Florida State University Law Review

Volume 11 | Issue 4

Winter 1984

Legislative Assistance to Victims of Crime: The Florida Crimes Compensation Act

Lesley J. Friedsam

Follow this and additional works at: http://ir.law.fsu.edu/lr
Part of the Legislation Commons, and the State and Local Government Law Commons

Recommended Citation
http://ir.law.fsu.edu/lr/vol11/iss4/2

This Article is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Florida State University Law Review by an authorized editor of Scholarship Repository. For more information, please contact bkaplan@law.fsu.edu.
LEGISLATIVE ASSISTANCE TO VICTIMS OF CRIME: THE FLORIDA CRIMES COMPENSATION ACT

LESLEY J. FRIEDSAM*

I. INTRODUCTION

In 1977, Florida became the thirty-fourth state to pass legislation compensating victims of violent crimes. Florida’s Crimes Compensation Act (the Act) was the result of a growing awareness by lawmakers that criminal defendants have been increasingly afforded substantial protective rights while victims have been left with little or nothing to alleviate their injuries.

This article will provide an overview of the Act and examine in detail two controversial exclusionary provisions: the requirement that claimants must suffer serious financial hardship in order to receive compensation, and the mandated exclusion of a class of

---

*J.D., with high honors, Florida State University College of Law, 1982; LL.M., Yale Law School, 1983; Associate, Pajcic Pajcic Dale & Bald, Jacksonville, Florida. The author gratefully acknowledges the assistance of Professors Daniel Freed, Yale Law School, and Kenneth Vinson, Florida State University College of Law, in preparing this article.


For instance, a woman is struck down by a robber on the city street; her assailant, when apprehended and convicted, is sent to prison where he is fed, housed, clothed, given necessary medical attention, provided with a vocation or a college education—all at state expense. The victimized woman, however, must bear any hospital and other expenses on her own and may suffer additional economic hardship from the temporary or even permanent loss of employment.


If the division finds that the claimant, if not granted assistance pursuant to this chapter to meet the loss of earnings or support or out-of-pocket loss, will not suffer serious financial hardship as a result of the loss of earnings or support and the out-of-pocket loss incurred as a result of the injury, the division shall deny the award.
claimants based on their relationship with the criminal offender. This article will begin with a brief look at the origins of compensation legislation and its underlying rationales. Next, the article will consider traditional remedies available to crime victims—restitution, civil remedy in tort, and private insurance—to demonstrate both the necessity for the Act and to explore its relationship to traditional avenues of victim redress. Following this discussion, the article will give a brief overview of the Act before commencing an examination of its exclusion provisions. This article will both raise questions about the Act's problematic exclusions and suggest improvements.

A. Historical Origins

Concern for crime victims is not new and has been found to be most evident during periods of heightened criminal activity. Often, heinous offenses have served as catalysts increasing public awareness of the catastrophic effects of criminal activity on innocent people. Predating contemporary interest is a wealth of literature stressing the cross-cultural and religious origins of compensating crime victims. Indemnification of the victim by the offender or his family was a foundation of primitive and early western law. Perhaps the most frequently cited authority for current efforts by government to compensate crime victims is the 1775 B.C. Code of Hammurabi of ancient Babylonia:

If the robber is not caught, the man who has been robbed shall formally declare whatever he has lost before a god, and the city and the mayor in whose territory or district the robbery has been committed shall replace whatever he has lost for him.

If [it is] the life [of the owner that is lost], the city or the

6. FLA. STAT. § 960.04 (1981) excludes from compensation awards: those who are “related within the third degree of consanguinity or affinity to the person who committed the crime,” excepting dependent children “of a deceased victim of a crime who is related to or residing in the same household as the person who committed the crime;” those who are “maintaining a sexual relationship with the person who committed the crime;” and those who reside “in the same household as the person who committed the crime.” The statute also excludes those who “aided in the commission of the crime,” or “committed” the crime, or were “engaged in an unlawful activity at the time of the crime upon which the claim is based.”


8. For example, the 1965 fatal stabbing of a 28-year-old “Good Samaritan” in New York provided the major motivation leading to the passage of New York's statute to compensate victims of violent crime. Id. at 21-24.

mayor shall pay one maneh of silver to his kinsfolk.10

This early emphasis on victim compensation gradually changed. Modern commentators have provided numerous perspectives on the evolution of victim compensation throughout history, which led to monopolization of criminal redress by the state.11 Wrongful acts were classified as offenses against the public, and the state became interested only in punishing and rehabilitating the offender.12 Eventually, the victim's only remedy for individual injuries was a civil action in tort against the offender.13

Dissatisfied with this result and encouraged by public interest groups,14 a number of jurisdictions began to direct their attention to crime victims. In 1964, New Zealand became the first jurisdiction in modern times to establish a special program for compensating crime victims.15 In 1965, California became the first state to enact a crimes compensation statute.16 New York quickly followed in 1966.17

B. Theoretical Justifications

Commentators have advanced three rationales to justify government programs compensating crime victims. These are: the social contract/failure to protect theory, the shared risk/insurance theory, and the social welfare/moral obligation theory.18 Increased cooper-
ation with law enforcement officials by victims,\textsuperscript{19} compensating Good Samaritans,\textsuperscript{20} elimination of victim alienation,\textsuperscript{21} and deferring to politics—that compensation statutes are what the people want\textsuperscript{22}—are also reasons that have been advanced to justify compensation acts. However, upon closer examination, these last four appear to be simply "additional benefits of such legislation, not underlying justifications."\textsuperscript{23}

1. \textit{Social Contract/Failure to Protect}

This theory is premised on the acknowledged responsibility of the state to protect its citizens from crime.\textsuperscript{24} Additionally, this theory notes that states impose restrictions on victims which prevent them from seeking retribution by taking the law into their own hands.\textsuperscript{25} Accordingly, supporters of the social contract theory argue that in failing to protect its citizens, and then limiting those citizens' avenues for redress, the state has breached its duty and thus owes compensation to victims as a matter of right.\textsuperscript{26} It is understandable why this theory is unpopular with both legislators and courts.\textsuperscript{27} Making compensation a matter of right as opposed to a matter of grace necessitates a whole panoply of procedural rights for claimants, rights that cost time and money to the state and to claimants.\textsuperscript{28}

26 Drake L. Rev. 838, 839 (1977); Comment, supra note 1, at 270.
20. Id.
23. Id.
25. Brooks, The Case for Creating Compensation Programs to Aid Victims of Violent Crimes, 11 Tulsa L.J. 477, 479 (1976). Additionally, it is argued that the state's obligation also arises from the fact that laws incarcerating the criminal limit the victim's ability to obtain civil recovery, although this argument is incongruous with the argument that the state is at fault for not apprehending the criminal. Koning, supra note 22, at 698 n.66.
26. Comment, supra note 1, at 268.
27. See Comment, Rehabilitation of the Victims of Crime: An Overview, 21 U.C.L.A. L. Rev. 317, 336 (1973) (a survey conducted by the author determined that all legislatures adopting victim compensation programs through 1973 favored the social welfare theory, as opposed to the social contract theory); see also Hoelzel, supra note 2, at 487.
28. Brooks, supra note 25, at 484.

So long as compensation is a moral right, it remains something that the state \textit{ought} to do but not something that the state \textit{has} to do. . . . If compensation
Critics argue that the social contract theory misplaces the blame because it is the criminal, not the state, who is at fault for the criminal act.\textsuperscript{29} It is doubtful that government can eliminate all violent crimes.\textsuperscript{30} Attempts to halt crimes beyond a certain level could lead to repressive police tactics, impinging on the liberties of all citizens.\textsuperscript{31} Also, it is tenuous to presume that particular government defaults caused each victimization.\textsuperscript{32}

2. \textit{Shared Risk/Insurance}

This theory, analogous to an insurance plan, is the second rationale upon which victim compensation plans might be based. It suggests that citizens' taxes be used as premiums for compensation programs.\textsuperscript{33} Thus tax dollar contributions/premiums would mean that all citizens share both in the cost and the risk of victimization.\textsuperscript{34} Of course, this theory is inapplicable as a justification in states such as Florida which do not fund their compensation programs from tax dollars.

3. \textit{Social Welfare/Moral Obligation}

The justification for compensation statutes advanced by some states is the amorphous theory of moral obligation.\textsuperscript{35} The Florida Act thus states:

The Legislature recognizes that many innocent persons suffer personal injury or death as a direct result of criminal acts or in their efforts to prevent crime or apprehend persons committing or

\begin{quote}
payments are awarded as a matter of grace, as contrasted to the victim having a legal claim upon the state for compensation, then the administrative procedures, especially appeals proceedings, can possibly be quite different.
\end{quote}

\textit{Id.} (emphasis in original).

29. Childres, \textit{Compensation for Criminally Inflicted Personal Injury}, 39 N.Y.U. L. Rev. 444, 455 (1964). Because the criminal is at fault, to place blame on the state is to engage in a fiction and to ignore the individual will of that criminal. \textit{Id.}

30. Comment, \textit{supra} note 1, at 268.

31. McAdam, \textit{supra} note 19, at 352.

32. "Whether any government could . . . [halt all crimes of violence] absolutely seems doubtful. Whether being a victim necessarily depends upon a government ‘defaulting’ its obligations also seems doubtful, at least to many." Brooks, \textit{supra} note 25, at 480.

33. Comment, \textit{supra} note 1, at 270. Another way of looking at this theory is through a loss-spreading analysis. Thus one commentator noted: "A state's unique ability to spread these losses efficiently, combined with a state's general duty to provide for the public welfare, implicates a state duty to establish these programs." Koning, \textit{supra} note 22, at 699.


35. Hoelzel, \textit{supra} note 2, at 487; Comment, \textit{supra} note 27, at 318.
attempting to commit crimes. Such persons or their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon financial assistance. The Legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the intent of the Legislature that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of crime.\textsuperscript{38}

The social welfare/moral obligation theory has been soundly criticized.\textsuperscript{37} One argument is that the theory simply lacks a legal foundation; that is, the state's power to create such a moral obligation should not be confused with the reason for enactment.\textsuperscript{38} Thus, the theory does not answer the critical question of why the state's proper function is to help crime victims, while ignoring other victims who are equally deserving such as victims of natural disasters.\textsuperscript{39} Commentators argue this important question is not answered by simply saying "first things first."\textsuperscript{40} To the contrary, the legislative process is one of policy-making. Thus one argument for state-funded compensation programs for crime victims as opposed to natural disaster victims is related to the aforementioned social contract/failure to protect theory; that is, since society creates the conditions under which crimes are committed, society should help compensate victims.\textsuperscript{41} This answer, however, does nothing but reaffirm the argument that the social welfare theory lacks a legal foundation. Yet other commentators have argued that the consequence of operating without a theoretical foundation is problematic; justifications are necessary to insure proper handling of subsequent considerations.\textsuperscript{42}

\textsuperscript{36} FLA. STAT. § 960.02 (1981).
\textsuperscript{37} Brooks, supra note 25, at 486-90; Koning, supra note 22, at 698-99.
\textsuperscript{38} "The social welfare theory begs the question; the state's power to provide for the general welfare offers no explanation for the state's exercise of the power in this particular instance." Koning, supra note 22, at 698.
\textsuperscript{39} Brooks, supra note 25, at 486-87. "Why alleviate the suffering of victims of crimes of violence and not, for instance, that of the farmer, who while working in his field, is struck by lightening [sic] and rendered a helpless invalid?" Id. at 487 (quoting Miller, Compensation for Victims of Criminal Violence: A Round Table, 8 J. Pun. L. 203, 204 (1959)).
\textsuperscript{40} Id.
\textsuperscript{41} Id. at 487.
\textsuperscript{42} Id. at 486.

[Without a prescriptive theoretical foundation, other decisions that will have to be reached if a compensation plan is adopted may be more worrisome. Will payments be made as a matter of legal right or on an ex gratia basis? This can become very meaningful because of the necessity to accommodate the bureaucracy to a
Another criticism of the social welfare theory is the perception that it expands the welfare state and encourages dependence and governmental paternalism. This suggests that it is better for a crime victim to suffer his economic loss alone rather than risk fostering socialism through compensation programs. The validity of this conception that a lack of government assistance will "strengthen one's 'moral fiber'" is doubtful.

Accordingly, it is important to consider whether a legal foundation is necessary for these compensation programs. English jurist Rupert Cross stated:

Speaking for myself, I am content to do without theoretical justifications for compensation of victims of violence. . . . If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great.44

In subscribing to the social welfare/moral responsibility theory, the Florida Legislature has made compensation a matter of grace instead of right, thus signaling its intent to narrow the statute's application and winnow out classes of claimants who might either cost too much or be otherwise politically unacceptable. The question, of course, is at what point have the restrictions and exclusions gone too far, so that the Act becomes merely a placebo leaving the state's elusive moral responsibility unfulfilled.

II. ALTERNATIVES TO STATE COMPENSATION

Addressing the above question involves a brief look at the entire Act before examining its problematic restrictions. First, however, it is important to consider the context in which such compensation statutes exist. There are three traditional remedies available to crime victims—restitution, a civil remedy in tort, and private insurance. In considering these three remedies, it will be helpful to analyze the gaps left by these standard remedies because it is these gaps which victim compensation acts seek to fill. Further insight can be gained by considering how the traditional remedies fit

43. Id. at 489-91.
44. Id. at 486 (quoting Cross, Compensating Victims of Violence, The Listener, May 16, 1963, at 815-17).
within the systems which now include victim compensation.

A. Restitution

Restitution makes the criminal responsible for helping the victim become whole again. The appeal of restitution is that the punishment fits the crime. It also helps rehabilitate the criminal. But the problems with restitution are numerous. First, the offender must be apprehended and plead guilty, nolo contendere, or be convicted. State compensation programs do not have these prerequisites. Second, the offender must have enough money to pay the restitution award to the victim. This problem is often insurmountable. If the offender is incarcerated, scant prison wages are generally insufficient to provide for the offender's own family, much less the crime victim. The problem in Florida is exacerbated because restitution awards to victims from jailed offenders compete with payments to the offenders' families and/or payment for prison room and board. The money problem has resulted in restitution only being a viable remedy primarily when offenders can be quickly returned to society through probation or parole. In addition, those paroled after serving part of a sentence in prison are resistant to paying restitution. These offenders make the same mistake as the state by inferring that the offense was only against the collective whole and not against the individual victim.

45. Laster, supra note 11, at 80. See also Schafer, Restitution to Victims of Crime—An Old Correctional Aim Modernized, 50 MINN. L. REV. 243 (1965).
47. Brooks, supra note 25, at 491.
48. Apprehension of the offender is unlikely. According to the Federal Bureau of Investigation, out of 1,855,890 known offenses in 2,559 cities, the total arrest rate was only 19.7% in 1976. FBI UNIF. CRIM. REp. 219 (1976). Even if the offender is apprehended, he must still be convicted beyond a reasonable doubt unless he pleads guilty or nolo contendere. W. LAFAVE, HANDBOOK ON CRIMINAL LAW 16 (1972).
49. Comment, supra note 27, at 337. The current Florida statute is actually silent on that point, but a prior statute contained an express provision whereby an offender's apprehension was not required. FLA. STAT. § 960.09(3) (1977). This provision was apparently inadvertantly omitted when the statute was revised in 1980.
52. See FLA. STAT. § 944.49(2)(c) (1981).
53. Harland, supra note 46, at 216.
54. Brooks, supra note 25, at 492.
nally, most state legislatures have eliminated restitution for violent crimes fearing that criminals, if forced to pay compensation, might retaliate against their victims.66

Restitution works best in compensating for less serious offenses involving property loss or minor personal injuries when the offender is not incarcerated.66 This fits in well with the void left by compensation statutes which do not compensate property loss67 and which require a minimum loss before an award is given.68 Conversely, compensation statutes fill the gap left by restitution when serious personal injury resulting from crime necessitates a substantial money award. Of course, restitution still involves the problems of apprehension and conviction. There is, however, some indication that the financial abilities of non-incarcerated offenders to make restitution for small money losses or property losses are sufficient to make restitution a viable complement to compensation statutes.69

B. Civil Action in Tort

Although all victims of crime have a remedy in tort,60 problems of civil recovery render this option impotent.61 Many of the difficulties are identical with those discussed regarding restitution; the offender usually escapes apprehension62 or an apprehended offender is generally judgment-proof.63 If the offender has money, it may be exhausted in defending himself in either the criminal or

55. McAdam, supra note 19, at 349.
56. Harland, supra note 46, at 216.
57. See infra notes 108-20 and accompanying text.
58. Exactly half of the states with compensation statutes require a minimum loss ranging from $25 to $100/two weeks income. Florida has no minimum loss requirement. 1982 ANN. REP., supra note 1, at 10-13. For more about minimum loss requirements, see infra note 169.
59. Harland, supra note 46, at 216-22. After a thorough examination of the 1974 FBI Uniform Crime Report, Harland concludes that losses for offenses of non-violent crimes not involving vehicles are less than $100 for 73% of the victims; additionally, for vehicle theft, after recovery by police, insurance, and other sources is taken into account, the author concludes that only 8% of those victimizations involve losses of more than $250. Id. It must be noted that restitution programs have other problems in enforcement and administration through the courts and parole and probation commissions. See Chesney, Hudson & McLagen, A New Look at Restitution: Recent Legislation, Programs and Research, 61 JUDICATURE 348 (1978); Hudson, Galaway, & Chesney, When Criminals Repay Their Victims: A Survey of Restitution Programs, 60 JUDICATURE 313 (1977).
60. McAdam, supra note 19, at 347-48.
63. Lamborn, supra note 61, at 38.
civil case. Additionally, even when the offender has assets, it may be difficult to introduce a criminal conviction into evidence in a civil case. Accordingly, only a small percentage of victims ever recover civil awards from their assailant.

The civil action does fill a gap left by compensation statutes. Most programs do not compensate pain and suffering, and have a maximum award. Thus, only for those victims fortunate enough to be victimized by a solvent defendant does a civil remedy provide some supplemental relief.

C. Private Insurance

Those who criticize compensation plans as extensions of the welfare state argue that private individuals should have the responsibility of insuring themselves against the costs of crime. This alternative, however, has been repeatedly rejected as insufficient to provide for the majority of victims. First, research indicates that most victims live in low income districts. Insurance in these areas is more expensive; yet those in need are less likely to have the money to pay. Even those with insurance are generally underinsured. Further, insurance coverage typically excludes payment for injuries suffered due to the illegal or intentional act of another person. Accordingly, private insurance is a poor substitute for state-funded compensation plans. Private insurance, however, does have a place within a system that includes a state-funded compensation

64. Brooks, supra note 25, at 481.
66. D. Mulvihill & M. Tumin, Crimes of Violence: A Staff Report to the National Comm'n on the Causes and Prevention of Violence 801 (1969). Moreover, it must be noted that a civil action puts additional demands on the victim who must go through the anxiety of two processes—the criminal case and a civil proceeding. Brooks, supra note 25, at 481.
67. Hoelzel, supra note 2, at 492.
69. McAdam, supra note 19, at 348.
70. Brooks, supra note 25, at 500; Comment, supra note 24, at 719-22; Note, supra note 18, at 841.
72. Comment, supra note 27, at 330.
73. Haas, supra note 4, at 196.
plan; those who can afford insurance may protect against property losses which are not covered by the statute or which may not be recoverable through restitution.

In summary, these three traditional victim remedies are, by themselves, inadequate to provide meaningful recovery for crime victims. However, the gaps left by these remedies can be filled by compensation statutes. Conversely, it is possible that gaps in compensation statutes can be filled by these remedies.

III. AN OVERVIEW OF THE FLORIDA CRIMES COMPENSATION ACT

A hybrid of existing state plans and the Uniform Crime Victims Reparations Act (UCVRA), the Florida legislation was enacted a few years after the legislature first passed a series of laws to aid crime victims. Although the Act was passed in 1977, the law's application was, because of special funding provisions discussed hereinafter, limited to victims injured on or after January 1, 1978.

The compensation program is administered by the Bureau of Crimes Compensation (BCC) located within the Division of Workers' Compensation of the Department of Labor and Employment Security. Although the threshold eligibility requirements are eas-
ily achieved, a number of restrictions and qualifications limit both numbers and classes of claimants. The first requirement for eligibility is a finding by the BCC that a crime was committed. The Act requires that this crime be reported within seventy-two hours after it was committed unless a good cause for delay exists. Additionally, the Act requires that claimants duly cooperate with all law enforcement officials. The penalty for noncooperation may be denial, reduction, or withdrawal of any award.

The Act further requires that the victim be a Florida resident and that the crime have occurred within the state. The Act provides that the following are eligible to receive awards: victims, intervenors, surviving parents or children, a spouse of a dead victim or intervenor, other persons who are dependent for principal support from a dead victim or intervenor, and a dependent child of a dead victim who is related to or residing in the same household as the criminal offender. A victim is defined as a person who suffers personal physical injury or death as a direct result of the crime, and intervenors are persons who are injured or killed as a direct result of going to the aid of another.

Excluded from eligibility are the criminal offender, persons aiding the offender in committing the crime, persons engaging in unlawful activity when the crime was committed and anyone impermissibly related to the criminal offender as defined by statute. This broad category of exclusions will be examined in greater detail in a later portion of this article.

Although the maximum possible award is $10,000, the Act requires no minimum loss. Awards can be reduced under certain

---

Commission in 1980 and moved its functions to the Department of Labor and Employment Security.

80. *Fla. Stat.* § 960.13(1)(a)(1) (1981). Although some states have designated crimes for which compensation may be had, Florida uses a generic definition so that the commission of any misdemeanor or felony may mean compensation for the victim.


82. *Fla. Stat.* § 960.13(1)(b) (1981). Unfortunately, the statute does nothing to define what the required cooperation entails. It is thus unclear whether the victim/claimant must appear at every lineup, hearing, trial date, etc., in order to be given a full award. Also, the case examples given in the BCC’s annual report which show an award reduction make no mention of what administrative criteria were used to determine the meaning of cooperation.


87. *Fla. Stat.* § 960.13(8) (1981). For more about minimum loss requirements, see infra note 170. The statute also allows for emergency awards of up to $500, with this award de-
circumstances and are only granted on an "actual need" basis after insurance and workers' compensation benefits have been deducted. Significantly, awards will be denied if the claimant will not suffer serious financial hardship as a result of both the loss of earnings or support and the out-of-pocket loss incurred as a result of the injury. The financial needs test will be explored in detail following this overview.

The Act's funding provisions are especially interesting. While most states fund their compensation plans with tax dollars, Florida has chosen a multitude of funding elements: an added $15 court cost for any case where the defendant pleads guilty or nolo contendere or is convicted of a crime; a five percent surcharge on all criminal fines and bail bonds; the creation of an additional major fine of up to $10,000 which the court may impose on offenders; and the subrogation to the state, after payment of an award, of any cause of action accruing to a claimant, victim, or intervenor to recover losses resulting from the crime for which the award was made. Importantly, awards paid to claimants are considered debts owed to the state by the criminal offender. Thus, restitutionary repayment to the state may be considered by the court as a condition of probation or by the Parole and Probation Commission as a condition of parole. Finally, the Florida program may receive

88. FLA. STAT. § 960.12(1)-(2) (1981).
94. FLA. STAT. § 960.25 (Supp. 1982).
96. FLA. STAT. § 960.16 (1981).
money from a federal agency participating in a cooperative crime compensation plan if Congress enacts legislation to provide for such a program. 97

The Act, by making awards paid to victims a debt owed by the offender, meets a major criticism of compensation statutes—that such state payments do nothing to rehabilitate or punish the offender. 98 Additionally, this provision suggests an ordering system be used when both compensation and restitution are available as remedies, i.e., compensating the victim first, followed by restitution to the state by the offender. 99 This order allows the victim to be compensated more quickly than is possible with a scheme of restitution only. 100 This same scheme, however, contains a disadvantage; with the victim compensated and thus out of the picture, it is questionable whether the state will actively pursue the debt owed by the offender.

This debt repayment provision has also been challenged as a deprivation of due process. 101 Because the debt to the state is created automatically when the victim receives an award, the offender has no notice or opportunity to contest the amount. This procedural dilemma can be solved by amending the Act so that victim awards may be considered a debt owed by the offender with the

97. FLA. STAT. § 960.22 (1981). For a thorough discussion of the heretofore unsuccessful efforts to provide federal money to compensate crime victims, see H. Edelhertz & G. Geis, supra note 7, at 191-212. The proceeds of all of these collections are then earmarked to be paid into the Crimes Compensation Trust Fund which is administered by the BCC. FLA. STAT. § 960.21 (1981). Since the program began over five years ago, the trust fund has averaged receipt of nearly two million dollars per year. 1982 Ann Rep., supra note 1, at 21; 1981 FLA. BUREAU OF CRIMES COMPENSATION ANN. REP. 20-21.


99. This victim-first ordering makes the most sense if the victim has suffered financial hardship as a result of the crime. But this ordering also has equal merit should the financial hardship test be eliminated. For example, it seems absurd to deplete a family's assets for their child's upcoming college tuition with the promise of compensation through small amounts of restitution spread over the years when a state compensation award can pay the victim quickly. Accordingly, even victims with seemingly liquid assets can be just as much in need of quick replacement of their losses as their neighbors without savings who, without quick repayment, would suffer different consequences.

100. The length of time to process a claim under the Act "varies from one to six months, and sometimes even longer depending upon the cooperativeness of the applicant, the complexity of the applicant's financial resources and insurance benefits, and the disability and recovery period of the victim." 1982 Ann Rep., supra note 1, at 5. Additionally, as previously mentioned, the Act allows for emergency awards of up to $500. FLA. STAT. § 960.12 (1981). Conversely, restitutionary awards must wait until an offender is convicted or even until a later time such as parole.

101. In Champe, 373 So. 2d at 877, the Florida Supreme Court declined to rule on the due process question because the petitioner was not subject to the reimbursement provisions.
amount, if any, to be determined at whatever hearing is afforded the offender under regular restitution circumstances.102

The claims process in Florida begins when the BCC receives an application within one year after the crime occurred.103 In order not to prejudice a criminal defendant, the state attorney may request that the BCC defer action until after the criminal case is resolved.104 Claims which survive an initial screening105 are referred to an assigned field investigator who then makes a recommendation to the Bureau Chief.106 Claimants who disagree with the Bureau Chief's decision have sixty days in which to begin the appeals process.107

Before examining the two major exclusions of the Act, it is important to note that all compensation statutes disallow property loss.108 The importance to victims of this exclusion cannot be underestimated. According to a recent index of offenses by the Federal Bureau of Investigation (FBI), ninety-one percent of all offenses were property crimes.109 These victims, therefore, are excluded from state compensation.

102. For a thorough examination of the procedural aspects of restitution, see Goldstein, Defining the Role of the Victim in Criminal Prosecution, 52 Miss. L.J. 515, 544-47 (1982).
103. FLA. STAT. § 960.07(2) (1981). If a claimant shows good cause for delay, the Bureau may extend the filing time for a total period of up to two years. Id.
104. FLA. STAT. § 960.07(4) (1981). An offender could be prejudiced because "[i]mplicit in each award . . . is [a] . . . finding that someone committed a crime." H. Edelhertz & G. Geis, supra note 7, at 261. While this presents no problem if the offender has not been apprehended, one charged with a crime may have a substantial interest in the compensation process because the award determination could stigmatize the offender before trial. Id. Offenders, however, may be apprehended long after the one to six-month claims processing period has elapsed so that an award has already been made. All of this suggests that the impact of crimes compensation statutes on criminal justice has yet to be thoroughly examined.
105. After the law enforcement information is received, the BCC eliminates those claimants who fail to meet the statutory criteria of filing within the requisite period and reporting the crime to the proper authorities. 1982 ANN. REP., supra note 1, at 5. After the initial screening, the field investigator determines the more difficult issues of victim provocation and serious financial hardship. Claimants who are impermissibly related to the offender or those who were not injured by a crime are eliminated before the field investigator begins his work. Id.
106. Id.
107. FLA. STAT. § 960.09 (1981). The first appeal available to a claimant is the submission of additional evidence to the Bureau Chief. Should this prove unsuccessful, the claimant may next appeal to the Deputy Commissioner for Workers' Compensation who then conducts hearings in accordance with the statutory requirements for workers' compensation claims. Finally, actions by the Deputy Commissioner may be appealed to the First District Court of Appeal. Id.
108. See supra note 2.
109. FBI UNIV. CRIME REP., supra note 48, at 36.
In looking at those rationales which are advanced to justify compensation plans, the exclusion makes no sense.\textsuperscript{110} Although some commentators justified the property exclusion because "most property lost or damaged through crime is recovered,"\textsuperscript{111} recent FBI statistics show a contrary result.\textsuperscript{112} A further argument advanced is that property losses are more often insured.\textsuperscript{113} Yet this analysis has the same flaw as the argument that private insurance can be a substitute for state compensation plans; those least likely to be insured are those most likely to be property crime victims.\textsuperscript{114} Additionally, some commentators argue that compensating the great number of property loss victims would simply be too costly,\textsuperscript{115} while others claim the property loss exclusion prevents fraudulent claims.\textsuperscript{116}

But there is more. There is the belief that property losses are not as serious as personal injuries\textsuperscript{117} and that they lack social impact.\textsuperscript{118} This argument only makes sense if one believes the criticism that compensation plans operate mostly as placebos or political gestures.\textsuperscript{119} Accordingly, although the argument for compensating crime victims for property loss is as strong as that for providing awards for personal injuries, it is difficult politically to see how legislators will fund property losses before remedying

\textsuperscript{110} For example, if a victim has a "right" to compensation or even if the state owes only a moral responsibility to a victim, why should that right or responsibility stop when property crimes are involved?

\textsuperscript{111} Childres, \textit{Compensation for Criminally Inflicted Personal Injury}, 50 Minn. L. Rev. 271, 272 (1965).

\textsuperscript{112} Recent FBI statistics consistently show very low recovery rates for all types of stolen property except automobiles. Harland, supra note 46, at 208-19.

\textsuperscript{113} Childres, supra note 111, at 272.

\textsuperscript{114} See supra notes 69-74 and accompanying text.

\textsuperscript{115} The argument here is that although individual losses might be slight, there are simply too many losses.

\textsuperscript{116} McAdam, supra note 19, at 357. The author writes that it is easy to identify personal injuries, unlike property losses where the victim could double or triple the amount of claimed cash or goods lost. \textit{Id}. For a contrary view, see Harland, supra note 46, at 209. The author notes that the argument "that compensation for property losses would invite fraudulent claims says little about those victims who can clearly document bona fide losses." \textit{Id}.

\textsuperscript{117} Harland, supra note 46, at 209.

\textsuperscript{118} Childres, supra note 111, at 272.

\textsuperscript{119} Harland, supra note 46, at 222-24.

Because victimization is such an infrequent occurrence, what is actually done for victims becomes less important politically than creating the general impression that something is being done. As long as a majority of the public thinks it will be adequately compensated if victimized, proportionally so few will ever have to test such a belief that it need not necessarily be founded upon a realistic . . . program. \textit{Id}. at 223 (footnotes omitted).
the more demanding omissions in coverage of personal injuries.\textsuperscript{120}

While the Act’s declaration of policy and intent grandly states that its purpose is to meet the state’s moral obligation to aid innocent victims,\textsuperscript{121} two major restrictions within the statute contravene that intent. One restriction mandates claim denial unless the victim/claimant/intervenor would suffer a serious financial hardship.\textsuperscript{122} The other denies awards when the victim/claimant is impermissibly related to the criminal offender.\textsuperscript{123} Because these two exclusions are broad, they impact both on numbers and classes of potential claimants. As will be shown in the upcoming analysis, these statutory limitations have the effect of undermining the Act’s effectiveness and purpose. The criticism of two commentators is especially appropriate:

It is not unduly harsh to say that compensation programs emerged out of a desire to “do good” but to do so at the lowest possible price. From the seeds of some rather noble and encompassing justifications, therefore, legislatures have carefully pruned emergent programs with restrictive clauses that carefully stipulate to whom, under what circumstances, and in conformity with what conditions an award might be made.\textsuperscript{124}

Accordingly, it is appropriate to examine these restrictions in light of the reasons offered for their support and the detrimental effects which may result.

IV. FINANCIAL NEED REQUIREMENT

Currently, fourteen other states join Florida in requiring claimants to show financial need in varying amounts in order to be eligi-

\textsuperscript{120} H. Edelhertz & G. Geis, supra note 7, at 283.
\textsuperscript{121} Fla. Stat. § 960.02 (1981).
\textsuperscript{122} Fla. Stat. § 960.13(7) (1981). The statute reads: “If the division finds that the claimant, if not granted assistance pursuant to this chapter to meet the loss of earnings or support or out-of-pocket loss, will not suffer serious financial hardship as a result of the loss of earnings or support . . . the division shall deny the award.” Id.
\textsuperscript{123} Fla. Stat. § 960.04(2)(a)-(e) (1981). Excluded are those who committed the crime or aided in the commission of the crime upon which the claim was based, those who were engaged in unlawful activity at the time the crime was committed, those who are related within the third degree of consanguinity or affinity to the offender (with an exception for dependent children of a deceased crime victim who was related to or residing in the same household as the person who committed the crime), those who are maintaining a sexual relationship with the offender, and those who reside in the same household as the person who committed the crime. Id.
ble for awards. The Florida Act requires that claims be denied by the BCC unless the denial results in "serious financial hardship" to the claimant. The Act then instructs the BCC to consider "all the financial resources of the claimant" in determining whether the hardship test is met. The implementing rules, however, modify that harsh standard only slightly.

The predominant rationale for requiring actual need or serious financial hardship as a prerequisite for an award is that of cost efficiency; that is, it is assumed that the need requirement will limit the number of awards granted and thus insure compensation for the neediest victims. Legislators, aware of potential budget ramifications of legislation, are proponents of the financial hardship test. Commentators and program administrators, however, rarely favor such requirements; instead, many ardently oppose such restrictions.

Is the legislative cost-saving rationale correct? One must first examine the administrative costs inherent in determining eligibility on the basis of financial need. In Florida, the machinery for determining such eligibility does not come into play until well into the investigatory process. Officials necessarily spend time and therefore a considerable amount of money examining a claimant's financial records and checking information with employers, insurance carriers, banks, and other sources. It is arguable, therefore,

125. 1982 ANN. REP., supra note 1, at 10-13. Most states label the requirement "serious financial hardship." Oklahoma calls for "economic loss," while Oregon labels its requirement "extreme hardship." Id.
127. Id.
128. The implementing rules state that the claimant's financial resources shall be determined without reference to homestead, personal property, family cars, and tools or equipment needed in the claimant's profession, trade or business. FLA. ADMIN. CODE R. 10L-6.01(3) (1982).
130. H. EDELHERTZ & G. GEIS, supra note 7, at 31-35.
133. 1982 ANN. REP., supra note 1, at 5. After the application form is received, information is requested from the state attorney, law enforcement officials, and medical providers. Id.
that any savings coming from the financial hardship requirement are vastly overrated because the costs of administering the requirement are among the highest of the entire investigation.\textsuperscript{135}

There is a second factor that must be considered in evaluating any cost saving effect of the financial hardship test: abandonment of the collateral source rule.\textsuperscript{136} The Act operates so that actual need is determined after benefits provided by workers' compensation, health, accident, automobile, and life insurance have been awarded, thus preventing a "double recovery."\textsuperscript{137} People with insurance benefits are often the same persons who are excluded by the financial hardship test.\textsuperscript{138} Thus, elimination of this requirement would not add this group of claimants to the eligibility roster because the Act eliminates them on these other grounds.\textsuperscript{139} Also, wealthier claimants might be less likely to go through the intrusive compensation process to recover relatively small losses.\textsuperscript{140} Arguably, the savings to be achieved through the financial hardship test, therefore, have been greatly overestimated.\textsuperscript{141} Due to increased administrative costs and the fact that large numbers of those now excluded by the financial hardship test would not be added to the list of claimants because their insurance coverage would exclude them, fiscal benefits of the financial hardship test are small.\textsuperscript{142} On the basis of these considerations, the New York program's chief investigator estimated that eliminating the financial hardship requirement would add only ten percent to the cost of the program.\textsuperscript{143} Assuming, however, that this ten percent or a higher amount of money can be saved by keeping this restriction, does the savings equal or exceed the human costs?

There is a serious problem in requiring claimants, having already been victimized, to bare their financial souls by submitting private financial data to administrators. The financial examination is demeaning\textsuperscript{144} and makes the victim feel that he or she is on trial

\begin{itemize}
\item \textsuperscript{135} H. Edelhertz & G. Geis, \textit{supra} note 7, at 271-72.
\item \textsuperscript{136} The collateral source rule allows claimants to recover from both private insurance and those responsible for their injury. W. Prosser, \textit{The Law of Torts} 547-53 (4th ed. 1971).
\item \textsuperscript{137} \textit{Fla. Stat.} § 960.13(2) (1981).
\item \textsuperscript{139} \textit{Fla. Stat.} § 960.13(2) (1981).
\item \textsuperscript{140} Geis & Edelhertz, \textit{supra} note 138, at 904.
\item \textsuperscript{141} Koning, \textit{supra} note 22, at 703.
\item \textsuperscript{142} \textit{Id.}
\item \textsuperscript{143} H. Edelhertz & G. Geis, \textit{supra} note 7, at 59.
\item \textsuperscript{144} \textit{Id.} at 272.
\end{itemize}
and in the uncomfortable position of proving that he or she is poor enough to qualify for recovery. A California official who determined the need status of claimants stated:

[P]eople come in again and again and say because I was frugal, because I saved a dollar, I'm being deprived of my compensation, whereas the man who threw the money away, or the woman who threw it away, is going to get money from you. This story you hear over and over again. . . .

Thus the financial hardship test leads to alienation, which state-funded programs are intended to eliminate.

A more substantial problem with the financial needs test is that it changes the focus of the program from one of crime compensation to that of welfare handout. The California experience is especially instructive. When that state's compensation plan was enacted, the program was placed under the auspices of the then-existing welfare department. That department simply used its guidelines for determining aid to families with dependent children as the standard for determining victim compensation awards. The result was that attitudes formed by years of dealing with welfare recipients were carried over to crime victims. Commentators condemned the placement of the California program in the welfare department. Accordingly, the program was later moved to an in-

145. Id. at 62-63 (applicant stated upon leaving the hearing: “I feel like a criminal”).
146. Id. at 92.
147. Theoretically, state compensation awards should help dissipate the disillusionment of victims who suffer, in addition to their victimization, losses of time and income incurred as a result of their attempts to cooperate with law enforcement officials. Since some innocent victims are denied compensation because their income is not low enough, this achievement goes unrecognized. The experience of some states suggests that programs which use financial stress tests increase victim alienation. Id. at 59.

In addition, the indignity of the financial hardship test could lead to greater hesitancy on the part of those victimized to apply for compensation, and a corresponding decrease in crime reporting. McAdam, supra note 19, at 356.
148. H. Edelhertz & G. Geis, supra note 7, at 91-92. The needs requirement causes the public to confuse compensation programs with charity, which also results in a hesitancy of victims to apply for compensation. McAdam, supra note 19, at 355-56.
149. Lamborn, supra note 10, at 676. The experience of the first recipient of California’s program was hardly pleasant. She was required to reveal that she had only a seventh grade education and was pregnant at the time of her marriage. As an additional indignity she was told by welfare workers to get a job so as not to be a burden upon the taxpayers. Id. at 676-77.
150. Id. at 676. See Shank, Aid to Victims of Violent Crimes in California, 43 S. Cal. L. Rev. 85, 87 (1970).
dependent agency.\textsuperscript{151}

Although the Florida Legislature first put the compensation program in the Department of Health and Rehabilitative Services, the lawmakers later moved the program to a neutral agency.\textsuperscript{152} Thus, at least structurally, the Florida program seems far removed from the welfare stigma of free handouts. However, because of confusion in the public’s mind,\textsuperscript{153} the welfare spectre remains when, as in Florida, financial hardship is a requirement for compensation. The Act notes this overlap when it states that one policy rationale for compensating victims is to keep them from becoming dependent on public support.\textsuperscript{154} But one commentator noted that “welfare programs are analogous [to compensation programs] only in that they deal with destitution, which compensation is intended to prevent.”\textsuperscript{155}

The difference between the two programs is of critical importance. Welfare and victim compensation have different rationales, different victims, and different social problems which they seek to alleviate.\textsuperscript{156} Additionally, there is no admitted causal relationship between poverty and governmental activity.\textsuperscript{157} Arguably, however, such a relationship exists between governmental activity and criminal injury, as commentators have noted when justifying crimes compensation programs on the social contract/failure to protect theory.\textsuperscript{158}

The drafters of the UCVRA noted the danger of transforming victim compensation into a welfare-recipients-only program: “If the [needs] test is included, however, a real threat to the integrity of the program is posed because a strict ‘needs’ requirement will limit benefits of the program to persons already on welfare and thus be merely an exercise in bookkeeping.”\textsuperscript{159}

In addition to the welfare-related problems, there is an additional reason why the compensation program should not include a needs test: the problem of equitable decisionmaking by administrators. Two New York cases highlight this problem. In one case, a woman in her late twenties with a good job and no dependents was

\begin{itemize}
\item 151. 1982 ANN. REP., \textit{supra} note 1, at 10.
\item 152. \textit{See supra} note 79; 1982 ANN. REP., \textit{supra} note 1, at 3.
\item 153. McAdam, \textit{supra} note 19, at 355-56.
\item 154. FLA. STAT. § 960.02 (1981).
\item 155. Childres, \textit{supra} note 29, at 462 (emphasis added).
\item 156. \textit{Id}.
\item 157. \textit{Id}.
\item 158. \textit{See supra} notes 24-32 and accompanying text.
\item 159. UNIF. CRIME VICTIMS REPARATIONS ACT § 5(g) comment, 11 U.L.A. 42, 43 (1973).
\end{itemize}
not compensated because she had $8000 in savings. But in another case two elderly women received awards despite their having more than $18,000 in the bank.\textsuperscript{160} Additionally, innocent crime victims are not limited to one income group, and certainly "the loss sustained by the rich or middle-class victim is as real as that sustained by the impoverished victim."\textsuperscript{161} Medical expenses, employment disruption, and interference with normal life are universal to all victims.\textsuperscript{162}

The needs test has other problems. From a policy perspective,\textsuperscript{163} it is inconsistent with the theories justifying compensation. If the applicable justification is the shared risk/insurance rationale, an act including a financial needs test fails to spread losses but simply reallocates wealth by limiting eligibility.\textsuperscript{164} If a state, like Florida, uses the moral responsibility theory, why should that responsibility stop at the poverty line?

Thus, the needs test does nothing to help innocent victims; instead it denies just claims.\textsuperscript{165} As one commentator points out: "Such tests of financial need cannot be justified on either philosophical or practical grounds. There is no denying, however, that they are politically attractive and in some instances are considered a concession that must be made to secure passage of victim compensation legislation."\textsuperscript{166}

The political realities of the needs test are well demonstrated by comments such as those from Florida legislator Eric Smith, who wrote that the Act was "not a giveaway program."\textsuperscript{167} In New York the needs test was rationalized as a reaction by legislators to costs associated with Medicaid: "[O]ur legislature had already been

\textsuperscript{160} H. Edelhertz & G. Geis, supra note 7, at 60.
\textsuperscript{161} Cosway, Crime Compensation, 49 Wash. L. Rev. 551, 554 (1974).
\textsuperscript{162} Id.
\textsuperscript{163} From a principled perspective, the distinction between those who have financial need and thus are entitled to compensation and those who are excluded meets constitutional guarantees under the fourteenth amendment. In State v. Champe, 373 So. 2d 874, 879 (Fla. 1978), the Florida Supreme Court held that "the need limitation is clearly consistent with standards embodied in a host of... public benefit laws, and it is manifestly rational in relation to the objective of relieving demands on taxpayer-funded assistance programs." Id.

From a policy perspective, if victim compensation is simply another form of welfare as it well may be due the financial hardship test, it is especially difficult to understand why crime victims should be favored over others also in need. H. Edelhertz & G. Geis, supra note 7, at 271. See supra notes 39-40 and accompanying text.
\textsuperscript{164} Koning, supra note 22, at 701.
\textsuperscript{165} H. Edelhertz & G. Geis, supra note 7, at 271-72.
\textsuperscript{166} Id. at 271.
badly bitten by Medicaid. They were told one thing and when it got into existence, it blossomed. They treated this [victim compensation] program as another one of those runaways, and that's why they actually put the serious financial hardship in it.”

These political pressures should be overcome. Whatever the savings realized by the financial hardship requirement, they are far outweighed by the human costs and policy problems associated with it. Using a means test to eliminate the middle and upper-class victims exacerbates the victim's plight, adding distrust and alienation, while increasing public confusion by suggesting that awards are welfare handouts.

There are several potential solutions to this problem. First, Florida could make financial need one factor among many to determine eligibility. But this compromise would do nothing to eliminate administrative costs or arbitrary decisionmaking by administrators.

Second, lawmakers could fix a percentage or dollar amount of loss required for those who would not meet the financial hardship test. Thus, the compensation program would give awards at a certain point so that middle-class claimants would not have to deplete their savings. This proposal would eliminate the welfare stigma and meet the policy rationales for compensating victims. But serious problems remain because this proposal would, in effect, bring in a minimum loss requirement for certain financially situated claimants while doing nothing to alleviate the administrative costs.

Accordingly, the Florida Legislature should follow the continuing recommendation of the BCC and eliminate the financial needs


169. The justification advanced for minimum loss thresholds is that such a requirement might prevent small claims from being filed which cost more to process than the claim itself. This argument is weakened by common sense. Since victims are unlikely to understand the complexities of lost-earnings schedules, it is doubtful that they will know when their loss would fall below the minimum. Because an initial investigation of all claims must take place, it is arguable that the claim might as well be approved as denied. More importantly, since great numbers of claimants suffer small losses, such a threshold would deny these large number of otherwise eligible victims. Thus, one argument that makes sense for the minimum loss requirement is that it saves pay-out costs. Additionally, such a requirement appears unfair to those who are living at a subsistence level, for whom the small amount may be substantial. Accordingly, Florida wisely avoided the minimum loss requirement for all claimants. The proposal suggested in the text would not only undo this good result, but would add problems because it would only apply the minimum loss to those with financial means, thus again adding to the alienation of the middle-class victim. For further discussion of minimum loss requirements, see H. Edelhertz & G. Geis, supra note 7, at 283-84; Harland, supra note 46, at 212-14; Comment, supra note 1, at 281-82.
Another problematic provision of the Act is its exclusion of several classes of claimants because they are impermissibly related to the offender. These restrictions are not unique; the majority of compensation programs in existence currently limit awards in this way. The Florida Act denies awards when the claimant "[i]s related within the third degree of consanguinity or affinity to the person who committed the crime; . . . is maintaining a sexual relationship with the person who committed the crime; or . . . resides in the same household as the person who committed the crime."

Before examining the rationales advanced for excluding these claimants, it is important to note some troublesome statutory ambiguities. Neither the Act nor its implementing rules defines "household," "maintaining a sexual relationship" or "affinity." Consequently, does the "household" exclusion apply only to those living together when the crime occurred or also to those who lived together sometime in the past? The same argument can be made for the "maintaining a sexual relationship" exclusion. It is unclear, for example, whether a woman who was assaulted by a former boyfriend would be excluded if their sexual relationship ended the

170. 1982 ANN. REP., supra note 1, at 4.
171. Hoelzel, supra note 2, at 489-90. A few states, such as California and Delaware, have no ban at all on compensating persons related to the offender. Some states allow compensation "where the interests of justice require." Other states make the victim ineligible if he or she lives in the same household as the offender and aided or abetted the offender in the commission of the unlawful act. Id.
172. FLA. STAT. § 960.04(2)(c)-(e) (1981). Prior to 1980 even dependent children of a deceased victim who were related to the offender were excluded. The legislature amended the Act so that these victims would no longer be eliminated, but erred in not extending the amendment to include child abuse victims. Thus, when a father beats his child, but leaves the mother unharmed, the child is ineligible as a claimant because of the consanguinity and household exclusions. Needless to say, if the mother is also a victim of abuse, she is excluded from an award for the same reasons.
173. The "affinity" ambiguity has already resulted in litigation. In Ocasio v. Bureau of Crimes Compensation, 408 So. 2d 751 (Fla. 3d DCA 1982), the BCC denied a claim by the victim because she was still married to her estranged husband at the time he slashed her face with a razor. The court reversed the BCC's decision, noting, however, that the claimant had already filed for divorce and was neither living with the offender nor maintaining a sexual relationship with him. Id. at 752. The court dismissed the BCC's argument that the legislative intent was to render the Act unavailable to victims who have a personal relationship with their attackers. Instead, the court said such a broad general policy would extend to ex-spousal relationships, and thus held that the implementation of the exclusions should be limited to the precise restrictions stated within the Act. Id. at 753.
previous day.\textsuperscript{174}

These ambiguities are troublesome for reasons other than normal statutory construction issues. Rather, these vague descriptions are symptomatic of the questionable justifications for requiring such exclusions. As will be shown in the upcoming analysis of these justifications, more is at play here than the often-cited desire to eliminate fraud.

Four rationales are advanced to justify the relational exclusion: (1) the policy prevents fraud and collusion; (2) the policy prevents the criminal offender from benefiting from his crime; (3) the policy saves money; and (4) the policy prevents awards to less deserving victims who contributed to their victimization.\textsuperscript{175}

The argument that dropping the relational exclusion will result in fraud due to collusion between the victim and his or her known offender has little merit.\textsuperscript{176} Despite the analogy that cynics make to the incidents of fraudulent automobile and property insurance claims, compensation programs in general have been largely free of fraud.\textsuperscript{177} In those states that do not strictly prohibit awards to victims who are within the relational boundaries, the result is the same. The administrator of Ohio's compensation program noted that "[t]he awards rendered in cases where the relational exclusion is involved are usually too small to provide incentive for fraud."\textsuperscript{178}

Another example comes from the Delaware program's Executive Secretary: "This agency is well into its ninth year of operation and, to date, have [sic] not experienced any fraudulent relational type claims."\textsuperscript{179} The Minnesota program director had a similar response: "Familial or residential relationship does not seem to foster fraudulent claims at any greater rate than other claims. We find very few cases where we suspect fraud."\textsuperscript{180} A claims adjudicator from the Washington program noted:

\begin{itemize}
    \item \textsuperscript{174} Suppose the relationship had ended that day? Or a week before? Or a month before? Should there be a requirement that the person who moved out be gone for a certain length of time before the victim and the offender are no longer residing in the same household?
    \item \textsuperscript{175} Koning, \textit{supra} note 22, at 705.
    \item \textsuperscript{176} \textit{Id}.
    \item \textsuperscript{177} H. Edelhertz & G. Geis, \textit{supra} note 7, at 279-81.
    \item \textsuperscript{178} Letter from David Zwyer, Administrative Assistant, Victim Compensation Program, Ohio (Jan. 18, 1983).
    \item \textsuperscript{179} Letter from Oakley Banning, Jr., Executive Secretary, Delaware Violent Crimes Compensation Board (Jan. 13, 1983).
    \item \textsuperscript{180} Letter from David Woodworth, Executive Director, Minnesota Crime Victims Reparations Board (Jan. 21, 1983).
\end{itemize}
Out of the approximate 8,000 application[s] we have received during the life of the crime victim program, we have only been able to detect that approximately 4 or 5 were fraudulent. . . . [C]laim[s] that have fallen within the domestic violence exception . . . have not included any of the 4 or 5 fraudulent claims.181

Second, the Act itself works to check fraud. The legislation contains stringent provisions against fraudulent compensation awards.182 More importantly, the Act requires that the crime be properly reported within seventy-two hours after its occurrence.183 The BCC may reduce, deny, or withdraw any award if the claimant has not “duly cooperated” with all law enforcement officials.184

A problem exists here because, although a high percentage of claimants are denied awards because of noncooperation with law enforcement agencies,185 the required “cooperation” is not defined in the Act or its implementing rules.186 This ambiguity should be resolved so that cooperation requirements are made known to claimants upon application for awards.187 Legislators would thus be reassured that even relational claims would be free from fraud because offenders would know that the price of collecting an award would be high: reporting and subsequent cooperation that could lead to a relative's incarceration.

181. Letter from Brian Huseby, Claims Adjudicator, Washington Crime Victim Compensation Section, Department of Labor and Industries (Jan. 17, 1983). Huseby defined fraudulent claims as those which involve “knowing lies as opposed to embellishing one’s innocence during the activities leading to an assault.” Id.

182. Fla. Stat. § 960.18 (1981). The Act states that any person who procures compensation by fraud or helps or counsels another person to get compensation by fraud will be guilty of a felony of the third degree. Id.


184. Id.

185. The 1978 Annual Report shows that 32 out of 265 claimants were denied compensation because they didn't cooperate with law enforcement officials. 1978 Fla. Bureau of Crimes Compensation Ann. Rep. 12. In 1979, the figure was 97 out of 1143. 1979 Fla. Bureau of Crimes Compensation Ann. Rep. 17. In 1980, 205 out of 1252 were denied awards for noncooperation. 1980 Fla. Bureau of Crimes Compensation Ann. Rep. 24. In 1981, 131 out of 1159 claimants were denied for that reason. 1981 Fla. Bureau of Crimes Compensation Ann. Rep. 24. Although claims are frequently denied for more than one reason and thus these figures are not dispositive, the fact remains that noncooperation with law enforcement is one of the most often-cited reasons for claim denial. It should be noted that a lack of serious financial hardship is often the most cited reason for the denial of compensation.

186. For example, if a claimant misses one or two appointments with police after months of cooperation, has the claimant lost the right to receive compensation?

187. The BCC has interpreted the “cooperation” language of the statute to include pressing charges, giving depositions, appearing at lineups, and testifying at trial if need be. Telephone interview with Herb Parker, Executive Director, BCC (January 30, 1983).
There are additional provisions within the Act that protect against fraud. Like the majority of other states, Florida limits awards to reimbursement for actual losses sustained by physical injury or death. The unreimbursed losses must come from medical treatment and be documented. The possibilities for fraud are limited to the few people who have no medical insurance, could beat a financial hardship test, would risk the statutory penalties for fraud and, finally, would be willing to sustain injuries serious enough to require medical attention. There must be easier ways to make money.

Another rationale justifying relational exclusions is a desire to prevent “unjust enrichment” by an offender who, for example, beats his wife and then tries to collect for her injuries. This argument fails, however, because an offender does not profit when the cost of an award includes the claimant’s reporting the crime, subsequent prosecution, cooperation, and the offender’s potential conviction.

Additionally, the focus on the criminal offender is misplaced; the purpose of the Act is to aid victims. Even if the offender receives some benefit, such as being relieved from the responsibility of paying a battered spouse’s medical bills, it is arguable that as long as some of the award aids the victim, then the legislative policy is well-served.

Those uncomfortable with compensation being denied to some victims because an offender might also receive some benefit, but who are unwilling to eliminate the relational exclusion, should be satisfied by the UCVRA’s solution. The drafters of the UCVRA abandoned the strict relational exclusion in favor of more flexibility. Instead of totally banning compensation to victims who are related to criminal offenders, the UCVRA denies awards only if the

188. Hoelzel, supra note 2, at 491. Only a few states compensate for pain and suffering or mental and nervous shock. Id. at 492.

189. Fla. Stat. § 960.03(8) (1981). The Act compensates for out-of-pocket losses which “means unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care, or other treatment rendered in accordance with a religious method of healing or for other services necessary as a result of the injury or death upon which such claim is based.” Id.


191. Koning, supra note 22, at 706. For example, an individual who sought to defraud the program because he was within a relational exclusion could always blame an imaginary stranger for his injuries. Id.


193. Letter, supra note 180.
payment would unjustly benefit the offender.\textsuperscript{194} Although the UC-VRA's addendum creates a presumption of unjust benefits in certain situations, the compensation board still has the option of awarding benefits when "the interests of justice otherwise require."\textsuperscript{195} This flexible approach eliminates Florida's current inequity which allows victims of strangers to receive compensation while victims impermissibly related to their attacker are denied recovery, even though injury and loss occurred in both cases. Not only does this flexible approach make sense theoretically, but it works in practice as well.

For example, in Minnesota\textsuperscript{196} the "interest of justice clause" operates so that incest cases are "almost always paid mainly because there is almost always a prosecution, and the home situation is changed to avoid future incidents."\textsuperscript{197} Additionally, [h]usband-wife cases are paid where steps are taken to alleviate the situation, i.e., prosecution, divorce, restraining orders, etc. The ultimate question is not one of avoiding fraud, but of avoiding financial benefits to the assailant, e.g. [h]e battering husband is responsible for the battered wife's medical bills. The Board will not help both of them if they stay together and there is no prosecution. However, if she prosecutes, and attempts to remove herself from the bad situation, the Board will help her financially.\textsuperscript{198}

Washington uses a more restrictive approach; the statute absolutely bans compensating victims who are married or related by blood to the offender and living in the same household.\textsuperscript{199} Thus, the Washington act's "interest of justice" clause looks at whether provocation occurred where an estranged spouse is injured by the other.\textsuperscript{200} Additionally, the Washington use of the "interest of jus-

\begin{itemize}
  \item \textsuperscript{194} Unif. Crime Reparations Act § 5(c), 11 U.L.A. 42 (1973); Koning, supra note 22, at 706.
  \item \textsuperscript{195} Unif. Crime Reparations Act § 5(c) comment, 11 U.L.A. 43 (1973).
  \item \textsuperscript{196} The Minnesota statute states that no awards will be given if "the victim is the spouse of 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." Minn. Stat. Ann. § 299B.03(2)(c) (West Supp. 1983).
  \item \textsuperscript{197} Letter, supra note 180.
  \item \textsuperscript{198} Id.
  \item \textsuperscript{200} Letter, supra note 181. The result would be the same in Florida. See Ocasio v. Bureau of Crimes Compensation, 408 So. 2d 751 (Fla. 3d DCA 1982) (estranged wife of assailant compensated because she was neither living with nor maintaining a sexual relationship with the offender).
\end{itemize}
tice” clause also allows compensation for unmarried persons not cohabitating who are maintaining a sexual relationship and for those with a blood-relationship not living in the same household.

Ohio has the most expansive “interest of justice” clause, employing detailed criteria to determine when relational claimants should receive compensation. A few case examples illustrate the use of these criteria. Compensation was allowed for an offender's brother living with the offender by reason of a court order when the assault occurred. Yet a victim shot by her husband after being caught committing adultery was not compensated, the commissioner reasoning that the victim had violated her marital contract.

Especially striking, however, is the criteria's application when there has been a history of domestic violence. In *In Re Taylor*, a claims commissioner initially denied compensation for a victim assaulted by her husband because the record showed a pattern of domestic violence. The husband committed suicide after his assault. This decision was reversed by a three-commissioner panel.

---


1) Is there possibility of fraud and collusion between offender and the Applicant or the victim?
   a) Was there an injury?
   b) Did the Applicant cooperate with the police?
   c) Was the crime reported within seventy-two (72) hours?

2) Will there be a direct or indirect benefit to the offender that would encourage offenders to engage in criminally injurious conduct?
   a) Will the offender personally profit from an award?
   b) Will the offender be relieved of an obligation of support if an award is made?

3) Are there present any of the elements of domestic violence that would make it difficult to allocate ultimate fault to the victim or the offender?
   a) How closely are victim and the offender related?
   b) Was the victim guilty of contributory misconduct?
   c) If not guilty of contributory misconduct, did the victim or Applicant still share in the ultimate blame for causing injuries?
   d) Is there a history of conflict between the offender or the victim and a family member?

4) Is the Applicant in that class of wholly innocent persons who should not be excluded from a reparations award?
   a) Is the Applicant a minor dependent child?
   b) Is the Applicant capable of self-support?

Id.

205. See supra note 202.
206. The commissioner noted that the applicant had been threatened with bodily harm
which stated:

[T]he single commissioner has focused upon the Applicant's toleration of the assailant's abusive behavior and that he considered this toleration to constitute fault on the part of the Applicant. The single commissioner would thus require victims in every such situation to take affirmative steps to protect themselves from a relative or fellow household resident who has shown that he is ready, willing, and able to inflict harm upon them. . . .

Toleration of abuse falls within the realm of social judgments, but, . . . we do not consider it an appropriate standard of denial. It would be misguided to penalize the Applicant for tolerating physical or verbal abuse in a marital situation where she did not provoke or incite it. Many individuals, especially women, must tolerate abuse because of life-long economic dependency, love of children, love of spouse despite his misbehavior, and fear of retribution if the victim were to take protective action.207

The Ohio commissioners concluded that the Taylor victim should receive an award because there was no evidence showing she instigated the argument that led to her injuries.

The detailed investigation involved and the resulting expense is another rationale advanced for denying relational victims compensation.208 This argument has merit, but it is insufficient alone to justify barring these victims from compensation because it fails to recognize that the same costly examination of victim provocation is also made in other situations. For example, in a bar fight among friends, acquaintances, or even strangers, the investigator must still determine whether the victim contributed to his injuries.209

Thus, excluding relational claims comes from a belief that these victims are not truly innocent and that therefore the state has no moral responsibility to help them. But while public awareness of rape has diminished the idea that rape victims "ask for it," there persists a belief that women beaten by their husbands "must have numerous times and had also previously been beaten. The commissioner thus concluded that the applicant's conduct in remaining with the offender, while not contributory misconduct, still was a major factor resulting in her injuries. Id.


208. H. Edelhertz & G. Geis, supra note 7, at 269.

209. The Ohio administrator estimates that "[t]here are no additional burdens or cost from our perspective in these [relational] cases because the only real in-depth investigations are done by the local police departments." Letter, supra note 178.
done something terrible” to provoke the attack. Thus, relational exclusions cut costs by denying what some perceive to be as less deserving victims. This moralistic judgment has no place in a program whose purpose is to help victims recover from their injuries. Indeed the relational exclusion is like the financial needs requirement in that it leads to a double-victimization.

Another monetary argument used to deny relational claims comes from the public’s and legislatures’ perceptions that a high proportion of violent crimes occurs in domestic settings. Even assuming this perception is accurate, undoubtedly vast numbers of these crimes go unreported and unprosecuted. Therefore, these victims would be excluded from awards even if the restriction was eliminated.

But another factor may figure into the decision by legislators to exclude relational claims. Allowance of such claims would force administrators to deal with repetitive and complex situations which are highly intrusive into family life. Although studies show that family violence is often repetitive, states allowing compensation for relational victims “where the interest of justice allows” report no such problems. One administrator noted:

1984 CRIMES COMPENSATION ACT 889

211. H. EDELHERTZ & G. GEIS, supra note 7, at 269.
212. This perception is somewhat distorted because the Department of Justice estimates that less than 10% of all aggravated assaults are inflicted upon relatives. 1977 U.S. DEP’T OF JUSTICE SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 334-35.
213. M. Roy, BATTERED WOMEN: A PSYCHOSOCIOLOGICAL STUDY OF DOMESTIC VIOLENCE 65 (1977) (only one out of 270 incidents of spouse abuse are ever reported).
214. As the Executive Secretary of the Delaware program noted: “In most of the cases we receive involving adult relational type crimes, we find that the victim does not desire to prosecute the defendant and, therefore, the Board has no choice but to deny the application due to lack of cooperation with the law enforcement authorities.” Letter, supra note 179. It is arguable that should the relational exclusion be eliminated more victims of domestic violence would report and prosecute, thus adding greatly to the numbers of eligible claimants. But this has not been the case in states which allow compensation for such relational victims under “interest of justice” clauses. In Delaware, the Executive Secretary estimates that approximately 5% to 8% of all claims received resulted from relational crimes, a figure which includes unmarried couples living together. Id. In Washington, out of 8,000 applications, only 10 or 12 have been compensated as falling within the exceptions allowed for relational claimants. See Letter, supra note 181.
215. In general, once a wife has been hit, it is likely to recur. M. Roy, supra note 213, at 59.
216. The claims adjudicator from Washington states that “[i]f we were to receive a second application from a victim whose injury occurred under the same circumstances as the first injury, we would be unlikely to deny the second application.” Letter, supra note 181. Additionally, the Delaware administrator wrote: “With repeat claims, especially relational cases, the Board must take a hard look upon [sic] this situation. I might add that the majority would be denied or diminished.” Letter, supra note 179.
Repeat claimants are rare, whether involving the relational exclusion or not. A claim which is filed where there has been a pattern of domestic violence will probably be denied because the claimant did not remove themselves (or at least make an attempt to remove themselves) from a situation where personal injury was likely. Because repeat situations look suspicious, they will be scrutinized more closely both during the investigation and in weighing the evidence.\textsuperscript{217}

The examples from states allowing compensation for relational claimants “in the interest of justice” show that compensation is made to innocent claimants willing to act to prevent future victimization.\textsuperscript{218} This is basically the same standard used in non-relational cases where Florida denies compensation if the claimant “contributed to the infliction of his injury or death.”\textsuperscript{219}

No valid reason exists to exclude these claimants. The fear of fraud, collusion, or indirect benefit is mooted by the Act’s requirement of reporting and cooperation. Additionally, administrative or payment costs saved by the exclusion are outweighed by benefiting a broader class of innocent victims. Information from other states also demonstrates that relational claims can be handled administratively. Thus, the legislature should eliminate the relational exclusion and replace it with the “interest of justice” clause, supplemented by guidelines similar to those operating in Ohio.\textsuperscript{220}

The question remains of where additional revenue, if needed, will come from should the legislature scrap the financial hardship test and the strict relational exclusion.

VI. Conclusion

Several possibilities exist for funding should additional claimants become eligible. The least attractive choice involves raising no more money, but rather reducing the award to a fixed percentage. For example, claims might be funded at 80\% of what is needed to compensate for out-of-pocket expenses. This proposal’s advantage is compensation for more innocent victims without necessitating funding increases. The percentage of need funded could be adjusted upwards should other money such as federal funds become available. Arguably, this arrangement is consistent with the Act;

\textsuperscript{217} Letter, supra note 178.
\textsuperscript{218} See supra notes 194-207 and accompanying text.
\textsuperscript{219} FLA. STAT. § 960.13(6) (1981).
\textsuperscript{220} See supra notes 201-207 and accompanying text.
since some types of losses are not currently compensable, lawmakers never intended to restore the claimant financially to pre-victim status. The disadvantage to this proposal is that the victim needs all the compensation possible to help restore normalcy.

The best solution to the funding problem involves a combination of proposals. First, the legislature should increase the amount of money that offenders pay in court costs and fine surcharges. While lawmakers are to be commended for raising the court costs from ten to fifteen dollars, raising bailbonds from 5% to 10% is well within the requirements imposed by other states. This additional increase should withstand constitutional attack. In upholding the Act, the Florida Supreme Court stated that the current costs and surcharges were valid because they were neither excessive nor harsh, nor were they "plainly and undoubtedly in excess of any reasonable requirements for redressing the wrong."221 The proposed increases should easily fall within this standard and pass constitutional muster. This proposal's advantage is that revenues should increase greatly. As the assistant attorney general who works with the Tennessee program stated, "[t]axing every criminal offender would be the best answer. We would be awash in money if we could tax them all."222

The legislature should also enact a law structuring cooperation between the BCC, the Parole and Probation Commission, and the Office of the State Attorney to insure that more money comes into the fund from the debt payback of the criminal offender.

At present, there is no such coordination. It is therefore possible or probable that the sentencing judge is unaware that an award has been made by the Bureau and thus does not consider requiring the debt payback as a condition of probation. Requiring the BCC to notify the state attorney who would then notify the court of such an award could increase the amount of money paid into the fund. This is not always possible though. Because victims have up to a year in which to file a claim, the offender might have already appeared before the court prior to an award being made. Requiring the BCC to notify the Parole and Probation Commission of an award could also increase the fund's revenues because then the offender's repayment of the debt might be more seriously considered

221. State v. Champe, 373 So. 2d 874, 880 (Fla. 1978) (quoting Amos v. Gunn, 94 So. 615, 641 (Fla. 1922)).

222. Hoelzel, supra note 2, at 493.
by the Parole Commission at parole time. While offender debt pay-
ment will never account for a majority of the money going into the
trust fund for the same reason that restitution is an inadequate
substitution for compensation plans, the current situation, in
which offender repayment accounted for only $50,000 out of the $6
million collected in the last four years,\textsuperscript{223} can stand improvement.

In conclusion, the Florida Act is a significant first step in giving
recovery for innocent victims of violent crimes. It is now time for
the legislature to take the next step by eliminating the financial
hardship requirement and replacing the relational exclusion with
the flexible standard previously mentioned. With the history of
other compensation programs before them, the Florida Legislature
should be satisfied that the above-mentioned changes are not only
workable but required if the Act is to meet its promise to help
innocent victims of violent crime.

\textsuperscript{223} 1981 \textsc{Fla. Bureau of Crimes Compensation} \textsc{Ann. Rep.} 20-21.