JPP STAFF MINUTES OF 2015 VOCA NATIONAL TRAINING CONFERENCE
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JPP staff attorney Doug Nelson recently attended the 2015 Victims of Crime Act (VOCA) Training Conference, co-hosted by the National Association of Crime Victim Compensation Boards (NACVCB) and the National Association of VOCA Administrators (NAVA). The below minutes provide background and up-to-date information on the provision of compensation available to victims of sexual assault from the various crime victim compensation (CVC) programs administered by U.S. states and territories.

Pre-conference Session: Crime Victim Fund-amentals and Policy Discussion. This session, led by the executive directors of NAVA and NACVCB, explained how the VOCA Crime Victims Fund works, where the funds come from, and how they are used. PowerPoint slides from the session are available at the conference website at http://www.navaa.org/conf/.

In Fiscal Year 2015, states will receive approximately four times as much VOCA victim assistance funding as they received in Fiscal Year 2014. This funding is used to provide victim services such as emergency shelter, crisis intervention, counseling, and assistance in participating in the criminal justice system. Rather than a one-time "windfall," this probably represents the "new normal," at least for the next few years. State CVC programs, however, will not share at all in the sharp increase in VOCA assistance funding.

In 2014, 201,113 adult victims of sexual assault received VOCA assistance. This marked a 15% decrease from the 2007 total, which tracks a 14% decrease in VOCA assistance received by crime victims overall over the same period.

VOCA requires state CVC programs to "promote cooperation with the reasonable requests of law enforcement." However, VOCA leaves the interpretation of this requirement to the state programs. State CVC programs "promote cooperation" in a variety of ways, and some do not require reporting and cooperation for eligibility of CVC funds.

Under VOCA, state CVC programs generally are last payers with regard to federal benefits. The Veterans Affairs Department, however, has adopted a provision naming state CVC programs as a primary payer.

VOCA is silent as to compensation for abortions. Other federal laws make explicit exceptions and allow payment for abortions in cases of rape and incest. Generally speaking, state statutes control whether a state CVC program can cover abortion.

Helping Federal Victims with Compensation. This session explained ways to overcome challenges faced by state CVC programs in dealing with crimes that cross state borders. Panelists included the Assistant Director of the Office for Victim Assistance of the Federal Bureau of Investigation (FBI), an Attorney Advisor from the Executive Office of U.S. Attorneys, and CVC program managers from Maine and Colorado. Managers of many other CVC programs participated from the audience, including Maine, Pennsylvania, South Carolina, Tennessee, and Texas.

The challenge state CVC programs face in multijurisdictional cases stems from the fact that there is no federal CVC program other than the International Terrorism Victim

Expense Reimbursement Program (ITVERP), which is limited to compensation of overseas Americans for acts of terrorism. In these cases, CVC claim adjudicators must work cooperatively with the FBI and U.S. Attorney's offices. In doing so, however, CVC program managers report that federal laws and regulations often hinder the release of investigative reports. Therefore, CVC claim adjudicators have trouble obtaining information needed to document the facts of these cases and determine claim eligibility. The FBI Office for Victim Assistance is working to address this issue.

The most common interstate crimes covered by state CVC programs are child pornography, human trafficking, mass violence, cyber crimes (e.g., identity theft, cyber bullying), and medical fraud. There is no general rule on which state CVC program is responsible for compensating victims in these multijurisdictional cases. For example, in a child pornography case, possibilities include the state where an image or video was recorded, the state where the image/video was seen or possessed, the state of residence of the victim, or the state of residence of the accused.

During the session, state CVC program managers expressed interest in forming an *ad hoc* NACVCB committee to reach a consensus/compact on the issue of which state CVC program is responsible for compensating victims in interstate cases. Although such a compact would not bind all state CVC programs, it would be helpful in providing guidance to program managers struggling with this issue, which is becoming more common.

Serving American Victims of Crime Overseas: Challenges and Resources. This workshop explained the unique challenges faced by American crime victims who are living or traveling abroad. Presenters included representatives from OVC, the U.S. Department of State Office of Overseas Citizens Services, FBI Office for Victim Assistance, the Texas Office of the Attorney General, and the Americans Overseas Domestic Violence Crisis Center (AODVC).

The most common challenges faced by overseas American crime victims are accessing information, navigating a foreign country's criminal justice system, and accessing support services. Victims need assistance facing these challenges while abroad and once they return to the U.S.

Currently, 26 state CVC programs (including Texas) are authorized to provide compensation to victims of crimes committed overseas. The Office of Overseas Citizens Services at the U.S. State Department maintains an accurate list of these state CVC programs that is available upon request. In Texas, the most common types of overseas victims who apply for compensation are tourists and contractors. In order to be eligible for compensation, contractors must have workers' compensation insurance.

AODVC is a non-profit organization that provides crisis services to American sexual assault victims who are living overseas. Services include: a 24/7 toll-free crisis hotline; safety planning; professional counseling from social workers and psychologists; child abuse assessments; *pro bono* legal consultations and legal retainers; travel, relocation, and resettlement either within the foreign country or back to the U.S.; and rent, housing, and other basic necessities.

AODVC offers a Military Family Advocacy Program to provide services to military members and dependents living overseas and to support and co-manage cases with military Family Advocacy case managers. AODVC publicizes these services on overseas military bases, and links to the AODVC website are available on DoD and Service websites. AODVC also offers ongoing cross-training of military Family Advocates in South Korea, Japan, and Europe.

The International Terrorism Victim Expense Reimbursement Program (ITVERP) is a federal CVC program administered by OVC. ITVERP is funded through the Antiterrorism Emergency Reserve, a component of the VOCA Crime Victims Fund. Three requirements must be met for compensation: (1) a terrorist incident occurred; (2) the victim is a U.S. citizen and/or government employee; and (3) the victim's expenses are directly related to the terrorist incident. Although ITVERP covers both physical and emotional injuries – specifically, up to $50,000 in medical care and $5,000 in mental health care – the program does not cover pain and suffering, nor does it cover lost wages.

Current Challenges in Compensation. This discussion, facilitated by the executive director of NACVCB, explored how state CVC programs are coping with newer types of crime and the applicability of eligibility rules. State CVC program managers discussed how they are adapting their approaches to certain types of cases and finding new ways to meet victims' needs. The panel consisted of CVC program managers from Alabama, Colorado, Delaware, the District of Columbia, Hawaii, and Idaho. Managers of many other programs participated, including Alaska, Arizona, California, Louisiana, Maryland and New York.

State CVC program managers said they have recently observed evolution in the types of crimes and claimants as well as evolving compensation needs. The Affordable Care Act is affecting claim loads and payouts in many states, particularly those implementing Medicaid expansion. These and other so-called "collateral sources" of compensation are covering much if not all of the medical and counseling expenses incurred by victims. Meanwhile, violent crime continues to decline, reinforcing a trend toward decreased payouts.

On the other hand, new types of crime, such as sexting and financial fraud, are gaining public attention and are more frequently being prosecuted. Moreover, the recent dramatic increase in VOCA assistance funding may reverse the trend of decreased CVC program payouts. As more victims receive assistance, the numbers of compensation claimants may rise.

Increasingly, state and national victim advocacy organizations are questioning the basic tenets of compensation statutes. In particular, advocates assert that victims of sexual assault, domestic violence, and inner-city crime are not well-served by traditional CVC eligibility rules, such as reporting requirements, cooperation with law enforcement, and contributory misconduct.

Contrary to the advocates' criticisms, state CVC program managers noted that, with respect to sexual assault cases, victims' failure to meet the reporting requirement is frequently waived. In some states (e.g., Hawaii), a blanket waiver applies in sexual assault cases to both the reporting requirement and the filing deadline.

Several other recent trends observed by CVC managers were discussed during the session. For example, sexual assault forensic (SAFE) exams now comprise 10% of compensation paid by state CVC programs. In addition, managers of CVC programs that cover relocation expenses (e.g., Florida and Delaware) reported that this was a very costly and challenging component of their programs.

Opening Doors, Alternative Reporting Options for Law Enforcement, Crime Victim Compensation, and VAWA Forensic Compliance. This session reviewed ways that local communities are attempting to encourage sexual assault victims to provide information to law enforcement and participate in investigations. The session was led by a research director from End Violence Against Women International, a professional training organization that seeks to improve criminal justice and community responses to gender-based violence.

The federal Violence Against Women Act (VAWA) established as a condition for federal funding of women's services and programs that sexual assault victims be provided with access to a SAFE exam. To be VAWA-compliant, grantees must not: (1) charge victims for exams; or (2) require victims to cooperate with law enforcement or participate in the criminal justice system. About two-thirds of the states use CVC funds to pay for at least some SAFE exams, and more than one-third use **only** CVC funds to pay for SAFE exams.

As defined by VAWA, a SAFE exam does not necessarily include medical testing and treatment. Most jurisdictions include testing for sexually transmitted infections (STIs) and pregnancy as part of a SAFE exam, but in many jurisdictions, SAFE exams do not include HIV prophylaxis, STI treatment, or emergency contraception. Therefore, victims may be required to pay for the costs of medical testing and treatment upfront, and then submit an application to be reimbursed through their state's CVC program.

What Does Data Tell Us? In this session, three statisticians from DOJ's Bureau of Justice Statistics provided an overview of data gathered through the federal government's National Crime Victimization Survey (NCVS). The three panelists examined factors that determine the extent to which crime victims need compensation as well as their eligibility for compensation from the state CVC programs.

Between 2004 and 2013, a total of 151,598 NCVS respondents said that they had been sexually assaulted and sustained an injury. Of these, 37,154 (about 25% of the total) received medical treatment. Of the 37,154 who received medical treatment, only 4,525 (3% of the total) did not have medical insurance. Of the uninsured 4,525 who received medical treatment, 3,776 (2.55% of the total) reported the incident to the police.

While the above data concerns only one subset of sexual assault victims, it helps explain the relatively low – and declining – numbers of sexual assault victims filing claims for, and receiving, CVC funds. In Fiscal Year 2013, 13,489 sexual assault victims received a total of $18 million in CVC funds. In Fiscal Year 2014, 10,401 sexual assault victims received a total of $12.7 million in CVC funds.

Understanding and Interpreting Contributory Conduct Laws. This discussion, facilitated by the NACVCB executive director, concerned how state CVC claim adjudicators

approach decision-making in difficult cases involving potentially criminal or wrongful conduct on the part of the victim that directly causes crimes to occur. Judicial decisions were examined to help provide guidance in these cases, and cases involving gangs, drugs, and sexual assault were compared and contrasted.

Case law generally requires that in contributory conduct cases, a three-pronged test applies:

(1) Did the victim commit a criminal act or do something substantially wrong (as opposed to something stupid or in poor taste)? If yes, then . . .

(2) Did the victim's actions cause, in a substantial way, what happened? In other words: Was it reasonably foreseeable that the victim's actions would cause the offender to inflict an injury on the victim? Or, did the victim do more than make herself vulnerable (i.e., the easiest person to attack)? If yes, then . . .

(3) Are there facts and substantial evidence to prove that the victim's actions caused what happened? If yes, then there is a basis to deny compensation.

Rather than completely deny compensation in contributory conduct cases, some state CVC programs (e.g., Illinois) reduce awards by certain percentages (e.g., 25 or 50%). The percentages are tied to the degree of the victim's responsibility for his or her injury, as determined by claim adjudicators.

Sexual Assault Claims: How Compensation Programs Are Responding. This session highlighted recent and pending changes affecting how state CVC programs handle claims from sexual assault victims. Facilitated by the NACVCB executive director, the discussion featured presentations by representatives from the Connecticut, Louisiana, and Texas CVC programs, as well as participation by managers from Arizona, the District of Columbia, Indiana, Maine, Missouri, and Washington.

In some states (e.g., Hawaii, Louisiana, Pennsylvania, Utah), compensation statutes prohibit CVC claim adjudicators from considering contributory conduct in sexual assault cases. In other words, the above-three pronged test is not applied. In Hawaii, a statute prohibits consideration of 14 different possible behaviors or characteristics of victims; the same list was adopted by executive order in Louisiana.

In some states (e.g., Washington), the cooperation requirement is applied very liberally in sexual assault cases. The requirement does not mean that the victim must participate in a prosecution. In Indiana, the cooperation requirement is often waived in sexual assault cases.

Many state CVC programs allow a SAFE exam (generally within 72 or 96 hours of the sexual assault) to fulfill the reporting requirement in sexual assault cases, including the District of Columbia, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, New Hampshire, and New York. Similar legislation is currently pending in California and Texas, both of which are described in more detail below. In Maine and Missouri, the reporting requirement is often waived in sexual assault cases.

In Texas, under House Bill 1446, which becomes effective next week, sexual assault victims who have had a SAFE exam are eligible for compensation of medical fees incurred

at the time of the exam, regardless of whether they report the sexual assault or cooperate with law enforcement. Fees are frequently incurred in such cases for STI testing, stabilization, and/or treatment of broken bones, strangulation, and other injuries. The intent of HB 1446 is to foster cooperation with law enforcement – i.e., having received initial treatment, victims in need of follow-up care (and/or lost wages) must assist in the investigation and prosecution. In the absence of a SAFE exam, to be eligible for CVC funds in Texas, sexual assault victims' cooperation with law enforcement must be "substantial"; merely reporting anonymously to the police, for example, would be insufficient. As for the reporting requirement, a civil protective order can substitute for a police report. The cost of HB 1446 is estimated to be about $1,200 to $1,500 per case, for a total of $2-3 million per year.

Legislation similar to Texas House Bill 1446 already exists in Georgia and is pending in Louisiana. An alternative approach was adopted in Connecticut, where a law enacted in 2012 allows a sexual assault victim to satisfy the reporting requirement by reporting the incident to any of a number of specified professionals (i.e., medical, mental health, social work, etc.) aside from the police.

California Assembly Bill 1140 is currently pending in the Senate and is expected to become law this fall. AB 1140 prohibits denial of compensation based solely on a sexual assault victim's failure to report to police. Instead of a police report, California's CVC program would be able to consider medical records documenting injuries consistent with the allegations, mental health records, or that the victim received a SAFE exam. AB 1140 also prohibits California's CVC program from finding lack of cooperation based solely on a sexual assault victim's delay in reporting the crime.

The majority of state CVC programs cover STI testing as part of a SAFE exam. This was not true in Texas, hence the need for House Bill 1446. A few states (e.g., Indiana, Vermont) automatically cover a specified number of sessions (e.g., 20) of mental health counseling for sexual assault victims who receive a SAFE exam.