

ANNUAL REPORT 2008



CRIME VICTIMS COMPENSATION FUND

COURT OF CLAIMS

CHERYLE M. HALL, CLERK

2008
Annual Report
of the
West Virginia Court of Claims
for the
Crime Victims Compensation Fund

Presiding Judge
The Honorable George F. Fordham
Judges
The Honorable Robert B. Sayre
The Honorable John G. Hackney Jr.

Cheryle M. Hall, Clerk
Becky A. Ofiesh, Chief Deputy Clerk



West Virginia Court of Claims
Crime Victims Compensation Fund

Presiding Judge
George F. Fordham
Judges
Robert B. Sayre
John G. Hackney Jr.

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Clerk
Becky A. Ofesh
Chief Deputy Clerk

**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 for the Federal fiscal year 2007.

Respectfully,

A handwritten signature in blue ink that reads "Cheryle M. Hall".

Cheryle M. Hall,
Clerk

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Summary of Program



Created in 1981, and effective January 1, 1982, the compensation program is administered by the West Virginia Court of Claims, with the court's judges making the final determinations on claims.

FUNDING

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

ELIGIBILITY REQUIREMENTS

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

PROCEDURES

Applications are submitted to the Court of Claims. An investigator performs all work on the claim and writes 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 judge will review the file and issue an order to award or deny.

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

BENEFITS

Maximum award:

- \$25,000 in personal injury cases
- \$100,000 in permanent disability cases (in addition to the \$25,000)
- \$35,000 in death cases

Compensable expenses:

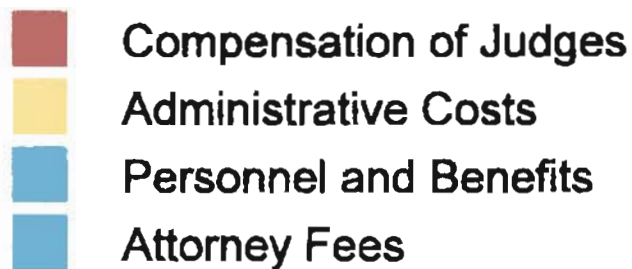
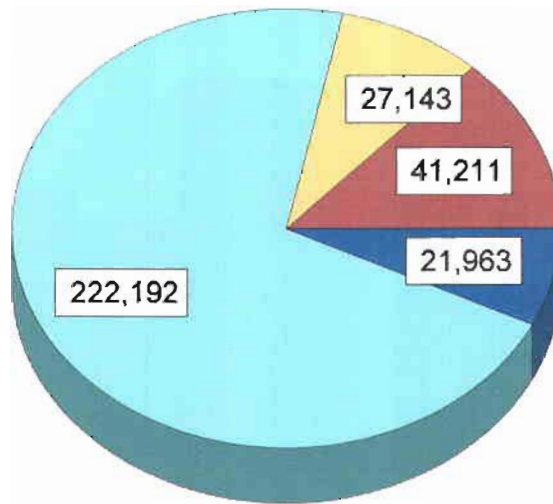
- Medical expenses
- Mental health counseling
- Mental health counseling for secondary victims up to \$1,000
- Lost earnings/support
- Funeral/burial up to \$6,000
- Relocation up to \$1,000
- Travel to medical treatment facility
- Travel to criminal proceeding
- Travel to return minor from out-of-state/out-of-country
- Replacement services
- Crime-scene cleanup up to \$1,000
- Meth lab cleanup (landlords)
- Rehabilitation
- Attorney fees (public defender rates)

Administrative Costs

October 1 - September 30

FFY 2007

Administrative Funds \$312,509

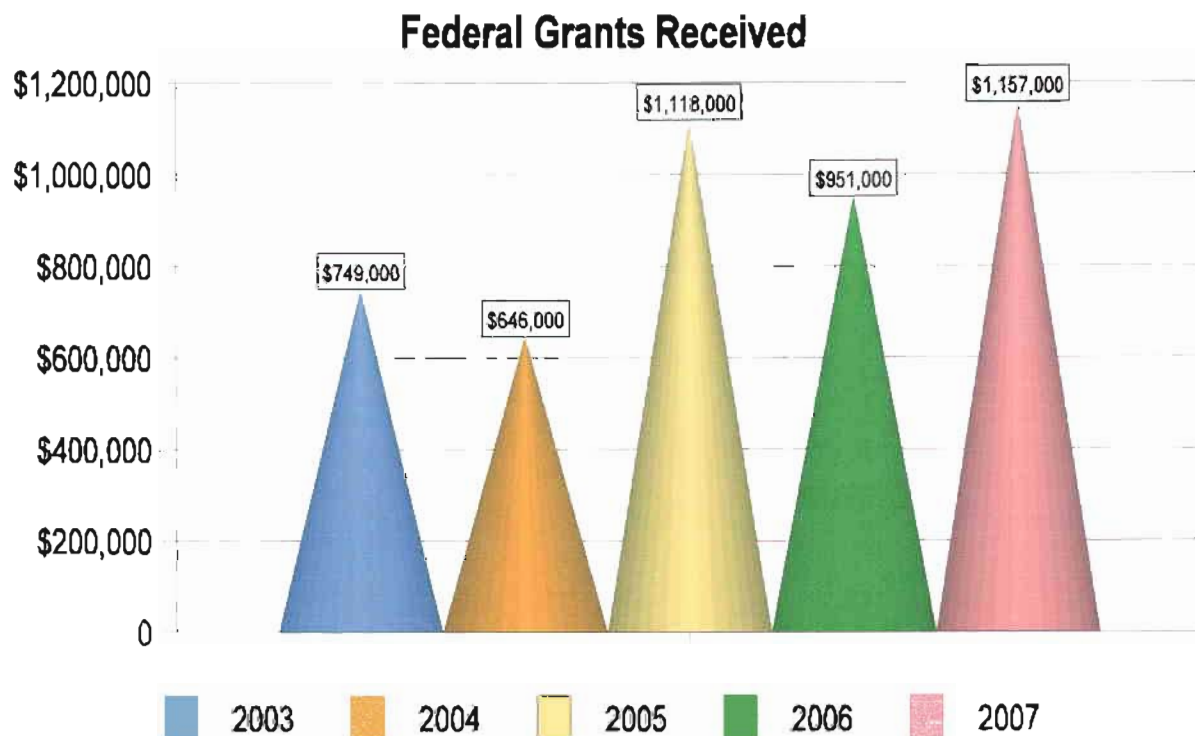


Federal Grants

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

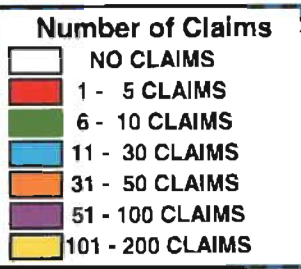
The U.S. Department of Justice, Office of Justice Programs, allocates these funds to state compensation programs based on a formula of 60% of the previous fiscal year's awarded claims.

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.



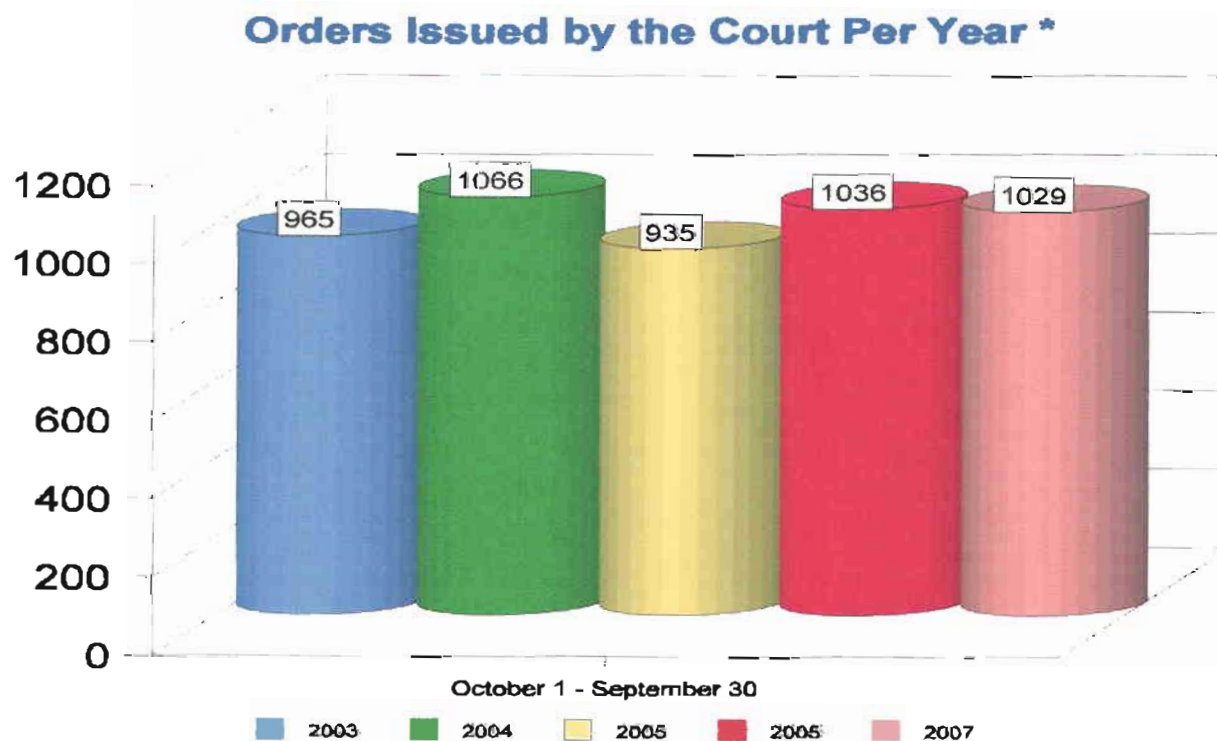
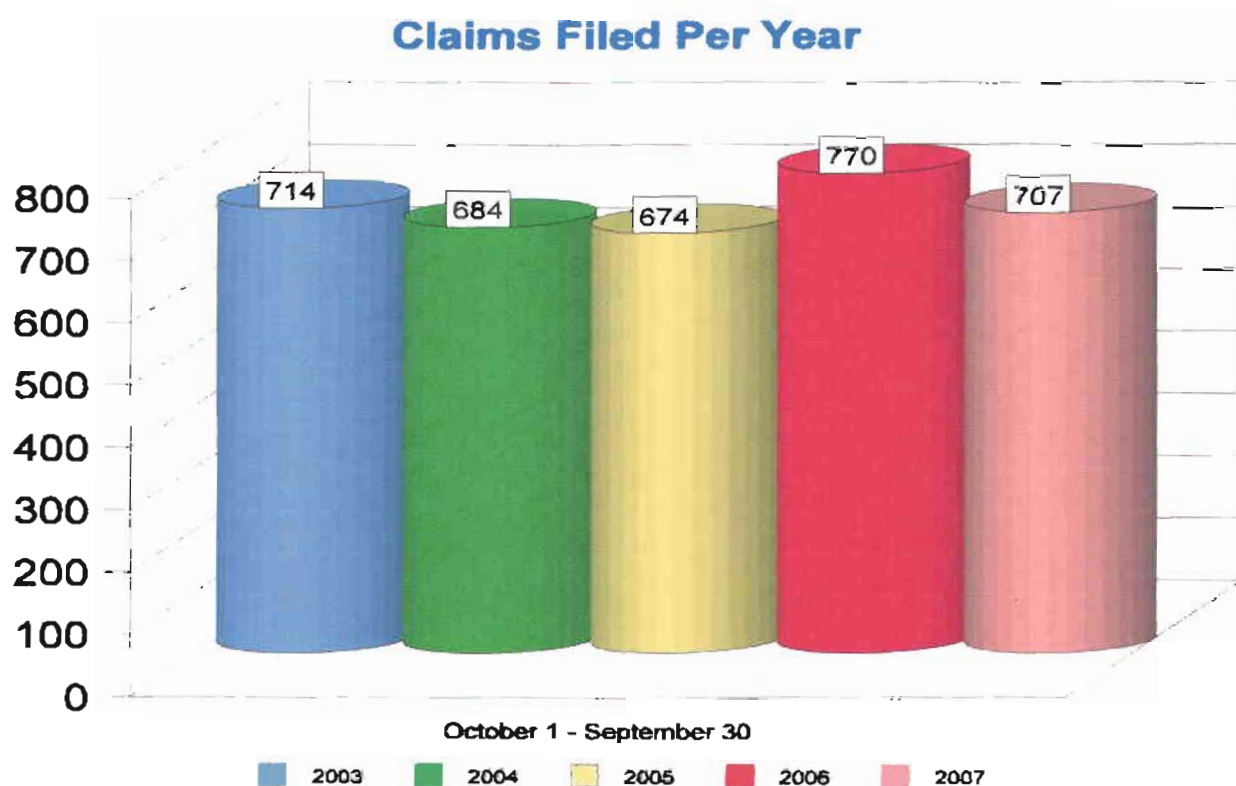
West Virginia has received a total of \$10,435,000 in federal funds for its compensation program since 1986 (the first grant year).

2008 grant: Undetermined at time of printing.

FFY 2007

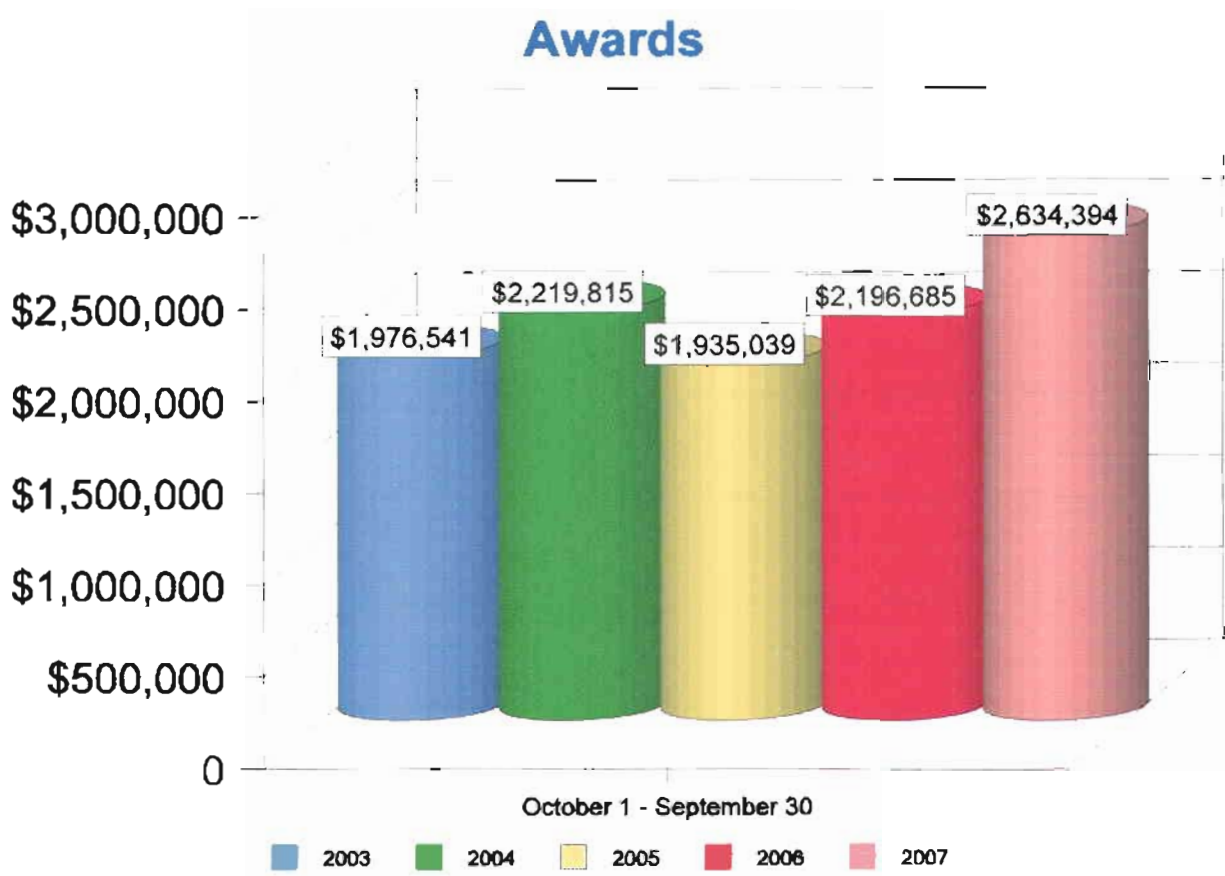
OUT OF STATE CLAIMS: 1

Crime Victims Compensation Fund



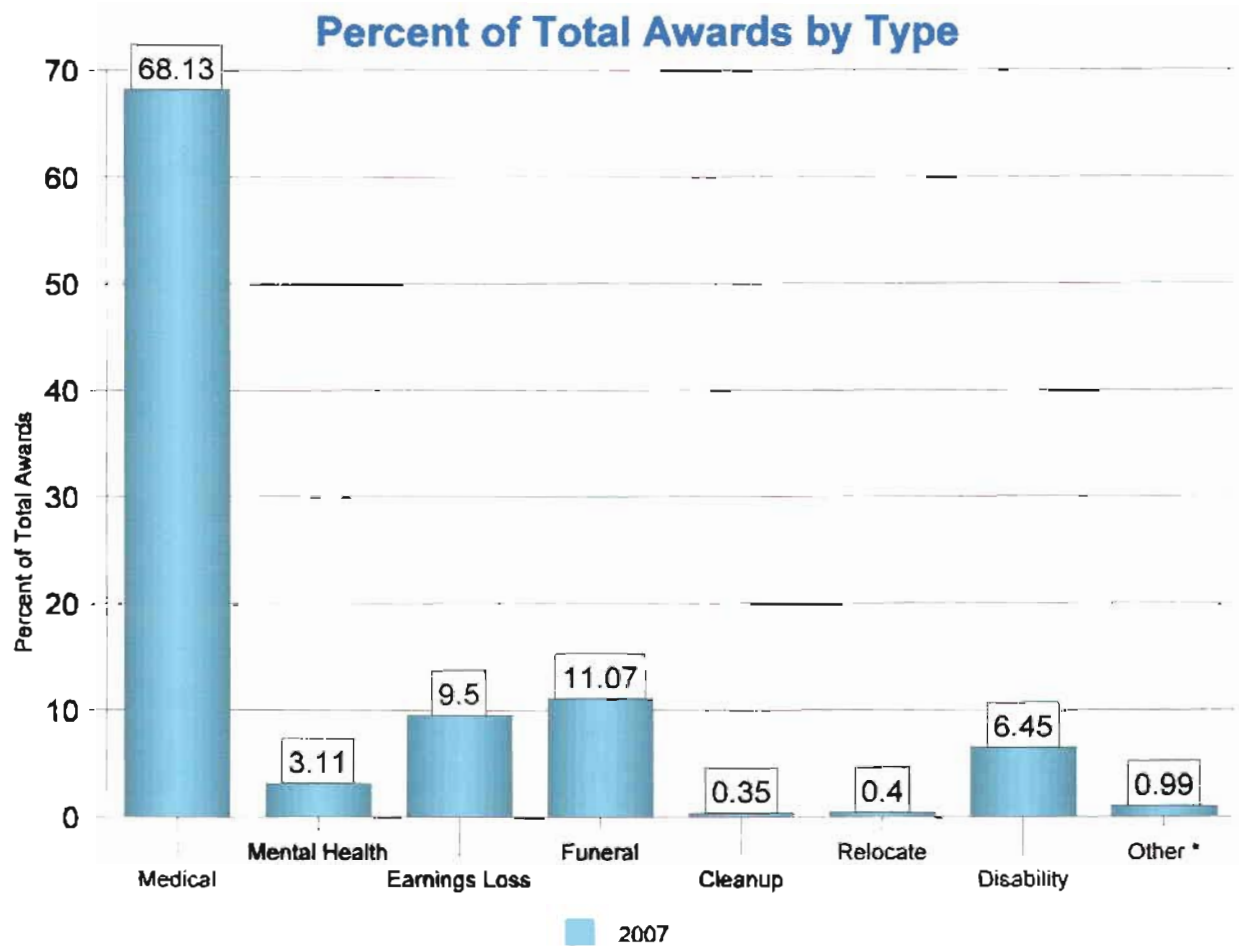
* Includes supplemental awards.

Crime Victims Compensation Fund



Crime Victims Compensation Fund

October 1 - September 30



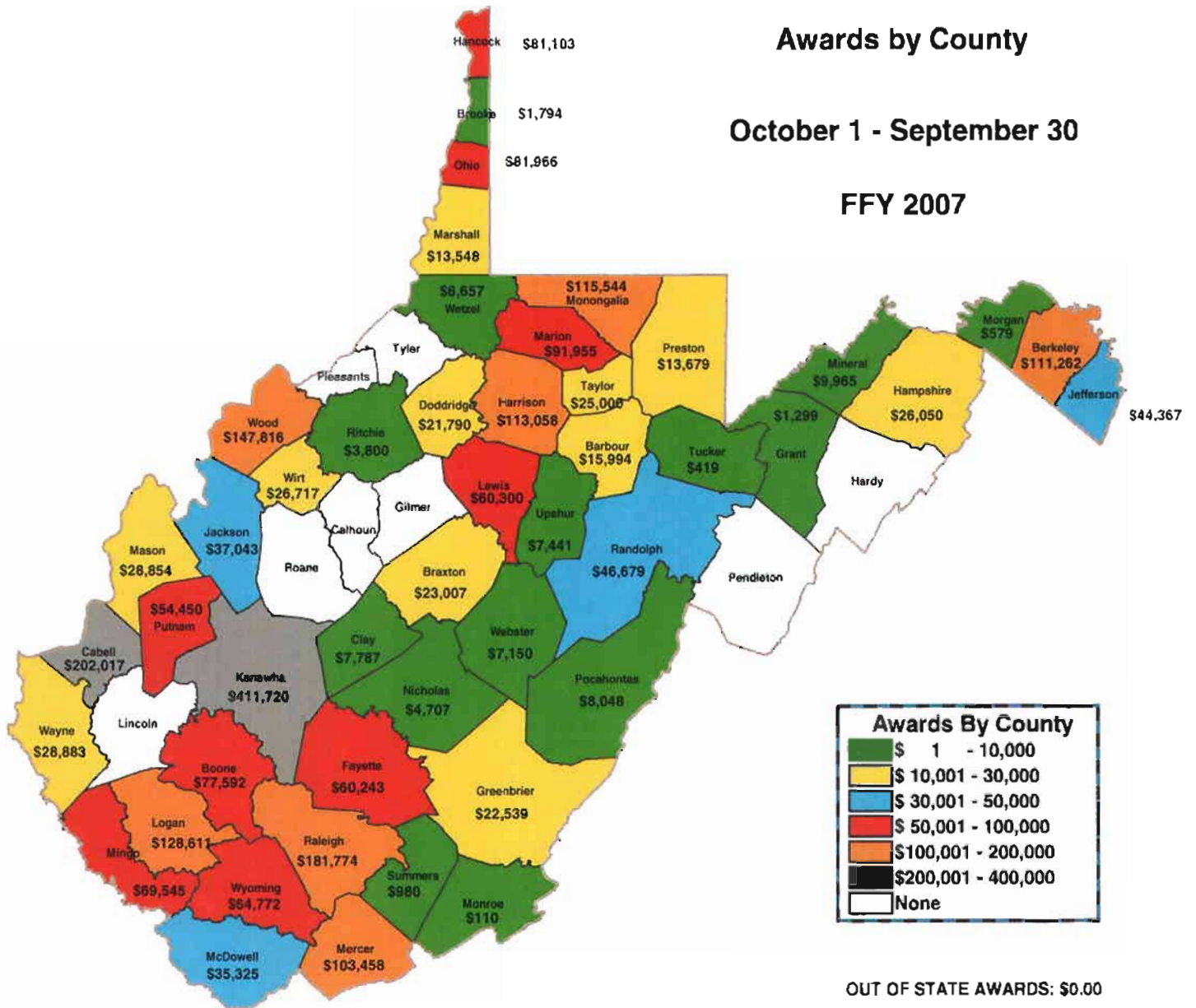
Note: FFY2002 was the first year that crime scene cleanup, relocation costs, travel expenses to court proceedings, and disability awards became available.

* Includes: mileage - replacement service - travel expenses to return minors

Awards by County

October 1 - September 30

FFY 2007



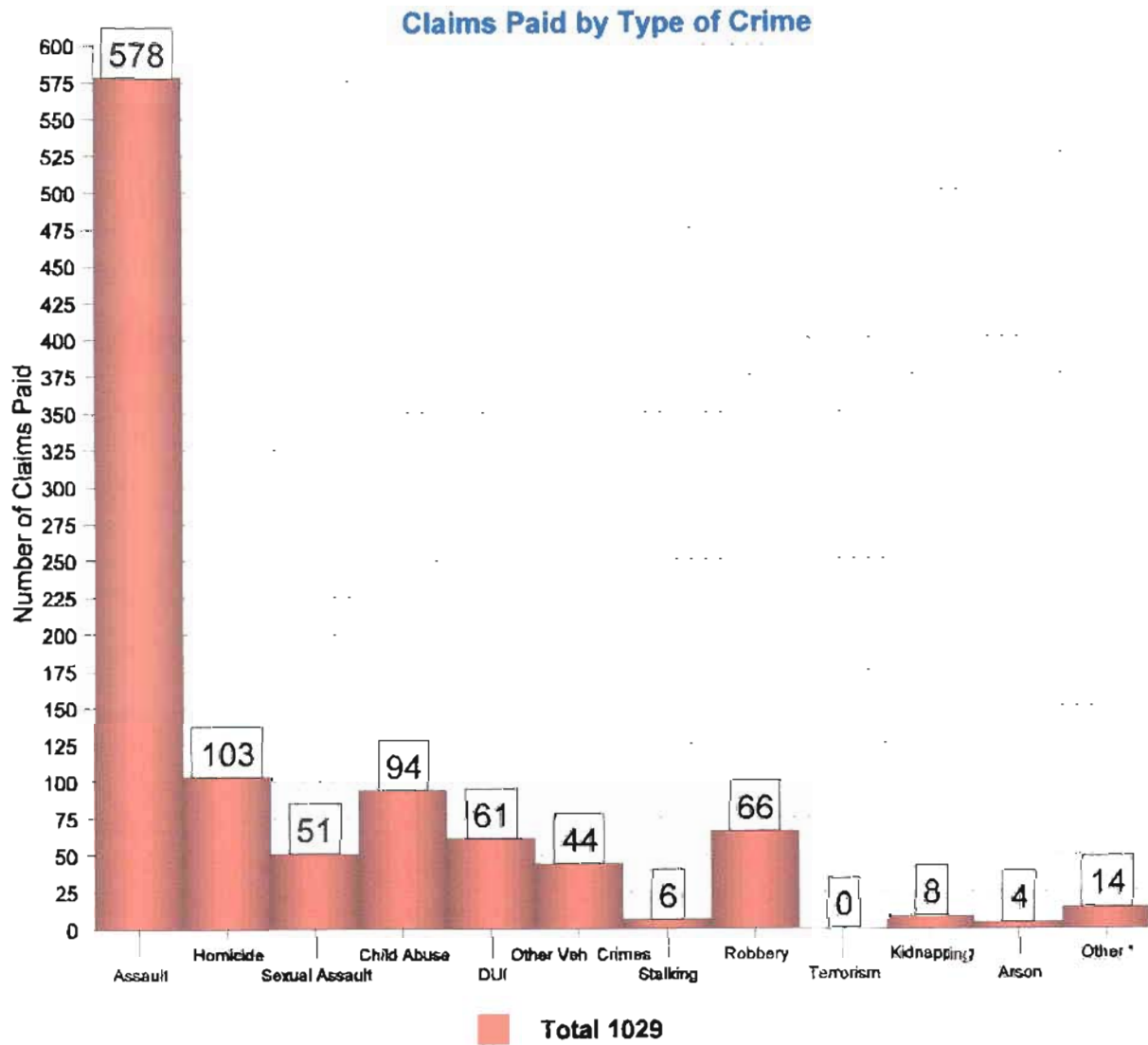
**Crime Victim Compensation Fund
Claims Filed by County**

Period: October 1, 2006 through September 30, 2007

COUNTY	CLAIMS FILED	COUNTY	CLAIMS FILED
Barbour	6	Mineral	5
Berkeley	21	Mingo	16
Boone	11	Monongalia	35
Braxton	7	Monroe	0
Brooke	8	Morgan	4
Cabell	45	Nicholas	4
Calhoun	1	Ohio	19
Clay	4	Pendleton	0
Doddridge	2	Pleasants	1
Fayette	11	Pocahontas	3
Gilmer	1	Preston	5
Grant	2	Putnam	16
Greenbrier	12	Raleigh	31
Hampshire	3	Randolph	12
Hancock	11	Ritchie	3
Hardy	0	Roane	1
Harrison	55	Summers	3
Jackson	10	Taylor	3
Jefferson	23	Tucker	1
Kanawha	127	Tyler	0
Lewis	17	Upshur	5
Lincoln	2	Wayne	5
Logan	32	Webster	2
Marion	15	Wetzel	3
Marshall	9	Wirt	2
Mason	8	Wood	40
McDowell	6	Wyoming	13
Mercer	25	Occurred Out of State	1

Crime Victims Compensation Fund

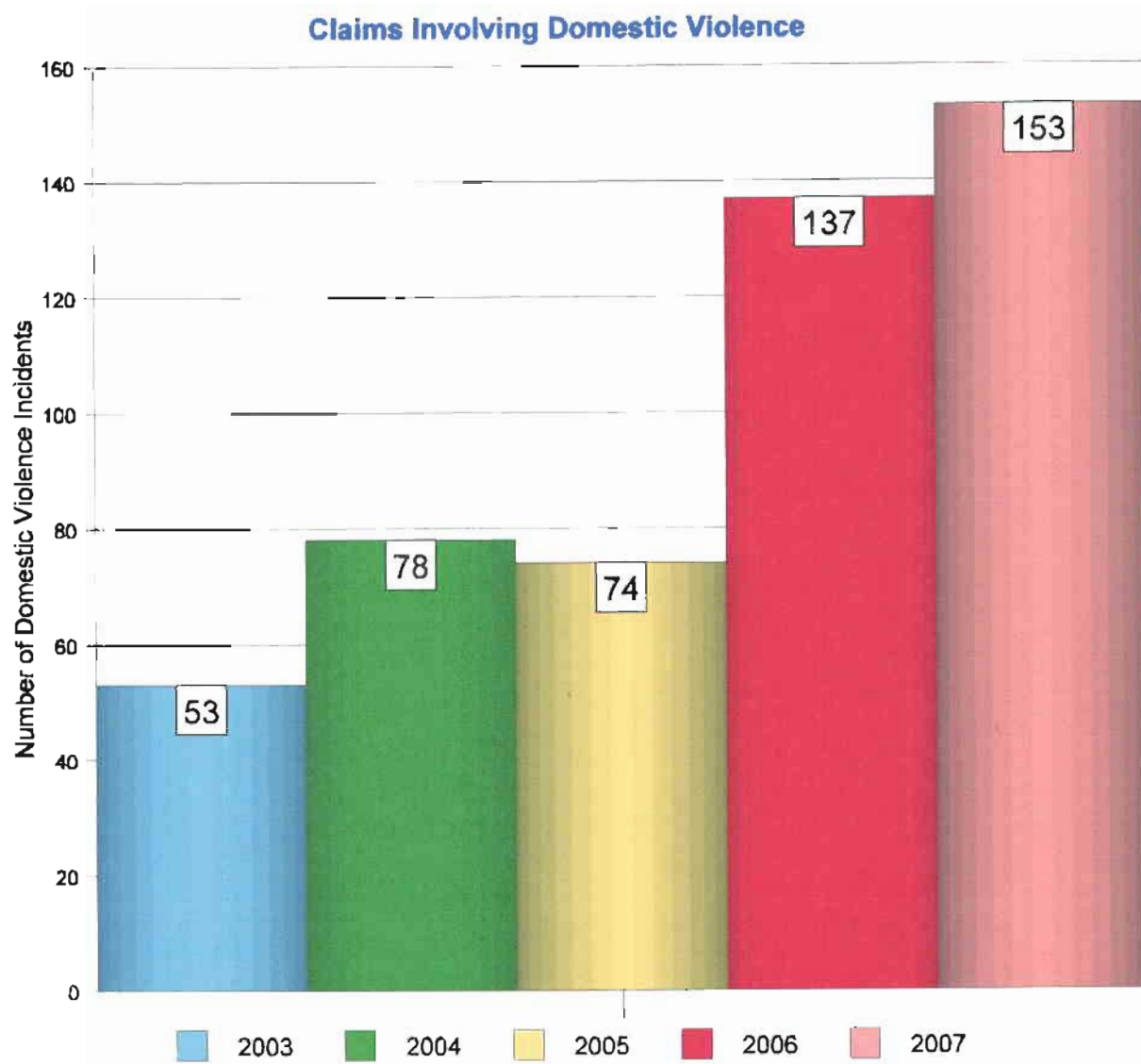
October 1 - September 30



* Includes: dog bite - arson - hunting accident - road rage

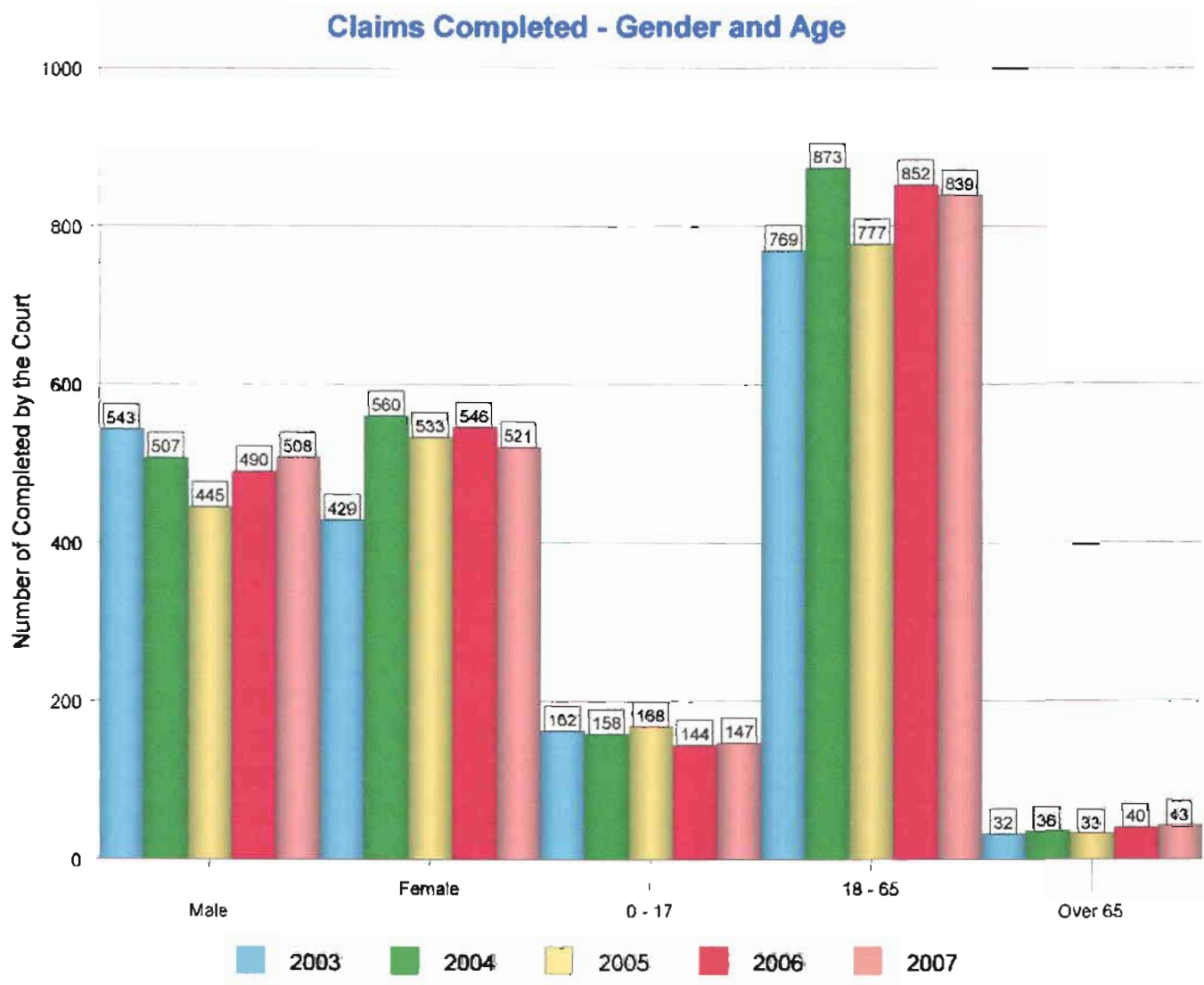
Crime Victims Compensation Fund

October 1 - September 30



Crime Victims Compensation Fund

October 1 - September 30



Crime Victims Compensation Fund

Denied Claims

October 1 - September 30

<u>Reason for Denial</u>	<u>Number</u>
Claim for loss of property	7
Claim not filed within two years	7
Claim withdrawn	1
Crime not reported timely to law enforcement	11
Crime occurred outside West Virginia	0
Crime occurred within penal institution	1
Crime not compensable	22
Dismissed	0
Duplicate claim	2
Incomplete information supplied	0
Maximum award reached	1
No economic loss*	135
Undetermined conduct	21
Unjust benefit to offender	0
Victim failed to cooperate with police or claim investigator	70
Victim guilty of contributory misconduct	<u>50</u>
TOTAL:	328

* The claim was denied because no economic loss was established at the time. However, if at a later date the victim suffers an economic loss, the Court may make an award.

West Virginia
Crime Victims Compensation Fund

Summary of Benefits

	Awards Directly to Provider	Death Award - Limit \$35,000	Forensic Medical Exam. Paid by PAI*	Injury Award - Limit \$25,000	Victims of Terrorist Acts Outside USA
Effective Date	06/12/1987	03/27/1987	06/07/1996	03/27/1997	03/27/1997

	Awards Directly to Funeral Home	College Scholarship Allowable Exp.	Funeral/Burial Expense - Limit \$6,000	Crime Scene Cleanup - Limit \$1,000	Victim Relocation Expense - Limit \$1,000
Effective Date	07/01/1998	03/02/1999	07/01/2001	07/01/2001	07/01/2001

	Mileage to Court for Hearings	Secondary Victims - Limit \$1,000 (counseling)	Disability - Additional \$100,000	Crime Scene Cleanup - Meth. Labs - Limit \$5,000	Travel Exp. to Oth. State to Get Minor - Limit \$2,000
Effective Date	07/01/2001	07/01/2001	07/01/2001	06/09/2006	06/09/2006

	Travel Exp. to Oth. Country to Get Minor - Limit \$3,000	Work Loss for Parent of Minor	Hit & Run Included in Criminal Conduct	Victim's Health Care Mileage- Current: 0.445/mi.	
Effective Date	06/09/2006	06/09/2006	06/09/2006	07/26/2006	

	Fee Amounts: - Municipal Courts = \$8.00 - Other Courts = \$10.00 plus 20% of DUI fines, plus \$50.00 each felony conviction
Effective Date	06/07/1996

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* W.Va. Prosecuting Attorneys Institute

Other States' Benefits

Alabama	15,000
Alaska	40,000/80,000*
Arizona	20,000
Arkansas	10,000/25,000**
California	70,000
Colorado	20,000
Connecticut	15,000/25,000*
D.C.	25,000
Delaware	25,000/50,000**
Florida	25,000/50,000**
Georgia	25,000
Hawaii	10,000/20,000#
Idaho	25,000
Illinois	27,000
Indiana	15,000
Iowa	limits on individual expenses, no overall max.
Kansas	25,000
Kentucky	25,000
Louisiana	10,000/25,000**
Maine	15,000
Maryland	45,000
Massachusetts	25,000
Michigan	15,000
Minnesota	50,000
Mississippi	15,000
Missouri	25,000
Montana	25,000
Nebraska	10,000
Nevada	35,000
New Jersey	25,000/60,000**
New Mexico	20,000/50,000**
New York	no med. max.
New Hampshire	10,000
North Dakota	25,000
North Carolina	30,000/33,500*
Ohio	50,000
Oklahoma	20,000
Oregon	44,000
Pennsylvania	45,500
Puerto Rico	3,000/5,000 per family
Rhode Island	25,000
South Carolina	15,000/25,000**
South Dakota	15,000
Tennessee	30,000
Texas	50,000/125,000**
Utah	25,000/50,000*
Vermont	10,000
Virgin Islands	25,000
Virginia	25,000
Washington	150,000 medical
West Virginia	25,000/35,000*/100,000**
Wisconsin	40,000
Wyoming	15,000/25,000**

* higher maximum for homicides

** higher maximum for catastrophic injuries (second figure is total, not
not additional, to first figure)

higher maximum for medical only

CLAIMS HEARD ON APPEAL

OCTOBER 1, 2006 - SEPTEMBER 30, 2007

CV-02-441

The Court awarded work loss to claimant, the mother of a crime victim, where the mother was unable to return to her job as she worked with her daughter's alleged offender. The Court found that the claimant established that her "work loss," as defined in W.Va. Code §14-2A-3(g), was related to criminally injurious conduct. Award of \$23,726.03.

CV-03-115

Claimant was walking on the side of the road when she was struck from behind by a vehicle driven by the offender. The Court's initial denial of an award was based on a finding that the crime did not fall into any of the four exceptions that relate to the use of a motor vehicle as "criminally injurious conduct" under W.Va. Code §14-2A-3(c). The Court held that since there was no evidence presented at trial that the claimant was the victim of an accident which was covered by the statute, the claim must be denied. Claim disallowed.

CV-03-174

The evidence established that the actions of the claimant's son, at the time he was fatally wounded outside a nightclub, did not constitute contributory misconduct. Therefore, the Court found that he was an innocent victim of crime. Award of \$6,000.00.

CV-03-312

The Court found that claimant's son was the victim of criminally injurious conduct when he was sexually abused at the residence of the offender. The claimant submitted into evidence documentation by medical professionals that criminal conduct did occur, resulting in unreimbursed medical, counseling, and mileage expenses. Award of \$3,666.43.

CV-03-331

Claimant and the alleged offender had an argument and the offender assaulted her. Since the claimant did not assist in the prosecution of the offender, the Court initially found that such inaction constituted a failure to cooperate with law enforcement officials. At the hearing, the claimant testified that she would have cooperated with law enforcement officials had charges been brought against the offender in West Virginia, but that he was charged with crimes in Pennsylvania and was prosecuted there. Thus, the Court found that the claimant did cooperate with law-enforcement officials to the extent possible, and there was no prosecution in West Virginia. Claim allowed.

CV-03-526

The Court reduced an award to claimant by twenty-five percent where there was evidence of contributory misconduct showing that claimant's minor daughter had alcohol in her system while she was riding as a passenger in an all-terrain vehicle driven by an intoxicated driver. The Court found that although the victim was not legally intoxicated, the blood alcohol level in her system more than likely had a negative impact on her judgment in accepting a ride on a motor vehicle whose operator was clearly impaired. Award of \$4,500.00.

CV-03-573

Where claimant was injured in a motorcycle accident which rendered her paraplegic,

counsel for the claimant and counsel for the Crime Victims Compensation Fund agreed to settle the claim and award claimant for her unreimbursed work loss. Award of \$11,940.48.

CV-03-618

The claimant, a police officer, suffered personal injuries while dismantling a methamphetamine drug lab. The Court held that the statute of limitations is tolled until a claimant knows or has reason to know not only of the existence of his injury but also its relation to criminal conduct. Where the Crime Victims Compensation Act is silent as to whether West Virginia State Police are covered, the Court found that the claimant should be considered as a member of a class of ordinary citizens covered by the Act. The Court awarded claimant for his unreimbursed work loss and documented medical and pharmaceutical expenses. Award of \$9,968.34.

CV-04-109

Based on the evidence presented at the hearing, the Court found that the claimant, who was assaulted while trying to stop an argument between a couple at a bar, was not guilty of contributory misconduct. Award of \$419.58.

CV-04-400

Claimant's decedent was killed in an automobile accident where he was the passenger in a car driven by an intoxicated driver. The Court found that the claimant proved by a preponderance of the evidence that the decedent was not guilty of contributory misconduct. Award of \$6,000.00.

CV-04-506

Claimant failed to prove by a preponderance of the evidence that he was not guilty of contributory misconduct when he was run over by the driver of a vehicle. The Court found that the claimant was drinking at the time of the accident. Claim disallowed.

CV-04-528

The Court made an award to the claimant where it was established that the claimant's father, who had intervened in an argument and was fatally shot, was an innocent victim of crime. Award of \$1,200.00.

CV-04-562

Claimant failed to establish by a preponderance of the evidence that he was not guilty of contributory misconduct where he was stabbed at a bar. The Court found that there was evidence that claimant first shoved the offender while inside the bar and had been drinking. Claim disallowed.

CV-04-614

Claimant's decedent was standing behind his vehicle when he was struck by another vehicle which caused fatal injuries. Claimant was unable to prove by a preponderance of the evidence that the decedent was not guilty of contributory misconduct since he had been drinking. Further, there was no evidence that the offender's actions fell within any of the four exceptions that relate to the use of a motor vehicle as "criminally injurious conduct" under W.Va. Code §14-2A-3(c). Claim disallowed.

CV-05-04

Where claimant was injured while trying to stop a physical altercation between her son and the offender, the Court found that claimant was guilty of contributory misconduct when she struck the offender with a metal rod. Claim disallowed.

CV-05-098

The claimant was at his residence when the offender came inside with a gun and shot him. The Court's initial denial of the award was based on the Claim Investigator's finding that the claimant was not an innocent victim of crime. W.Va. Code §14-2A-3(1) states: "'Contributory misconduct' means any conduct of the claimant...that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct has causal relationship to the criminally injurious conduct that is the basis of the claim..." The Court found that there was no evidence that the claimant was guilty of contributory misconduct and granted an award.

CV-05-198

Claimant, who was underage, was struck in the back of the head with an unknown object at a bar. The Court found that claimant was guilty of contributory misconduct but allowed him to recover for his unreimbursed medical expenses. Award of \$1,698.25.

CV-05-176 and CV-05-192

These claims were consolidated into one hearing since both claims arose from the same incident. Claimants, mother and son, were stopped in their vehicle when the offender drove her vehicle into the rear of claimant's vehicle. The Court held that the claimants were not victims of criminally injurious conduct, and there was no evidence that the offender's actions fell within any of the four exceptions that relate to the use of a motor vehicle as "criminally injurious conduct" under W.Va. Code §14-2A-3(c). Claim disallowed.

CV-05-180

Claimant, while exiting a rest room, was struck from behind. The evidence showed that claimant was intoxicated at the time of the incident. Pursuant to W.Va. Code §14-2A-14(f), the Court found that claimant was guilty of forty percent contributory misconduct and reduced claimant's award accordingly. Award of \$7,825.57.

CV-05-225

Where claimant's son was fatally shot in the chest and back by the offender, the Court found that the claimant's son was an innocent victim. Award of \$6,000.00.

CV-05-241

The claimant was standing in the parking lot of a café when the offender approached him and knocked him out, then kicked the claimant while he was down. The Claim Investigator recommended that no award be granted. An Order was issued upholding the Investigator's recommendation and denying the claim. The Court held that claimant failed to prove by a preponderance of the evidence that he was not guilty of contributory misconduct. There was evidence that the claimant had been drinking and had gotten into several arguments at the bar. Claim disallowed.

CV-05-243

Claimant was struck by a man with an unknown object and then was struck with a vehicle while he was lying on the ground. The Court's initial denial of the award was based on the Claim Investigator's finding that the incident appeared to be a hit-and-run accident which did not fall within one of the four exceptions regarding the use of a motor vehicle as "criminally injurious conduct" under W.Va. Code §14-2A-3(c). The evidence adduced at the hearing established that the claimant was an innocent victim when he was struck by a man with an unknown object, and this was the assault that led to claimant's injury.

CV-05-389

The father of claimant's child died of a fatal gunshot wound. The Court's initial denial of an award was based on the Claim Investigator's finding that the claimant had not documented any dependent's economic loss pursuant to W.Va. Code §14-2A-3(d). The Court held that the child was not a dependent of the deceased at the time of his death since she was receiving more than half of her support from the claimant herself, supplemented occasionally by other family members. Claim disallowed.

CV-05-428

Claimant fell over a coworker's foot and onto the floor, injuring her sciatic nerve. W.Va. Code §14-2A-3 describes "criminally injurious conduct" as "conduct that occurs or is attempted in this state... which by its nature poses a substantial threat of personal injury or death and is punishable by fine or imprisonment." The Court held that the claimant failed to prove by a preponderance of the evidence that she was the victim of criminally injurious conduct. Claim disallowed.

CV-05-510

The claimant's daughter was fatally shot in the head by the offender. The Court's initial denial of an award was based on the Claim Investigator's finding that the victim was not an innocent victim of crime. The original Order upheld the Claim Investigator's finding. The Court concluded that the claimant was not guilty of contributory misconduct since there was no evidence to suggest that the victim stole money from the offender or that she used drugs. Award of \$6,627.85.

CV-05-561

Claimant was exiting a bar when he was attacked by the owner, who struck him with a "slapjack," breaking his nose. In its initial denial of an award in this claim, the Court found that the crime was not timely reported to law-enforcement officers as required by W.Va. Code §14-2A-14(b). Claimant stated that the police report date was incorrect and that he went to the police station the morning of the assault. The Court held that the claimant met his burden of proving that the criminal conduct was timely reported to law enforcement authorities. Award of \$6,720.00.

CV-05-613

Although no award was initially granted because of the claimant's alleged contributory misconduct, the Court found that there was no indication of any misconduct on the part of the claimant and she was an innocent victim of crime. Award of \$2,919.44.

CV-05-643

While claimant was attending the funeral of his mother's husband, members of the

deceased's side of the family suddenly attacked him and his sister. The Court initially denied an award based on the vagueness of the events leading up to the assault. Based on the testimony at the hearing, the Court found that the claimant was free from any contributory misconduct and was not involved in an altercation, but was attempting to defend himself and his family. Award of \$4,122.16 for medical bills and work loss.

CV-05-84

Claimant, who was knocked to the ground and beaten by the offender, was initially denied an award for failing to report the incident to law enforcement within seventy-two hours as mandated by W.Va. Code §14-2A-14(b). The Court found that claimant established by a preponderance of the evidence that good cause existed for his failure to report the incident. The evidence adduced at trial showed that the claimant, who is hearing-impaired, asked his friends to call the police for him, and the claimant was told it was under investigation. Award of \$1,350.00.

CV-06-048

Claimant's daughter was killed when she was riding as a passenger of a vehicle whose driver was racing with another vehicle and lost control. The Court initially denied compensation due to the claimant's failure to provide the Court with necessary information. After the hearing, the Court overturned the denial of compensation and made an award of \$14,896.83 to cover the dependent's economic loss, medical, and funeral expenses.

CV-06-164

The claimant was struck in the head by the offender while he was leaving a bar in South Charleston, Kanawha County. The Court initially denied an award because the Claim Investigator found that the claimant did not pursue charges against the alleged offender. Pursuant to W.Va. Code §14-2A-14(d), "A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies...may deny a claim, reduce an award of compensation, or reconsider a claim already approved." The Court reduced the claimant's award by one-half for the claimant's failure to pursue charges. Award of \$1,275.20.

CV-06-25

The Court made an award to the claimant where it was established that the claimant was an innocent victim of crime when he was shot by an unidentified assailant as he walked out of a nightclub. Award of \$21,851.70.

CV-06-253

The claimant was getting ready to leave for a gathering when he was attacked by the offender, who struck him in the face, knocking him to the ground. Based on W.Va. §14-2A-14(d), "A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim..." In its initial order, the Court denied an award because the claimant failed to appear for proceedings against the offender. At the hearing, the claimant testified that he was unaware of the magistrate court hearing because he never received notice of the date or time. Based on this evidence, the Court granted an award for payment of the claimant's unreimbursed allowable expenses. Award of \$1,445.53.

CV-05-045

Claimant suffered injuries when the offender struck him in the face and in the ankle. However, the Court found that the claimant was guilty of contributory misconduct when he yelled back at the offender, which led to the physical altercation and the claimant's victimization. Claim disallowed.

Activities Promoting the Crime Victims Fund

Crime Victims Staff



Left to right: Becky Ofiesh, Nicole Reed, Rocky Martin, Amy Shupe, David Bennett, Trish McElhaney

Training Conference

The Crime Victims staff conducted a training conference at Flatwoods for persons working in the field of assisting victims. Representatives from numerous organizations attended.



National Crime Victims Rights Week

During the month of April, Crime Victims Compensation staff members participated in a local event that centered around victims and the multitude of services available. A number of disciplines including, but not limited to, law enforcement, corrections, and nonprofit agencies, came together in an effort to educate the public about such services. Events to celebrate this week throughout the country are supported by the United States Department of Justice.

Governor Joe Manchin II signed a proclamation designating the last week in April as Crime Victims Rights Week. The proclamation was presented to one of the organizers of the events, Nicole Reed, Crime Victims Compensation Fund.



**Crime Victims
Day at the
Capitol
Complex**





Nicole Reed, Investigator with the Crime Victims Compensation Fund, receives an outstanding achievement award from Charles T. Miller, U.S. Attorney, Southern District.

