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COMMENTS

Victim Reparation Programs: Learning From Experience*

I. INTRODUCTION

Victim reparation and compensation programs allow crime victims to recover certain losses by applying to a state agency for compensation. During May and June 1985, the Utah Commission on Criminal and Juvenile Justice (CCJJ or Commission) conducted a detailed study of ten state reparation programs. The Commission also reviewed compensation statutes from twenty-five other states.¹ Both studies were done prior to drafting a proposed victim reparation bill for Utah.² The Commission sought to ascertain strengths and weaknesses in other state reparation programs so as to provide Utah legislators with an edu-

*The author surveyed victim reparation programs in ten states while interning with the Utah Commission on Criminal and Juvenile Justice (CCJJ or Commission). Most of the information is from the author's unpublished survey. The survey consisted of telephone interviews with reparation program directors from ten states and with the Deputy Director of the National Organization of Victims Assistance. The author relied on those interviews for factual information. Survey results are on file with the Commission and were made available for purposes of this publication by permission of the Executive Director, Craig L. Barlow. This is the only publication reflecting survey results. Readers desiring more information should contact the Commission.

1. A more exhaustive survey was conducted by the United States Department of Justice in conjunction with the National Institute of Justice. D. MCGILLIS & P. SMITH, *COMPENSATING VICTIMS OF CRIME: AN ANALYSIS OF AMERICAN PROGRAMS* (1983). However, the Utah Commission survey uncovered a wealth of practical information not addressed by the NIJ Report. The Commission relied on its own survey in drafting a proposed reparation statute. Therefore, the proposed statute contains a number of unique provisions reflecting the practical experience of programs in other states. The Commission also relied heavily on the uniform reparation statute. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *UNIFORM CRIME VICTIMS REPARATIONS ACT* (1983), reprinted in *VICTIM/WITNESS LEGISLATION: CONSIDERATIONS FOR POLICYMAKERS* 7 (The Victim Witness Assistance Project of the ABA Section of Criminal Justice 1981).

2. Utah's proposed bill uses the term "reparation" to better distinguish it from workers' compensation or welfare programs. *VICTIMS' REPARATIONS BILL* (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

cated basis for avoiding known problems while incorporating successful portions of similar statutes.³

The study results provide significant insight into the characteristics of successful victim reparation programs. Utah and other states that have not yet enacted reparation programs, and states with programs needing modification may benefit from a careful examination of the Commission's study.

This comment summarizes the study's most significant findings and explains their role in reparation programs. The study sampled a variety of compensation programs in ten states: Alaska, California, Colorado, Iowa, Montana, Nebraska, Nevada, Oklahoma, Pennsylvania, and Texas.⁴ Directors of these reparation programs were contacted by telephone and asked a uniform set of questions.⁵ A representative of the National Organization

3. Interview with Craig L. Barlow, Executive Director of the Utah Commission on Criminal and Juvenile Justice (May 1985).

4. The states to be surveyed were selected under two criteria: similarity to Utah and innovative programs. States geographically and demographically similar to Utah—Nevada, Oklahoma, Colorado, and Montana—were sampled to obtain an approximation of what Utah could expect from a compensation program. Other states were sampled because they exhibited leadership in instigating new programs, *e.g.*, Texas and California. The survey consisted of telephone interviews with the following administrators: Nola K. Capp, Administrator, Alaska Violent Crimes Compensation Board; Sterling O'Ran, Manager, California Victim-Witness Assistance Programs; Luann Richie, Director, Victim Compensation Fund for the Second Judicial District of Colorado; Carroll L. Bidler, Director of Administrative Services, Iowa Department of Public Safety; Cheryl Bryant, Administrative Officer, Montana Crime Victims Unit; Ron VanMeter, Chief, Nebraska Commission on Law Enforcement and Criminal Justice; Rochelle Summers, Program Coordinator, Nevada Department of Administration, Budget Division; Charles W. Wood, Administrator, Oklahoma Crime Victims Compensation Board; Joanne Zakielarz, Administrative Officer, Pennsylvania Crime Victims Compensation Board; Jerry Belcher, Director, Texas Crime Victims Compensation Division, Industrial Accident Board; John Stein, Deputy Director, National Organization of Victim Assistance (NOVA).

5. These questions included the following, some of which may have been followed by prompts: (1) What do you consider to be the major strengths of your compensation program? (2) What would you describe as being the major shortcomings of your program and what suggestions do you have for improving it? (3) Are you still using *X* as your funding source? (*X* may be general revenues, additional criminal fines, or license reinstatement fees, etc.) (4) What problems, if any, have you had financing your program? (5) Has your program been well publicized? (6) What form of publicity has your state used? (7) In what areas do you consider your statute to be deficient? (8) Has your legislature provided you with adequate staff and resources to administer the program? (9) How long does it take to process claims? (10) What are the causes of delay in claim processing? (11) What suggestions do you have for expediting claim processing? (12) What percentage of potentially eligible victims would you estimate actually apply for reparation? (13) At what rate have applications and awards increased? (14) Have you applied for federal funding? (15) Which agency administers the program and are there any difficulties associated with that agency's administration? (16) Do victim-witness and victim-assistance programs integrate services and, if so, to what extent?

for Victim Assistance (NOVA) and the president of the National Association of Crime Victims Compensation Boards were also contacted.⁶ Using data from these sources, this comment focuses on four aspects of victim reparation programs: eligibility requirements, funding features, program administration, and miscellaneous aspects.

II. SURVEY FINDINGS

A. *Eligibility Requirements*

All reparation programs place limits on applicants in order to preserve the programs' fiscal integrity. Typical eligibility requirements and program limitations include the following: (1) applicants must apply in writing; (2) applicants must file within one year of the criminal conduct giving rise to the claim; (3) awards benefiting an offender are not permitted; (4) applicants must report an injury to police within a statutorily-prescribed period of time; (5) claimants must cooperate with law enforcement or prosecuting agencies; (6) a claimant's award may be reduced by the amount of collateral source income available;⁷ (7) ceilings are placed on awards for certain expenses and on aggregate amounts; (8) property losses are excluded; (9) family members of an offender are ineligible; (10) applicants must demonstrate financial stress; (11) minimum losses are required; (12) persons who contribute to their own injury may have awards denied or reduced; and (13) victims of drunk driving are excluded.⁸ Provisions one through eight are widely accepted means of protecting the financial stability of reparation funds and will not be discussed. However, provisions nine through eleven pose serious problems that warrant their elimination from reparation statutes. Provision twelve should be retained, but requires careful planning by administrators. There is general agreement that provision thirteen is unfair to victims of drunk driving, but its elimination poses financial risks.

6. Herbert G. Parker, President, National Association of Crime Victims Compensation Boards, and Mr. John Stein, Deputy Director of the National Organization of Victim Assistance (NOVA), contributed substantially to the survey.

7. Examples of collateral source income include insurance or workers' compensation awards.

8. D. MCGILLIS & P. SMITH, *supra* note 1, at 154-75.

1. *Family relationship exclusion*

The family relationship exclusion denies compensation to a victim who is a close relative of the perpetrator.⁹ This exclusion is designed to prevent fraudulent claims. However, experience demonstrates that the provision may cause unnecessary hardship. Innocent victims of domestic violence, among others, have been harmed by this exclusion.¹⁰

The policy behind the family relationship exclusion can be achieved with a more flexible provision. Fraud can be prevented by denying compensation if an award will (1) benefit the perpetrator, or (2) work fraud on the program.¹¹ A flexible family exclusion provision avoids the harsh results of an absolute bar and leaves program administrators free to scrutinize claims involving relatives of the perpetrator. The family relationship exclusion should be abandoned in favor of a more general provision allowing claims by family members.

9. Missouri's family relationship exclusion is typical: "An offender or an accomplice of an offender, a member of the family of the offender, a person living with the offender or a person maintaining sexual relationships with the offender shall in no case be eligible to receive compensation with respect to a crime committed by the offender . . ." Mo. REV. STAT. § 595.020 (Cum. Supp. 1983). Some states have cured problems associated with an absolute family exclusion by granting reparation boards power to compensate relatives in certain cases. For example, MINN. STAT. § 611A.53(2) (1985), provides:

No reparations shall be awarded to a claimant otherwise eligible if . . . (c) the victim is the spouse or a person living in the same household with the offender or his accomplice or the parent, child, brother or sister of the offender or his accomplice unless the board determined that the interests of justice otherwise require in a particular case.

Pennsylvania has recently expanded eligibility to allow claims for domestic violence if an offender will not benefit. Telephone interview with Joanne Zakielarz, Administrative Officer, Pennsylvania Crime Victims Board (Nov. 12, 1985). Pennsylvania has also recently expanded eligibility to Social Security recipients deprived of money or checks as a result of crime. This represents a narrow exception to the general rule that property loss is not compensable. *Id.*

10. For example, if a husband kills his wife and then takes his own life, his children and their guardian are ineligible to recover funeral costs for the mother. Telephone interview with John Stein, Deputy Director, NOVA (May 1985); see also D. MCGILLIS & P. SMITH, *supra* note 1, at 19, alluding to "injustices that often occur in the administration of blanket relative and household exclusions."

11. The proposed Utah statute includes a discretionary family exclusion:

Reparations may not be awarded to a claimant who is the offender . . . nor to any claimant if the award would—in the discretion of the reparations officer—unjustly benefit the offender, accomplice, or other person strongly suspected of participating in the crime.

VICTIMS' REPARATIONS BILL § 12, ¶ 3 (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

2. *Financial stress provision*

The financial stress provision limits eligibility to persons who can demonstrate financial need.¹² NOVA recommends abolition of the financial stress requirement due to administrative difficulties.¹³ Determining financial stress requires substantial investigative legwork;¹⁴ consequently, such determinations inevitably increase claim processing costs.¹⁵ In addition, the time used to investigate financial eligibility necessarily delays award payments.¹⁶

12. A typical financial stress provision requires the board to deny a victim's application if "the claimant will not suffer financial stress as a result of the pecuniary loss arising out of criminally injurious conduct." TEX. REV. CIV. STAT. ANN. art. 8309-1 § 6 (Vernon Supp. 1986). The Texas program administrator noted that the financial stress provision is interpreted liberally so that even people with relatively high incomes (approx. \$40,000) may be eligible. Telephone interview with Jerry Belcher, Director, Texas Crime Victims Compensation Division, Industrial Accident Board (May 1985); *see also* D. MCGILLIS & P. SMITH, *supra* note 1, at 19:

A number of policymakers have strongly opposed the use of financial means tests by victim compensation programs. One-third of the programs currently in operation require that victims suffer substantial financial hardship before they are eligible for compensation. Efforts to enforce these provisions, however, vary widely. Policymakers need to consider carefully their underlying rationale for program development in implementing such provisions. The use of a means test implies a "welfare" rationale for victim compensation; the absence of such a requirement implies other rationales (e.g., an insurance model, torts and contracts models, etc.). A number of states are considering eliminating the means test due to the high costs of investigations regarding financial hardship, the gross inequities that can occur in denying benefits to victims who have been diligent in saving money (especially when those victims are the elderly on fixed incomes), and the chilling effect that such means tests can have on the willingness of victims, even those experiencing severe financial hardship, to apply for compensation.

13. Telephone interview with John Stein, Deputy Director, NOVA (May 1985).

14. New York's financial stress provision requires consideration of seven factors: (1) number of dependents, (2) reasonable living expenses of claimants and family, (3) special health or rehabilitative needs, (4) employment and earning capacity, (5) net financial resources excluding homestead and certain other items, (6) whether resources will be exhausted during claimant's lifetime, and (7) nature of total debt and liabilities. N.Y. EXEC. LAW § 631(6)(a) (McKinney Supp. 1984).

15. *See* D. MCGILLIS & P. SMITH, *supra* note 1, at 70:

The main purpose of including a financial needs test in the eligibility criteria is to contain costs by reducing the number of awards. There is little evidence, however, that this savings is actually realized, because programs with such requirements expend considerable administrative costs in gathering the necessary documentation and making the determinations of financial need.

See also R. HOFRICHTER, VICTIM COMPENSATION AND THE ELDERLY: POLICY AND ADMINISTRATIVE ISSUES, 27 (1980) (In New York, "a substantial amount of staff time and program resources" are devoted to "complex administrative screening investigations into victims' financial affairs . . ."), *quoted in* D. MCGILLIS & P. SMITH, *supra* note 1, at 70.

16. D. MCGILLIS & P. SMITH, *supra* note 1, at 70.

High administrative costs associated with financial stress provisions may justify their elimination. According to NOVA estimates, states abolishing financial stress requirements realize only about a ten percent increase in claims. This cost increase is offset by administrative savings because reparation investigators and hearing officers need not conduct protracted investigations into an applicant's financial status.¹⁷

3. *Minimum loss provision*

Several states require that a victim's loss exceed a minimum threshold.¹⁸ This provision is designed to eliminate small claims, save time, and reduce administrative costs.¹⁹ However, states are beginning to eliminate this provision because small claims do not dramatically increase if there are no minimum loss requirements.²⁰ Absent a significant increase in the number of claims, small claims do not pose a substantial administrative burden. Moreover, a low-income person living in a state with a hundred-dollar minimum loss requirement may experience substantial hardship when confronted with a ninety-dollar medical bill for treatment of a crime-related injury.²¹ Therefore, equity favors the abolition of minimum loss provisions.²²

17. See *supra* note 15. According to the Montana director, few people apply for compensation unless they are experiencing financial stress; however, a significant number of claimants apply despite collateral income sources. Telephone interview with Cheryl Bryant, Administrative Officer, Montana Crime Victims Unit (May 1985). Still, elimination of the financial stress requirement is unlikely to increase the number of claims because people usually ignore reparation programs until they need assistance.

18. Minimum loss amounts are usually \$100 or \$200. D. MCGILLIS & P. SMITH, *supra* note 1, at 163-67.

19. *Id.* at 70.

20. Telephone interview with John Stein, Deputy Director, NOVA (May 1985); see also D. MCGILLIS & P. SMITH, *supra* note 1, at 78-79 (eliminating the minimum loss provision would increase costs approximately 12%).

21. "Experience has taught that the minimum loss requirement often discriminates against certain classes of victims, especially rape victims, the elderly and the disabled." D. MCGILLIS & P. SMITH, *supra* note 1, at 77.

22. Other benefits derived from eliminating the minimum loss provision include:

"[1] increased information regarding the extent of the crime problem, through the inclusion of a wider range of victims in the data base; [2] increased awareness of the program, through raising the number of benefit recipients; and [3] increased support for the program among recipients, through reducing the number of innocent victims arbitrarily denied on technical grounds."

Id. at 78.

4. *Contribution provision*

Most reparation statutes contain contribution provisions.²³ Under these provisions, a victim who contributes to his injury may have his award nullified or offset by his proportionate contribution.²⁴ Contribution provisions are essential because they prevent undeserved awards, thus preserving a program's fiscal integrity. Claimants who may otherwise qualify for substantial compensation are often denied any award due to their participation in or contribution to the injury-causing crime. Victims of barroom brawls frequently fall into this category since their actions or words sometimes provoke incidents leading to injury.²⁵

Although necessary, contribution provisions pose practical problems. Contribution presents peculiar administrative challenges because it is difficult to apportion fault between perpetrators and victims.²⁶ Some states apply contribution provisions strictly and prohibit awards when any evidence of contribution exists.²⁷ This view seems unduly harsh.

How strictly contribution provisions should be applied is essentially a matter of administrative policy best determined after several years of trial and error. After hearing officers see a number of similar cases, they can develop standards against which to

23. *Id.* at 163-67.

24. Some states deny a claim when there is some evidence of contributory behavior, while other states attempt to assess the extent of contribution and reduce awards accordingly. *Id.* Montana's contribution provision is typical:

Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury.

MONT. CODE ANN. § 53-9-125 (7) (1983).

25. D. MCGILLIS & P. SMITH, *supra* note 1, at 71.

26. The problem arises primarily because of changes in administrative personnel since each administrator or board member has a personal view of what constitutes contributory behavior. Absent uniform and durable guidelines, administration of contribution provisions leads to inconsistent results. Telephone interview with Cheryl Bryant, Administrative Officer, Montana Crime Victims Unit (May 1985). California, because it contracts with county governments for claim verification, has encountered difficulty with inconsistent eligibility standards. Telephone interview with Sterling O'Ran, Manager, California Victim-Witness Assistance Programs (May 1985). Despite these difficulties, experience may nevertheless provide guidelines for defining contribution. Program administrators need discretion to award funds and to reduce claims when behavior contributes minimally to an injury. Legislators should avoid total restrictions on recovery and allow administrators to make awards based on common sense and fairness.

27. See D. MCGILLIS & P. SMITH, *supra* note 1, at 71 ("Almost one-third of the existing programs deny a claim outright when there is evidence of contributory misconduct.").

judge different degrees of contributory behavior. This approach avoids the harsh results generated by total prohibitions and gives an administrative agency discretion to limit awards based on a claimant's relative fault.²⁸

5. *Drunk driving*

Almost all state reparation statutes explicitly exclude or include victims of drunk driving.²⁹ Alaska, Iowa, Colorado, and California allow these victims to apply for compensation while Oklahoma does not. The administrator in the latter state perceives exclusion as a weakness. Most administrators think victims of drunk driving ought to recover from a compensation fund if an adequate funding mechanism exists.³⁰

The policy argument for including driving-under-the-influence (DUI) victims is simple: because DUI-related accidents often result in serious injury, DUI victims should participate in a reparation program. From a policy standpoint, inclusion is obviously preferred since nearly everyone concedes that something should be done to assist victims of drunk driving. However, states that exclude DUI victims fear that allowing recovery will drastically increase the cost of compensation programs.³¹ Contrary opinions exist as to whether inclusion significantly increases program costs.³² As a practical matter, some states are unwilling to financially risk including DUI claims in reparation programs.³³

28. The Utah statute leaves determinations of contribution to reparation officers on a case-by-case basis. VICTIMS' REPARATIONS BILL § 12, ¶ (6)b (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

29. Typically, states exclude motor vehicle accident victims except when the collision was intentional. In many cases, exclusion extends to victims of drunk drivers.

30. NOVA also supports including victims of drunk driving. Telephone interview with John Stein, Deputy Director, NOVA (May 1985).

31. Oklahoma excludes victims of drunk driving for this reason. Telephone interview with Charles W. Wood, Administrator, Oklahoma Crime Victims Compensation Board (May 1985).

32. A Florida survey concluded that the fiscal impact of inclusion increases award payments an average of 3% to 5%, 10% at most. Telephone interview with Bob Wells, Director, Palm Beach County Victim-Witness Services, Legislative Chairman of the Florida Network of Victims-Witness Services (Nov. 14, 1985). Florida recently expanded eligibility to include victims of drunk driving. This expansion has not resulted in a dramatic increase in the number of claims. However, DUI victims have only been included since July 1985; it is too early to measure the impact of making those victims eligible for funds. Telephone interview with Herbert G. Parker, President, National Association of Crime Victims Compensation Boards (Nov. 12, 1985).

33. Oklahoma is an example. Telephone interview with Charles W. Wood, Adminis-

B. Funding Features

Victim reparation programs are funded in various ways. Some states allocate funds from general revenues.³⁴ Discretionary criminal fines, or fee assessments that add on either a percentage of a basic fine or a flat fee are also popular and provide the advantage of being less vulnerable to legislative cuts than general appropriations.³⁵ Other programs combine general revenue appropriations with fee assessments.³⁶

Judges complain that additional fines are burdensome because they impose tax collection duties on the judiciary.³⁷ This concern can be alleviated by using an upwardly-adjusted schedule of criminal fines reflecting the cost of the reparation program.³⁸

Successfully structured funding schemes usually levy against traffic offenses, in addition to other crimes.³⁹ Some states

trator, Oklahoma Crime Victims Compensation Board (May 1985). Utah already has a restitution program for victims of drunk driving. However, the current program requires applicants to obtain court judgments against the DUI offender. Consequently, although the program has existed for nearly two years, it only recently issued its first award. The proposed reparation bill includes the DUI fund in the reparation fund and eliminates the separate program. Claimants under the new program will not be required to obtain a judgment to be eligible. VICTIMS' REPARATIONS BILL § 10 (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

34. Nebraska's program was funded from general revenues and funding was terminated in 1985. The program had not received adequate funding since its inception. The Nebraska legislature was forced to make across-the-board cuts because of a suffering state economy; the victim compensation fund was one of the first programs eliminated. Telephone interview with Ron VanMeter, Chief, Nebraska Commission on Law Enforcement and Criminal Justice (May and Nov. 1985). Iowa now assesses fees for driver license reinstatement. A portion of these fees goes to the general victim compensation fund. Iowa has sufficient resources from this funding mechanism to comfortably administer its program. Telephone interview with Carroll L. Bidler, Director of Administrative Services, Iowa Department of Public Safety (Nov. 12, 1985). There is some effort in Nebraska to introduce a bill establishing a fee for driver license reinstatement similar to Iowa's fee. If passed, such a measure could resurrect Nebraska's program.

35. D. MCGILLIS & P. SMITH, *supra* note 1, at 184-90. California funds its program solely from fee assessments and leads the nation in collection of revenue. *Id.*

36. *Id.*

37. Some Utah judges have already expressed aversion to collecting additional fines currently imposed by other programs. Interview with Craig L. Barlow, Executive Director, Utah Commission on Criminal & Juvenile Justice (July 1985).

38. Utah may ultimately use an adjusted criminal fine schedule, but such a scheme develops slowly. Meanwhile, the proposed bill employs a 25% surcharge on all criminal fines. VICTIMS' REPARATIONS BILL § 11 (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

39. California's director specifically mentioned the importance of including revenue from traffic fines into the program's funding base. Telephone interview with Sterling O'Ran, Manager, California Victim-Witness Assistance Programs (May 1985).

allow judges to impose discretionary fines of up to ten thousand dollars on convicted felons and misdemeanants.⁴⁰ Statutes also usually call for the confiscation of part or all revenues derived from the commercialization of infamous crimes, the so-called Son-of-Sam provisions, but these provisions do not generate significant revenue.⁴¹

California's assessment levy is by far the most successful funding mechanism for a reparation program.⁴² The levy amounts to fifty percent of all criminal fines imposed in the state, including traffic violations. In addition to financing the victim compensation fund, California also finances five other major programs.⁴³ Traffic fines account for the bulk of California's assessment levy revenue.⁴⁴ California law also allows judges to impose up to ten thousand dollars in additional fines on persons convicted.⁴⁵

Some small state programs survive despite reliance on a single funding source. For example, Montana funds its program by allocating eighteen percent of highway fines to victim compensa-

40. California allows discretionary fines. CAL. GOV'T CODE § 13967 (West 1980).

41. Some states have lengthy provisions regarding such profits. For example, the New York statute contains three pages on royalties from crime publication. N.Y. EXEC. LAW § 632-a (McKinney 1982). But the survey revealed that such provisions do not yield much revenue. For example, although the Nevada program has been in existence for several years, it has yet to collect under its Son-of-Sam provision. Telephone interview with Rochelle Summers, Program Coordinator, Nevada Department of Administration, Budget Division (May 1985).

42. The California program has been able to collect sufficient revenue to consistently pay awards aggregating to an average of \$15,000,000 per year. Telephone interview with Sterling O'Rand, Manager, California Victim-Witness Assistance Programs (May 1985).

43. A portion of these funds is directed to the Fish & Game Preservation Fund, the Indemnity Fund, the Peace Officer's Training Fund, the Driver Training Penalty Assessment Fund, and the Corrections Training Fund. CAL. PENAL CODE § 1464 (West Supp. 1985). The victim program receives about 24% of the fines collected. Telephone interview with Sterling O'Rand, Manager, California Victim-Witness Assistance Programs (Nov. 8, 1985). Utah's proposed bill similarly would consolidate surcharges already levied for the benefit of other programs. At present, Emergency Medical Services collects a three-dollar surcharge on all moving violations. These surcharges would be rolled together into one 25% surcharge on all crimes. Money would then be split between participating organizations upon collection. This system eases the administrative burden on the judiciary because they need only assess one additional fee as opposed to two or three.

44. Telephone interview with Sterling O'Rand, Manager, California Victim-Witness Assistance Programs (May 1985). Utah's bill includes fines from traffic offenses in the levy scheme. VICTIMS' REPARATIONS BILL § 11 (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

45. CAL. GOV'T CODE § 13967 (West 1980). Utah's proposed bill allows judges to impose additional discretionary fines. VICTIMS' REPARATIONS BILL § 11 (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

tion.⁴⁶ States should be cautious in implementing single-source plans due to their inherent fragility. Nevada, a state where program funding is dependent solely on bail forfeitures, emptied its account in May 1985. Fixed-fee schemes employing flat fines on different crime categories are likewise problematic because they require periodic adjustment to meet the increasing victim compensation costs.

Most states surveyed by the Commission, with the exception of Nevada, have already qualified for federal funds under the Victims of Crime Act.⁴⁷ State lawmakers should keep in mind the federal requirements to qualify for such funding—especially requirements that compensation be given for mental health counseling and that no discrimination against nonresidents be permitted.⁴⁸

Other possible revenue sources include taxing profits earned by prison industries, recapturing unclaimed restitution awards, reinvesting funds to draw interest, and collecting supervisory fees from parolees, probationers, and residents of halfway houses.⁴⁹ The first of these four concepts is already used by the federal government as a condition for granting expanded commercial licenses to state prison industries.⁵⁰ Prison industries may receive licenses to sell goods in interstate commerce, provided they pay a percentage of profits into either a victim reparation or assistance fund.⁵¹ California employs the second suggestion by allowing counties to keep the interest earned on fines

46. MONT. CODE ANN. § 53-9-109 (1983).

47. Victims of Crime Act of 1984, Pub. L. No. 98-473, 98 Stat. 2170, 2171 (1984) (to be codified at 42 U.S.C. § 10601); *see also* Crime Victim Compensation Grants; Program Guidelines, 50 Fed. Reg. 10119, 10119 (1985):

The Act provides that, funds permitting, the Attorney General will make an annual grant to an eligible crime victim compensation program in an amount equal to 35% of the amount paid from State funds by the program as compensation to victims of crime (excluding amounts paid to compensate victims for property damage) during the preceding fiscal year.

48. Crime Victim Compensation Grants; Program Guidelines, 50 Fed. Reg. 10119 (1985). Utah's proposed bill adequately addresses these requirements. VICTIMS' REPARATIONS BILL (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

49. These income sources alone would probably not suffice. However, used together, they could provide substantial revenue.

50. Private Sector/Prison Industry Enhancement Certification Program; Issuance of Final Guidelines, 50 Fed. Reg. 12663 (1985).

51. *Id.* Services of victim assistance programs include counseling or counseling referrals, information on the judicial process, some types of physical assistance, advocacy for victims in the criminal justice system, etc. These services contrast with the compensatory nature of victim reparation programs.

collected during each quarter. The third concept, reinvesting funds to draw interest, has also been suggested as a means of raising revenue.⁵² The supervisory fee concept embodied in the fourth suggestion entails collecting a flat periodic fee from all working probationers and parolees as a condition of probation or parole.⁵³ Such supervisory fees could be extremely profitable.⁵⁴ The supervisory fee has the additional advantage of forcing convicted criminals to provide funding for victim compensation—an idea likely to draw popular support.

The reparation fund should be revolving since legislatures generally prepare a budget based on the previous year's expenses. However, disbursements from victim compensation programs increase rapidly in their early years.⁵⁵ Therefore, a program that must apply for funds each year risks being underappropriated. A legislature may fail to anticipate a program's increased needs if it relies on a previous budget.⁵⁶ A revolving fund presents less administrative difficulty because a one-year surplus hedges against increased expenditure in a sub-

52. Utah could implement this scheme through an expendable trust fund. Interview with Gordon Crabtree, Director of Finance for the State of Utah (August 1985).

53. The CCJJ Victims Task Force did not include a supervisory fee in Utah's proposed bill because the members felt it should be sponsored as a separate measure. They discussed the possibility of the Department of Corrections proposing such a measure and suggested that Corrections should share equally in the revenue.

54. The Utah Department of Corrections currently estimates that 20,000 inmates are supervised by Adult Parole & Probation each year, with approximately 9,000 to 10,000 under supervision at any given time. Assuming a \$100 fee per year and 100% collection, a potential revenue base exists of \$2,000,000. However, similar programs yield a 50% to 60% collection rate, which represents an optimistic return. Based on that assumption, Utah's program would generate approximately \$1,000,000. Telephone interview with Myron March, Director, Division of Field Operations, Utah Department of Corrections (Nov. 12, 1985). Even splitting revenue equally with Corrections, the infusion into the victim reparation program would probably exceed one-third of first-year program expenditures as a conservative estimate.

55. Program growth rates range anywhere from 300% to 800% in their early years. Forecasting the rate of increase is impossible because there are too many variables—many independently unpredictable—in the equation. After three years, leveling should occur as it did in California. However, the California program took twenty years to reach its present level of maturity in which close to 81% of claimants receive awards, a percentage due primarily to the recent increase in the number of quality applications. Telephone interview with Sterling O'Ran, Manager, California Victim-Witness Assistance Programs (Nov. 12, 1985).

56. This was a problem in Montana in 1984, where the victim compensation program asks for money each year from the legislature. Montana was likely to experience a shortfall in 1985 but for federal funding. Telephone interview with Cheryl Bryant, Administrative Officer, Montana Crime Victims Unit (Nov. 9, 1985).

sequent year.⁵⁷ Administrators are also freed from the headache of annual lobbying effort.

Whether victims of crime merit public concern is not a political issue. However, a related volatile political question is who pays. Some view victim compensation as an entitlement arising out of government failure to fully protect its citizens from the harmful effects of crime.⁵⁸ Others view such programs as an appropriate "humanitarian response to a compelling human need."⁵⁹

These rationales lead to significant political debate over how reparation programs should be funded. The issue is essentially whether program support should come through general revenues or through assessments on criminals. Whatever the outcome of this debate, politicians need to realize that funding is the linchpin of compensation and that adequate funding should not depend on one's view of these programs as "entitlements" or "humanitarian responses." Poor funding will kill a program. A strong revenue base is crucial and should not be sacrificed for the sake of political posturing. The best and most consistent revenue-generating sources should be tapped.

A combination of revenue sources is probably the best guarantee of adequate funding. One possible component, additional criminal fines or upwardly-adjusted criminal fine schedules are popular in conservative states like Utah, where the public would like to see criminals shoulder the burden of reparation programs.⁶⁰ Upwardly-adjusted criminal fine schedules draw more support from the judiciary than levy assessments because the former are easier to administer.⁶¹ Regardless of which mechanism legislators choose, any levy assessment or increased crimi-

57. Funds collected in Pennsylvania were originally routed into general funds; the state was profiting because collections exceeded disbursements. The creation of a revolving fund (a restricted receipt account) changed that situation. Telephone interview with Joanne Zakielarz, Administrative Officer, Pennsylvania Crime Victims Compensation Board (May 1985).

58. D. MCGILLIS & P. SMITH, *supra* note 1, at 4.

59. *Id.* at 5.

60. Informal discussion with Utah legislators and general public comment in certain committee sessions seem to indicate support for such a proposal.

61. As previously mentioned, members of the Utah judiciary have expressed dislike for imposing surcharge fines. See *supra* note 37. Some judges resist a state statute requiring mandatory restitution fines in DUI cases. Judges who already must collect additional fees for Emergency Medical Services and Peace Officers Standards and Training are likely to consider additional fees a nuisance. Interview with Craig L. Barlow, Executive Director of the CCJJ (July 1985).

nal fines should apply to moving traffic violations because fines on convicted misdemeanants and felons will fail to provide a sufficient funding base.⁶² Alternatively, compensation could be drawn from general appropriations. However, due to tax implications, appropriations from general revenues tend to be unpopular with conservative state legislators concerned about government spending. In an era of fiscal conservatism, programs funded from general revenues run the risk of being grossly underfunded.⁶³

Some innovative funding techniques, like parolee supervisory fees, exhibit great potential as a revenue source, but probably would be insufficient. Therefore, they should be combined with more traditional methods such as levy assessments and general appropriations. It is anticipated that for a few years federal funding will be available to supplement state funding efforts. In addition, judges should impose discretionary fines on perpetrators possessing substantial assets.⁶⁴ Son-of-Sam provisions may also be included, but will not result in a significant stream of revenue.⁶⁵

62. Some people object to including traffic violations in levy assessments or increased fine schedules because such offenders are not considered criminals in the same sense as those most likely to cause compensable injury. However, many other "criminals" do not cause injuries reimbursable by a reparation fund, but are still subject to levy assessments or increased fines, e.g., prostitutes, shoplifters.

California's director indicated, along with other state administrators, that applying levy assessments to traffic fines is crucial since prison-bound felons often have no money. Telephone interview with Sterling O'Rand, Manager, California Victim-Witness Assistance Programs (May 1985); see also G. Goodrich, Memoranda on Funding Compensation Plans: State-by-State Comparisons 2-5 (1985) (unpublished memorandum; copy on file with CCJJ).

63. Nebraska's experience is illustrative. Although one legislature had good intentions in establishing a compensation program, a subsequent legislature slashed funding for the program until it became a virtual nullity. See *supra* note 34. The president of the National Association of Crime Victims Compensation Boards emphatically discouraged general appropriations as a funding source for the same reason. He recommended a criminal fine or penalty mechanism. Telephone interview with Herbert G. Parker, President, National Association of Crime Victims Compensation Boards (Nov. 12, 1985).

64. Utah's bill contains such a provision: "In addition to the monies collected from the 25% surcharge, judges are encouraged and may in their discretion impose additional reparations fines to be paid into the reparations account by convicted criminals. Such additional discretionary fines shall not exceed the statutory maximum fine permitted by the Criminal Code for that offense." VICTIMS' REPARATIONS BILL § 11 (Proposed Official Draft, Utah 1985) (copy on file with CCJJ).

65. See *supra* note 41 and accompanying text.

C. Program Administration

Because many reparation programs have been in operation for several years, administrators have formulated some observations and suggestions pertaining to program administration. This comment surveys three areas of program administration: publicity for claims programs, turnaround time, and claim processing.

1. Publicity

Publicity is an important part of any reparation program. Of the ten states surveyed, those with the most extensive and most effective publicity (California, Colorado, Montana, and Oklahoma) combine a number of techniques, such as the "reverse Miranda" (law enforcement officers notify victims concerning the program), hospital posters, brochures, and referrals from victim assistance programs. In Denver, police give victims an information sheet, and then the agency initiates follow-up correspondence.⁶⁶ Public service announcements, appearances, press releases, newspaper articles, and public speaking engagements are also helpful support mechanisms.⁶⁷

Despite ongoing publicity efforts in many states, most victims learn about reparation programs after being victimized. For this reason, agencies dealing most frequently with victims—law enforcement, health providers, victim assistance organizations, and victim compensation boards—should shoulder the advertising burden. In California, close to ninety percent of victims learn about compensation programs through law enforcement agencies and victim witness programs—a statistic that dramatically illustrates the need for law enforcement participation.

In some states, law enforcement has delayed involvement in victim reparation programs. In states where police participation is statutorily required, law enforcement can be monitored for cooperation by requiring police officers to check boxes on their reports indicating whether victims were notified. This practice is common in California. Administrators should also consider the

66. Telephone interview with Luann Richie, Director, Victim Compensation Fund for the Second Judicial District of Colorado (May 1985). In Denver, police use tear-off pads to hand out information to victims; in some states, victim notification cards are used in lieu of tear-off pads.

67. This list is a compilation of ideas mentioned by various administrators during the course of the survey. For a list of those surveyed, see *supra* note 4.

possibility of including a training module in the state police academy curriculum. Oklahoma has been using this technique to teach its peace officers the importance and necessity of informing crime victims about compensation programs.

Nevada has avoided publicity efforts, perhaps fearing enormous demand on the system. Such avoidance is symptomatic of a limited budget.⁶⁸ When efforts to reach victims are stymied, a program is doomed to no more than limited success. Unsuccessful programs reflect poorly on legislators. Conversely, if a funding mechanism is properly constructed, legislators have no reason to fear publicity.

If a victim compensation program is administered by the District Attorney's office, as in Colorado, there is some risk that only victims filing criminal complaints will be notified.⁶⁹ Since many criminals are never apprehended or discovered, such a program could fail to notify a significant number of claimants. However, the Denver program has overcome that problem by conducting weekly scans of police reports on violent crimes. The program administrator then contacts potentially eligible claimants. This procedure probably accounts for the higher percentage of claims filed in Denver than in many other parts of the country.⁷⁰

68. Nevada's fund, reliant on bail forfeitures, suffers periodic shortfalls. Consequently, Nevada legislators are loathe to encourage publicity. Telephone interview with Rochelle Summers, Program Coordinator, Nevada Department of Administration, Budget Division (May 1985); see also D. MCGILLIS & P. SMITH, *supra* note 1, at 21:

The hesitancy of legislators and program administrators to encourage the filing of legitimate claims that may not be paid due to lack of funds is understandable. But this hesitancy strikes at the heart of the victim compensation enterprise and raises the question of whether states are willing to back up the high-sounding rationales for programs with adequate financing. The failure to announce the availability of certain other forms of relief, (e.g., vaccine during an epidemic) would be considered a scandal. The failure to make victim compensation broadly available is also viewed as a scandal by proponents of such programs. States should review their current policies and funding mechanisms and seek to close the gap between program rationales and actual program operations. Innovative funding sources outside of general revenues may enable states to fulfill the broad goals presented in typical victim compensation legislation.

69. Denver's program director has cured this problem by systematically contacting victims who report crimes to law enforcement agencies. Telephone interview with Luann Richie, Director, Victim Compensation Fund for the Second Judicial District of Colorado (May 1985).

70. Denver's administrator estimated that between 10% and 25% of potentially eligible victims actually apply for reparation. *Id.* Most states estimate between 5% and 10% of potentially eligible claimants actually file for awards. Those figures seem to remain constant even if they are inaccurate for a given state in a given year. In some

2. Turnaround time

One measure of a program's success is the speed with which it processes claims after the application process commences.⁷¹ When processing is not timely, incapacitated persons who lose earnings, or victims with dependents who experience hardship due to the victim's incapacity, will suffer. In addition, health care providers and other creditors may become restless to collect bills for treating or assisting victims.⁷²

A number of factors can slow claim processing, and it is important to identify which sources of delay can be avoided by draftsmen and by administrators. Reasons for delay in turnaround time vary. In telephone interviews, two state administrators indicated that collateral source verification delays claim processing.⁷³ Four attribute some delay to the slow submission of medical records and bills.⁷⁴ Four administrators primarily attributed delay to victims being slow to file completed claims.⁷⁵ Interestingly, states successfully integrating victim assistance with victim compensation do not consider applicants a primary cause of processing delays.⁷⁶ Three state administrators regard

states, such as Texas, the figure is estimated to be as low as 1%. Telephone interview with Jerry Belcher, Director, Texas Crims Victims Compensation Division, Industrial Accident Board (May 1985). John Stein of NOVA distrusts these low numbers because he feels they do not accurately reflect the percentage of homicide-related victims included in the eligible pool. Telephone interview with John Stein, Deputy Director, NOVA (May 1985).

71. The following are estimates by program directors of average turnaround times for the surveyed states:

STATE	DAYS
Alaska	90
California	180-360
Colorado	90
Iowa	180
Montana	30
Nebraska	90
Nevada	60-120
Oklahoma	111
Pennsylvania	60-180
Texas	60

These statistics are based on interviews with various state administrators. See *supra* note 4 for a list of those interviewed.

72. D. MCGILLIS & P. SMITH, *supra* note 1, at 81. Surprisingly, most directors felt that health care providers waited patiently for hoard decisions—an almost unbelievable observation with respect to states that have turnaround times of six months or more.

73. California and Oklahoma.

74. Alaska, Colorado, Nebraska, and Pennsylvania.

75. Pennsylvania, Nebraska, Montana, and Iowa.

76. California and Colorado.

law enforcement personnel as a cause of delay, saying that police are slow in submitting reports.⁷⁷ On the other hand, two states where victim compensation programs are administered by public safety agencies had no difficulty obtaining police reports.⁷⁸ However, those same states had greater difficulty obtaining medical records than states in which victim compensation programs are administered by workers' compensation boards. Thus, each approach has its drawback. Montana's administrator—affiliated with the worker's compensation agency—mentioned that she had overcome the difficulty of obtaining police records by developing good rapport with law enforcement agencies. Other reasons cited for delay include infrequent meetings of the board (two states), slow processing by state review authorities (one state), hospitalized or traumatized victims (two states), and delay pending the outcome of trials (one state).⁷⁹

Several administrators emphasized the importance of an emergency award provision to offset hardships arising because of delay. These provisions are included in most reparation statutes. Such provisions enable administrators to provide some assistance prior to making a formal award.

Suggestions from program administrators pertaining to improved turnaround time can be summarized as follows: increase meeting frequency where award decisions are made by a board (Alaska and Nebraska), reduce or eliminate documentation requirements for lost earnings (Alaska), consolidate the preparation and verification of claims into one step (California), use an IRS procedural model as opposed to a welfare model for administering awards and construct a table of awards for routine claims (California), establish priority for processing the bills and records of crime victims (Colorado),⁸⁰ increase program publicity to encourage victims to file quickly (Iowa), encourage claimants to complete forms accurately in their initial filing and provide assistance for them in doing so (Nebraska), eliminate the need for attorneys by simplifying application forms (Montana), build better rapport with law enforcement agencies (Montana and

77. Montana, Pennsylvania, and Texas.

78. Alaska and Iowa.

79. The parenthetical numbers refer only to the number of state administrators specifically mentioning the corresponding reason for delay. Other states may also experience delay for the same reasons.

80. For example, health care providers or law enforcement personnel could expedite claim processing by tagging victim records and then sending them directly to the processing agency.

Texas), train victim assistance organizations to help claimants complete forms (California and Pennsylvania), have a summary disposition procedure for prima facie invalid claims (Pennsylvania), and require the vote of only one board member in order to approve claims (Texas).⁸¹

Montana has the fastest turnaround time of the ten states surveyed: thirty days. However, this period is measured from the application date to the date the victim is notified concerning approval or denial of an award. Issuance of the award is frequently withheld pending evaluation of collateral source payments, although emergency awards may be issued when payment is withheld. The Montana board's ability to quickly decide claims affords prompt notice to health providers and others about a forthcoming award. This procedure is superior to evaluating collateral sources prior to making awards because the former method puts everyone on early notice that a claim is being processed, and it respects the worth of a victim's claim regardless of collateral income sources.

81. McGillis & Smith recommend several ways of expediting claim processing: (1) avoid split decision-making processes requiring legislative approval; (2) avoid separating the investigative staff from the decision-making staff; (3) use victim-witness agencies to file claims and assist in documentation; (4) avoid adjudicating claims in court; (5) be wary of time-consuming procedures such as (a) financial stress provisions, (b) contribution provisions, and (c) collateral source provisions; if necessary, streamline the verification process on these items; (6) abbreviate verification processes for small claims; and (7) allow the program to issue its own checks. D. MCGILLIS & P. SMITH, *supra* note 1, at 103-06. For an example of one suggestion, Pennsylvania's administrative officer noted that a delay of four to six weeks results from check issuance by a separate agency. Telephone interview with Joanne Zakielarz, Administrative Officer, Pennsylvania Crime Victims Compensation Board (Nov. 12, 1985).

The CCJJ Victims Task Force drafted the administrative structure provisions of the Utah reparation bill to implement efficient claim processing. The bill allows reparation officers—comparable in some respects to insurance adjusters—to process claim information and make decisions concerning awards. This procedure differs from that in most states because boards or panels are typically used to actually decide whether an award will issue. Utah's proposed program features a board, but the board only advises on policy which the reparation staff then must follow when deciding claims. This system avoids the delays caused when victims must wait for a board to convene before receiving awards. It has the additional advantage of allowing one person to make the award decision, thus avoiding possible disagreements. VICTIMS' REPARATIONS BILL §§ 4-8 (Proposed Official Draft, Utah 1985) (copy on file with CCJJ). Herbert G. Parker also emphasized the importance of letting one person make award decisions. Telephone interview with Herbert G. Parker, President, National Association of Crime Victims Compensation Boards (Nov. 14, 1985).

3. *Administrative agencies*

Victim reparation programs can be administered in a variety of ways. The NIJ study reveals that reparation programs are commonly administered by workers' compensation boards. The courts and department of public safety programs are the next most frequently used entities.⁸² Other entities include gubernatorial executive offices and social service agencies.⁸³

Literature on victim reparation programs typically warns against adverse victim treatment by workers' compensation boards and court systems, or confrontations with mountains of bureaucratic red tape as a result of program administration.⁸⁴ Directors in Montana and Texas—states whose programs are administered by workers' compensation boards—indicated that crime victims are not mistreated because of the staff's additional role of assisting injured workers. However, a program invariably assumes some color from the agency that administers it. This chameleon-like propensity suggests that the best way to avoid

82. D. MCGILLIS & P. SMITH, *supra* note 1, at 15.

83. The administrative agencies responsible for reparation programs in the surveyed states are as follows:

STATE	AGENCY
Alaska	Dept. of Public Safety
California	Office of Criminal Justice Planning
Colorado	District Attorney's Office
Iowa	Dept. of Public Safety
Montana	Worker's Compensation Board
Nebraska	Criminal Justice Commission
Nevada	State Board of Examiners
Oklahoma	Crime Victims Comp. Board
Pennsylvania	Crime Victims Comp. Board
Texas	Industrial Accident Board

84. However, there are distinct advantages to using a workers' compensation board to administer the program:

Such agencies typically are equipped with staff experienced in the investigation of insurance claims and boards or administrators that are skilled in the procedures for deciding such claims. More importantly, worker's compensation boards already have established schedules of benefits for payments of claims involving medical expenses and loss of earnings. In addition, many departments have regional offices or contacts that would facilitate victims' access to the program.

D. MCGILLIS & P. SMITH, *supra* note 1, at 50. The President of the National Association of Crime Victims Compensation Boards recommended that workers' compensation boards operate these programs. However, he emphasized that an independent group of investigators should be retained to deal solely with victims' claims and that the program should have a marked degree of autonomy. Telephone interview with Herbert G. Parker, President, National Association of Crime Victims Compensation Boards (Nov. 14, 1985).

superimposing idiosyncrasies on a victim compensation program is to create a separate agency.⁸⁵

The administrators from Pennsylvania—a state using a board dependent on an executive office for administrative services only—thought it important to maintain an identity separate from the executive office. This separate identity assists publicity efforts and allows the board freedom to set its own policies and regulations. The program director in Texas also recommended serious consideration of a program operated by an independent agency, even though the Texas program is not so structured. Likewise, the Montana director emphasized that although she is officially an arm of the worker's compensation board, she operates the program under a separate identity: the Crime Victims Unit. She thought that a separate identity contributes to program visibility and helps victims realize that the state is concerned about victims' unique problems. Thus, if establishing a separate agency is not an available option, administrators should strive to establish a separate program identity.

Cost is naturally the greatest hurdle to establishing a separate agency. In the short run, the staff and facilities of an existing agency can provide more cost-effective service, although the long term cost of agency affiliation may itself become burdensome.⁸⁶ Compensation programs ordinarily experience exponential growth during their early years.⁸⁷ In Texas, twelve additional staff members were recently added to the crime victim wing of the Industrial Accident Board—initially staffed by only one person—to deal with the high volume of claims.⁸⁸

If an existing agency administers the program, it should either set apart personnel to deal only with victim compensation cases or integrate that responsibility into the duties of existing personnel.⁸⁹ Existing office equipment, office space, data processing, and payroll procedure could be employed at little or no ex-

85. However, utilizing a separate agency may result in forfeiting some benefits derived from the experience of an extant program. *See supra* note 84.

86. As a program grows it may demand increased staff and other services, perhaps even requiring office expansion or affiliation with a new agency.

87. *See supra* note 55.

88. Telephone interview with Jerry Belcher, Texas Crime Victims Compensation Division, Industrial Accident Board (May 1985).

89. For a comparison of the pros and cons associated with using separate staff as opposed to integrated staff operations, see D. MCGILLIS & P. SMITH, *supra* note 1, at 54-57.

tra cost.⁹⁰ Existing agency heads could review the work of specialists.⁹¹ As long as the case load remains manageable in such an operation, it can be administered at minimal cost.

4. *Other administrative notes*

States with good victim assistance programs have used those programs to build successful reparation programs.⁹² Hence, anything that may encourage cooperation between victim assistance groups and victim reparation programs is desirable. For example, victim assistance personnel could be housed in close proximity to victim reparation personnel, thus facilitating interaction and victim referral, and minimizing administrative burdens on the victim.

Colorado is the only state testing a local administration concept. Denver has had considerable success; some outlying rural areas are experiencing difficulty.⁹³ The Denver reparation pro-

90. Cost considerations and a desire to avoid creating another agency led to the CCJJ's Victims Task Force's decision to combine Utah's reparation program with the Department of Public Safety or the Department of Corrections. The Commission voted tentatively to place the reparation program in Corrections, although no strong justifications existed for doing so. No other state uses a corrections agency to administer its program. Several program administrators advised against affiliating with corrections agencies because of their negative public image, e.g., Herbert G. Parker, President, National Association of Crime Victims Compensation Boards (Nov. 14, 1985). Corrections personnel are often accused of being cold, uncaring, and insensitive—hardly traits associated with victim reparation. On the other hand, corrections personnel may enjoy being involved with something positive since such involvement may improve their public image.

91. Montana and Florida use this procedure. Telephone interview with Cheryl Bryant, Administrative Officer, Montana Crime Victims Unit (May 1985); telephone interview with Herbert G. Parker, President, National Association of Crime Victims Compensation Boards (Nov. 14, 1985).

92. California has been a leading state in this respect. D. MCGILLIS & P. SMITH, *supra* note 1, contains a good discussion on integrating victim assistance with victim compensation:

The victim compensation movement should . . . promote the extension of personal services to victims of traumatic, violent crime, both because the compensation programs cannot reach their intended clientele otherwise and because the whole person must be served Only by linking compensation programs to service in this way and removing unnecessary impediments to learning about and receiving benefits can these victim compensation programs realize their true potential.

Id. at 135-36 (citing R. HOFFRICHTER, *VICTIM COMPENSATION AND THE ELDERLY: POLICY AND ADMINISTRATIVE ISSUES* 5 (1979)).

93. Some rural areas lack staff to deal with victim compensation because the District Attorney responsible for administering compensation has no money budgeted for that purpose. Telephone interview with Luann Richie, Director, Victim Compensation Fund for the Second Judicial District of Colorado (May 1985).

gram administrators are housed with the victim assistance program in the district court building. Consequently, the programs appear well integrated. Drawing from Denver's experience, the optimal administrative scheme may be local administration in large urban centers and state administration for towns and rural areas.

Reparation administrators repeatedly emphasized that simplicity in the claim filing process is essential to program success. Simplicity is important because claimants often are not capable of understanding even a basic application form. Simple procedures also avoid the use of attorneys; attorneys tend to delay processing and deplete funds intended for victim use.

The recent trend in claim payments has been to pay awards directly to health care providers and other service agencies. This procedure encourages hospitals and others to await the outcome of a claim before they begin harassing a victim for payment.

Administrators can enhance good public relations by keeping legislators apprised of awards made to constituents.⁹⁴ Administrators should also make awards to eligible claimants without regard to the availability of collateral sources, but withhold payment to victims pending receipt of collateral source payments.⁹⁵

III. CONCLUSION

Victim reparation programs are not an ultimate solution to victims' problems. But such programs are a means of assisting persons traditionally victimized twice: once by the criminal and once by the criminal justice system. The question is not whether to enact victim reparation statutes; it is which programs are most effective and why are they successful. States, such as Utah, that are late in starting reparation programs can benefit from the experience of those who pioneered the reparation concept.

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94. Telephone interview with Ron VanMeter, Chief, Nebraska Commission on Law Enforcement and Criminal Justice (May 1985).

95. Telephone interview with Cheryl Bryant, Administrative Officer, Montana Crime Victims Unit (May 1985).

