

Annual Report 2009



Crime Victims Compensation Fund

Court of Claims

Cheryle M. Hall, Clerk

2009

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.

1900 Kanawha Blvd., E., Rm. W-334
Charleston, WV 25305-0610
Telephone (304) 347-4850
Toll free (877) 562-6878
Fax (304) 347-4915

Cheryle M. Hall
Clerk
Becky A. Ofiesh
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 2008.

Respectfully,

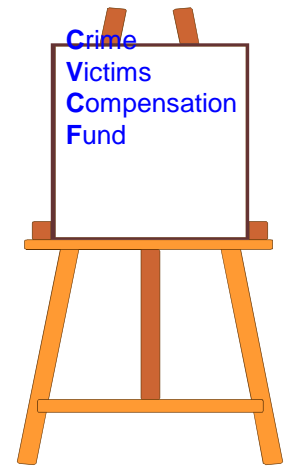
Cheryle M. Hall,
Clerk

TABLE OF CONTENTS

	<u>Page</u>
Summary of Program	1
Administrative Costs	2
Funds Collected	3
Federal Grants	4
Claims Completed per County	5
Claims Filed and Orders Issued by the Court	6
Awards	7
Types of Awards	8
Awards by County	9
Claims and Payments by County	10
Types of Crimes	11
Domestic Claims	12
Gender and Age	13
Denied Claims	14
Summary of Benefits	15
Other States' Benefits	16
Claims Heard on Appeal	17-20
Events and Recognitions	21

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)
- \$50,000 in death cases

Compensable expenses:

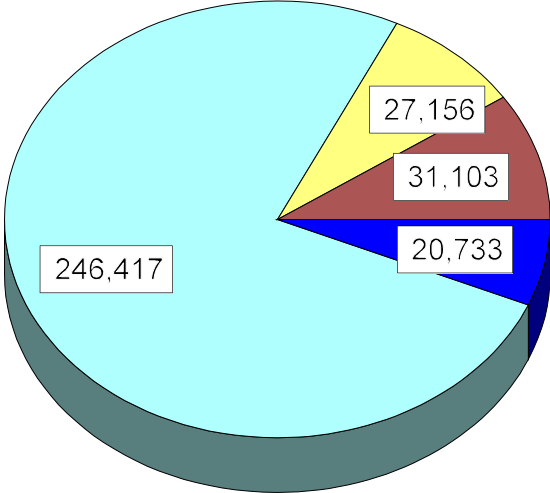
- Medical expenses
- Mental health counseling
- Mental health counseling for secondary victims up to \$1,000
- Lost earnings/support
- Funeral/burial up to \$7,000
- Relocation up to \$1,000
- Travel to medical treatment facility
- Travel to criminal proceeding
- Travel to return minor from out-of-state/out-of-country
- 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 2008

Administrative Funds \$325,509

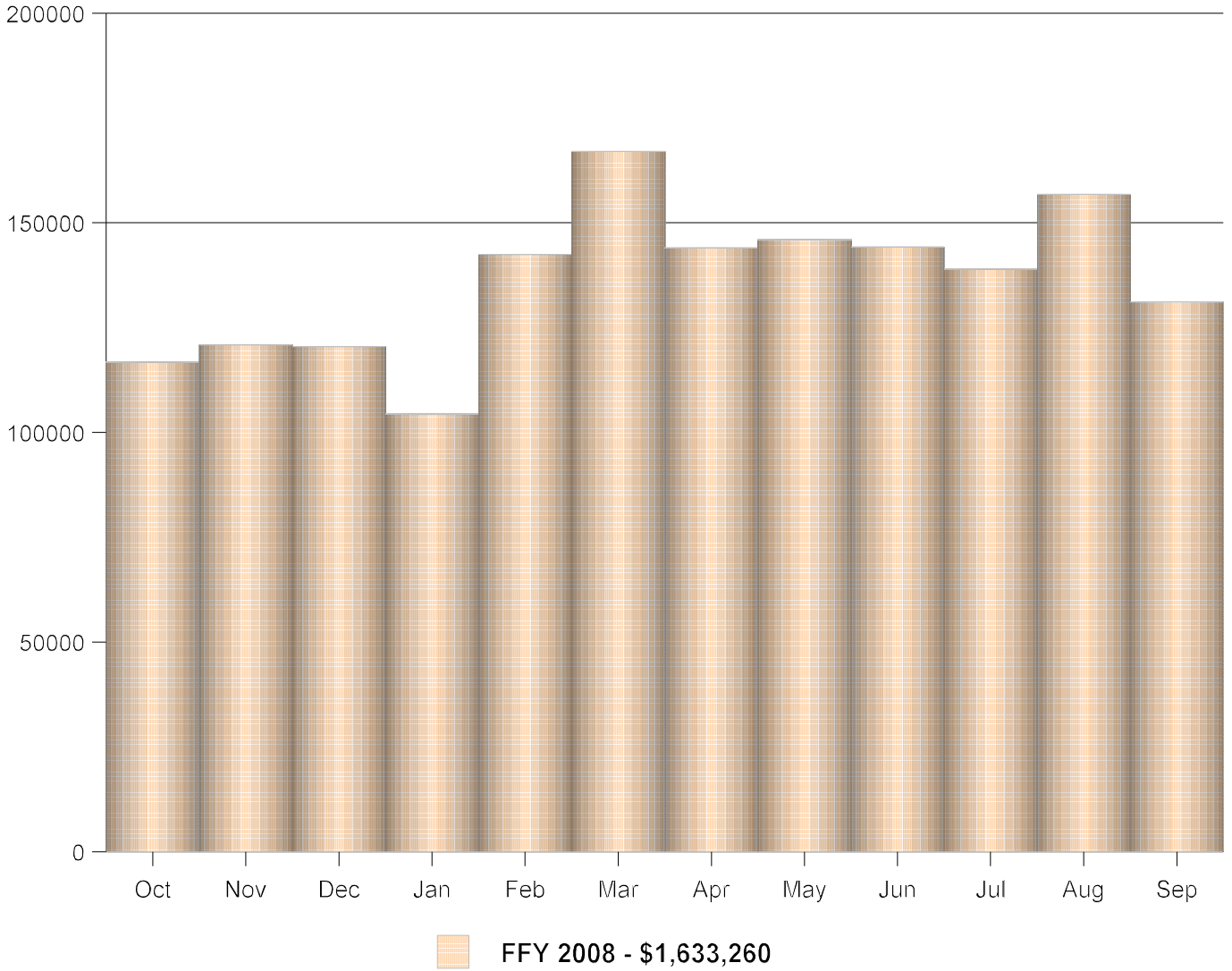


- Compensation of Judges
- Administrative Costs
- Personnel and Benefits
- Attorney Fees

Crime Victims Compensation Fund

October 1 - September 30

State Funds Collected by Month

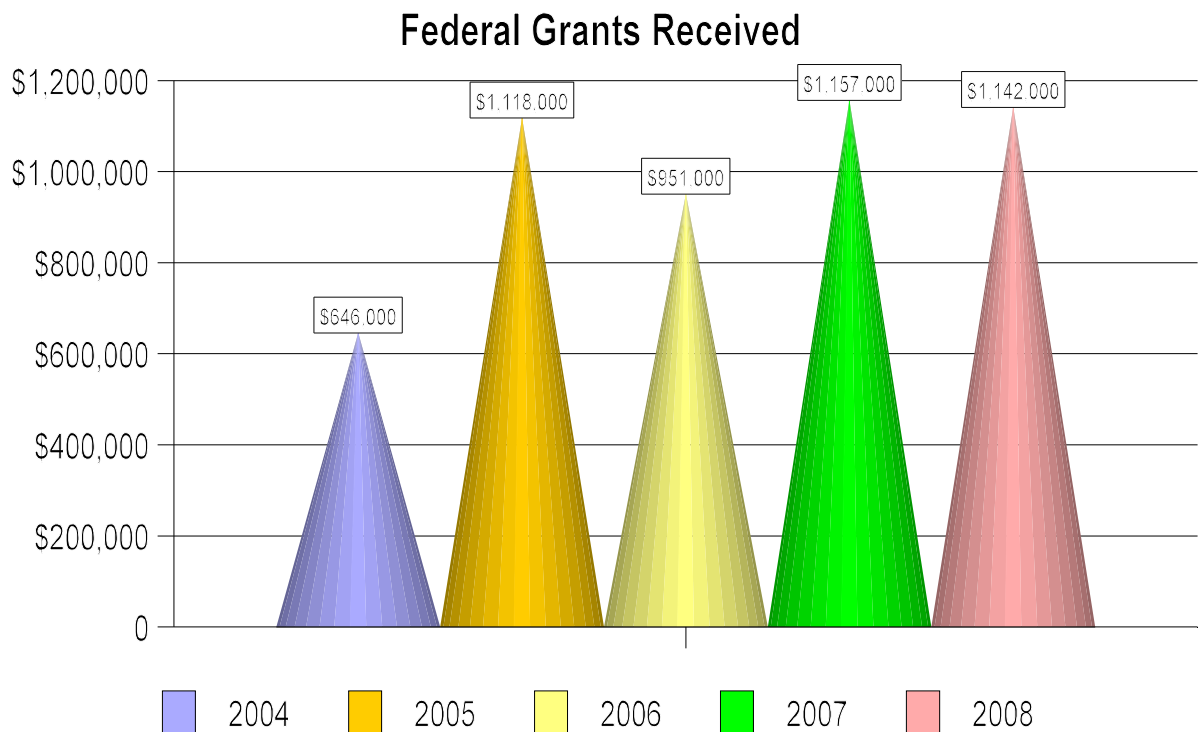


Federal Grants

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.

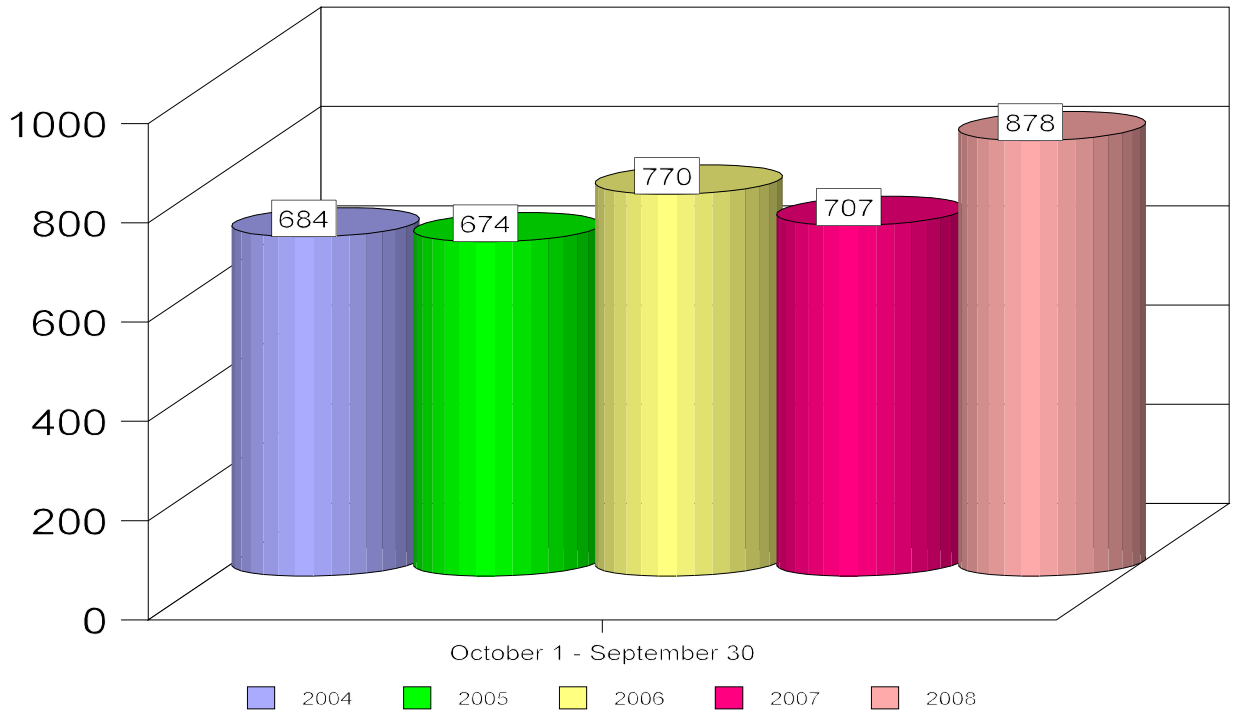
Beginning with the 1995 grant, programs are permitted to use up to 5% for administrative expenses, which includes purchasing equipment, hiring personnel, and travel expenses. However, the administrative expenses may not supplant state funds.



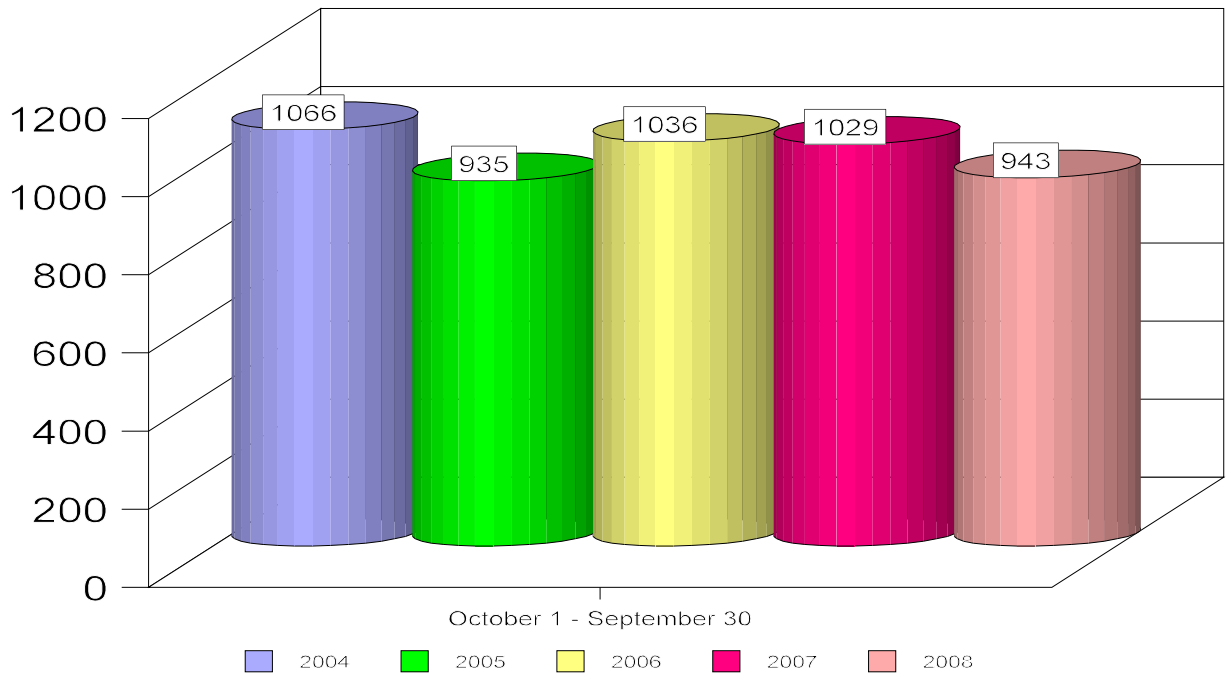
West Virginia has received a total of \$11,577,000 in federal funds for its compensation program since 1986 (the first grant year).

Crime Victims Compensation Fund

Claims Filed Per Year



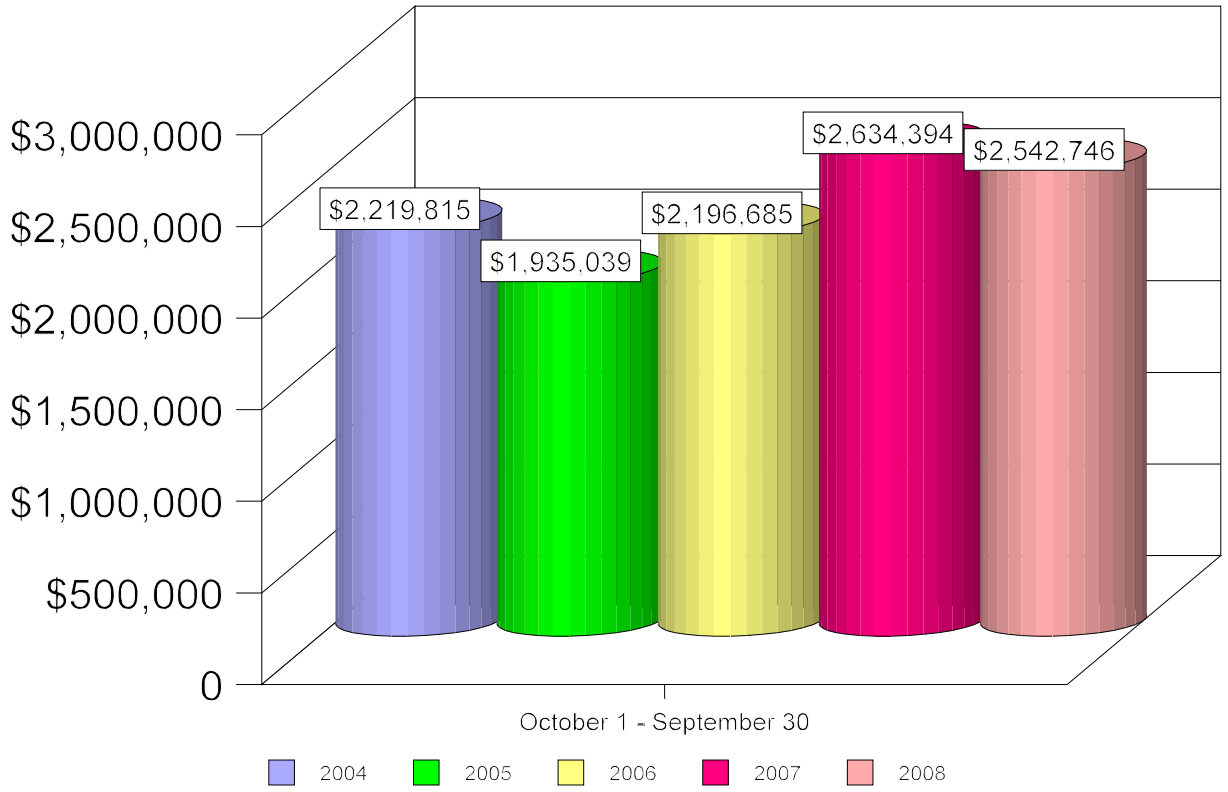
Orders Issued by the Court Per Year *



* Includes supplemental awards.

Crime Victims Compensation Fund

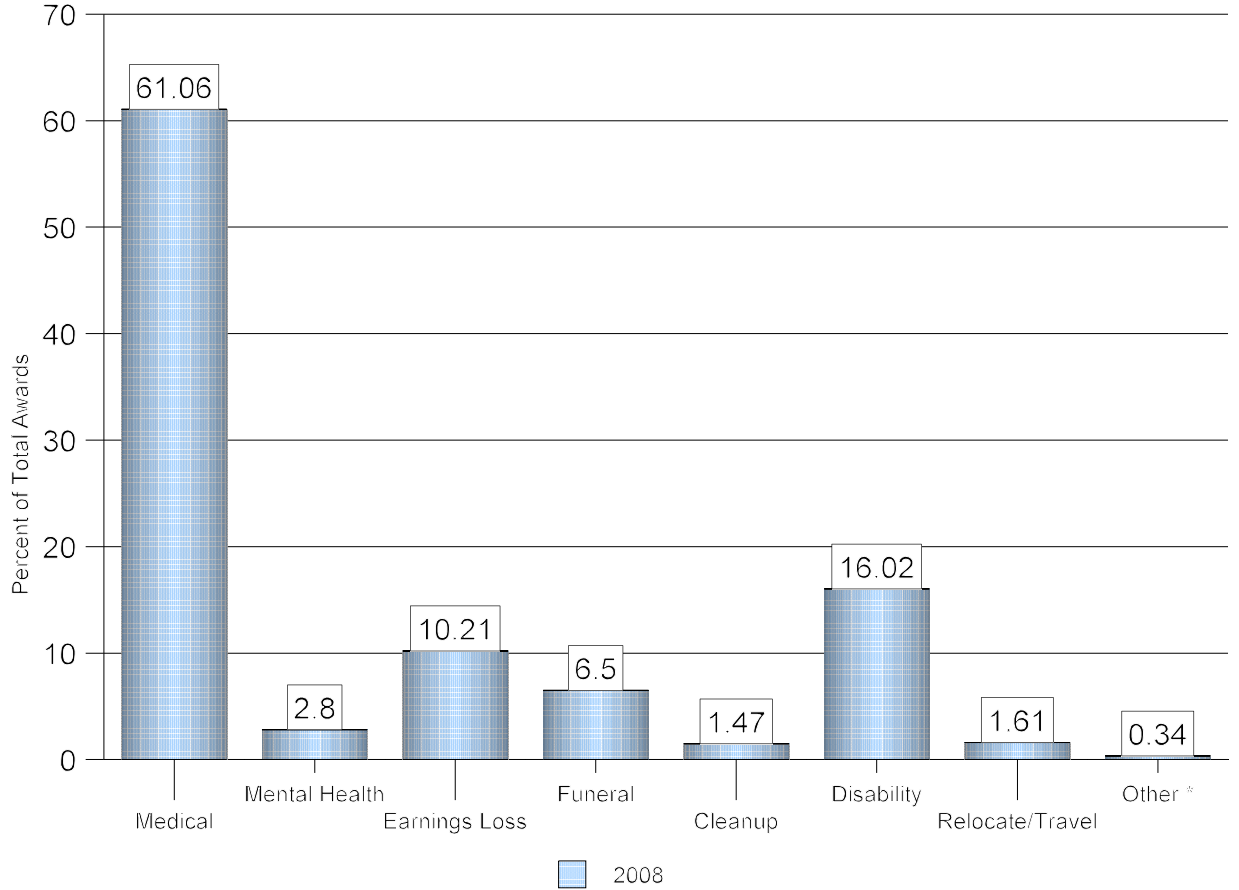
Awards



Crime Victims Compensation Fund

October 1 - September 30

Percent of Total Awards by Type



*

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

Crime Victim Compensation Fund

Claims Filed by County

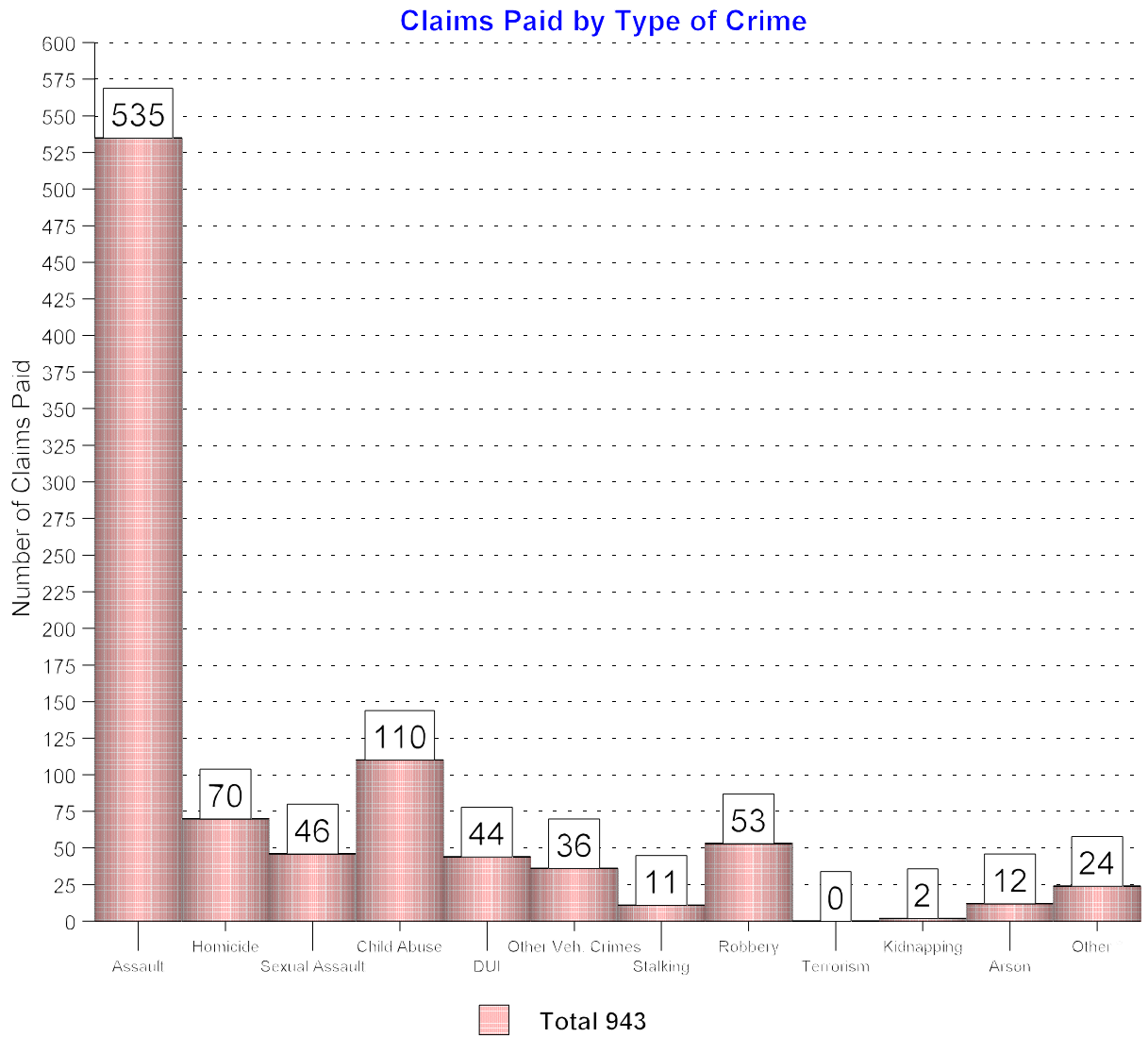
Period: October 1, 2007 through September 30, 2008

COUNTY	CLAIMS FILED	
	2007	2008
Barbour	6	7
Berkeley	21	26
Boone	11	13
Braxton	7	7
Brooke	8	9
Cabell	45	80
Calhoun	1	1
Clay	4	1
Doddridge	2	1
Fayette	11	8
Gilmer	1	1
Grant	2	1
Greenbrier	12	12
Hampshire	3	1
Hancock	11	10
Hardy	0	0
Harrison	55	60
Jackson	10	13
Jefferson	23	29
Kanawha	127	125
Lewis	17	20
Lincoln	2	11
Logan	32	18
Marion	15	18
Marshall	9	16
Mason	8	18
McDowell	6	8
Mercer	25	30

COUNTY	CLAIMS FILED	
	2007	2008
Mineral	5	3
Mingo	16	17
Monongalia	35	46
Monroe	0	2
Morgan	4	5
Nicholas	4	8
Ohio	19	49
Pendleton	0	2
Pleasants	1	0
Pocahontas	3	2
Preston	5	8
Putnam	16	14
Raleigh	31	34
Randolph	12	26
Ritchie	3	13
Roane	1	6
Summers	3	5
Taylor	3	2
Tucker	1	2
Tyler	0	4
Upshur	5	6
Wayne	5	26
Webster	2	0
Wetzel	3	4
Wirt	2	0
Wood	40	38
Wyoming	13	9
Occurred Out of	1	3
Total Filed	707	878

Crime Victims Compensation Fund

October 1 - September 30

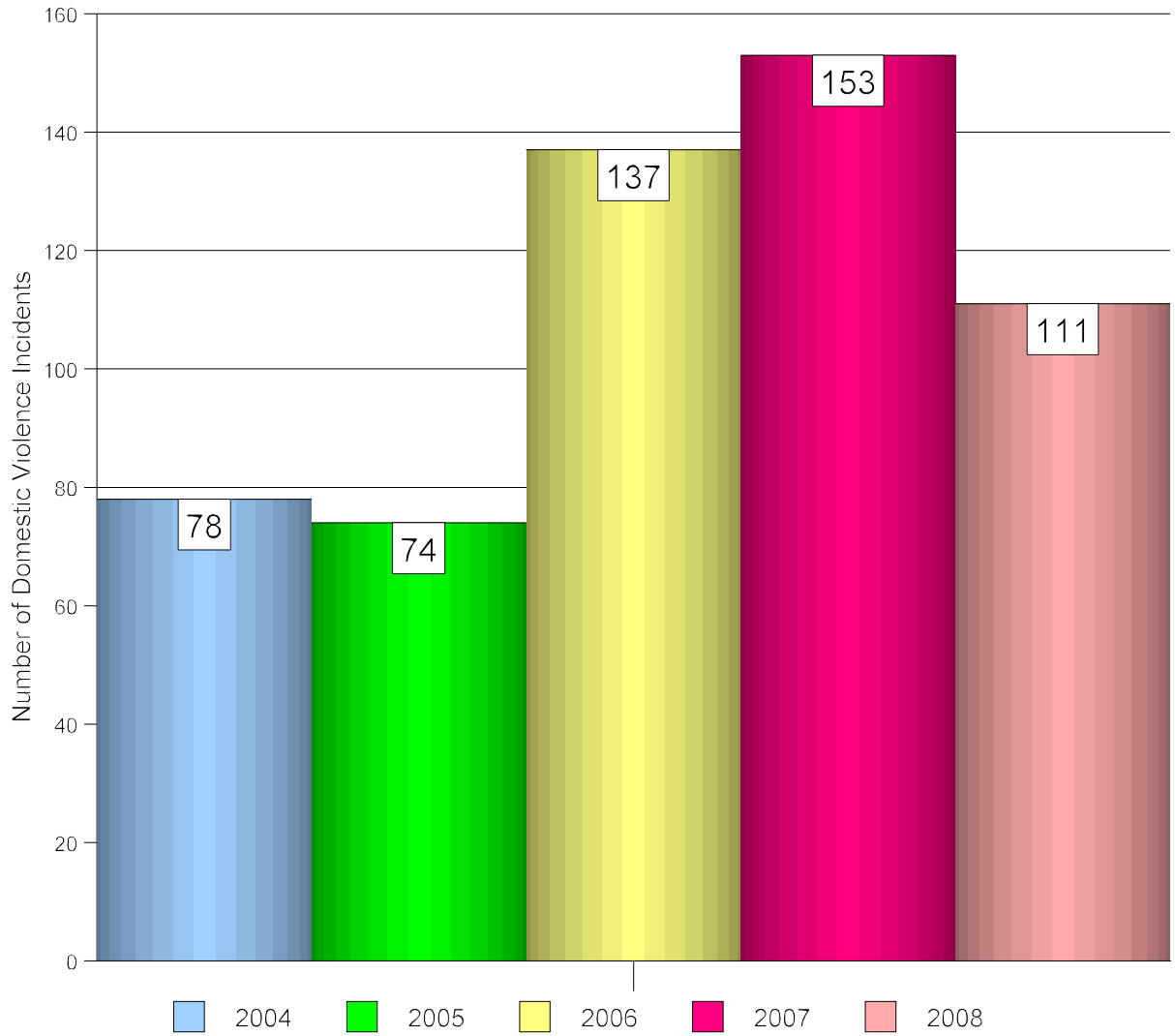


* Includes: dog bite - arson - hunting accident - road rage

Crime Victims Compensation Fund

October 1 - September 30

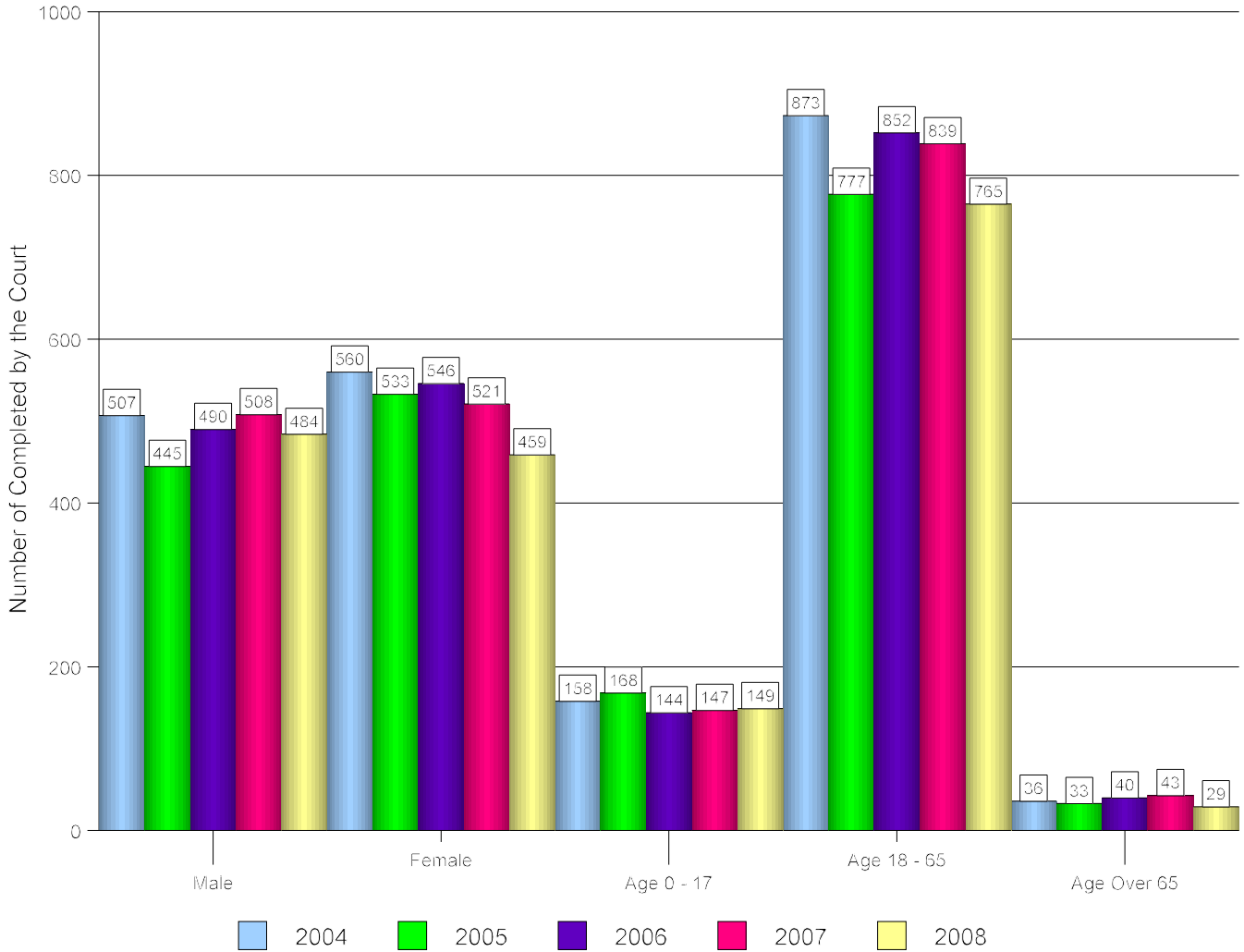
Claims Involving Domestic Violence



Crime Victims Compensation Fund

October 1 - September 30

Claims Completed - Gender and Age



e:\workfile\annualreport\gender&age.wpd

Crime Victims Compensation Fund

Denied Claims

October 1 - September 30

<u>Reason for Denial</u>	<u>Number</u>
Claim for loss of property	19
Claim not filed within two years	8
Claim withdrawn	0
Crime not reported timely to law enforcement	8
Crime occurred outside West Virginia	3
Crime occurred within penal institution	0
Crime not compensable	17
Dismissed	0
Duplicate claim	0
Further awards denied	1
Held in abeyance	3
Incomplete information supplied	3
Maximum award reached	0
No economic loss*	115
Undetermined conduct	22
Unjust benefit to offender	2
Victim failed to cooperate with police or claim investigator	49
Victim guilty of contributory misconduct	<u>46</u>
TOTAL:	292

* 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

	<i>Awards Directly to Provider</i>	<i>Death Award - Limit \$50,000</i>	<i>Forensic Medical Exam. Paid by PAI*</i>	<i>Injury Award - Limit \$25,000</i>	<i>Victims of Terrorist Acts Outside USA</i>
Effective Date	06/12/1987	07/01/2008	06/07/1996	03/27/1997	03/27/1997
	<i>Awards Directly to Funeral Home</i>	<i>College Scholarship Allowable Exp.</i>	<i>Funeral/Burial Expense - Limit \$7,000</i>	<i>Crime Scene Cleanup - Limit \$1,000</i>	<i>Victim Relocation Expense - Limit \$1,000</i>
Effective Date	07/01/1998	03/02/1999	07/01/2008	07/01/2001	07/01/2001
	<i>Mileage to Court for Hearings</i>	<i>Secondary Victims - Limit \$1,000 (counseling)</i>	<i>Disability - Additional \$100,000</i>	<i>Crime Scene Cleanup - Meth. Labs - Limit \$5,000</i>	<i>Travel Exp. to Oth. State to Get Minor - Limit \$2,000</i>
Effective Date	07/01/2001	07/01/2001	07/01/2001	06/09/2006	06/09/2006
	<i>Travel Exp. to Oth. Country to Get Minor - Limit \$3,000</i>	<i>Work Loss for Parent of Minor</i>	<i>Hit & Run Included in Criminal Conduct</i>	<i>Victim's Health Care Mileage- Current: 0.445/mi.</i>	
Effective Date	06/09/2006	06/09/2006	06/09/2006	07/26/2006	
	<i>Fee Amounts: - Municipal Courts = \$8.00 - Other Courts = \$10.00 plus 20% of DUI fines, plus \$50.00 each felony conviction</i>				
Effective Date	06/07/1996				

* W.Va. Prosecuting Attorneys Institute

z:\workfile\annualreport\summary of benefits.wpd

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. 25,000
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 additional, to first figure)

higher maximum for medical only

z:\workfile\annualreport\20 other states benefits.wpd

CLAIMS HEARD ON APPEAL

OCTOBER 1, 2007 - SEPTEMBER 30, 2008

CARDWELL, KATE COSBY (CV-05-23)

On November 3, 2004, the claimant's twenty-four-year-old grandson, was the victim of criminally injurious conduct in Princeton, Mercer County. The victim was fatally shot by two assailants at his friend's residence. 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 Court found that there was no evidence presented at the hearing that the victim was not guilty of contributory misconduct.

Claim disallowed.

GILMORE, DENNIS E. (CV-07-0158-Y)

On March 18, 2006, the fifty-four-year-old claimant was the victim of criminally injurious conduct at his residence in Bancroft, Putnam County. On the evening in question, the claimant was involved in an altercation with his neighbor, Jerry Rhodes, and Mr. Rhodes' guest, Harold Cochran. The offenders knocked the claimant to the ground and beat him. The Court's initial denial of an award was based on the Claim Investigator's finding that the claimant was not an innocent victim of crime. The Court, after examining the events that occurred prior to the altercation, found that the altercation could have been avoided if the claimant would have retreated or called the police.

Claim disallowed.

POWELL, TIMOTHY A. (CV-06-0359-X)

On September 17, 2004, the thirty-year-old claimant was the victim of criminally injurious conduct in St. Albans, Kanawha County. The claimant testified that when he came home from work, he noticed that there were approximately six to eight piles of dog excrement on his porch. The claimant suspected that his neighbor, David Krise, had thrown the dog excrement over the porch with a shovel. The claimant walked over to Mr. Krise's house to find out why he had thrown dog excrement on his porch. Mr. Krise slung the door open and struck the claimant with a two-by-four board. The Court's initial denial of an award was based on the Claim Investigator's finding that the claimant was not an innocent victim of crime. The evidence established that the claimant was not aware of the conflict between Mr. Krise and his roommate, Daniel Winnell, that existed because Mr. Winnell had thrown a condom into Mr. Krise's swimming pool. The Court concluded that the claimant's actions did not, in fact, constitute contributory misconduct.

Award of \$8,177.31.

PARSONS, MITZI D. (CV-07-0179)

On May 28, 2006, the claimant's one-year-old son Dallas C. Gibson, was severely attacked by a dog belonging to Glenn Adkins. The claimant had the burden of proving by a preponderance of the evidence that the injury resulted from "criminally injurious conduct" under W.Va. Code § 14-2A-3©. Since the Court concluded that there was no "criminally injurious conduct," an award for the claimant's

work loss relating to the incident was not granted. The claimant testified at the hearing that her son's medical bills have been covered by Medicaid, and no unpaid medical expenses have been submitted.

Claim disallowed.

SUTTON, GLORIA (CV-06-462)

On May 11, 2005, the fifty-one-year-old claimant was severely injured in a motor vehicle accident on Route 340 South in Jefferson County. The Court's initial denial of an award was based on a finding that the driver of the vehicle did not commit any of the motor vehicle violations which are defined as "criminally injurious conduct". The Court determined that the offending driver's conduct, although careless and negligent, did not rise to the level of reckless driving under W.Va. Code § 14-2A-3©.

Claim disallowed.

MONTGOMERY, HEATHER C. (CV-07-153)

From September 2006 through January 2007, the claimant's rental property in Jane Lew, Lewis County, was damaged by the operation of a methamphetamine laboratory. Unbeknownst to the claimant, offender Russell Foster was engaged in that illegal activity in the claimant's apartment above her place of business. As a result, the claimant began suffering health problems from exposure to the chemicals, causing her to miss work. The claimant also incurred expenses for cleanup of the property. In its initial award, the Court granted reimbursement for the claimant's medical, prescription, mileage, and work losses totaling \$2,165.00, plus \$1,000.00 for *general* crime scene cleanup, for a total of \$3,165.00. In not approving the Claim Investigator's recommended award of \$5,000.00 for cleanup of a methamphetamine laboratory under W.Va. Code § 14-2A-3(f)(3)(A), the Court found that the claimant did not hire a certified, licensed, and bonded business to perform the work, as required by the Court's guidelines. From the evidence adduced at the hearing, the Court found that a certified and licensed company removed the hazardous materials, and that a post-test was performed which was sufficient to prove that no dangerous residue was present.

Award of \$4,000.00 for the cleanup of the property.

BOATWRIGHT, ERICA (CV-06-589)

On March 7, 2006, the twenty-eight-year-old claimant was the victim of criminally injurious conduct in Holden, Logan County. The claimant was visiting the home of David Cyrus' mother when an unknown male pulled out a gun and shot Mr. Cyrus in the arm. The bullet exited Mr. Cyrus' arm and struck the claimant in the cheek. The Court's initial denial of an award was based on the Claim Investigator's finding that the claimant failed to cooperate with law enforcement officials. The Court opined that the claimant cooperated with law enforcement officials to the extent possible due to her injury. However, the claimant failed to provide the Court with evidence of her unreimbursed allowable expenses. In the event that the claimant later submits documentation of any unreimbursed allowable expenses relating to the incident, the claim may be reviewed again by the Court.

DERSEH, KEBEDE E. (CV-06-656)

On July 8, 2005, the thirty-two-year-old claimant was the victim of criminally injurious conduct in Talcott, Summers County. The incident occurred while the claimant was delivering narcotic medication for his employer. As the claimant was searching for the residence to make the delivery, a woman came out of a trailer and started yelling at him. The claimant told her that he was going to call the police, and she pointed a shotgun at him. The Claim Investigator's finding was that the claimant did not report the crime to the police within seventy-two hours after the crime occurred. The claimant, an Ethiopian native who relied on the manager at his workplace for assistance, made every attempt to report the incident to the police. Once he prepared the police report, he acted reasonably in trusting the manager at work, a former police officer, to file the report. Thus, the Court found that good cause existed for the claimant's failure to report the crime.

Award of \$1,047.39.

JARVIS, JOHN L. (CV-06-288)

On August 4, 2004, the fifty-five-year-old claimant was the victim of criminally injurious conduct in Huntington, Cabell County. The claimant was beaten by two or three individuals on Hal Greer Boulevard. The Claim Investigator found that the claimant did not report the crime to the police within seventy-two hours. The Court was constrained by the evidence to stand by its previous ruling.

Claim disallowed.

UNDERWOOD, JOHNNY BURL (CV-05-282)

On May 11, 2005, the forty-three-year-old claimant was the victim of a battery in Mount Hope, Raleigh County. The claimant's wife, Brenda Underwood, his stepson, Matthew Pugh, and his stepdaughter, Emily Brogan, started a verbal altercation outside his residence. When the claimant attempted to leave his residence, he realized that the offenders had blocked the road with their truck and van. As he was leaving, the claimant's vehicle accidentally struck the truck. When the claimant got out, two unidentified men grabbed him and beat him to the ground. The Court's initial denial of an award was based on the Claim Investigator's finding that the claimant failed to cooperate with law enforcement officials. The Court found that the claimant failed to prove that he fully cooperated with law enforcement officials.

Claim disallowed.

COPLEY, DOROTHY (CV-06-433)

The claimant sought to recover on behalf of her granddaughter, Brittany Shantal Copley, who she asserted was a dependent of her daughter, Tatasha Copley. On March 27, 2006, Tatasha Copley died in an automobile accident in McDowell County, West Virginia. The victim was a passenger in the right front seat of the vehicle being operated by Torrey R. Hairston. They were traveling south on Route 17 when Mr. Hairston lost control of his vehicle, which ran off the right edge of the roadway surface. Then, Mr. Hairston over-corrected the vehicle in reentering the roadway, and it came to rest crossways in the northbound lane, with the passenger side facing south. Another vehicle, driven by Charley Auliye, slammed into the passenger side of the Hairston vehicle, killing the victim. The Court finds that the victim's association with Mr. Hairston placed her in a position of extreme peril, and she could not be

considered an innocent victim. In addition, Tatasha's daughter, Brittany, was not a dependent under W.Va. Code § 14-2A-3(d).

Claim disallowed.

WAITTS, QUEENA M. (CV-05-605)

On July 9, 2005, the claimant's son, twenty-four-year-old Chris Waitts, was the victim of a homicide in Wheeling, Ohio County. Chris Waitts was standing at the intersection of 15th Street and Wood Street when a green Jeep Cherokee drove to the area. James Pugh exited the vehicle and fired several shots at Chris Waitts. Then, the offender returned to the vehicle and fled from the scene. The victim sustained multiple gunshot wounds to the back, shoulder, arm, and leg. He was pronounced dead at the hospital. The Court's initial denial of an award was based on the Court's finding that the victim was not an innocent victim of crime. After the hearing, the Court found that the claimant met her burden of proof that her son had not been engaged in contributory misconduct.

Award of \$5,114.44.

WALKER, JUDITH A. (CV-04-121)

On September 15, 2003, the forty-seven-year-old claimant was the victim of criminally injurious conduct in Comfort, Boone County. The claimant was working as a teller at Whitesville State Bank when the offender, Chris Mullins, came into the bank and pointed a gun at her face. Claimant sought to recover work loss as a result of the incident. The Court found that the claimant would have been able to return to work, if not as a bank teller, then in some other capacity, had she complied with the treatment plan recommended by her counselor and doctor.

Claim disallowed.

Events and Recognitions

Staff



Left to right: Becky Ofiesh—Trish McElhane y—Nicole Reed—Rocky Martin—Amy Shupe—Rachel Dove—Erika Schrader

Community Liaison and Outreach Administrator

In an effort to increase awareness throughout the State about the WV Crime Victims Compensation Fund,



Trish McElhane y

we have recently added a new position to our staff. Trish McElhane y, Community Liaison and Outreach Administrator, will provide advice to others who assist victims. It is our goal to increase the number

of claims filed and to make the Fund known to the citizens of the State.

Trish will meet with as many elected county officials as possible to provide information about the program and its benefits. She will provide training to law enforcement officers and other victim service providers as needed. Outreach activities will also include making visits to hospitals, libraries, community centers, and school counselors, as well as attending conferences, fairs, and festivals as an exhibitor. The Community Liaison is also responsible for serving on various boards and committees affiliated with victim services.

New Assistant Claim Investigator

Erika Schrader has been promoted to Assistant Claim Investigator. Her duties include sending out initial requests for police reports, court records, medical records, and information from employers and claimants. Erika



Erika Schrader

then follows up with additional requests in 30-45 days with another letter or telephone call. She also prepares supplemental recommendations, calling providers to ascertain outstanding balances, calculating a victim's work loss, and researching any related out-of-pocket expenses. The Assistant Claim Investigator also assists the Business Manager with statistics. When necessary, Erika performs certain administrative duties, such as issuing Orders and assisting members of the public in completing applications.