



DECEMBER 2003

STATE LEGISLATIVE APPROACHES TO FUNDING FOR VICTIMS' SERVICES

LEGAL SERIES



Message From THE DIRECTOR

Over the past three decades, the criminal justice field has witnessed an astounding increase in statutory enhancements benefiting people who are most directly and intimately affected by crime. As of 2000, all states had passed some form of legislation to benefit victims. In addition, 33 states have recognized the supreme importance of fundamental and express rights for crime victims by raising these protections to the state constitutional level.

Of course, the nature, scope, and enforcement of victims' rights vary from state to state, and it is a complex and often frustrating matter for victims to determine what those rights mean for them. To help victims, victim advocates, and victim service providers understand the relevance of the myriad laws and constitutional guarantees, the Office for Victims of Crime awarded funding to the National Center for Victims of Crime to produce a series of bulletins addressing salient legal issues affecting crime victims.

Although federal grant programs are key in the funding for crime victim assistance, state-level support can play an equal role. *State Legislative Approaches to Funding for Victims' Services*, the ninth in the OVC series, gives an overview and describes the major state legislative approaches used in recent years to create sources of funding for crime victim

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Introduction

Crime victim assistance programs often rely on public funding, either as their principal source of financial support or to fund significant projects. Although federal grant programs are key funding components for crime victim assistance, state-level support can play an equal role. This overview describes the major state legislative approaches to creating sources of funding for crime victim assistance.

Offender-Based Funding

History

The notion that offenders should pay for the repercussions of their crime is very old. In the 1800s, many states adopted laws that required offenders to pay the Society for the Prevention of Cruelty to Children the costs of investigating and prosecuting child abuse cases when the society brought the action. Some of these laws are still on the books.¹

Today

In 1984, the Federal Government endorsed the concept that convicted offenders should pay for the consequences of their crimes by passing the Victims of Crime Act (VOCA) and establishing the Crime Victims Fund (the Fund). This legislation provides that all fines, penalties, forfeited bail bonds, and special assessments imposed on convicted federal offenders shall be deposited into the Fund and used principally to provide the states with funding for crime victim compensation and assistance programs.²

Today, nearly every state has some form of general offender assessment, penalty, or surcharge that all convicted offenders must pay. This money may go to the state's victim services, victim compensation, or be divided between the two.

Amount of Surcharges

The amount of offender surcharges varies. Some states impose a low fee on all offenders, including most traffic offenders. Virginia imposes a \$3 fee on all traffic and misdemeanor offenders and certain felony drug offenders. These fees are deposited into Virginia's victim-witness fund and used to implement victims' rights.³ Other states impose a higher fee but limit its application to convicted felons and misdemeanants. Massachusetts is

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assistance. This bulletin and the others in the Legal Series highlight various circumstances in which relevant laws are applied, emphasizing their successful implementation.

We hope that victims, victim advocates, victim service providers, criminal justice professionals, and policymakers in states across the Nation will find the bulletins in this series helpful in making sense of the criminal justice process and in identifying areas in which rights could be strengthened or more clearly defined. We encourage you to use these bulletins not simply as informational resources but as tools to support victims in their involvement with the criminal justice system.

John W. Gillis
Director

typical of this approach, imposing a \$60 penalty for a felony and a \$35 penalty for certain misdemeanors.⁴ Texas imposes a \$45 fee for felony convictions, a \$35 fee for class A and class B misdemeanors and more serious municipal ordinance convictions, and a \$15 fee for class C misdemeanors and less serious municipal ordinance convictions, excluding parking and pedestrian violations. The Texas fees are deposited into the Texas Crime Victims' Compensation Fund and other funds that may be appropriated by the Texas legislature for crime victim assistance programs.⁵

Some states impose far higher penalties. Washington applies a surcharge of \$500 for felonies and \$250 for misdemeanors.⁶ Alabama leaves the exact penalty amount to the discretion of the court, limited by Alabama statute to a range of \$50 to \$10,000 for felonies and \$25 to \$1,000 for misdemeanors.⁷

Washington State estimates that its surcharge brings in approximately \$3 million a year.⁸ Virginia's \$3 fee brings in a comparable \$3.8 million annually.⁹ In 1999, Texas court costs raised nearly \$69 million for the Texas Crime Victims' Compensation Fund, and more than \$16 million was appropriated for crime victim services.¹⁰

Surcharges for Specific Crimes

In addition to the general assessments and surcharges applied to offenders, several states raise money for particular crime victim programs by applying specific assessments to offenders of particular types of crime:

- **Child pornography.** Illinois imposes a fine on offenders convicted of child pornography charges. When child pornography fines are greater than \$10,000, 100 percent of the amount above \$10,000 goes to the Child Sexual Abuse Fund, which is used for grants to private entities treating and counseling victims of child sexual abuse.¹¹ With the explosion of child pornography on the Internet and the renewed determination of the criminal justice system to pursue these offenders, fining perpetrators may be a potential source of funding for many programs to help victims.
- **Other offenses against children.** Indiana imposes a \$100 fine on convicted offenders of various violent and sexual offenses against children. Funds raised from these fines are used for child abuse prevention programs.¹² California also imposes several specific fines, up to \$10,000, for such offenses.¹³
- **Domestic violence.** Many states impose special fees on convicted batterers that are used to support battered women's shelters.¹⁴ California gives courts the option of ordering the defendant to pay up to \$5,000 to a battered women's shelter in lieu of ordering a fine.¹⁵ Florida and Idaho impose fines on those who violate protective orders. A part of these fines is used to fund domestic violence programs.¹⁶
- **Sex offenses.** In Illinois, a \$100 fine is imposed on anyone convicted of sexual assault or attempted sexual assault. The collected fines are deposited into the Sexual Assault Services Fund.¹⁷ Several other states use fines collected from sex offenders to fund other programs not directly related to the victim, such as programs for sex-offender registration,¹⁸ sex-offender treatment,¹⁹ and AIDS education.²⁰
- **Pimping or soliciting a prostitute.** In Minnesota, fines are imposed on those who solicit prostitutes or make a profit from prostitution. The funds raised are used partly to fund child protection teams and partly to fund programs for those who have escaped or want to escape prostitution.²¹
- **Crimes against the elderly or disabled.** South Carolina allows courts to impose civil fines up to \$30,000 on offenders convicted of abuse, neglect, or exploitation of adults in long-term care facilities. After the attorney general's costs of litigation, remaining funds are deposited into the Adult Protective Services Emergency Fund.²² Iowa imposes a civil penalty up to \$5,000 for consumer fraud against the elderly. Funds collected through fines are used to fund investigation and prosecution of such offenses.²³

Other Forms of Offender Penalties

In addition to fines and costs assessed against convicted offenders as part of the sentence, other forms of offender penalties are used to fund crime victim services:

- **Probation, parole, and supervisory status.** Several states impose costs on offenders placed on probation or other forms of supervised release. Many states impose fees on domestic violence offenders placed on probation, and the states use the fees to fund domestic violence programs. In California, a person on probation for a hate crime may be ordered to make compensation to a community-based program serving victims of hate crime.²⁴ Arizona imposes a general supervision fee on offenders who are placed on parole, probation, or community supervision, and funds raised from these fees are deposited into the state's victim compensation and assistance fund.²⁵
- **Inmate earnings.** Colorado, South Carolina, and Utah withhold a percentage of an inmate's earnings through prison or community release work programs.²⁶ This money may go to fund victim assistance or may be deposited into the state's crime victim compensation fund.
- **Surplus restitution.** A few states apply "surplus restitution" to crime victim services. This is restitution that has been paid to the collecting agency but was either declined by the victim or the crime victim could not be located. The restitution surplus is deposited into a state fund for crime victim services.²⁷

Current Issues Relating to Offender-Based Funding

Enforcement of Surcharges

Resistance. Many states have found courts reluctant to order convicted offenders to pay penalties and surcharges and to collect the penalties and surcharges that would be used to support victim services. Courts indicate that imposing and collecting penalties slows the judicial process and burdens court personnel with additional duties. Some state laws specifically provide that such fees can be waived. For instance, New Hampshire allows the court to

suspend all or part of the penalty assessment if it "would work a hardship on the person convicted or on such person's immediate family."²⁸

Strengthening laws. Other states have attempted to strengthen their laws regarding ordering and collecting offender fees. Several have taken the New York approach, which provides that "under no circumstances shall the mandatory surcharge or the crime victim assistance fee be waived."²⁹ A few states have provided the means to enforce the imposition and/or collection of such penalties. Pennsylvania's law provides that "the district attorney, the bureau [of victim services], the commission [on Crime and Delinquency], or any direct victim . . . shall have standing to seek a mandamus order requiring the county to collect the costs imposed." The Pennsylvania statute also provides that the costs must be paid before the defendant can be eligible for probation, parole, or accelerated rehabilitative disposition.³⁰

Strong enforcement. Texas has even stronger enforcement provisions that apply to the collection of costs for victim compensation and could be applied to the collection of costs to fund victim services. Under Texas law, if the attorney general has reason to believe that a court has not been assessing costs due, or has not made an effort to collect costs, the attorney general must send the counsel a warning letter. The court must respond to the charges within 60 days. If the court does not respond or the attorney general considers the response inadequate, the attorney general may request an audit of records. If the evidence indicates the court is not assessing costs or making a reasonable effort to collect costs, the attorney general may refuse to award compensation to residents of that jurisdiction or may notify the State Commission on Judicial Conduct of the findings. Failure or refusal to order and collect costs is official misconduct and constitutes grounds for removal from office.³¹

Competing Interests

Although offender penalties are an equitable way to fund crime victim assistance programs, they can face competition. The payments for victim services can be adversely affected as legislatures look to offenders to shoulder more and more of the costs of the criminal justice system, such as prison room and board, maintenance of DNA databanks, and indigent offender defense funds. To protect these funds, many states have provided that victim services and/or compensation assessments have priority over payments for other court costs. However, restitution to direct victims usually retains the highest priority over other assessments.³²



Funding Through Fees

In addition to imposing fines and penalties on offenders, states have imposed nonoffender-based fees for certain services, which are used to fund crime victim programs. For instance, many states add a surcharge when issuing a marriage license. The money collected is used to fund domestic violence or child abuse programs. Connecticut uses part of the marriage license surcharge to fund rape prevention programs.³³ Indiana uses marriage license fees to fund its general victim/witness assistance programs.³⁴ Surcharge amounts range from \$3 in Minnesota to \$38 in New Hampshire.³⁵

In addition to marriage license fees, many states charge an additional fee for filing for divorce. This amount ranges from \$1 in Oregon to \$32 in Ohio.³⁶ Utah assesses an additional \$2 fee on all civil filings. This money is deposited into the Children's Legal Defense Account for guardian ad litem programs and other programs involving child custody and visitation.³⁷

The amount of money raised through such fees can be significant. Nevada adds a \$15 surcharge to its marriage license fee. This money is deposited into an account to aid victims of domestic violence.³⁸ In 1999, this program brought in \$2.1 million.³⁹ Ohio's \$32 surcharge for filing for divorce and its \$17 fee for each marriage license raised \$3,203,668 for domestic violence shelters in 1999.⁴⁰

Similarly, many states have attached fees, ranging from \$1 to \$10, for issuing birth certificates. The money collected generally goes to the Children's Trust Fund or to fund child abuse and prevention programs.⁴¹ A few states add a Children's Trust Fund surcharge when issuing a birth certificate "suitable for display."⁴²

A few states impose fees on the reinstatement of a driver's license after its suspension or revocation for drunk or drugged driving. Illinois imposes a \$60 reinstatement fee on first-time offenders. Thirty dollars of the fee is deposited into the Drunk and Drugged Drivers Prevention Fund. For reinstatement after a second or subsequent suspension or revocation for impaired driving, the fee is \$250, and \$190 of that is deposited into the fund.⁴³

As illustrated above, when states impose fees on government services that have a logical connection to specific crime victim programs, they have found a source of funding limited only by the creativity of advocates and policymakers.

State-Facilitated Funding by Private Citizens

Personal Income Taxes

Many states use various approaches to facilitate private giving for crime victim services. One method is to place a voluntary income tax checkoff box on tax forms that individual taxpayers may check to designate payment to crime victim programs. This is most commonly used to fund state children's trust funds.⁴⁴ A few states also fund domestic violence programs this way.⁴⁵ Iowa tax forms have a box that taxpayers may check to designate a payment for sexual assault and domestic violence programs.⁴⁶

The amount of money that can be raised through checkoff boxes on income tax forms appears to be relatively low. The checkoff box for the Child Abuse Prevention Fund⁴⁷ on Arizona's income tax form raises approximately \$190,000 a year.⁴⁸ Colorado's long-standing income tax form checkoff box for its Domestic Abuse Program Fund⁴⁹ brought in almost \$400,000 from 1999 tax returns.⁵⁰ Some laws specify that if a certain amount is not raised by using an income tax form checkoff box, it will be eliminated. Montana eliminates a checkoff box from its tax form if it generates less than \$10,000 in 2 consecutive years.⁵¹

Missouri also promotes the support of domestic violence programs through its income tax system by providing a tax credit for contributions to domestic violence shelters. Half of a taxpayer's contribution to any domestic violence shelter is credited against that individual's total state tax liability. Contributions during the tax year must be at least \$100 to qualify for the credit, and the credit cannot exceed \$50,000 a year.⁵²

Special License Plates

Another state-sponsored activity that attracts private support for victims' programs is the sale of special license plates, commonly used to support children's programs. In Nevada, drivers can order special license plates, and the proceeds support programs for missing or exploited children.⁵³ Ohio offers a special "Celebrate Kids!" license plate for an additional \$25. Of that fee, \$15 goes to support the Ohio Court-Appointed Special Advocate/Guardian Ad Litem to help abused, neglected, and dependent children.⁵⁴ The license plate sales bring in approximately \$225,000 a year.⁵⁵

Juror Fees

A few states have passed laws allowing jurors to donate their fees to crime victim-related programs, including the Court Appointed

Special Advocate Volunteer Account,⁵⁶ the victim' compensation fund, the child welfare service fund, and a fund for domestic violence programs. Texas raised \$199,213.50 for domestic violence programs in 1999 through these donations.⁵⁷

Miscellaneous Approaches

Although many of the legislated funding mechanisms states use fall into the primary categories discussed above, states also use various other approaches.

Local Property Taxes

Illinois gave county boards special taxing authority to fund creation of Children's Advocacy Centers—interdisciplinary centers that coordinate investigation and victim assistance in cases of child sexual abuse. The county boards must adopt a resolution for such funding by taxation and submit it to the voters at a general election.⁵⁸ Similarly, Ohio allows county boards to levy a property tax, with voter approval, to provide grant money for crime victim assistance programs.⁵⁹

Urban Action Bonds

Connecticut sells urban action bonds, whose proceeds are used to build and renovate centers for the elderly, shelter facilities for domestic violence victims, and emergency shelters.⁶⁰ Individual programs apply to the Department of Social Services for money from the bonds. Eight domestic violence groups recently applied for and were awarded a total of \$400,000 over 4 years for renovation of their facilities.⁶¹

Food and Beverage Taxes

Since 1989, Washington has imposed a \$1-per-gallon tax on the syrup used to make soft drinks.⁶² This tax brings in about \$4 million annually to fund the reduction of violence and drug enforcement account.⁶³ In Florida, counties have the option of adopting a tax on food, beverages, or alcoholic beverages. Funds raised can be used to support the construction and operation of domestic violence shelters and to help the homeless.⁶⁴

Inmate Arts and Crafts

Louisiana passed an unusual funding mechanism, the Inmate Arts Trust Fund. Under Louisiana law, arts and crafts created by inmates were to be sold and the proceeds used to pay for services to crime victims. This law was passed in 1995, but the administrative procedures to implement the program were never put in

place. So, although arts and crafts of inmates have been sold, the proceeds were never used to fund crime victim services as intended, and the legislation was repealed in 2001.⁶⁵

Conclusion

Crime victim assistance is an essential public service and, as such, merits the states' commitment to adequate funding. As states strive to create funding sources for victim assistance, they have a wide range of legislative options, including adoption of offender-based penalties, charging nonoffenders' fees for governmental services that are logically connected to crime victim needs, and implementing private and innovative fundraising efforts. With the state's encouragement and facilitation, these can all work to provide the critical financial support for services to help victims in the aftermath of crime.

Notes

1. LA. REV. STAT. ANN. § 15:571.12 (West 2002); N.J. STAT. ANN. § 9:6-6 (West 2001).
2. This method of creating the VOCA Fund was initially called for as part of the 1982 *Final Report of the President's Task Force on Victims of Crime*. The task force stated that "it is appropriate that these monies collected as a result of criminal activity be used to help victims." President's Task Force on Victims of Crime, *Final Report*, Washington, DC: U.S. Government Printing Office, December 1982:6.
3. VA. CODE ANN. § 19.2-11.3 (Michie 2001).
4. MASS. ANN. LAWS ch. 258B, § 8 (Law. Co-op. 2002).
5. TEX. CODE CRIM. PROC. ANN. §§ 56.55, .541 (Vernon 2002).
6. WASH. REV. CODE § 7.68.035 (2002).
7. ALA. CODE § 15-23-17 (2001).
8. Conversation with Steve Eckstrom, Washington State Office of Crime Victims Advocacy, August 1999. The difficulty in calculating the amount of funds resulting from the surcharge is principally due to two factors: the money is retained at the local level, and collection of the money is uncertain during the offender's incarceration.



9. Telephone interview with Wendy Lohr Hopp, Victims Services Section, Virginia Department of Criminal Justice Services (July 17, 2000).
10. Crime Victims' Compensation Division, Office of the Texas Attorney General, 1999 *Annual Report*, 5, 12.
11. 730 ILL. COMP. STAT. 5/5-9-1.8 (2001).
12. IND. CODE ANN. § 33-19-6-12 (Michie 2001).
13. For example, CAL. PENAL CODE §§ 266k, 288 (Deering 2001).
14. For example, NEV. REV. STAT. ANN. § 200.485 (Michie 2001); WIS. STAT. § 973.055 (2001).
15. CAL. PENAL CODE § 243 (Deering 2001).
16. FLA. STAT. ch. 741.30 (2001); IDAHO CODE § 39-6312 (Michie 2001).
17. If the victim and offender are family members, the fine is divided between the Sexual Assault Services and the Domestic Violence Shelter and Services Funds. 730 ILCS 5/5-9-1.7 (2001).
18. IOWA CODE § 692A.6 (2002).
19. For example, COLO. REV. STAT. § 18-21-103 (2001); TENN. CODE ANN. § 39-13-709 (2001).
20. CAL. PENAL CODE § 288a (Deering 2001).
21. MINN. STAT. § 609.3241 (2001).
22. S.C. CODE ANN. § 43-35-80 (Law. Co-op. 2001).
23. IOWA CODE § 714.16A (West 2002).
24. CAL. PENAL CODE § 422.95 (Deering 2001).
25. ARIZ. REV. STAT. §§ 31-411, -418, -466 (2001).
26. COLO. REV. STAT. § 17-27-104 (2001); S.C. CODE ANN. § 24-3-40 (Law. Co-op. 2001); UTAH CODE ANN. § 63-63a-4 (2001).
27. For example, FLA. STAT. ANN. ch. 960.0025 (Harrison 2001).
28. N.H. REV. STAT. ANN. § 188-F:31 (2000).
29. N.Y. CRIM. PROC. LAW § 420.35 (Consol. 2002).
30. 18 PA. CONS. STAT. § 11.1101 (2001).
31. TEX. CODE CRIM. PROC. ANN. art. 56.59 (Vernon 2002).
32. For example, CAL. PENAL CODE § 1203.1d (Deering 2001); COLO. REV. STAT. § 24-4.1-119 (2001).
33. CONN. GEN. STAT. § 7-73 (2001).
34. IND. CODE ANN. §§ 33-17-14-2, -19-9-2, -19-9-4 (Michie 2001).
35. N.H. REV. STAT. ANN. §§ 173-B:15, 457:29 (2000); MINN. STAT. § 517.08 (2001). Minnesota's \$3 fee is used to support supervised visitation centers.
36. OHIO REV. CODE ANN. § 2303.201 (Anderson 2001); OR. REV. STAT. § 417.825 (2001).
37. UTAH CODE ANN. § 63-63a-8 (2001).
38. NEV. REV. STAT. § 122.060 (2001).
39. A. Wagner, "Marriage License Fees in Nevada Aid Programs for Battered Women," *Las Vegas Review-Journal*, June 12, 2000.
40. OHIO REV. CODE ANN. §§ 2303.201, 3113.34 (Anderson 2001). Telephone interview with Janey Sulser, Crime Victims' Section, Office of Ohio Attorney General (end of June 2000).
41. For example, MINN. STAT. §§ 119A.12, 144.226 (2001).
42. ALASKA STAT. § 18.50.225 (Michie 2001); WASH. REV. CODE ANN. § 70-58-085 (West 2002).
43. 625 ILL. COMP. STAT. 5/6-118 (2001).
44. As examples, see ALA. CODE § 26-16-31 (2001); LA. REV. STAT. ANN. 47:120.35 (West 2002); and VT. STAT. ANN. tit. 32, § 5862b (2001).
45. For example, COLO. REV. STAT. § 39-22-801 (2001). Virginia has an income tax form checkoff box for its Family and Children's Trust Fund, which funds any programs addressing violence in families. VA. CODE ANN. § 58.1-346.3:1 (Michie 2001).
46. IOWA CODE § 236.15B (2002).
47. ARIZ. REV. STAT. ANN. § 43-613 (2001).

48. Telephone interview with Valerie Roberson, Arizona Department of Economic Security (June 2000).
49. COLO. REV. STAT. § 39-22-801 (2001).
50. Telephone interview with Mary Ann Ganey, Colorado Domestic Abuse Program Fund (July 5, 2000).
51. MONT. CODE ANN. § 15-30-155 (2001).
52. MO. REV. STAT. tit. § 135.550 (2001).
53. NEV. REV. STAT. ANN. § 432.154 (Michie 2001).
54. OHIO REV. CODE ANN. § 4503.72 (Anderson 2001).
55. Telephone interview with Ohio court-appointed special advocate/guardian ad litem representative (end of June 2000).
56. UTAH CODE ANN. § 78-46-28 (2001).
57. TEX. GOV'T CODE § 61.003 (Vernon 2002). Crime Victims' Compensation Division, Office of the Texas Attorney General, *1999 Annual Report*, 5, 12.
58. 55 ILL. COMP. STAT. §§ 80/4, /6 (2001).
59. OHIO REV. CODE ANN. §§ 307.62, 5705.19 (Anderson 2001).
60. CONN. GEN. STAT. § 4-66c (2001).
61. Telephone interview with Mary McInerney, Executive Director, Connecticut Coalition Against Domestic Violence (July 7, 2000).
62. WASH. REV. CODE §§ 82.64.010, 82.64.020 (2001).
63. M. McCloy, "State Takes Steps to Aid Rape Victims; \$1 Million Program Will Begin in July," *The Arizona Republic*, June 14, 2000, at B5.
64. FLA. STAT. ANN. § 212.0306 (West 2001).
65. Law of 1996, LA. REV. STAT. ANN. ch. 49, § 46:2640 (repealed 2001).

About This Series

OVC Legal Series bulletins are designed to inform victim advocates and victim service providers about various legal issues relating to crime victims. The series is not meant to provide an exhaustive legal analysis of the topics presented; rather, it provides a digest of issues for professionals who work with victims of crime.

Each bulletin summarizes—

- Existing legislation.
- Important court decisions in cases where courts have addressed the issues.
- Current trends or "hot topics" relating to each legal issue.

The OVC Legal Series bulletins were created by the National Center for Victims of Crime (NCVC) under grant number 1999-VF-GX-K007 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this bulletin are those of the author/NCVC and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Office for Victims of Crime is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office of Juvenile Justice and Delinquency Prevention.

First edition December 2003
Reprinted September 2006

NCJ 199477

U.S. Department of Justice

Office of Justice Programs

Office for Victims of Crime

Washington, DC 20531

Official Business

Penalty for Private Use \$300



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