, 2014).

<sup>204</sup> See Appendix B.

permanent.<sup>205</sup> Returning to the three selected compensation comparator states, New York places no maximum caps on medical care expenses but limits other categories of benefits, California limits recovery to \$63,000, and Texas limits recovery to \$50,000 unless the injuries are permanent and total in which case the victim can recover up to \$125,000.<sup>206</sup> The MCB should therefore consider using \$50,000 as a benchmark in determining compensation award ceilings for most sexual assault and harassment crimes.

Unlike state compensation boards, the MCB should also establish an appropriate compensation floor that is applied before adding reimbursable costs and pain and suffering. One method of determining and assigning an appropriate compensation floor to crimes of sexual misconduct is to look at the costs society imposes on first-time drunk-driving convictions. The similarity between the costs of drunk driving and sexual misconduct lies not in the nature of the crimes but in the nature of the offenders. As drunk drivers presumably make enough money to pay for their car, their car's registration and maintenance, and their alcohol, society demands they pay dues for their misconduct. Likewise, military offenders have a guaranteed salary; and even if they are subsequently discharged for their sexual misconduct, it is at least guaranteed they had a salary during their time in the service. As shown in Figure 4 below, New York state charges offenders anywhere between \$7,392.50 and \$11,127.50 for a first-time drunk-driving conviction. If society is willing to charge drunk drivers, whose actions may or may not hurt anyone else, the military should be willing to charge sexual offenders more since their actions necessitate victims. This article proposes that the compensation floor for a rape conviction should be \$20,000, and the compensation ceiling for the same offense would be \$100,000, of which no more than \$62,500 could be allotted to pain and suffering.

By approximately doubling the drunk driver fine, the MCB could appropriately account for the varying nature of the two crimes. "As courts and legislators in this country have long recognized, rape is 'highly reprehensible, both in a moral sense and in its almost total

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<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

contempt for the personal integrity and autonomy of the . . . victim.”<sup>207</sup> The Supreme Court has similarly emphasized that, “[s]hort of homicide, it is the ‘ultimate violation of self.’”<sup>208</sup> While drunk driving is dangerous and potentially deadly, rape’s particular moral reprehensibility and its devastating ability to violate the victim’s personal autonomy demand a higher compensation floor than drunk driving.

Additionally, a \$20,000 compensation floor for rape ensures military compensation amounts are comparably fair to tort awards for the same crimes in civilian courts. Civilian courts, for example, have awarded compensatory awards ranging from \$100,000 to \$500,000 for multi-incident sexual assault and rape of inmates or detainees by prison guards.<sup>209</sup> For single incidents “of rape or sexual assault by an on-duty, uniformed enforcement officer who preyed upon his victim by either effectuating a traffic stop, offering a ride to a lone woman, or taking advantage of a woman who sought the officer’s assistance,” civilian courts have typically awarded damages ranging from \$50,000 to \$350,000.<sup>210</sup>

The infamous 1991 Tailhook Convention served as a basis for even higher compensatory damage awards.<sup>211</sup> In *Caughlin v. Tailhook Association*, Coughlin—a female Navy lieutenant—managed to escape a throng of men who “attacked, groped, [and] grabbed” her in a hotel hallway.<sup>212</sup> As a result of the incident, she experienced PTSD and other psychological problems that eventually caused her to leave the Navy.<sup>213</sup> An eight-person jury in Nevada awarded Caughlin compensatory damages of \$1,695,000 and set total punitive damages for the Tailhook Association and the hotel at over four-million dollars.<sup>214</sup> In light of the compensatory damages awarded to sexual assault victims in civil suits, a compensation floor of at least \$20,000 is necessary to ensure military victims receive comparable compensation to their civilian counterparts.

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<sup>207</sup> *Charleston Area Med. Ctr, Inc. v. Nat’l Union Fire Ins.*, No. 2:09-cv-00573, 2011 U.S. Dist. LEXIS 58520 at \*23–24 (quoting *Coker v. Georgia*, 433 U.S. 584, 597 (1977)).

<sup>208</sup> *Id.*

<sup>209</sup> *Trinidad v. City of Boston*, No. 07-11679-DPW, 2011 U.S. Dist. LEXIS 26416, at \*18–19 (D. Mass. Mar. 15, 2011).

<sup>210</sup> *Id.* at 19.

<sup>211</sup> *Caughlin v. Tailhook Ass’n*, 112 F.3d 1052, 1054 (9th Cir.1997).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

DWI Expenses	Amount	Time Period	Total (Low)	Total (High)	Total (Average)
Towing	\$75+	--	--	--	\$75.00
Car Storage	\$45+/day	--	--	--	\$45.00
Defense Attorney	\$1500+	--	--	--	\$1,500.00
Bail Fee	\$0-500	--	--	\$500+	\$250.00
DWI Fine	\$350-1,000	--	\$350.00	\$1,000.00	\$675.00
State Surcharges	\$245-395	--	\$245.00	\$395.00	\$320.00
Ignition Interlock	\$75-150 installation, \$65-90 monthly maintenance	6 month minimum	\$465.00	\$690.00	\$577.50
Alcohol Evaluation	\$100+	--	\$100.00	--	\$100.00
Victim Impact Panel	\$10-50	--	\$10.00	\$50.00	\$30.00
Probation Supervision	\$0-250+	--	\$0	\$250.00	\$175.00
Conditional License	\$75.00	--	--	--	\$75.00
Drinking Driver Program	\$175-300+	--	\$175.00	\$300.00	\$237.50
DMV Civil Penalty	\$125-750	--	\$125.00	\$750.00	\$437.50
DWI license reinstate	\$100.00	--	--	--	\$100.00
DMV susp. Termination	\$50.00	--	--	--	\$50.00
Assessment	\$250.00	Every three years	--	--	\$250.00
Auto Insurance	\$2,000-\$3000	Per Year	\$2,000.00	\$3,000.00	\$2,500.00
				<b>Total 1:</b>	<b>\$7,397.50</b>
<i>Additional Costs:</i>					
SCRAM Ankle Bracelet	\$11/day	6 weeks+, average of 6 months	\$66.00	--	\$1,980.00
Fines if BAC is over > 0.18	+1000-2500	--	\$1,000.00	\$2,500.00	\$1,750.00
				Total:	\$3,730.00
				<b>Total 2:</b>	<b>\$11,127.50</b>

Figure 4. Cost of a First Time Drunk Driving Conviction<sup>215</sup>

<sup>215</sup> STOP DWI NEW YORK, PENALTIES FOR DRIVING WHILE INTOXICATED IN NEW YORK STATE, <http://www.stopdwi.org/sites/default/files/brochures/>

After assigning rape a compensation floor of \$20,000 and a ceiling of \$100,000, it becomes necessary to categorize other crimes of sexual misconduct to determine their relative compensation floors and ceilings. Figure 5, below, contains a list of common sexual offenses under the UCMJ, lists their maximum punishments, and assigns them a number category based on their corresponding maximum prison time. Figure 6, also below, shows what category numbers are matched to what maximum prison times, assigning a category of 1 to offenses that carry maximum punishments of confinement less than a year, a category of 2 to offenses that carry maximum punishments of one year confinement to less than five years, a category of 3 to offenses that carry maximum punishments of five years confinement to less than ten years, and so on in five-year increments until reaching category 7.

Crimes	UCMJ	Maximum/Minimum Punishment	Category
Cruelty and maltreatment	Article 93	Dishonorable discharge, forfeiture of all pay and allowances (P&A), confinement for 1 year	2
Murder	Article 118(1), (4)	Death, mandatory minimum is confinement for life	7
Murder	Article 118(2), (3)	Punishment other than death	7
Manslaughter (Voluntary)	Article 119	Dishonorable discharge, forfeiture of all P&A, confinement for 15 years	5
Manslaughter (Involuntary)	Article 119	Dishonorable discharge, forfeiture of all P&A, confinement for 10 years	4
Indecent Exposure	Article 120c	Dishonorable discharge, forfeiture of all P&A, confinement for 1 year	2
Rape	Article 120	Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life	7 <sup>216</sup>
Sexual Assault	Article 120	Dishonorable discharge, forfeiture of all P&A, and confinement for 30 years	7

STOP\_DWI\_PENALTIES\_INTERNAL\_TRI\_052713.pdf (last visited Feb. 19, 2015).

<sup>216</sup> National Defense Authorization Act for Fiscal Year 2014, Pub L. No. 113-66, § 1705, 127 Stat. 672, 959 (2013) (adding a mandatory minimum for subsections (a) and (b) of section 920 (article 120(a) or (b)) and forcible sodomy under section 925 (article 125)).

Aggravated Sexual contact	Article 120	Dishonorable discharge, forfeiture of all P&A, confinement for 20 years	6
Abusive Sexual contact	Article 120	Dishonorable discharge, forfeiture of all P&A, confinement for 7 years	2
Stalking	Article 120a	Dishonorable discharge, forfeiture of all P&A, confinement for 3 years	3
Indecent Viewing, Visual Recording, or Broadcasting	Article 120c	Dishonorable discharge, forfeiture of all P&A, confinement for 1 year	2
Forcible Pandering	Article 120c	Dishonorable discharge, forfeiture of all P&A, confinement for 12 years	4
Sexual Harassment: Threatening job, career salary	Article 127 (Extortion)	Dishonorable discharge, forfeiture of all P&A, confinement for 3 years	2
Sexual Harassment: Threatening job, career salary	Article 128 (Assault)	Confinement for 3 months, forfeiture of 2/3 pay for 3 months	1
Assault consummate by a battery	Article 128	Bad conduct discharge, forfeiture of all P&A, confinement for 6 months	1
Conduct unbecoming an officer and gentleman	Article 133	Dismissal, forfeiture of all P&A, confinement not in excess of that authorized for the most analogous offense, or if none prescribed, for 1 year	2
Sexual Harassment: Threatening job, career salary	Article 134 (Communicating a threat)	Dishonorable discharge, forfeiture of all P&A, confinement for 3 years	2
Assault with intent to commit rape	Article 134	Dishonorable discharge, forfeiture of all P&A, confinement for life without eligibility for parole or confinement for 20 years.	6

Assault with intent to commit sodomy	Article 134	Dishonorable discharge, forfeiture of all P&A, confinement for 10 years.	4
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Figure 5. UCMJ Crimes, Punishments, and Corresponding Categories<sup>217</sup>

With each offense assigned a number category, the relative compensation floors and ceilings can be established. The compensation floors decrease from a maximum of \$20,000 for category 7 offenses to \$1,000 for category 1 offenses. Meanwhile, the compensation ceilings decrease with each drop in category such that the average of the ceilings, assuming an even distribution of all crimes committed (excluding murder), is \$56,250. This average is close to the \$50,000 maximum award amounts maintained by numerous states' compensation boards. Realistically, more crimes will fall in the lower categories, suggesting that the maximum amounts charged offenders are more than reasonable by state standards. The only exception to the maximum \$100,000 charge is in the case of murder convictions in which case the compensation ceiling can reach \$250,000.

No:	Confinement	Min:	Max:	Base P&S:	P&S Multiplier Range:	P&S Max:
1	Confinement less than a year	\$1000.00	\$6,250.00	\$500.00	0.02-6.25	\$3,125.00
2	Confinement 1 year to less than 5 years	\$2,000.00	\$12,500.00	\$1,000.00	0.02-6.25	\$6,250.00
3	Confinement 5 years to less than 10 years	\$4,000.00	\$25,000.00	\$2,000.00	0.02-6.25	\$12,500.00
4	Confinement 10 years to less than 15 years	\$6,000.00	\$50,000.00	\$4,000.00	0.02-6.25	\$25,000.00
5	Confinement 15 years to less than 20 years	\$8,000.00	\$75,000.00	\$6,000.00	0.02-6.25	\$37,500.00
6	Confinement 20 years to less than 30 years	\$10,000.00	\$100,000.00	\$8,000.00	0.02-6.25	\$50,000.00

<sup>217</sup> This table was created by the author using the *Manual for Courts-Martial*.

7	Confinement 30 years to life	\$20,000.00	\$125,000, unless murder then \$250,000	\$10,000.00	0.02-6.25	\$62,500
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Figure 6. Conviction Categories (“No.”), Minimums (“Min”), Maximums (“Max”), and Pain and Suffering (“P&S”)

*c. Determining Pain and Suffering*

As show in Figure 6, above, no more than half the amount of any compensation ceiling may be awarded in pain and suffering damages. To determine pain and suffering damages, the MCB will multiply the base number assigned to the applicable conviction by a pain and suffering multiplier. These pain and suffering base numbers are always half of the relevant compensation floor. The highest pain and suffering multiplier has a value of 6.25 points and the lowest multiplier has a value of 0.02 points.

Variable Components:	Multiplier Ranges:
Age of Victim	0.01-0.25
Rank of Offender:	0.01-0.25
Lack of Offender Remorse:	0 – 0.25
Physical Injuries:	0-2.75
Mental/Emotional Injuries:	0-2.75
<b>Total:</b>	<b>0.02-6.25</b>

Figure 7. Breaking down the Pain and Suffering Variable<sup>218</sup>

The appropriate multiplier number is determined by finding the sum of all point values assigned to the variables of victim age at the time of offense, offender rank at time of the offense,<sup>219</sup> offender remorse,

<sup>218</sup> The concept of using multipliers to determine pain and suffering is based on Avraham, *supra* note 177, at 90.

<sup>219</sup> The military is a hierarchal system, and soldiers place a significant amount of trust in their superiors. A violation of that trust arguably deserves an imposition of higher

victim's physical injuries, and victim's emotional injuries. As may be obvious, the worse the physical and emotional injuries, the more points the MCB will assign within those ranges. Similarly, the less remorse an offender demonstrates, the higher the offender's rank is, and the younger the victim is, the more points the MCB will assign those variables.

Moreover, Figure 7, above, shows that each variable has its own range of minimum and maximum values corresponding to the importance of the aggravating factors considered in previous sections. The first three variables are given lesser weight than physical and emotional injury categories because (1) while the amount of time a victim must live with his or her trauma and while the rank of the offender matters for payment purposes, these two factors are completely circumstantial and cannot reveal the true gravity of the offense as well as the other factors can, and (2) offender remorse may be extremely difficult to measure.

To follow this proposed scheme properly, additional schemes are needed to sensibly plot a demonstration of remorse, offender rank, and victim ages across a scale of 0.01 to 0.25 and to plot physical and emotional injuries on a scale of 0 to 2.75.

#### *d. Summary of Offender Payment*

To summarize, when an offender is convicted of sexual misconduct and the victim applies to the MCB, the MCB will first look to the category number assigned the offense. Next, it will see what floors and ceilings correspond with the conviction category number. To the floor amount will be added any expenses directly related to the crime incurred by the victim that have not been reimbursed by insurance or some other source, such as VA benefits. In addition to the floor plus victim expenses, the MCB will determine the amount of pain and suffering damages (capped at half of the conviction's compensation ceiling) owed the victim using the system of base numbers, multipliers, and point systems established in this article. Should the MCB hit the conviction's ceiling amount before pain and suffering can be considered, pain and suffering will not be considered unless justice requires an expansion of

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compensation burdens.

the pain and suffering maximum.<sup>220</sup> This determines the final amount awarded to the victim.

If the ceiling has not been reached, the MCB should also consider any costs to the victim that have been reimbursed by insurance or some source. Such costs should be added to the compensation owed by the offender to the MCB (but which will not be passed on to the victim). Likewise, the VA should assess MCB awards given when determining how much assistance to afford a benefits applicant.

#### *4. MCB Award Disbursement and Funding*

After determining a final compensation award and after the appeals process is complete, the MCB would promptly pay the victim the determined amount in either one lump sum or in several installments from the U.S. Treasury. Offenders would then make their payments to DFAS when on active-duty or through a garnishment order, which would, in turn, pay the U.S. Treasury. Like student loans and other priority debts, Congress should ensure such amounts are not dischargeable through bankruptcy.<sup>221</sup> This system would immediately provide funds for suffering victims and place the burden of compensation collection on DFAS and ultimately on the IRS. To collect money from offenders sentenced to a military confinement facility, the military should consider implementing a system similar to that of the CDCR by which DFAS could collect up to 50% of any money deposited into their accounts.

As with other debts owed to the federal government, the IRS should charge installment and late fees for compensation payments that do not comply with the original offender compensation plan. If necessary, the IRS would also be able to attach the offender's real and personal property in the same manner as for a federal tax lien, seize and sell an individual's assets pursuant to its levy authority, seize pending income tax refunds, garnish the wages of federal employees, and request civilian

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<sup>220</sup> Hitting the conviction's compensation ceiling before the consideration of pain and suffering is anticipated to be an extremely rare occurrence. If this turns out to be incorrect, the system of assigned floors and ceilings ought to be adjusted according to the principles laid out in this article.

<sup>221</sup> See 11 U.S.C. § 523(a)(8) (2012) (providing that educational loans owed to a governmental unit or a nonprofit institution of higher education are not dischargeable).

employers to participate in wage garnishment.<sup>222</sup> The IRS should apply its normal rules for liens and levies on retired pay. The 20-year statute of limitations and other provisions for civil fines in 18 U.S.C. § 3613(b)<sup>223</sup> should be applied.

While offenders pay their restitution obligations, and in case offenders are unable to pay off the entire order, the military will need to access funds within the U.S. Treasury to pay victims. Congress may choose to use VOCA as a “vehicle to address . . . [the] risks and needs” of military victims.<sup>224</sup> Since its inception, Congress has amended VOCA several times “to support additional victim-related activities and accommodate the needs of specific groups of victims, such as child abuse victims and victims of terrorist acts.”<sup>225</sup> As the current situation of military victims render them a population with unique risks and needs, Congress should, under VOCA, allocate additional funds to the Crime Victims Fund (CVF) within the U.S. Treasury from which DFAS would pay victims.

While a U.S. Treasury-supported system may superficially appear to circumvent the *Feres* doctrine, a closer examination shows the compensation system does not violate any of the purposes for which *Feres* was enacted.<sup>226</sup> That is, by allocating funds to CVF for DFAS to use, Congress would simply be voluntarily appropriating funds to compensate victims of sexual assault and harassment—a process that would improve the existing comprehensive compensation schemes already in place for injured military personnel. Additionally, the proposed MCB system would not allow soldiers to sue the government,

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<sup>222</sup> Bobby L. Dexter, *Transfiguration of the Deadbeat Dad and the Greedy Octogenarian: An Intratextualist Critique of Tax Refund Seizures*, 54 KAN. L. REV. 643, 644 (2006).

<sup>223</sup> Title 18 U.S.C. § 3613(b) provides, “Termination of Liability—The liability to pay a fine shall terminate the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person fined, or upon the death of the individual fined.”

<sup>224</sup> LISA N. SACCO, CONG. RESEARCH SERV., R42672, THE CRIME VICTIMS FUND: FEDERAL SUPPORT FOR VICTIMS OF CRIME 14 (2012).

<sup>225</sup> *Id.*

<sup>226</sup> The *Feres* court’s rationale for barring military victims’ claims is: (1) the military offers “a separate, uniform, comprehensive, no-fault compensation scheme for injured military personnel,” (2) permitting soldiers to sue the Government or each other might have a negative effect on “military order, discipline, and effectiveness,” and (3) a “corresponding unfairness” would arise when non-uniform local tort law would decide service-connected claims. *The Feres Doctrine: An Examination of this Military Exception to the Federal Torts Claims Act: Hearing before the S. Comm. on the Judiciary*, 107th Cong. 2 (2002) (statement of Paul Harris, Deputy Assoc. Attorney Gen.); see also *Feres v. United States*, 340 U.S. 135, at 140–43 (1950).

nor would it have a negative effect on military order and discipline. In fact, as the goal of the MCB is to curb sexual assault, it would improve military order, discipline, and effectiveness. Lastly, no “corresponding unfairness” would arise from a non-uniform tort law because the MCB creates a uniform system within the military.

### 5. *Challenging MCB Findings*

A complainant, perpetrator, or government counsel could appeal MCB findings within 30 calendar days of receiving the decision.<sup>227</sup> After the appellant sends a written notice of appeal to the MCB, the appellant would have 30 additional days to file an appeal, and the appellees (government, perpetrator, or victim) would have 60 days to file a response. Three MCB members would review the appeal and have the authority to affirm, modify, or remand the decision. The review panel’s decision would stand as final. As with individuals appealing revoked security clearances,<sup>228</sup> the party paying the compensation can obtain legal counsel or other assistance at his or her own expense. Other aspects of the appeal process, such as content of an appeal and submission of an appeal, should conform with all rules outlined in Enclosure 7 of DoD Instruction 1340.21<sup>229</sup> that are not inconsistent with the process previously described.

### 6. *Cross-Examination Concerns*

Though the MCB provides compensation as a post-appellate process, some defense attorneys may try to use the process during the cross-examination of a victim at criminal trials, which may occur in courts-martial, state courts, or U.S. district courts, depending on the location of the offense, arguing, essentially, that the possibility of compensation creates perverse incentives for the victim to file a false report. Even so, the defense’s argument would not necessarily be persuasive or decisive.

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<sup>227</sup> Thirty days is the length of time New York allows victims to submit a written appeal to their state compensation board. *Frequently Asked Questions What Do I Do If I Am Unhappy with the OVS Decision on My Claim Application?*, N.Y. OFFICE OF VICTIM SERVS., <http://www.ovs.ny.gov/HelpforCrimeVictims/HelpFAQ.aspx> (last visited July 16, 2014).

<sup>228</sup> U.S. DEP’T OF DEF., 5200.2-R, PERSONNEL SECURITY PROGRAM para. C8.2.2.1.1 (Jan. 1987).

<sup>229</sup> DoD INSTR.1340.21, *supra* note 186, at 17.

Victims have been able to sue perpetrators in tort after criminal trials for decades and prosecutors have nevertheless been able to obtain convictions.

#### V. Benefits of Creating the MCB Instead of Implementing Other Potential Solutions

The MCB uniformly provides justice for military victims of sexual assault and harassment while punishing their perpetrators, fostering proper deterrence levels, and contributing to the essential military goals of discipline and preparedness. By creating a military-based solution for a military problem, the MCB preserves the authority of the commander. While some critics may be uncomfortable preserving the strong role the commander plays within the military justice system, especially in regards to claims of sexual assault and harassment,<sup>230</sup> changing the role of the commander may come with undesirable and unintended consequences. As Diane H. Mazur notes in her article *The Beginning of the End for Women in the Military*,<sup>231</sup> “[u]sing the chain of command is ingrained in all service members,” and once the chain of command is discarded as an avenue for redress, she says sexual assault and harassment will “no longer [be] a priority for the command.”<sup>232</sup> That is, “[i]f we tell individual supervisors and commanders that they are incompetent to respond to women’s concerns, they will remain incompetent.”<sup>233</sup>

Moreover, victims will be less fearful of reporting sexual assault and harassment, and of engaging with the military’s administrative and judicial processes, knowing they will have a chance to approach the MCB (regardless of their offender’s conviction status) and recover monetary compensation that appropriately recognizes their struggles.

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<sup>230</sup> Some advocates do not like that commanders and not lawyers are deciding what disciplinary action to take, choosing whether or not to try a case, and in selecting the court members. See, e.g., *Will Military Sexual Assault Survivors Find Justice*, NOW (March 19, 2014), <http://now.org/resource/will-military-sexual-assault-survivors-find-justice-issue-advisory/> (last visited July 21, 2014). Others doubt the commanders’ abilities to ignore the pressure from the media or their superiors to “look good” and keep problematic issues in their unit quiet by ignoring them, or worse, actively discouraging victims from making allegations against other servicemembers. See, e.g., Jackie Speier, *Military Justice Bungles Sex Cases*, CNN, Mar. 20, 2014, <http://www.cnn.com/2014/03/20/opinion/speier-military-prosecution/>.

<sup>231</sup> Diane H. Mazur, *The Beginning of the End for Women in the Military*, 48 U. FLA. L. REV. 461, 464 (1996).

<sup>232</sup> *Id.* at 470.

<sup>233</sup> *Id.*

Additionally, the creation of the MCB accomplishes reform in a simpler and more efficient manner than other suggested solutions. By implementing the MCB, Congress would not have to transform the ingrained role of the commander or overturn federal case law to eliminate or seriously amend the *Feres* doctrine, the FTCA, the MCA, Title VII, or EEOC jurisdiction. Lastly, the MCB is a solution that gives the military the proper deference that courts and Congress have long afforded it. It is also large enough in its scope and vision to respond to the serious problem of sexual assault and harassment in the military.

## VI. Conclusion

In summary, the military is a community apart, a society with unique tasks and responsibilities that operates under a separate legal system. It is a community whose sexual assault and harassment victims often do not report incidents for fear of reprisal or retaliation.<sup>234</sup> None of these victims can sue the government for tort damages, and the compensation options available to them are decidedly lacking.

Creation of a separate Military Crime Victims Compensation Board creates an efficient military solution to a unique military problem, allowing military victims of sexual assault and harassment to apply for and receive just compensation awards. The award amount would include scheduled pain and suffering damages to ensure fair, predictable awards tailored for deterrence. Perpetrators would be responsible for paying the compensation, and if discharged from the military, the IRS could then use the full panoply of remedies to collect the debt. While the need for further improvement and refinement of the processes developed in this article remains, by creating the MCB, the military would make significant progress toward providing justice for victims and forcing offenders to face tougher consequences.

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<sup>234</sup> Banner, *supra* note 55, at 768-71.

**Appendix A**

**Sample Draft Bill**

(Original Signature of Member)

**114TH  
CONGRESS**

**H. R. \_\_\_\_\_**

To expand the roles and responsibilities of the Under Secretary of Personnel and Readiness to provide a uniform compensation system to military victims of violent crimes committed by military offenders to ensure victims receive adequate support and recognition of their suffering, impose appropriate consequences on offenders, and offer opportunities to military victims by which they can recover awards available to similarly situated civilians.

**IN THE HOUSE OF REPRESENTATIVES**

\_\_\_\_\_ introduced the following bill; which was referred to the Committee \_\_\_\_\_ on \_\_\_\_\_

**A BILL**

To expand the roles and responsibilities of the Under Secretary of Personnel and Readiness to provide a uniform compensation system to military victims of violent crimes committed by military offenders.

*Be it enacted by the Senate and House  
of Representatives of the United States  
of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Military Crime Victims Compensation Board Act of 2015.”

**SEC. 2. EXPANDING THE ROLE AND RESPONSIBILITY OF THE UNDER SECRETARY OF PERSONNEL AND READINESS.**

(a) SECTION 136(D) OF TITLE 10 U.S. CODE IS ADDED TO AS FOLLOWS:

(1) At the end of Section 136(d), the following sentence is added: “The Department of Defense shall establish a fund, to be known as the Military Crime Compensation Fund.”

(b) SECTION 136(D)(1) OF TITLE 10 U.S. CODE IS ADDED AS A SUBSECTION OF 136(D) AS FOLLOWS:

(1) Property loss, personal injury, or death due to sexual assault, abuse, or harassment: incident to combat or noncombat activities of the armed forces:

(A) Definitions:

(1) personal injury as used in this section refers to a victim’s physical as well as emotional pain and suffering caused by sexual assault, abuse, or harassment.

(2) servicemember as used in this section refers to any member or the Army, Marines, Navy, Air Force, or Coast Guard.

(3) service as used in this section refers to the Army, Marines, Navy, Air Force, and Coast Guard.

(B) The purpose of this Act is to promote and maintain a collaborative safe working environment within the armed services; to compensate the victims of sexual assault, abuse, and harassment, and to punish sexual offenders through the prompt settlement of meritorious claims, the Secretary concerned, or an officer or employee designated by the Secretary, may

appoint, under such regulations as the Secretary may prescribe the Military Compensation Board (MCB), composed of at least five officers or employees or combination of officers or employees of the services, to settle and pay in an amount not more than \$100,000, or not more than \$250,000 in the case of murder, a claim against the United States for—

(1) damage to, or loss of, real property of any servicemember;

(2) personal injury to, or death of, any servicemember if the damage, loss, personal injury, or death—no matter the place of its occurrence, whether inside or outside the United States or its commonwealths or possessions—and is caused by, or is otherwise incident to, combat or noncombat<sup>235</sup> activities of the armed forces under his jurisdiction, or is caused by a member thereof or by the Coast Guard, as the case may be. An officer or employee may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(C) A claim may be allowed under subsection (B) only if—

(1) the underlying incidence was reported within 72 hours of its occurrence, or a reasonable amount of time depending on deployment circumstances or military duties of the

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<sup>235</sup> While the Foreign Claims Act (FCA) bans claims arising from combat activities, there have been instances in which the DoD has still found a way to compensate combat related damages. These exclusions from the FCA ban are “strong evidence of the high value that the U.S. military places upon winning the hearts and minds of civilians and compensation as a means to that end.” Jordan Walerstein, Note, *Coping with Combat Claims: An Analysis of the Foreign Claims Act’s Combat Exclusion*, 11 CARDOZO J. CONFLICT RESOL. 319, 331 (Fall 2009). If the military prioritizes the hearts and minds of civilians in other countries, it seems logical that it would also prioritize the hearts and minds of its own soldiers. The combat provision should apply to military victims of sexual assault, abuse, and harassment.

victim, and was presented within two years after the filing of the report or within 90 days after the sentence of the court-martial is announced, or the matter is otherwise resolved through imposition of a reprimand or non-judicial punishment, whichever is later; and (2) it arose from criminal conduct by a servicemember who was on active duty when such conduct occurred.

An appeal of a final claim determination as prescribed in this chapter is allowed only if –

(1) a complainant, an accused, or the United States believes the amount tendered is unjust or in violation of the rules prescribing compensation payments.

(2) the appellant files notice of the written appeal within 30 calendar days of receiving the MCB's final payment decision.

(3) the appellant files the appeal within 60 days of filing the notice of appeal.

(D) After the MCB reviews a victim's application and determines the compensation owed, an order for payment will be sent to the Defense Finance and Accounting Office (DFAS), the victim, and the perpetrator.

(E) If after 30 days no notice of appeal is filed, DFAS will pay the victim and either garnish the perpetrator's pay or forward the debt to the IRS for collection should the perpetrator be discharged.

(F) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess

of \$100,000 to the Secretary of the Treasury for payment.

(G) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(H) The Board will operate pursuant to the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness. The Secretary of Defense shall issue appropriate directives, appoint hearing officers, support staff, and appeal board members as necessary, to implement this statute within 180 days of the date of this authorization.

(I) The Military Crime Compensation Board designated under this paragraph shall have the following functions, powers, and duties

(1) To establish and maintain a principal office within the Department of Defense.

(2) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions and purposes of this article, including rules for the determination of claims and military judge advocates or lawyers appointed as victim representatives shall be responsible for assisting victims in filing claims to the MCB.

(3) To require any military criminal investigative agency, military police agency, or Department of Defense command to provide investigative reports and records necessary to enable the Board to

carry out its functions and duties.

(4) To hear, determine, and review all claims for awards filed with the office by military victims including for pain and suffering damages.

(5) To establish an advisory council to assist in formulation of policies on the problems of crime victims and providing recommendations to the Under Secretary to improve the delivery of services to victims by the office.

(6) To establish a review board to review claims and affirm, modify, or remand the claims to ensure compliance with Department of Defense procedural regulations and to establish uniformity in awards throughout the Department of Defense.

(7) Render each year a written report to the Under Secretary on the office's activities including, but not limited to, the manner in which the rights, needs, and interests of crime victims are being addressed by the MCB and changes that are recommended in the authority or procedures of the MCB.

## Appendix B

### Summary of Basic State Program Information

Note: Significant exceptions exist for many states' reporting and filing requirements. In general, most states can waive reporting and filing requirements for "good cause" and many have specific exceptions for child victims. With regard to the maximums listed below, nearly every state has limits below the maximum on some specific expenses, such as funerals, mental health counseling, and lost wages. Go to [www.nacvcb.org](http://www.nacvcb.org) and the Program Directory there to find more state information.

	Reporting Requirement (in hours unless noted)	Filing Limit	Maximum Payment
Alabama	72	1 year	15,000
Alaska	5 days	2 years	40,000; 80,000 in homicides with multiple victims
Arizona	72	2 years	25,000
Arkansas	72	1 year	10,000; 25,000 for catastrophic injuries
California	reasonable time	3 years	63,000
Colorado	72	1 year	20,000 (each district may set lower maximum)
Connecticut	5 days	2 years	15,000; 25,000 in homicides
Delaware	72	1 year	25,000; 50,000 when injuries are total and permanent
D.C.	7 days	1 year	25,000
Florida	72	1 year	15,000; 30,000 for catastrophic injuries
Georgia	72	1 year	25,000
Hawaii	72	18 months	10,000; 20,000 if only medical expenses are claimed
Idaho	72	1 year	25,000
Illinois	72/7 days sexual assault	2 years	27,000
Indiana	48	180 days	15,000
Iowa	72	2 years	No overall limit; maximums for each expense
Kansas	72	2 years	25,000
Kentucky	48	5 years	25,000
Louisiana	72	1 year	10,000; 25,000 when injuries are total and permanent
Maine	5 days	3 years	15,000
Maryland	48	3 years	45,000
Massachusetts	5 days	3 years	25,000
Michigan	48	1 year	25,000
Minnesota	30 days	3 years	50,000
Mississippi	72	3 years	20,000
Missouri	48	2 years	25,000
Montana	72	1 year	25,000
Nebraska	72	2 years	10,000
Nevada	5 days	1 year	35,000
New Hampshire	5 days	1 year	25,000
New Jersey	9 months	3 years	25,000; 60,000 for catastrophic injuries
New Mexico	30 days; 180 days sexual assault	2 years	20,000; 50,000 for catastrophic injuries
New York	7 days	1 year	No medical maximum; limits on other expenses
North Carolina	72	2 years	30,000; additional 5,000 for funeral expenses
North Dakota	72	1 year	25,000
Ohio	no limit	no limit	50,000
Oklahoma	72	1 year	20,000; 40,000 in catastrophic cases and homicides
Oregon	72	6 months	47,000
Pennsylvania	72	2 years	46,500 (35,000 plus 10,000 counseling; 1,500 other)
Puerto Rico	72	6 months	6,000 per person, 15,000 per family; 40,000 in catastrophic
Rhode Island	10 days	3 years	25,000
South Carolina	48	180 days	15,000; 25,000 in catastrophic cases
South Dakota	5 days	1 year	15,000
Tennessee	48	1 year	30,000
Texas	reasonable time	3 years	50,000; 125,000 when injuries are permanent and total
Utah	no limit	no limit	25,000; additional 25,000 medical if base amount exceeded
Vermont	no limit	no limit	10,000
Virgin Islands	24	2 years	25,000
Virginia	5 days	1 year	25,000
Washington	1 year	2 years	50,000
West Virginia	72	2 years	35,000; 50,000 in homicides; 100,000 in catastrophic cases
Wisconsin	5 days	1 year	40,000; additional 2,000 for funerals
Wyoming	reasonable time	1 year	15,000; 25,000 for catastrophic injuries

NAT'L ASS'N OF CRIME VICTIM COMPENSATION BDS., BASIC PROGRAM INFORMATION, *available at* <http://www.nacvcb.org/NACVCB/files/ccLibraryFiles/Filename/000000000196/Basic%20Information%202014.doc>.

## Appendix C

**Crime Victims Funds FY1985–2012**  
 (dollars in millions)<sup>236</sup>

Fiscal Year	Amount Collected to CVF	Enacted Cap on CVF Deposits	Enacted Cap on CVF Distribution	Funds Made Available for Distribution <sup>a</sup>	Carryover CVF Balance
1985	\$68.3	\$100	—	\$68.3	—
1986	62.5	\$110	—	62.5	—
1987	77.5	\$110	—	77.5	—
1988	93.6	\$110	—	93.6	—
1989	133.5	\$125	—	124.2	—
1990	146.2	\$125	—	127.2	—
1991	128.0	\$150	—	128.0	—
1992	221.6	\$150	—	152.2	—
1993	144.7	—	—	144.7	—
1994	185.1	—	—	185.1	—
1995	233.9	—	—	233.9	—
1996	528.9	—	—	528.9	—
1997	362.9	—	—	362.9	—
1998	324.0	—	—	324.0	—
1999	985.2	—	—	500.0	—
2000	777.0	—	500.0	537.5	485.2
2001	544.4	—	537.5	550.0	785.2
2002	519.5	—	550.0	600.0	792.0
2003	361.3	—	600.0	617.6 <sup>b</sup>	718.9
2004	833.7	—	621.3 <sup>c</sup>	671.3 <sup>c</sup>	422.1
2005	668.3	—	620.0	620.0	1,307.4
2006	641.8	—	625.0	625.0	1,333.5
2007	1,018.0	—	625.0	625.0	1,784.0
2008	896.3	—	590.0	590.0	2,084.0
2009	1,745.7	—	635.0	635.0	3,146.5
2010	2,362.3	—	705.0	705.0	4,801.5
2011	1,998.0	—	705.0	705.0	6,099.7
2012	—	—	705.0	705.0	—

<sup>236</sup> U.S. Dep't of Justice, Office of Justice Programs, Office of Comm.; SACCO, *supra* note 233, at 4.