

2019 Annual Report

Crime Victims Compensation Fund



Legislative Claims Commission
Janet N. Kawash, Clerk



**West Virginia
CRIME VICTIMS
COMPENSATION FUND**

Presiding Commissioner
J. David Cecil

Commissioners
J. Rudy Martin
Andrew B. Cooke

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Janet N. Kawash
Clerk

Becky A. Ofiesh
Chief Deputy Clerk

February 21, 2020

Honorable Members of the
West Virginia State Legislature

It is my honor and privilege to present to you, in accordance with West Virginia Code §14-2A-21, the Annual Report of the West Virginia Crime Victims Compensation Fund. This Report covers the activities of the Fund for the federal fiscal year 2019.

Very truly yours,

A handwritten signature in blue ink that reads "Janet N. Kawash".

Janet N. Kawash
Clerk



2019

Annual Report
of the
West Virginia Legislative Claims Commission
for the
Crime Victims Compensation Fund

Presiding Commissioner

The Honorable J. David Cecil

Commissioners

The Honorable J. Rudy Martin

The Honorable Andrew B. Cooke

Janet N. Kawash, Clerk

Becky A. O'fiesh, Chief Deputy Clerk

Prepared by Leslie R. Roberts, Business Manager



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Summary of Program

Created in 1981, and effective January 1, 1982, the West Virginia Crime Victims Compensation Fund is administered by the West Virginia Legislative Claims Commission¹.

FUNDING

The program receives \$50 per felony, \$10 per misdemeanor, \$8 for each municipal infraction except parking tickets, and 20% of assessed fines in drunk-driving cases. The program also receives an annual VOCA grant from the U.S. Department of Justice that equals 60% of the State's eligible awards.

ELIGIBILITY REQUIREMENTS

- Reporting period: 72 hours
- Filing period: 2 years
- Exceptions: Reporting period may be waived for good cause; time periods begin when child victims attain age of majority
- Reporting period - sexual assault: 96 hours

PROCEDURES

Applications are submitted to the Legislative Claims Commission. An investigator performs an investigation and prepares a report that includes findings of fact and a recommendation. The report is sent to the applicant who has 30 days to respond. This initial response is handled informally by the investigator who reviews and comments on the response. One commissioner will review the file and issue an order to award or deny compensation.

Appeals: The applicant has 21 days to request a hearing, which is held before a commissioner other than the initially deciding commissioner. The hearing commissioner's order is final.

BENEFITS

Maximum award:

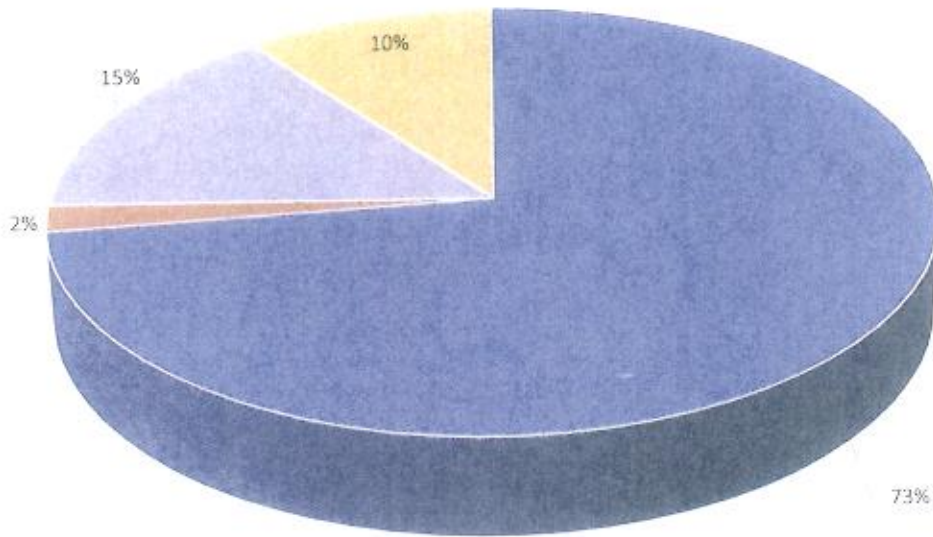
- \$35,000 in personal injury cases
- \$100,000 in permanent disability cases (in addition to the \$35,000)
- \$50,000 in death cases

Compensable expenses:

- Medical expenses
- Mental health counseling
- Mental health counseling for secondary victims up to \$1,000
- Lost earnings/support expenses
- Funeral/burial expenses up to \$10,000
- Relocation up to \$2,500
- Travel to medical treatment facility
- Travel to criminal proceeding up to \$1,000
- Travel to return minor from out-of-state/out-of-country
- Replacement services
- Rehabilitation
- Attorney fees (public defender rates)

¹ The West Virginia Court of Claims changed its name to the West Virginia Legislative Claims Commission effective July 1, 2017. The term Commission is inclusive of all decisions made by either the Court or Commission.

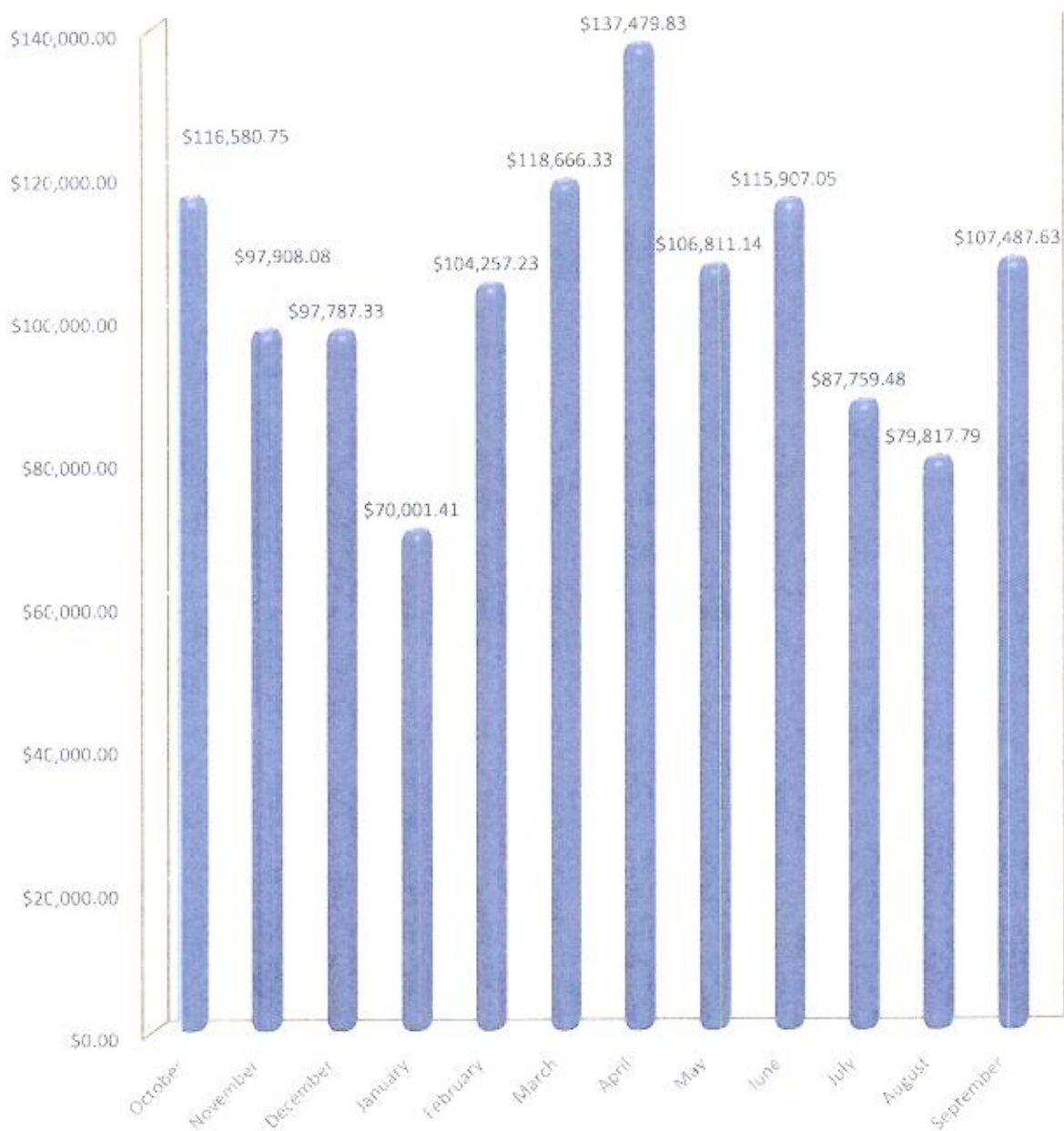
Administrative Funds
October 1, 2018 - September 30, 2019



■ Personnel & Benefits ■ Attorney Fees ■ Administrative Costs ■ Compensation of Commissioners

Federal Fiscal Year 2019 (October – September)

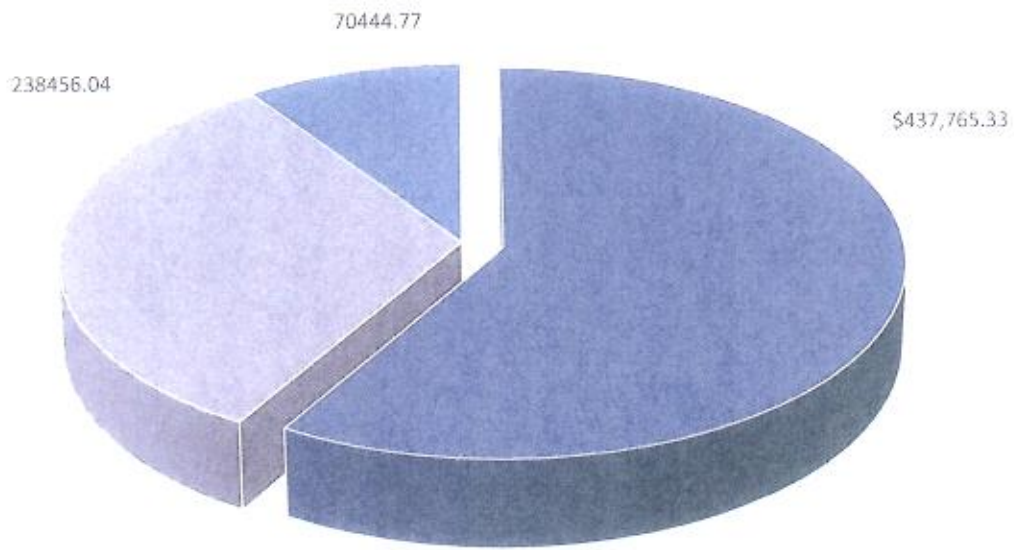
Court Fees Collected



❖ State funds – fines and court costs (circuit and magistrate courts, \$10; municipal courts, \$8; felony convictions, \$50; 20% of DUI fines) W.Va. Code §14-2A-4, §62-5-10

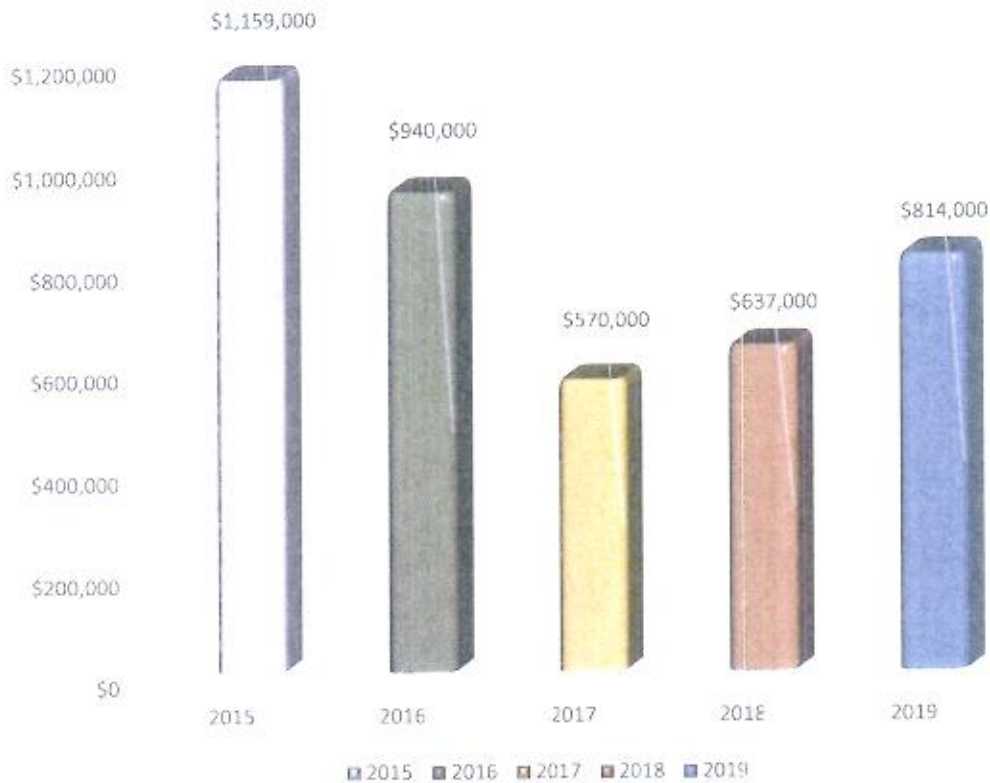


Court Fee Sources



• Magistrate Court • Municipal Court • Circuit Court

FEDERAL GRANTS RECEIVED



Under the Federal Victims of Crime Act (VOCA) of 1984, federal monies became available to state compensation programs and victim assistance programs.

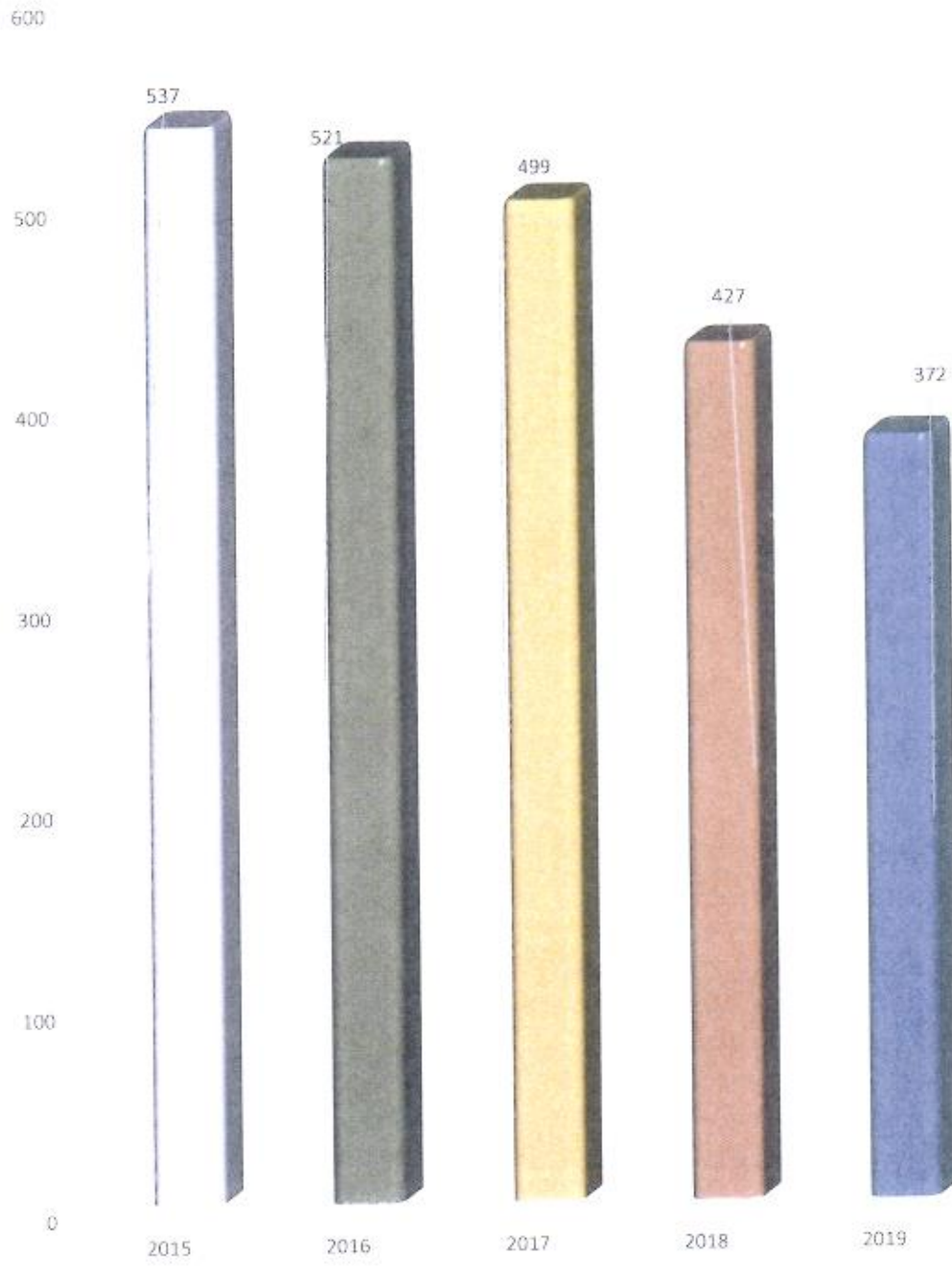
The U.S. Department of Justice, Office of Justice Programs, allocates these funds to state compensation programs based on a formula of 60% of the previous fiscal year's awarded claims.

Beginning with the 1995 grant, programs are permitted to use up to 5% for administrative expenses, which includes purchasing equipment, hiring personnel, and travel expenses. However, the administrative expenses may not supplant state funds.

West Virginia has received a total of \$24,650,230 in federal funds for its compensation program since 1986 (the first grant year).

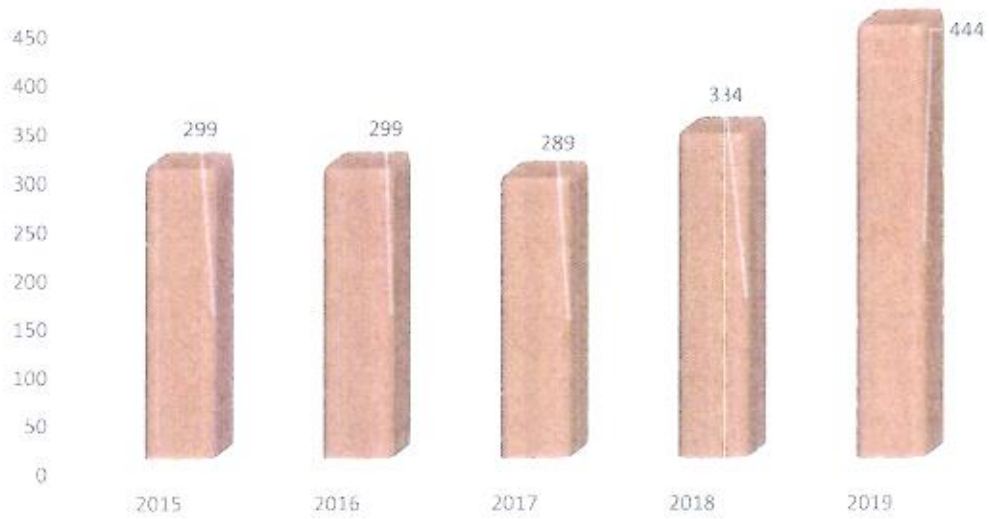


Claims Filed Per FFY

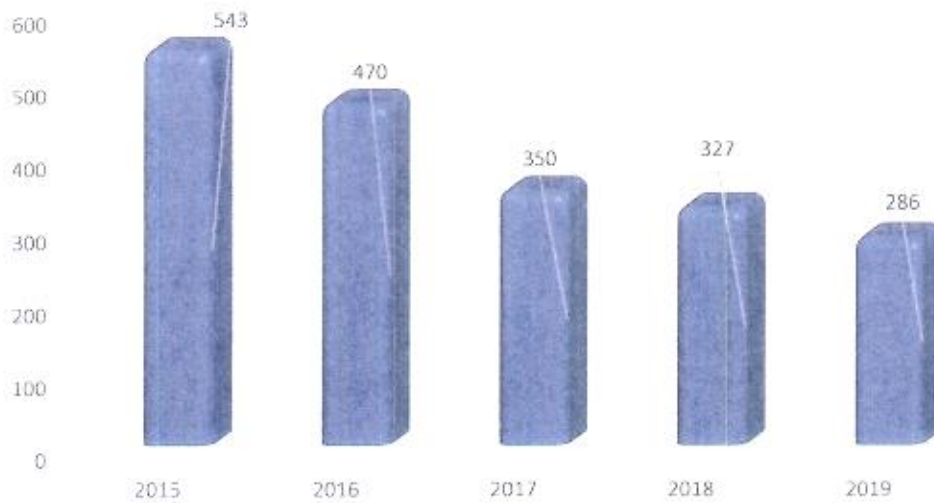




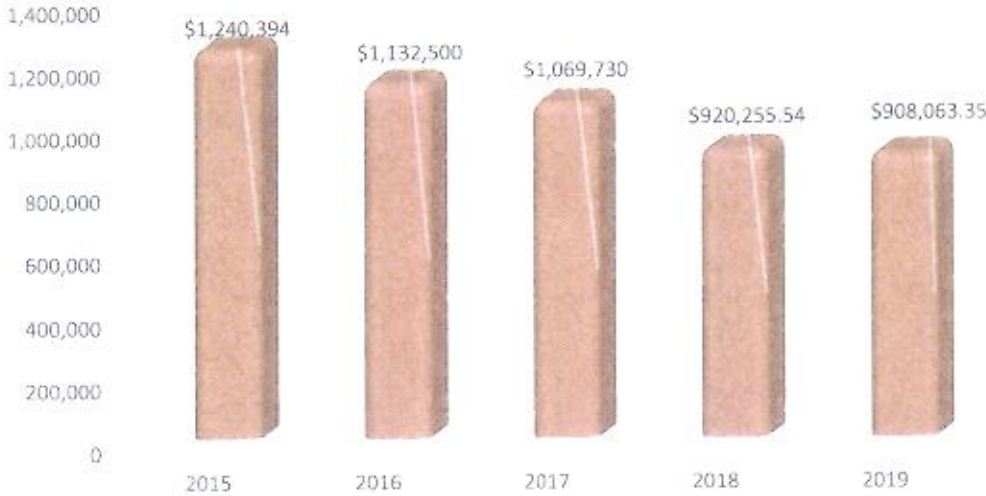
Orders Issued by the Commission - INITIAL



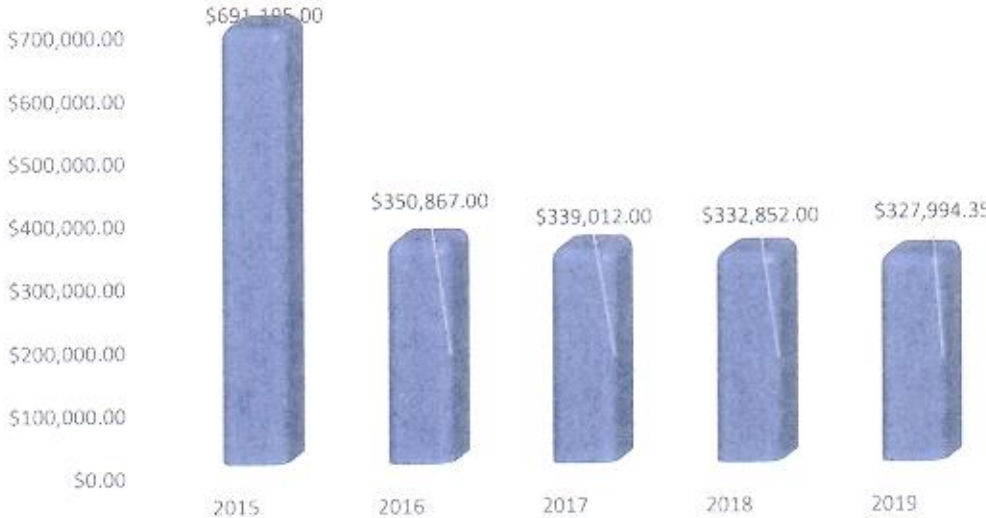
Orders Issued by the Commission - SUPPLEMENTALS



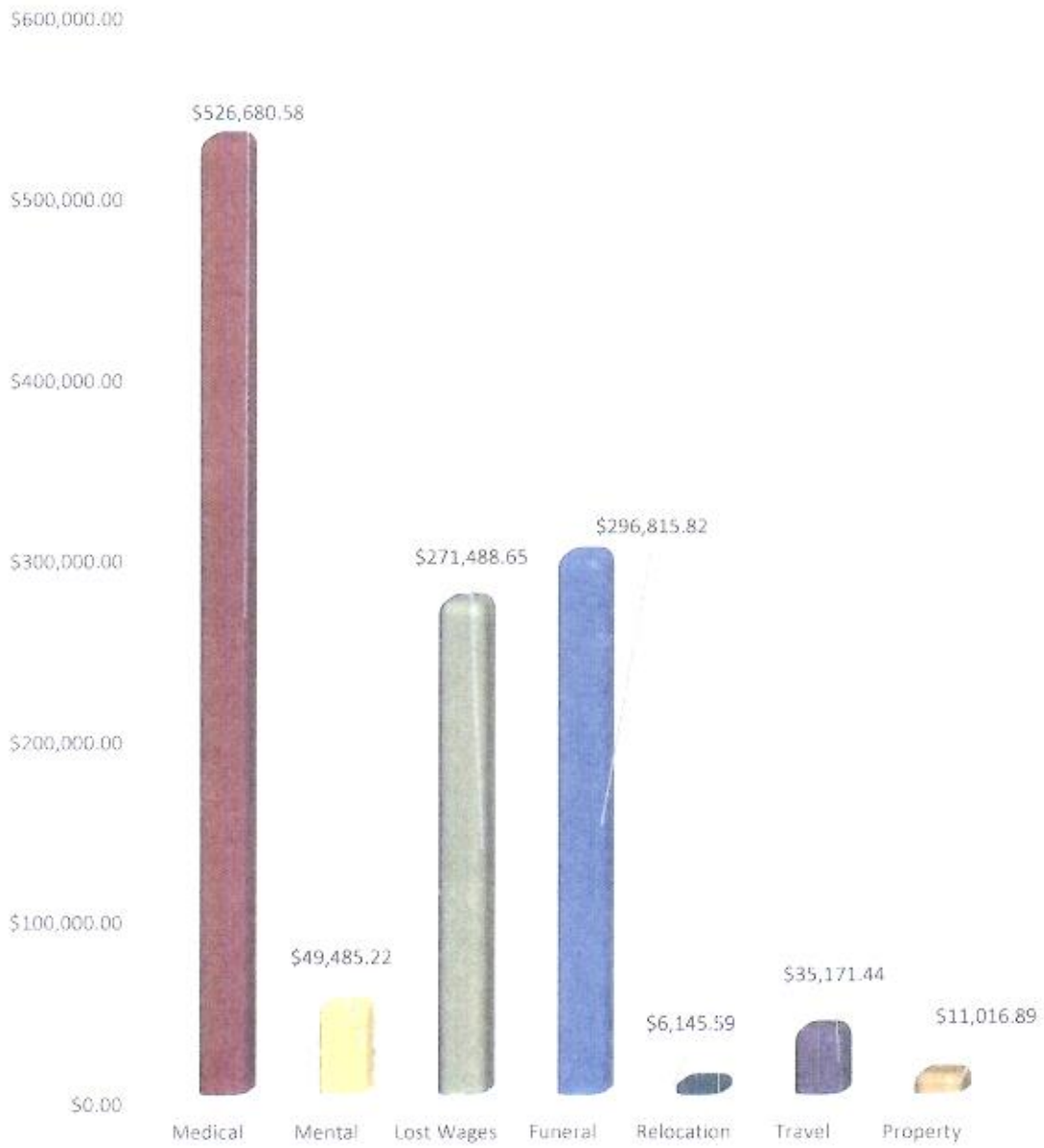
Initial Award Amounts



Supplemental Awards

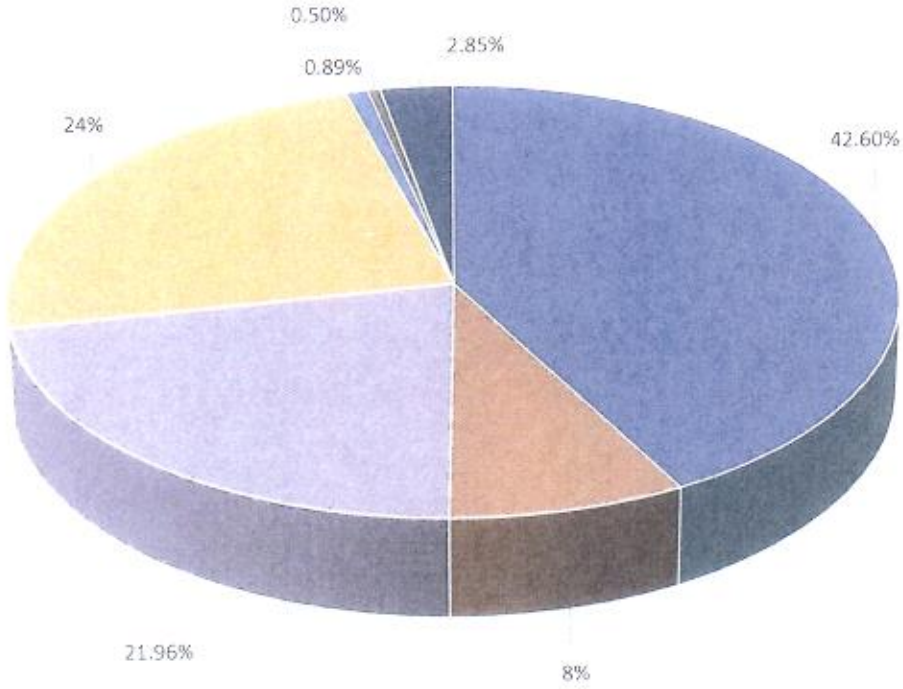


Total Awards by Type





Percent of Total Awards

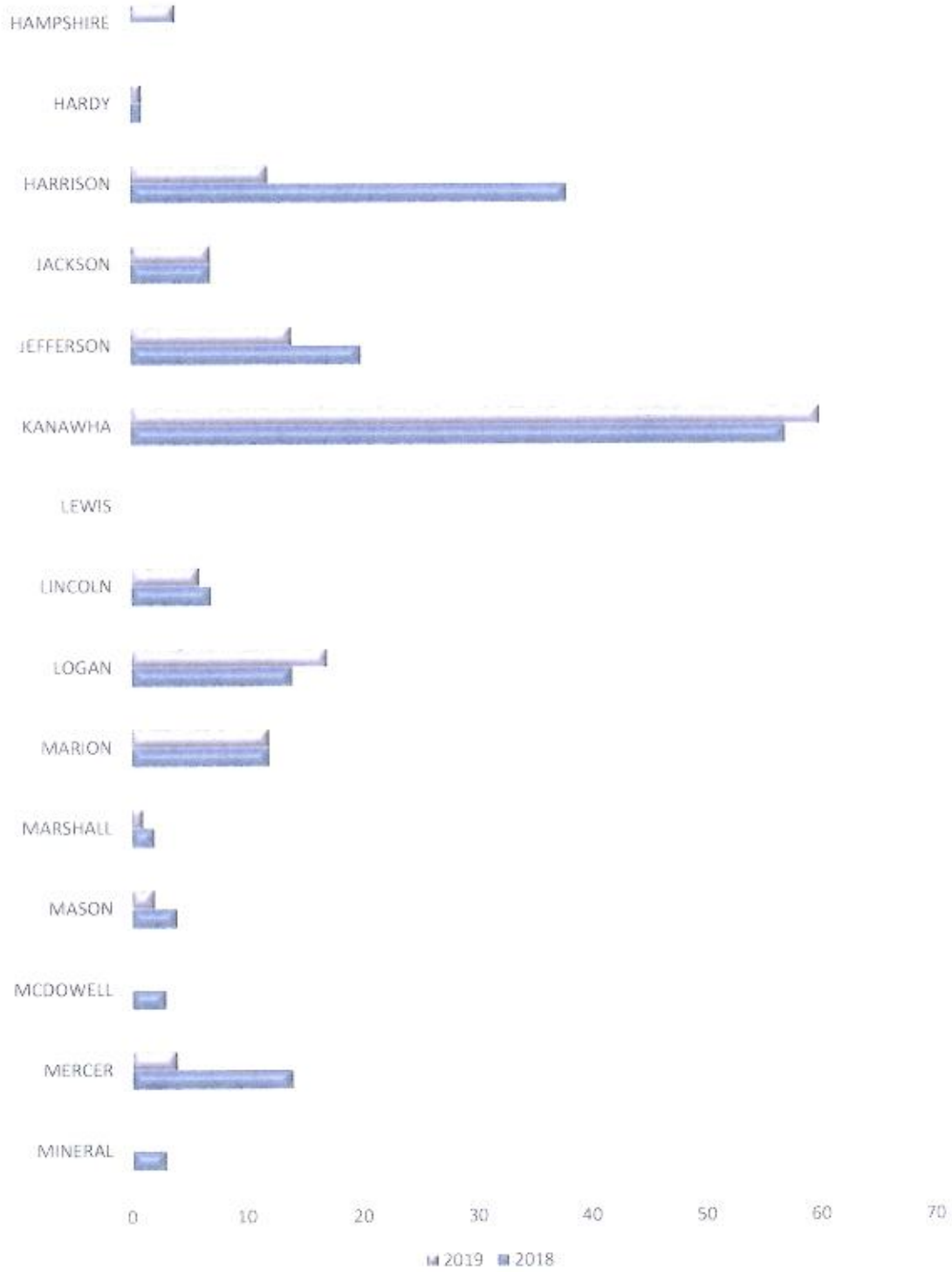


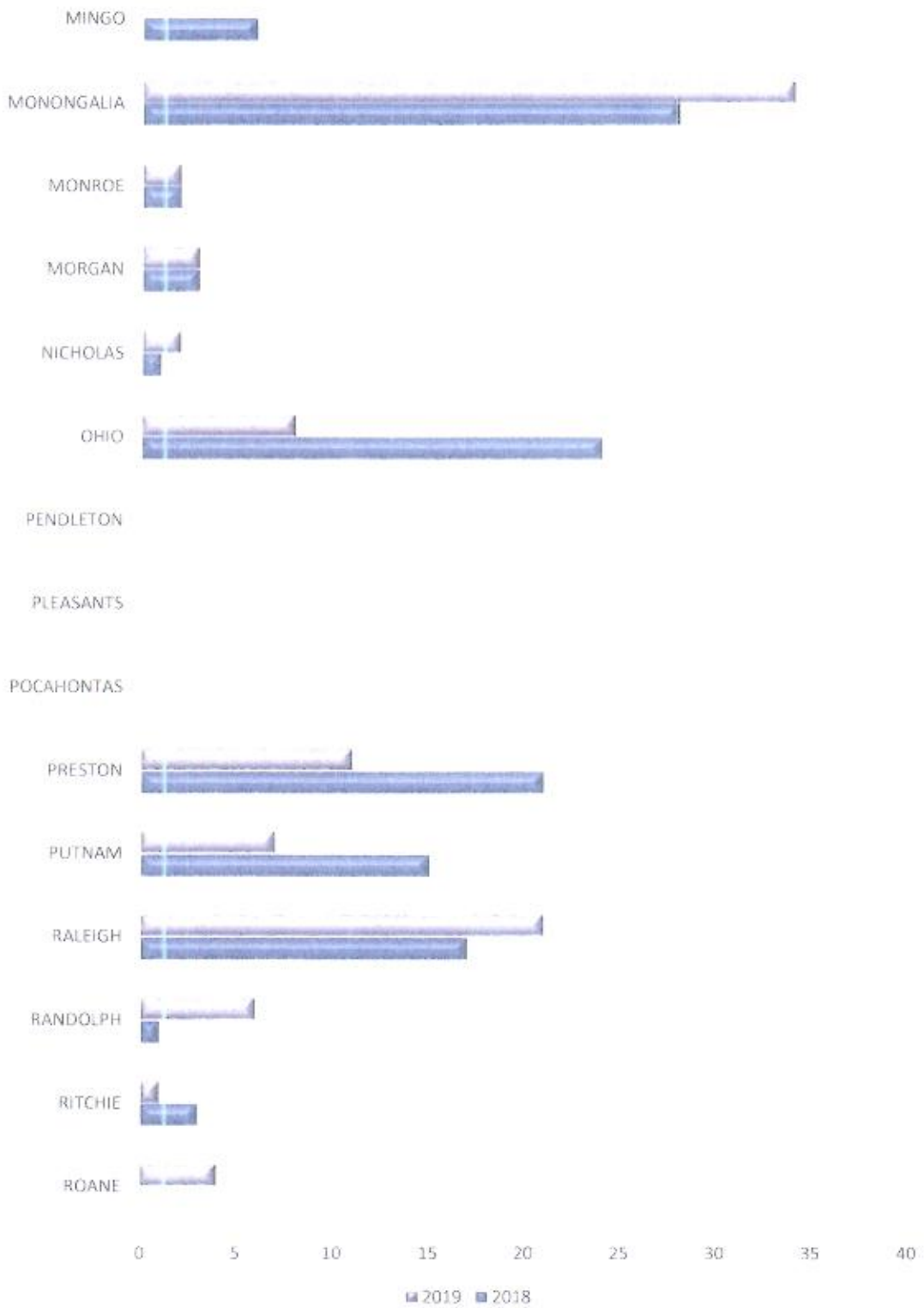
• Medical • Mental Health • Lost Wages • Funeral • Property • Relocation • Travel



Claims Filed By County 2018 & 2019







SUMMERS



TAYLOR

TUCKER



TYLER



UPSHUR



WAYNE



WEBSTER



WETZEL

WIRT

WOOD



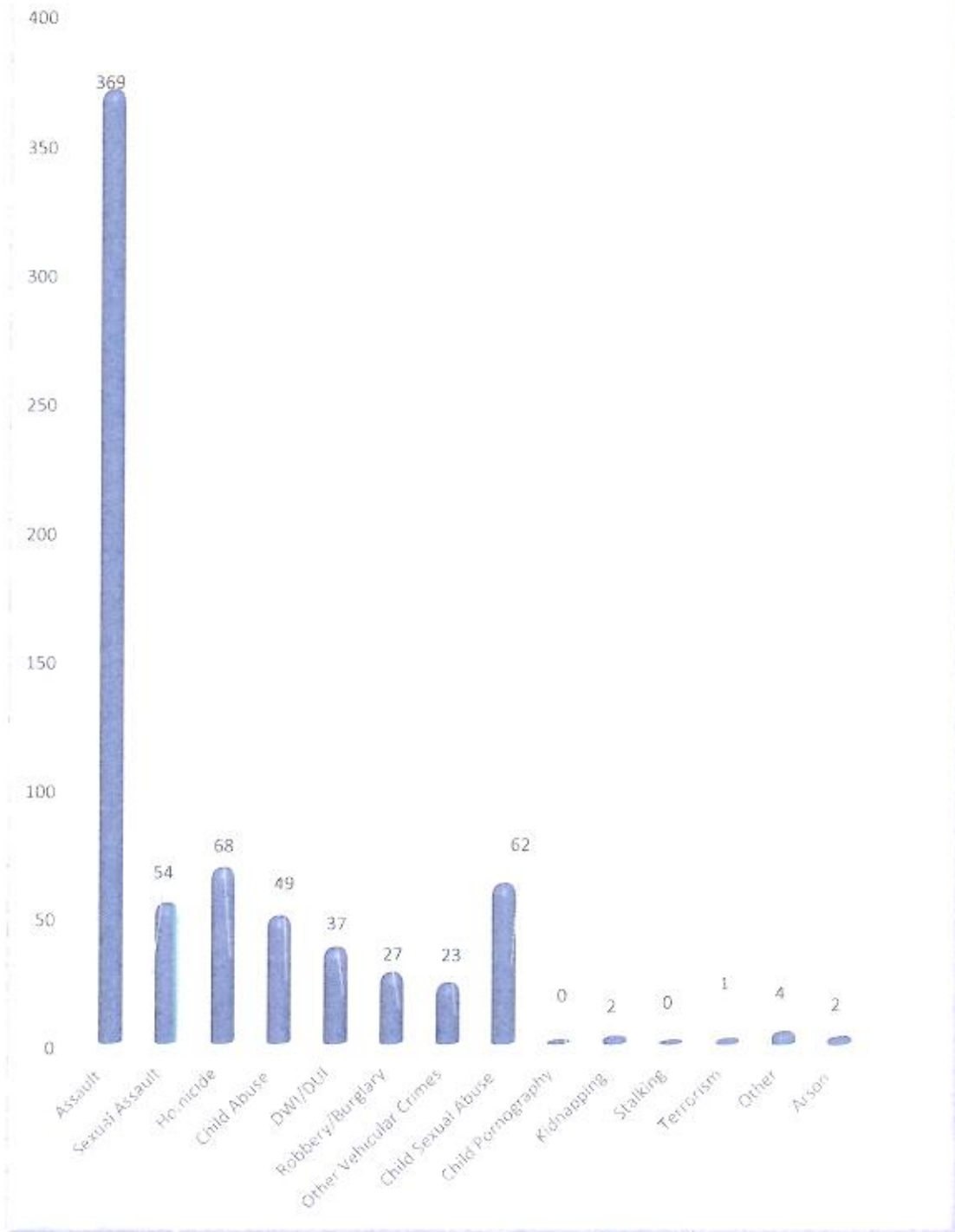
WYOMING



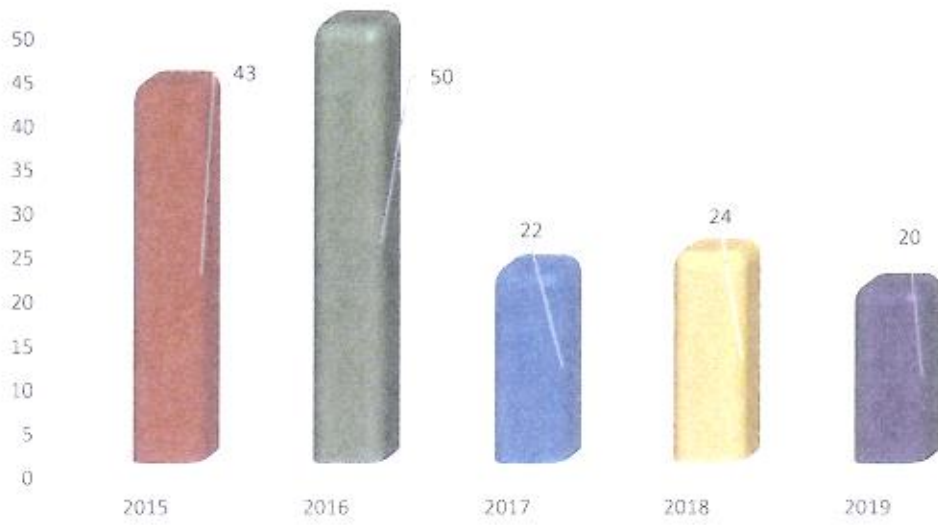
0 5 10 15 20 25

2019 2018

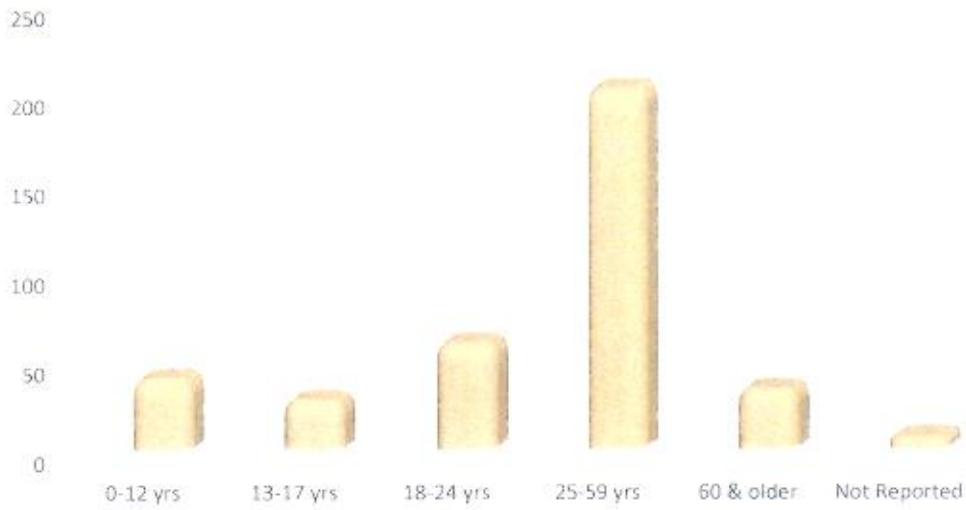
Claims Paid by Type of Crime



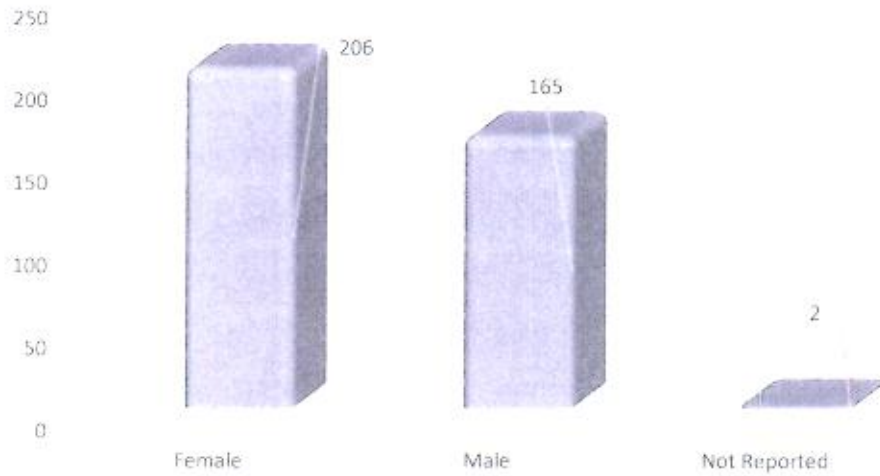
Claims Involving Domestic Violence



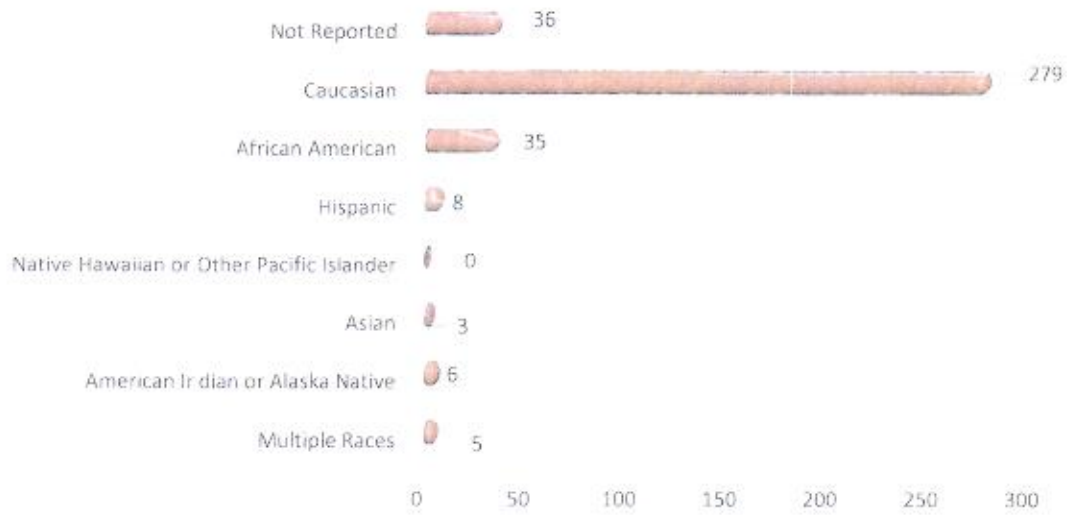
Claims Completed by Age



Claims Awarded by Gender



Claims Completed by Race/Ethnicity





Denied Claims

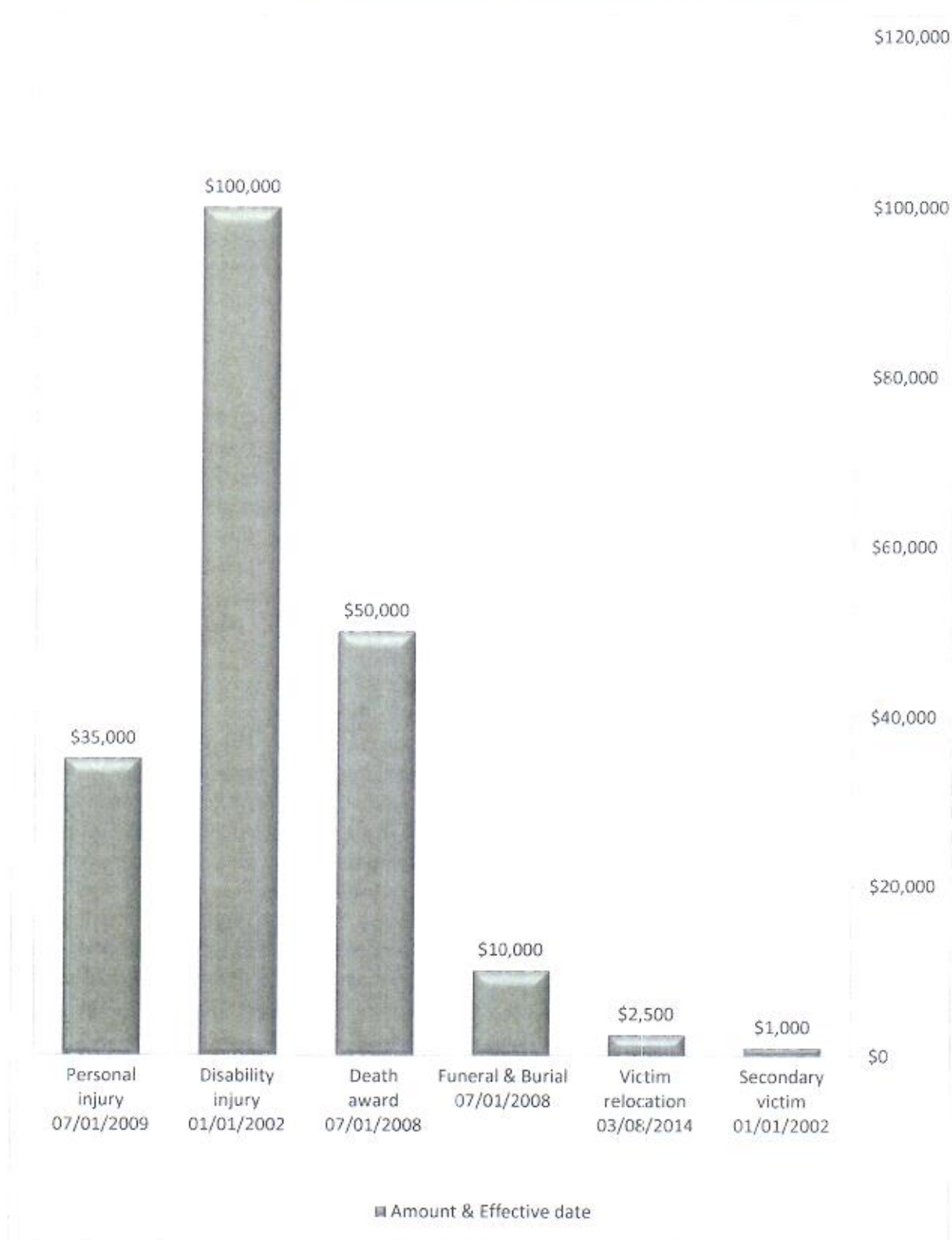
October 1, 2018 – September 30, 2019

The Commission denied 259 claims for various reasons which include:

No Economic Loss*	179
Incomplete Information	7
Contributory Misconduct	28
Failed to Cooperate	13
No Criminal Conduct	8
Not Filed Within 2 Years	4
Undetermined Conduct	3
Crime Outside WV	1
Not Reported Timely	4
Unjustly Benefits Offender	0
Duplicate Claim	6
Crime Within Penal Institution	1
Claim Withdrawn	4



Summary of Maximum Benefits by Statute





CRIME VICTIMS COMPENSATION FUND
A SYNOPSIS OF APPEALED CLAIMS

CV-05-0527 *In re:* L. S.

The Claimant filed an application for an award following the death of her son. An investigation was conducted by the State Police and an autopsy was performed by the State Medical Examiner. The results of the investigation and the autopsy revealed that the victim was in poor health and had a history of using illegal drugs. The cause of death for the Claimant's son was listed as a drug overdose. The claim was initially denied because the Claimant's son was not a victim of "criminally injurious conduct" in accordance with West Virginia Code §14-2A-3(c). Upon appeal, the Claims Commission upheld the denial of the claim and determined that there was no evidence presented at the hearing to support a finding of "criminally injurious conduct" relative to the death of the Claimant's son.

CV-06-0138 *In re:* D. W.

The Claimant had been found to be an innocent victim of crime and entitled to benefits from the Crime Victims Compensation Fund. She submitted a request for the payment of various home health services that had been provided to her. Upon investigation, the Fund determined that the services had been provided to the Claimant by a family member; services provided by a family member are not compensable under the Fund. The Claims Commission entered an Order denying the payment of these home health services, which the Claimant appealed. The Claimant received sufficient notice of the hearing but did not appear at the hearing to prosecute her appeal. The Claims Commission dismissed the Claimant's appeal as to the payment of the home health services based on her failure to appear at the hearing.

CV-13-0096 *In re:* M. G.

The Claimant alleged that she was an innocent victim of crime after she was injured in an altercation. The Claimant and a friend went to a local bar; her friend began to argue with an unidentified woman inside the bar. The Claimant's friend and the unidentified woman left the bar to continue their argument and the Claimant followed her friend outside. The Claimant alleged that she was injured when the bar's doorman pushed her to the ground. The claim was denied on two grounds: the Claimant was not a victim of "criminally injurious conduct" and that by following the arguing parties outside, the Claimant's behavior met the criteria for "contributory misconduct". Upon appeal, the Claims Commission affirmed the findings that the Claimant was not a victim of criminally injurious conduct and that the Claimant's decision to follow the arguing parties outside constituted contributory misconduct as defined by the applicable statutes.



CV-16-0235 *In re*: J. B.

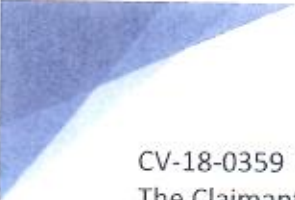
The Claimant's brother was allegedly involved in a physical altercation that resulted in physical injuries that subsequently led to his death. Upon investigation by the County Sheriff's Department, no criminal charges were filed as the evidence did not establish that a crime had occurred. The investigation conducted by the Crime Victims Compensation Fund determined that the Claimant's brother was intoxicated at the time of the altercation and was likely the aggressor in the altercation, supporting a finding of contributory misconduct as defined by the applicable statute. The Claimant filed an appeal. Prior to the hearing, the Fund filed a Motion to Dismiss asserting that the Claimant's application was filed outside of the applicable two year statute of limitations. The altercation occurred in May, 2014; the application was filed in June, 2016. Following the hearing, the Claims Commission upheld the denial of the claim finding that the evidence presented, including the testimony of the multiple witnesses, was insufficient to establish that the Claimant's decedent was a victim of "criminally injurious conduct". The Claims Commission also determined that the claim should be dismissed as it was filed outside the applicable statute of limitations.

CV-17-0051 *In re*: W. M.

The Claimant filed an application seeking an award under the Crime Victims Compensation Fund alleging that he was injured during an altercation with another man concerning an alleged sexual affair between the Claimant's wife and this other man. Following an investigation, the claim was denied because the Claimant's conduct during the altercation constituted "contributory misconduct". The Claimant appealed the decision of the Commissioner. On the date of the hearing, for which the Claimant received sufficient notice, the Claimant did not appear at the hearing. Additional evidence was submitted at the hearing regarding the Claimant's guilty plea to a wanton endangerment charge involving a firearm in the incident which was the subject of his claim. The Claims Commission granted the State's motion to dismiss for the Claimant's failure to appear and prosecute his claim. The Claims Commission upheld the finding of the Claimant's engaging in contributory misconduct based on the evidence of his guilty plea.

CV-17-0387 *In re*: D. C.

The Claimant filed an application for crime victim benefits following an alleged sexual assault. She notified the city police department and the County Sherriff's Department of the alleged assault approximately almost three weeks after it occurred. The investigation was closed when the Sheriff's Department determined that no crime had occurred and no charges were filed against the alleged perpetrator. The investigation conducted by the Crime Victim Compensation Fund determined that there was insufficient evidence to establish whether a crime occurred inasmuch as the Claimant did not file a report until nineteen (19) days after the alleged incident occurred, well outside the ninety-six (96) hours set forth in West Virginia Code §14-2A-14(b). Upon appeal, the Claims Commission found, based on the evidence presented at the hearing, including the Claimant's testimony, that the evidence was insufficient to establish that a crime had occurred. Furthermore, the Claims Commission determined that the Claimant failed to establish good cause so as to waive the ninety-six (96) hour reporting requirement in the statute.



CV-18-0359 *In re: D. W.*

The Claimant was the victim of repeated sexual assaults occurring between 1984 and 2006. The offender was indicted for these crimes in 2007 and plead guilty to several charges shortly thereafter. The Claimant filed her application for benefits in 2018. Her claim was denied because it was filed more than two years after the last incident occurred and was therefore outside the applicable statute of limitations. Upon appeal, the denial of the claim was upheld as outside the statute of limitations and the testimony provided at the hearing did not provide any basis for the tolling of the statute of limitations to allow the claim to proceed.

CV-19-0008 *In re: P. N.*

The Claimant was involved in a motor vehicle accident as a passenger and sustained physical injuries. The investigation by the County Sheriff's Department determined that the driver of the vehicle was intoxicated at the time of the accident with a blood alcohol content over two times the legal limit. The Sheriff's report stated that the driver had a strong odor of alcohol on his breath, his speech was slurred and his eyes were bloodshot and glassy. The investigation conducted by the Crime Victims Compensation Fund determined that the Claimant was or should have been aware of the driver's intoxicated condition and should not have accepted a ride from him. The claim was denied because the Claimant's actions constituted "contributory misconduct" as defined by statute. Upon appeal, the evidence presented, including the testimony of the Claimant, affirmed the finding that the Claimant's accepting a ride from an intoxicated driver met the standard of contributory misconduct.