

Judicial Proceedings Panel

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Statement by Dan Eddy

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The Judicial Proceedings Panel is considering recommending that the military create its own victim compensation program. Since your consideration appears in part to be based on misconceptions of state compensation programs, and a desire to establish a model for the states, I thought I would address those misconceptions and point out that many programs already incorporate what the JPP might consider best practices. There is no need to establish a “model,” since it already exists in many states.

Misconception #1: Sexual Assault Victims Must Report Within 72 Hours.

The two largest states, California and Texas, which together pay close to a third of all compensation nationally, ***have no reporting deadlines at all***. Neither does Ohio, Utah, or Vermont. Connecticut has no reporting deadline at all, because it doesn’t require sexual assault victims to report to police.

Military victims of sexual assault don’t have to report at all in California: California’s legislature recognized the severe problems that military sexual assault victims face in reporting within the military, and changed the compensation law so that no one sexually assaulted while in the military has to report to qualify for benefits.

Sexual assault victims don’t have to report to law enforcement at all in Texas, under recent legislation, to get compensation for their medical costs incurred during the initial emergency room visit.

Many other states have extended deadlines: Wyoming and Washington state’s deadlines are 1 year. New Jersey’s deadline is 9 months. New Mexico: 180 days; Minnesota: 30 days; New York and Illinois: 7 days. In all, close to half the states have deadlines longer than 72 hours. And in the other states, managers indicate that they “always” or “routinely” waive the 72-hour reporting requirement for sexual assault victims, since all are authorized to do so under “good-cause” exceptions.

With most large states either having no reporting deadline at all, or flexible time limits significantly longer than 72 hours, the large majority of rape victims in America are not subject to a 72-hour reporting requirement to get a full range of benefits.

In addition, ***32 compensation programs do not require reporting or cooperation*** of sexual assault victims in order to pay for forensic exams and an array of related medical bills (STD testing, prophylactic medications, and even counseling in some states). All 50 states were placed under this requirement by VAWA, and in those 32 states, it is the compensation program designated to pay for the exams.

Misconception #2: Lack of Cooperation with Law Enforcement Always Results in Claim Denial.

Along with the exceptions noted above for California and Texas, other states indicate significant flexibility regarding requirements relating to cooperation in the investigation and prosecution of the case.

Federal law (VOCA) requires state compensation programs to “promote cooperation with the reasonable requests of law enforcement” as a condition of receiving federal funding (42 U.S.C. 10602(b)(2)). State laws generally also require cooperation. A failure to provide any information at all to police may prevent a sexual victim from receiving compensation, though some programs may help with regular compensation benefits if a victim has submitted only to a forensic examination, or at least cooperated initially with law enforcement. Practically speaking, if a victim has provided information to police to form the basis for an initial investigation, her compensation claim is likely to be paid, since the program will not learn whether she later stops cooperating. Prosecutions rarely result from any criminal investigation, including sexual assaults, so participation at trial is often not a consideration in compensation-program decision making. As one manager said, “We usually have paid the claim long before a criminal trial.”

Misconception #3: Sexual Assault Victims’ Behavior is Used as Grounds for Denial.

This is simply not true. Sexual assault victims are NOT denied because of any contributing behavior on their part. Some programs have written this right into their policies. Other programs have adopted it as standard practice in processing applications from sexual assault victims.

While “contributory conduct” exclusions exist in every state compensation law, they are in place to weed out criminals who directly cause their own injury: drug dealers who are assaulted and killed are not eligible for crime victim compensation, and contributory conduct provisions enable compensation programs to deny their claims for public funds intended for victims.

Contributory conduct is not applied as a standard against sexual assault victims. I know, because we train on precisely this issue at every conference we hold, attended by victim compensation managers and staff. A victim’s behavior – even criminal behavior, such as drinking underage – can at most make her more vulnerable to attack. It does not cause someone to rape her.

Misconception #4: State Compensation Programs Present Too Much Diversity in Administration, Requiring a Nationalized Compensation Program as a Solution.

In fact, state crime victim compensation programs offer remarkably consistent substantial financial help to sexual assault victims. Through the implementation of similar approaches, policies, and benefits, compensation is provided in a remarkably standard way across state boundaries, and nearly every sexual assault victim that seeks help receives it.

All offer the same major benefits: Medical care, counseling, lost wages – these are the primary needs of any victim, including sexual assault victims. In addition, a substantial number of programs have gone further, offering benefits that are less often sought by victims, including relocation.

Crime victim compensation in the United States is not a federal or national program. Neither is the administration of criminal justice; the police and prosecution functions for the large majority of

violent crime in America is done at the local and state level. State legislatures began creating victim compensation programs in 1965, and Congress made a choice in 1984, with passage of the Victims of Crime Act (VOCA), to rely on these programs to help victims of federal crimes, rather than create a national or federal program. Congress established a grant program to supplement state resources, and conditioned these grants upon full coverage of federal crime victims.

In creating crime victim compensation programs, state legislatures faced a number of issues. I'll briefly outline those issues, and describe what states decided, as a guide to any consideration of the establishment of any other than the existing program.

Who is Eligible?

States uniformly decided that compensation would be provided to victims who did not commit crimes that caused their own victimizations. Sexual assault, domestic violence, homicide, assault, drunk driving, child abuse all would be covered; deaths and injuries to criminals in the course of committing crimes would not be – hence requirements to report, cooperate, and not have contributed to the victimization were standard across all states. Exceptions were made to ensure that these requirements did not work to exclude victims deserving coverage.

How Will the Program Be Funded?

States almost universally use fees and assessments on convictions, or surcharges on fines, rather than taxpayer funds. The federal Crime Victims Fund is financed through the collection of all federal criminal fines. The military criminal justice system does not contribute to the federal VOCA Crime Victims Fund.

How much money will be needed? How many victims, and how much per victim, on average? The large majority of state compensation programs, all of which have been in operation for at least 20 years, and some going back 40 and 50 years, have achieved a balance of state and federal funding to meet the needs of victims in their state.

How Will the Money Be Distributed?

With limited resources, both state and federal, state legislatures determined that the programs would pay for out-of-pocket costs. The fund would not be distributed simply because someone was a victim, without regard to actual need.

For state programs, the focus was on medical care, counseling, lost wages, and funerals and lost support in homicides. All states cover these expenses and losses. A large number also cover relocation from an abusive or unsafe home (generally for domestic violence victims, and generally not sought by sexual assault victims), crime-scene cleanup, and transportation expenses.

There were two exceptions. Rhode Island offered \$25,000 in pain and suffering, but after a couple of decades of operation, found itself bankrupt, with claims waiting up to 12 years for payment. The Rhode Island legislature ended the benefit, reverting to an out-of-pocket model. The same thing happened in Delaware. Hawaii, which has long had a mandatory employer-provided health-insurance

requirement, has a “recognition award” of \$800 that it can make in some cases; and Tennessee offers up to \$3,000 in pain and suffering to victims of sexual assault.

Programs offering lump-sum benefits, unrelated to actual loss, must assess incentives for false reporting, particularly if the benefit is available absent any report to law enforcement. Models such as the funds that have sprung up in the wake of some major mass-violence incidents (Aurora, Newtown, Boston Marathon) may not be particularly helpful, since the task faced in administering those funds was to find an equitable distribution of however much had been collected, large or small, to a defined and limited number of victims. A program offering ongoing benefits to many victims over many years faces a different set of circumstances.

Who is your decision maker?

For U.S. compensation programs, state government agencies make decisions, with two exceptions, Colorado and Arizona, where independent units within district attorney offices are authorized to administer the programs. For any military program, would operation and decisions be at the battalion level, or under a flag-level general officer, or at the service-branch level, or in the Department of Defense?

Who Handles Appeals?

Appeals beyond program auspices in the states (some have informal review processes following an initial decision) generally go to administrative law judges or some appeals board before entering the regular state court system.

What Are the Requirements for Eligibility?

What is the decision threshold? What are the advantages and disadvantages of each?

1. Filing a claim? No report or proof, simply an allegation.
2. Report to a counselor. No report to law enforcement.
3. Submitting to a forensic examination. No further cooperation with law enforcement.
4. Report to law enforcement. No investigation.
5. Investigation substantiating crime. No charges.
6. Charges brought.
7. Conviction.

Among state programs, eligibility rules were set for all victimization types, and then exceptions allowed. Legislatures evinced a belief that not only did the state have an obligation to provide a safety net for victims of crime, and try to make them as whole as possible within funding constraints, but that victims also had an obligation to help the state find perpetrators and protect the community. The general standard requiring reporting and cooperation helped prevent criminals from getting payments from state funds designated for crime victims. However, no charges are required, and no conviction is necessary, for a victim to get compensation. And many exceptions, particularly for child victims and for victims of sexual assault and domestic violence, are used routinely. For example, victims under the age of majority are not required to report within any time limits or to file claims before they reach adulthood.

State compensation programs have operated for decades, under both state and federal control, for decades, providing a range of benefits to meet victims' needs, including sexual assault victims. The programs continue to evolve to help victims recover by assisting them in paying for the costs of crime. They offer important financial aid to victims of all crimes, including those occurring within the ranks of the military, or those perpetrated by service members upon civilians.