



West Virginia
CRIME VICTIMS
COMPENSATION FUND

2010 Annual Report

Court of Claims
Cheryle M. Hall, Clerk

2010
Annual Report
of the
West Virginia Court of Claims
for the
Crime Victims Compensation Fund

Presiding Judge
The Honorable John G. Hackney Jr.
Judges
The Honorable Robert B. Sayre
The Honorable J. David Cecil

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



West Virginia Court of Claims
Crime Victims Compensation Fund

Pending Judge
John G. Hackney Jr.
Judges
Robert B. Sayre
J. David Cecil

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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 2009.

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.



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 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 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 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:

- \$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:

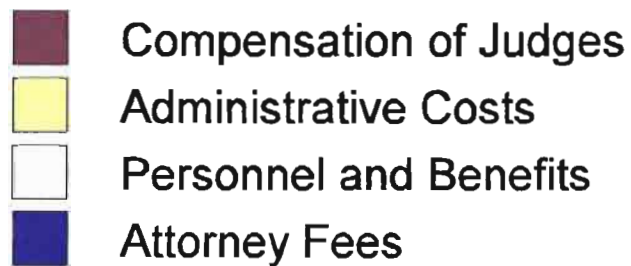
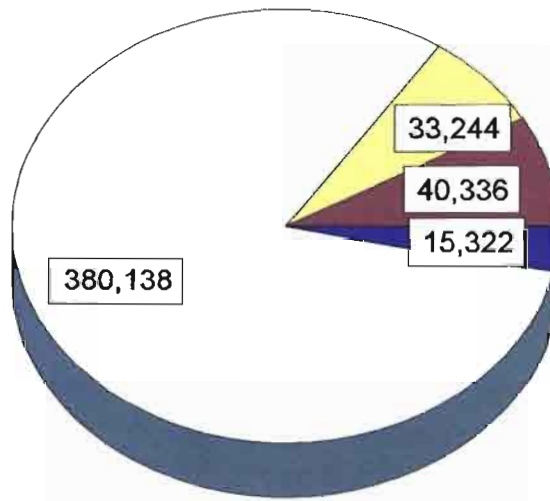
- Medical expenses
- Mental health counseling
- Mental health counseling for secondary victims up to \$1,000
- Lost earnings/support
- Funeral/burial up to \$7,000
- Relocation up to \$2,000
- Travel to medical treatment facility
- Travel to criminal proceeding
- Travel to return minor from out-of-state/out-of-country
- Replacement services
- Crime-scene cleanup up to \$1,000
- Meth lab cleanup (property owners) up to \$5,000
- Rehabilitation
- Attorney fees (public defender rates)

Administrative Costs

October 1 - September 30

FFY 2009

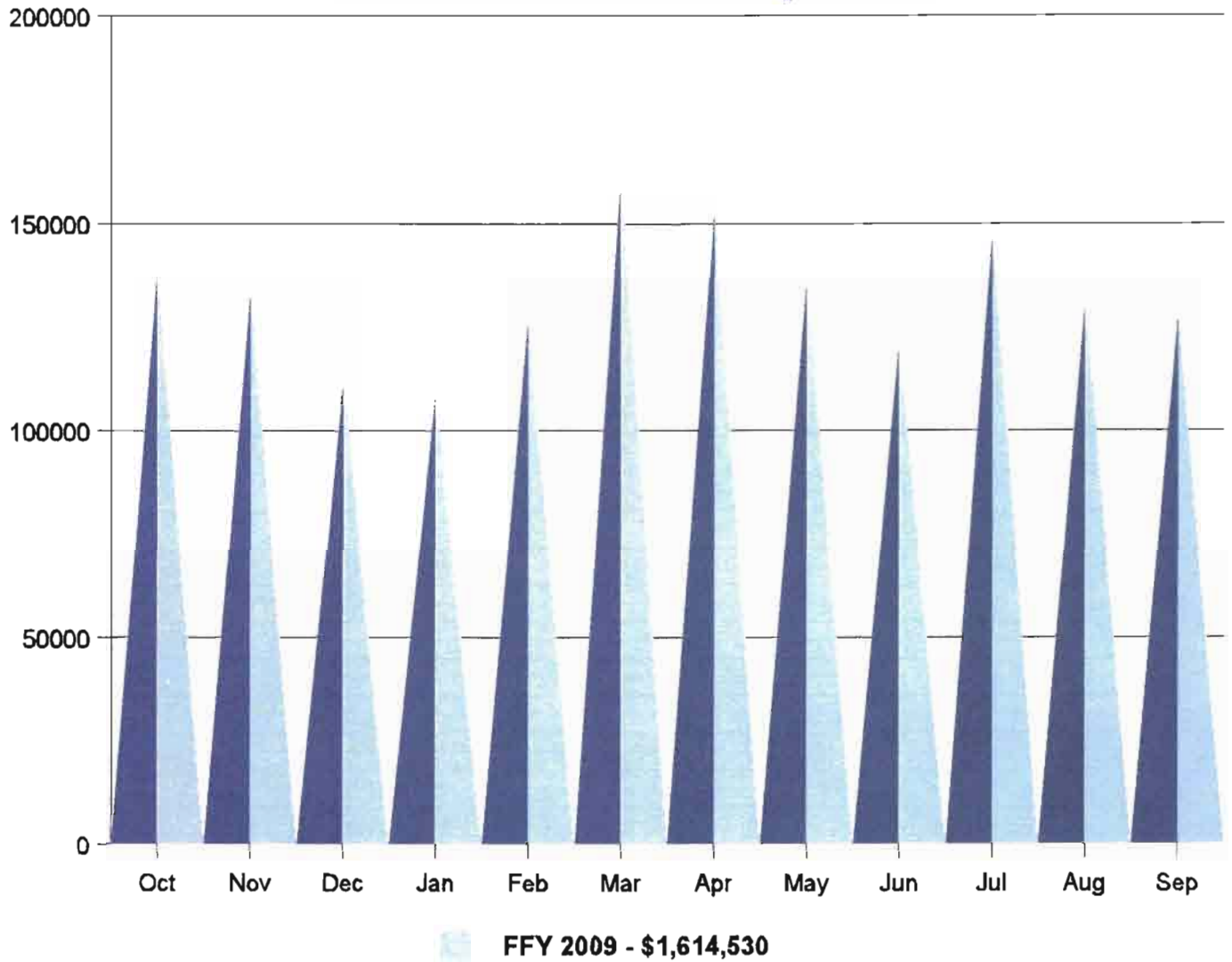
Administrative Funds \$469,040



Crime Victims Compensation Fund

October 1 - September 30

State Funds Collected by Month

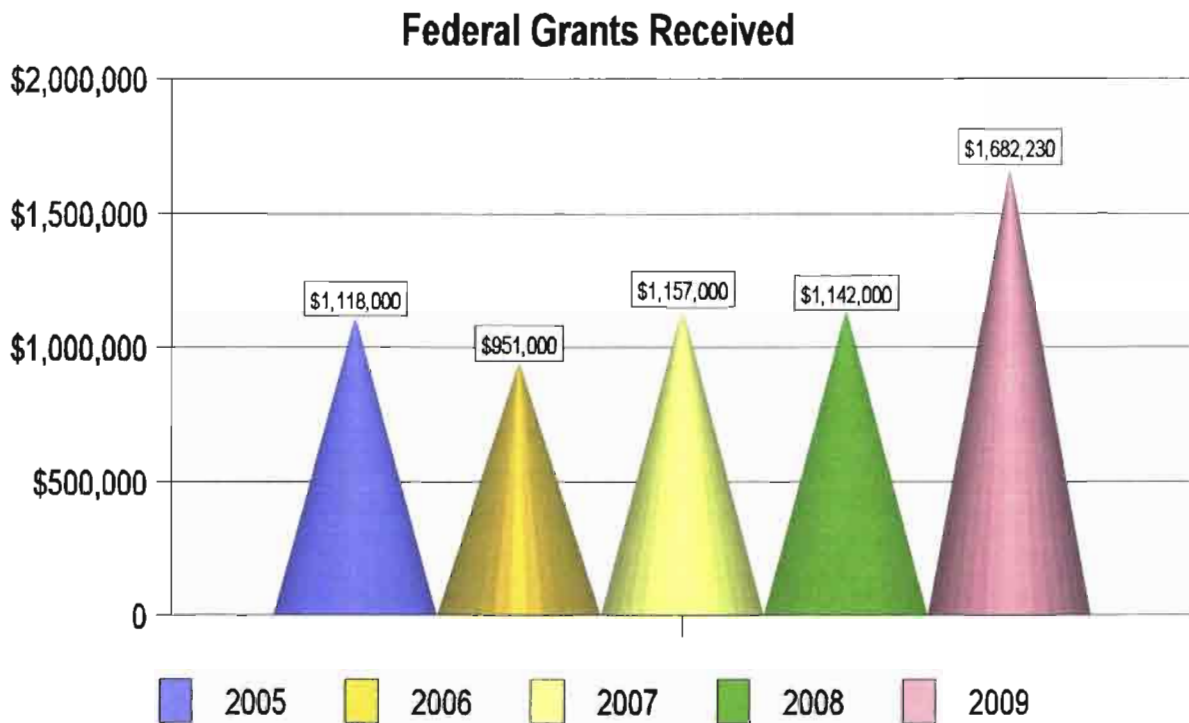


Federal Grants

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.

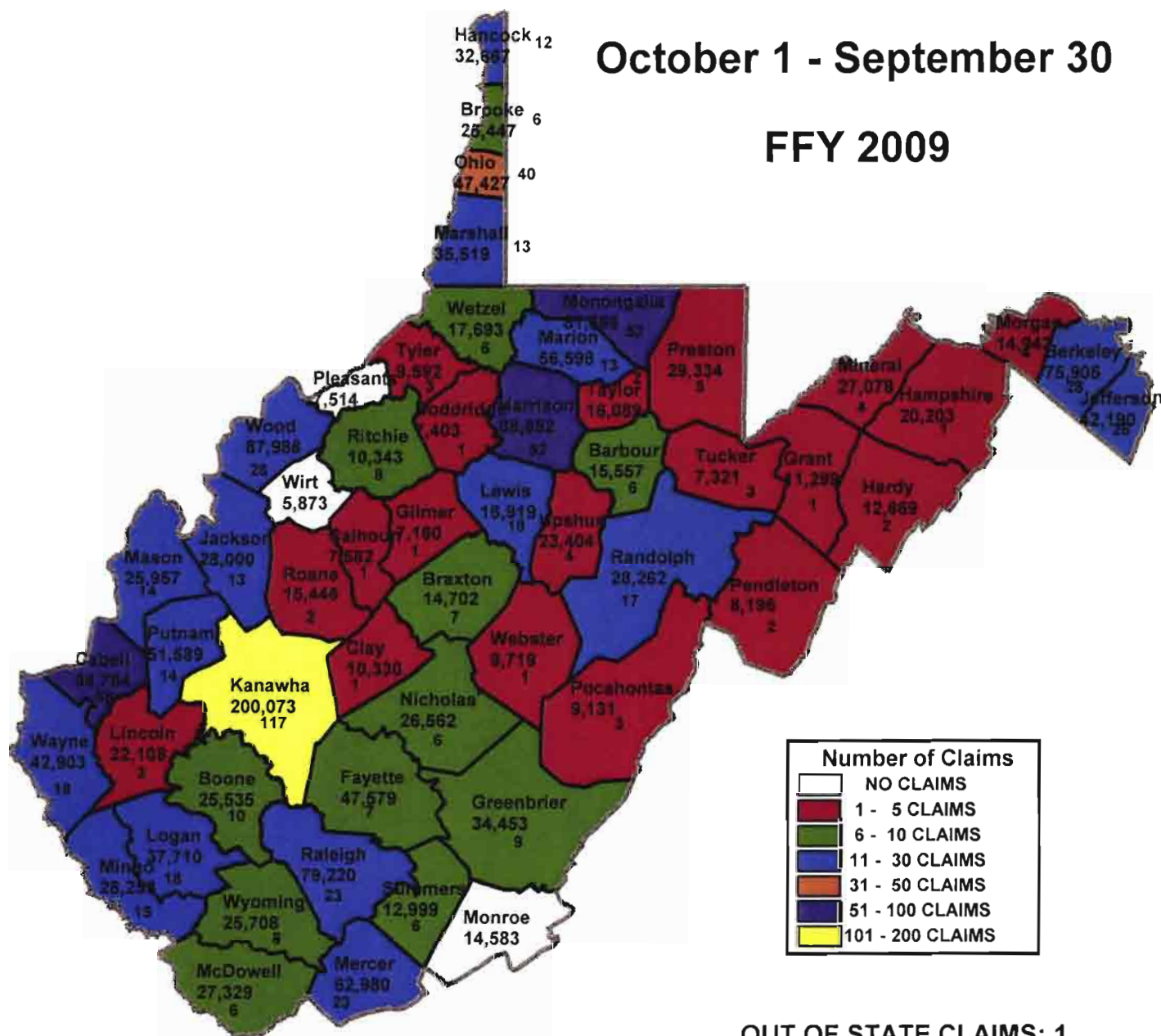


West Virginia has received a total of \$13,259,230 in federal funds for its compensation program since 1986 (the first grant year). The 2009 amount includes a one time stimulus grant of \$348,230.

Claims Completed by the Court Plus County Population

October 1 - September 30

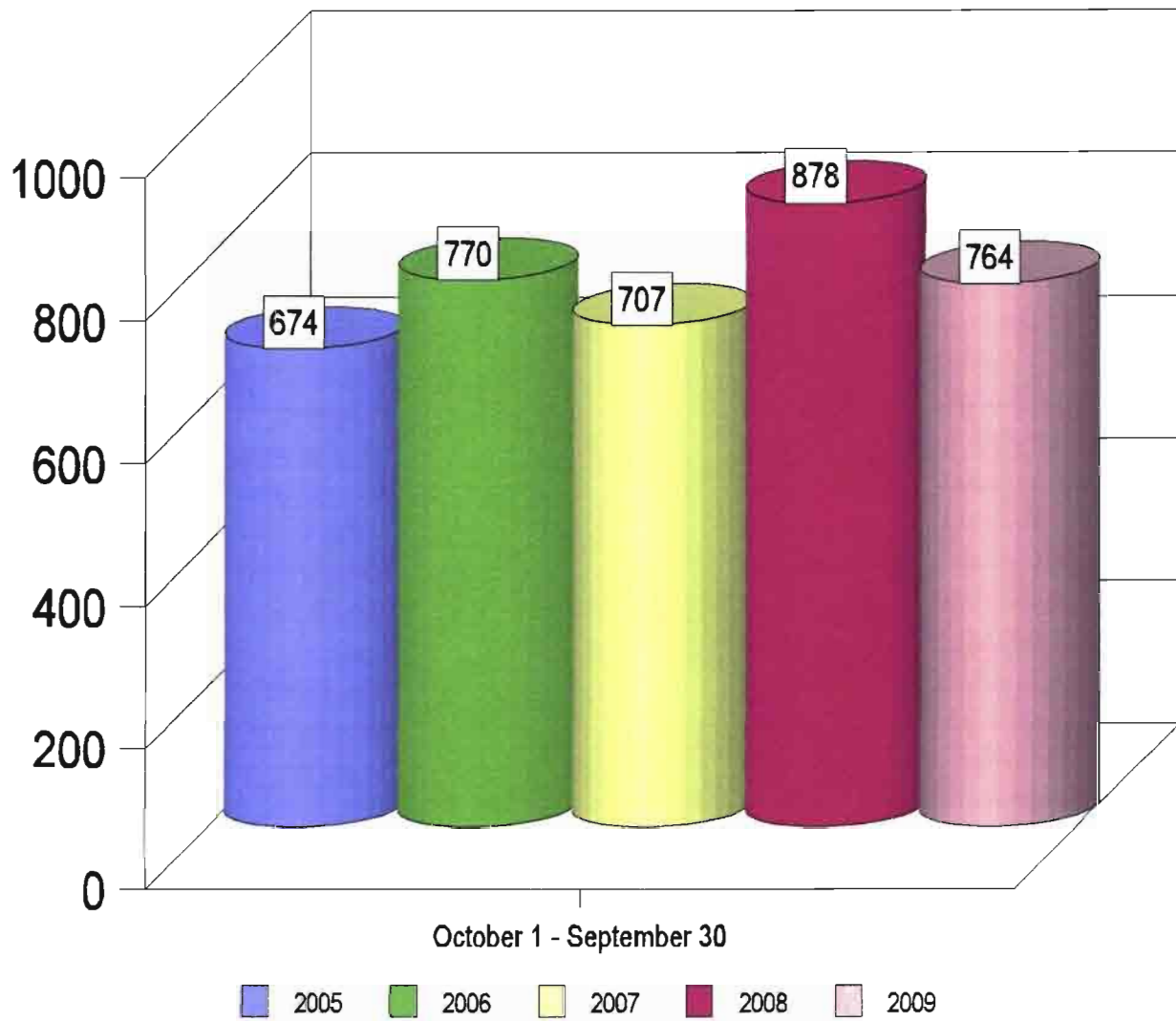
FFY 2009



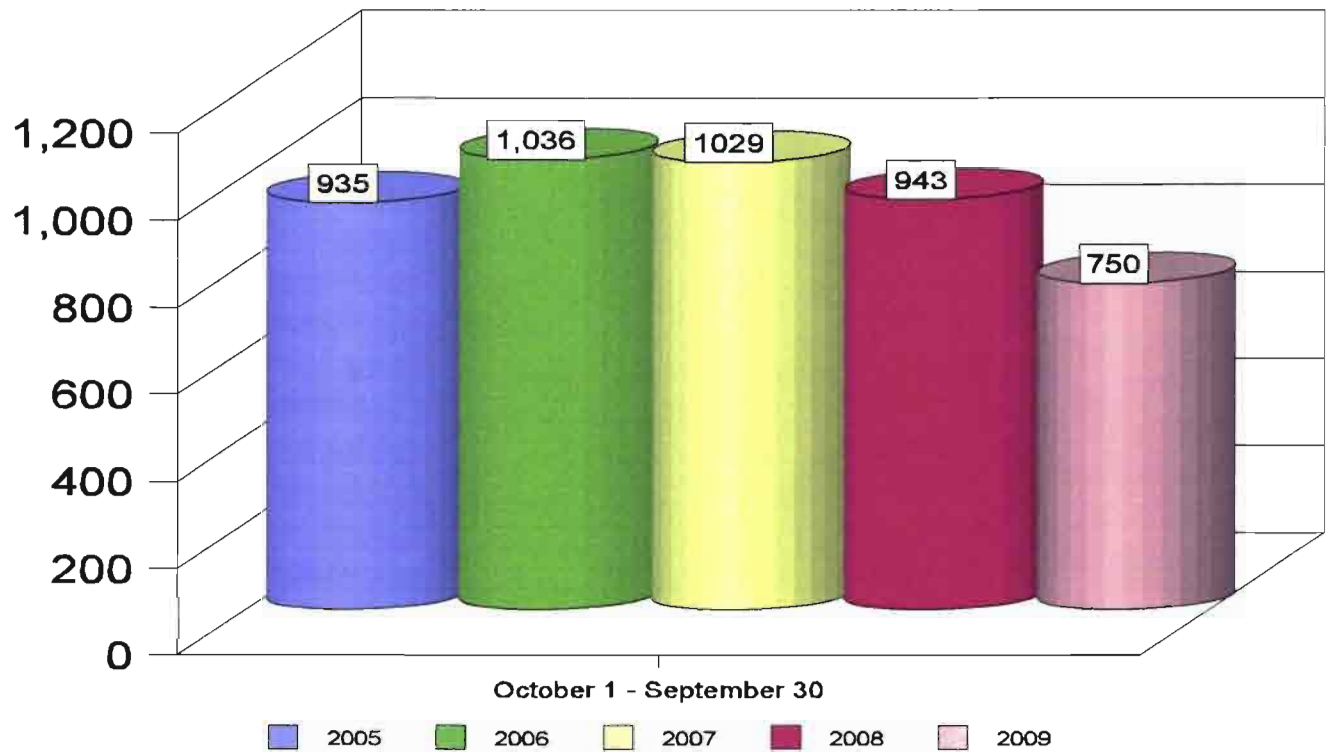
OUT OF STATE CLAIMS: 1

Crime Victims Compensation Fund

Claims Filed Per Year

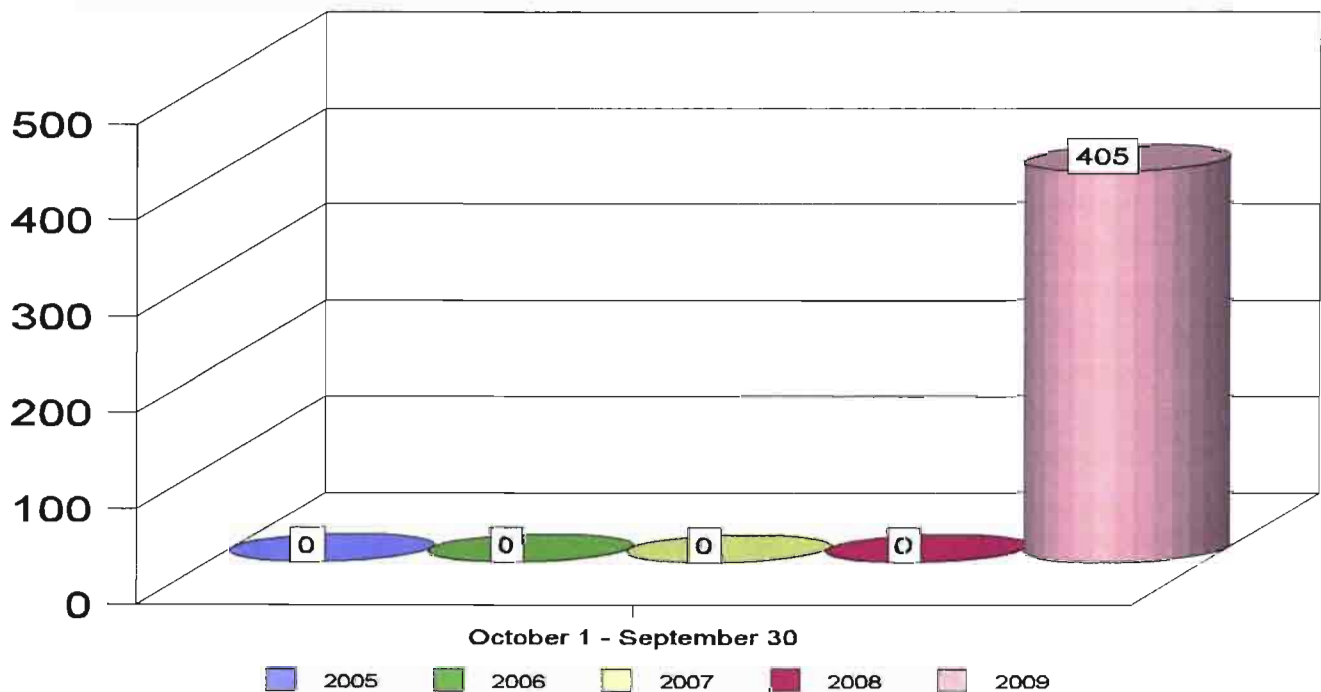


Initial Orders Issued by the Court Per Year

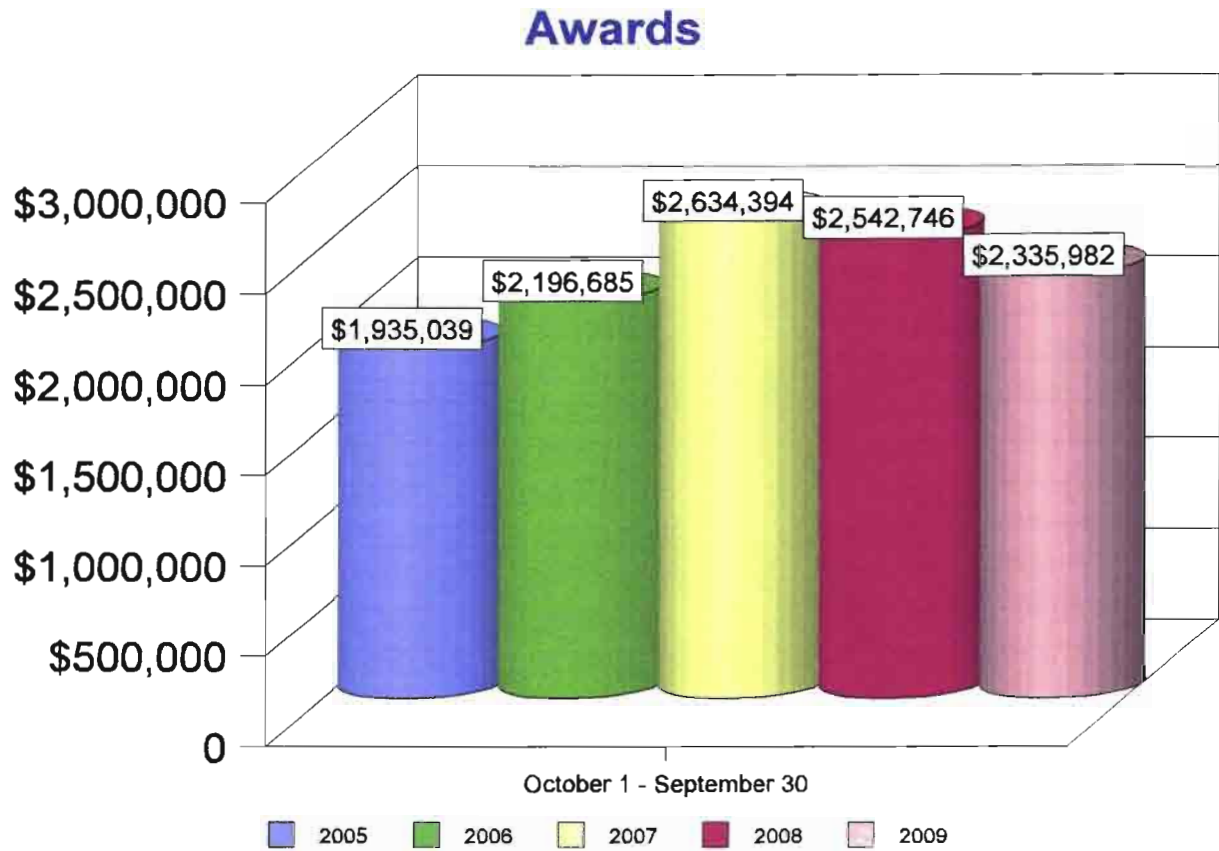


Years prior to 2009 included supplemental awards.

Orders Issued by the Court Per Year-SUPPLEMENTALS

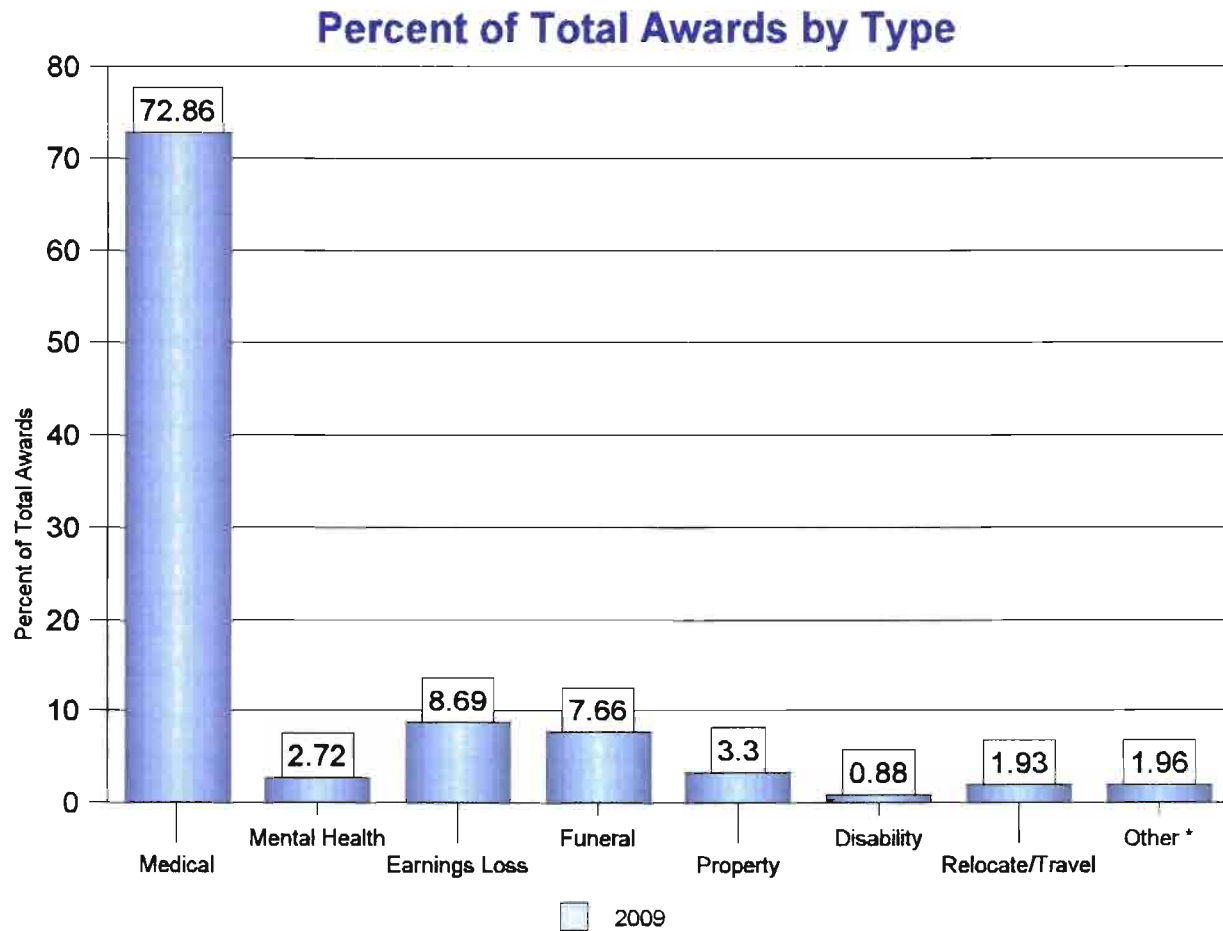


Crime Victims Compensation Fund



Crime Victims Compensation Fund

October 1 - September 30

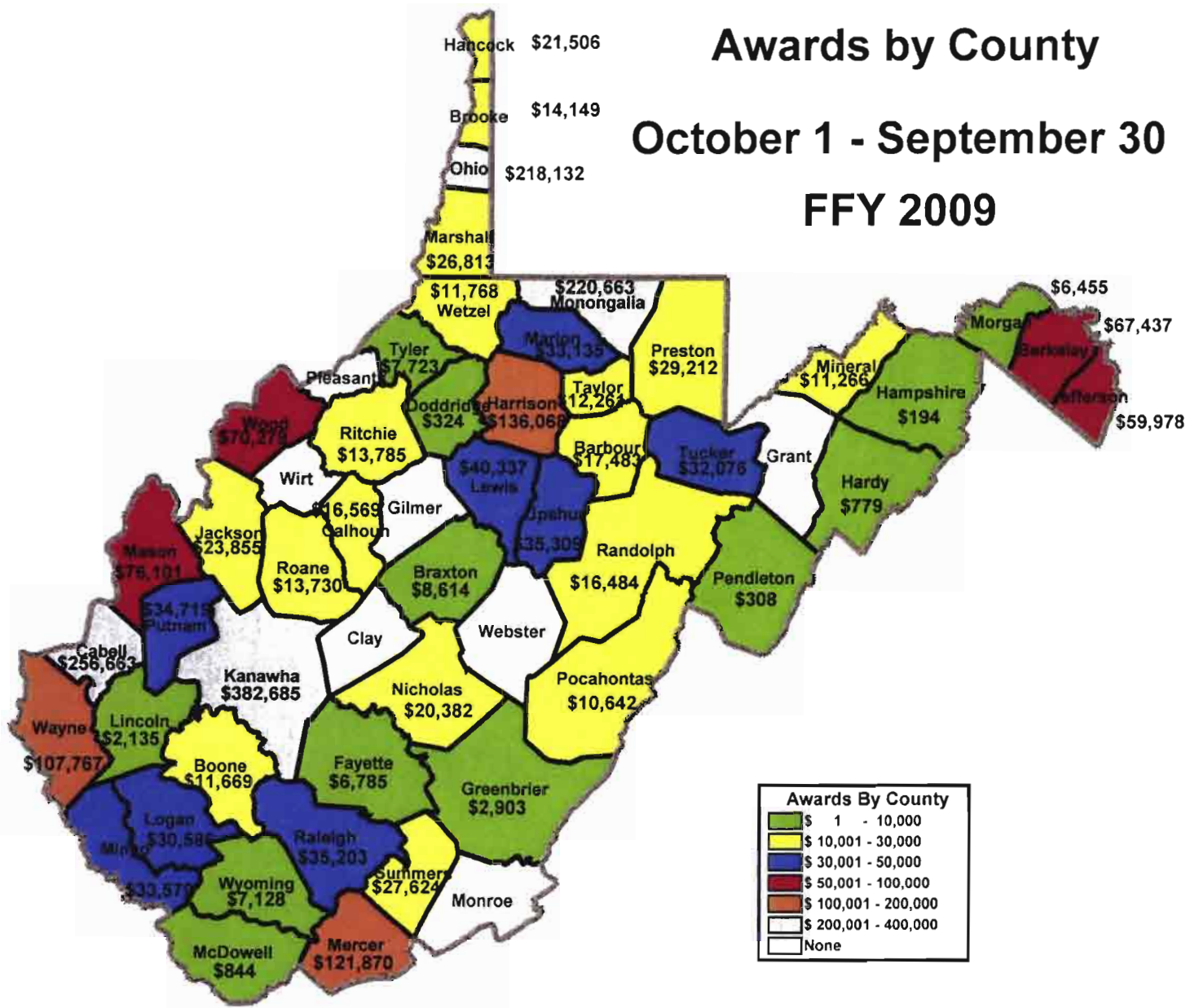


* Includes: Replacement Services Loss, Dependent's Economic Loss and Lost Scholarships

Awards by County

October 1 - September 30

FFY 2009



OUT OF STATE AWARDS: \$0.00

Crime Victim Compensation Fund
Claims Filed by County

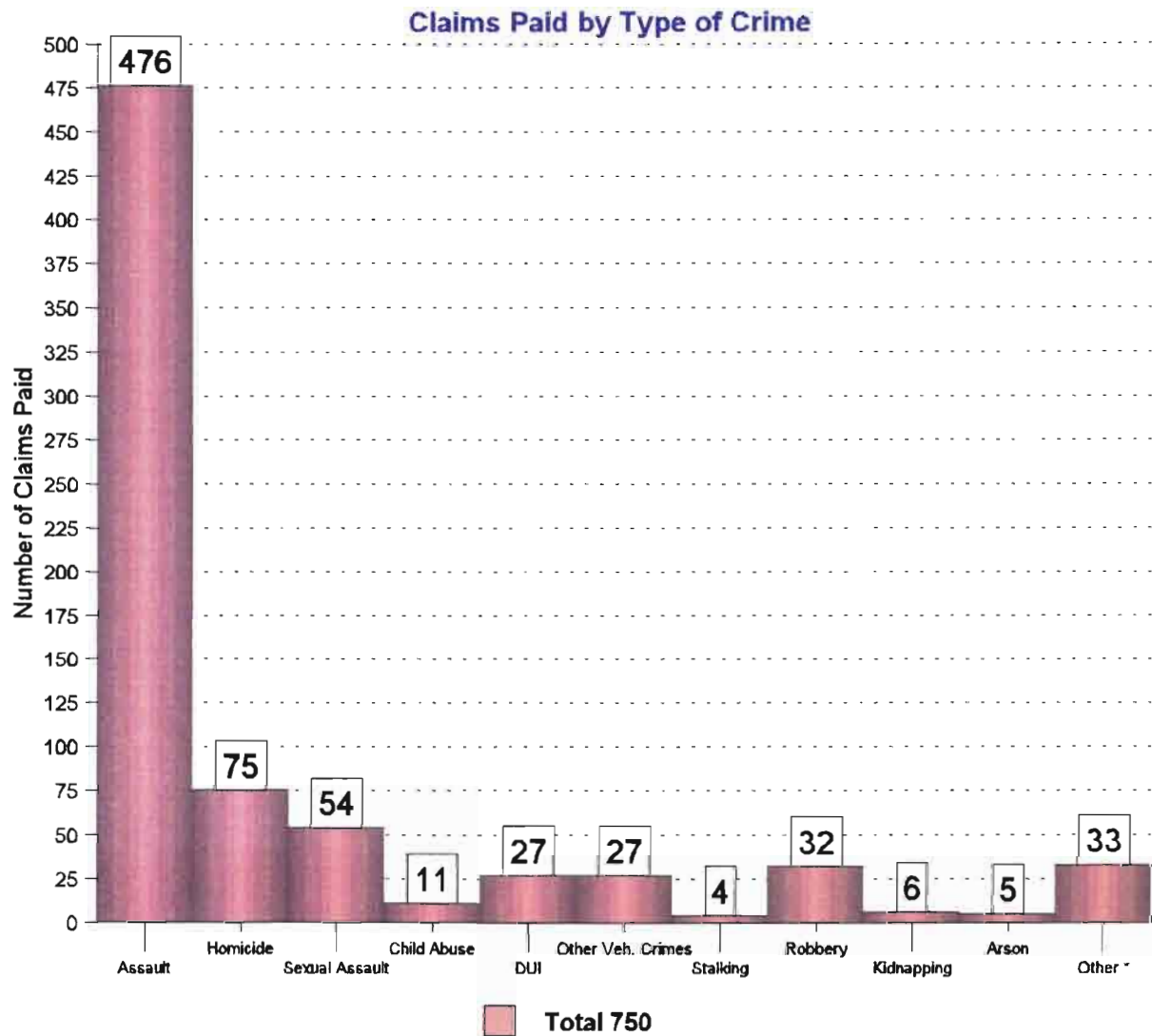
Period: October 1, 2007 through September 30, 2008

COUNTY	CLAIMS FILED	
	2008	2009
Barbour	7	5
Berkeley	26	27
Boone	13	5
Braxton	7	7
Brooke	9	3
Cabell	80	64
Calhoun	1	0
Clay	1	0
Doddridge	1	2
Fayette	8	8
Gilmer	1	0
Grant	1	1
Greenbrier	12	9
Hampshire	1	3
Hancock	10	14
Hardy	0	6
Harrison	60	64
Jackson	13	15
Jefferson	29	26
Kanawha	125	108
Lewis	20	11
Lincoln	11	4
Logan	18	33
Marion	18	18
Marshall	16	12
Mason	18	18
McDowell	8	7
Mercer	30	22

COUNTY	CLAIMS FILED	
	2008	2009
Mineral	3	2
Mingo	17	11
Monongalia	46	52
Monroe	2	2
Morgan	5	2
Nicholas	8	4
Ohio	49	44
Pendleton	2	3
Pleasants	0	0
Pocahontas	2	1
Preston	8	6
Putnam	14	15
Raleigh	34	27
Randolph	26	24
Ritchie	13	7
Roane	6	1
Summers	5	3
Taylor	2	4
Tucker	2	3
Tyler	4	2
Upshur	6	10
Wayne	26	5
Webster	0	1
Wetzel	4	1
Wirt	0	0
Wood	38	25
Wyoming	9	5
Occurred Out of state	3	0
Total Filed	878	762

Crime Victims Compensation Fund

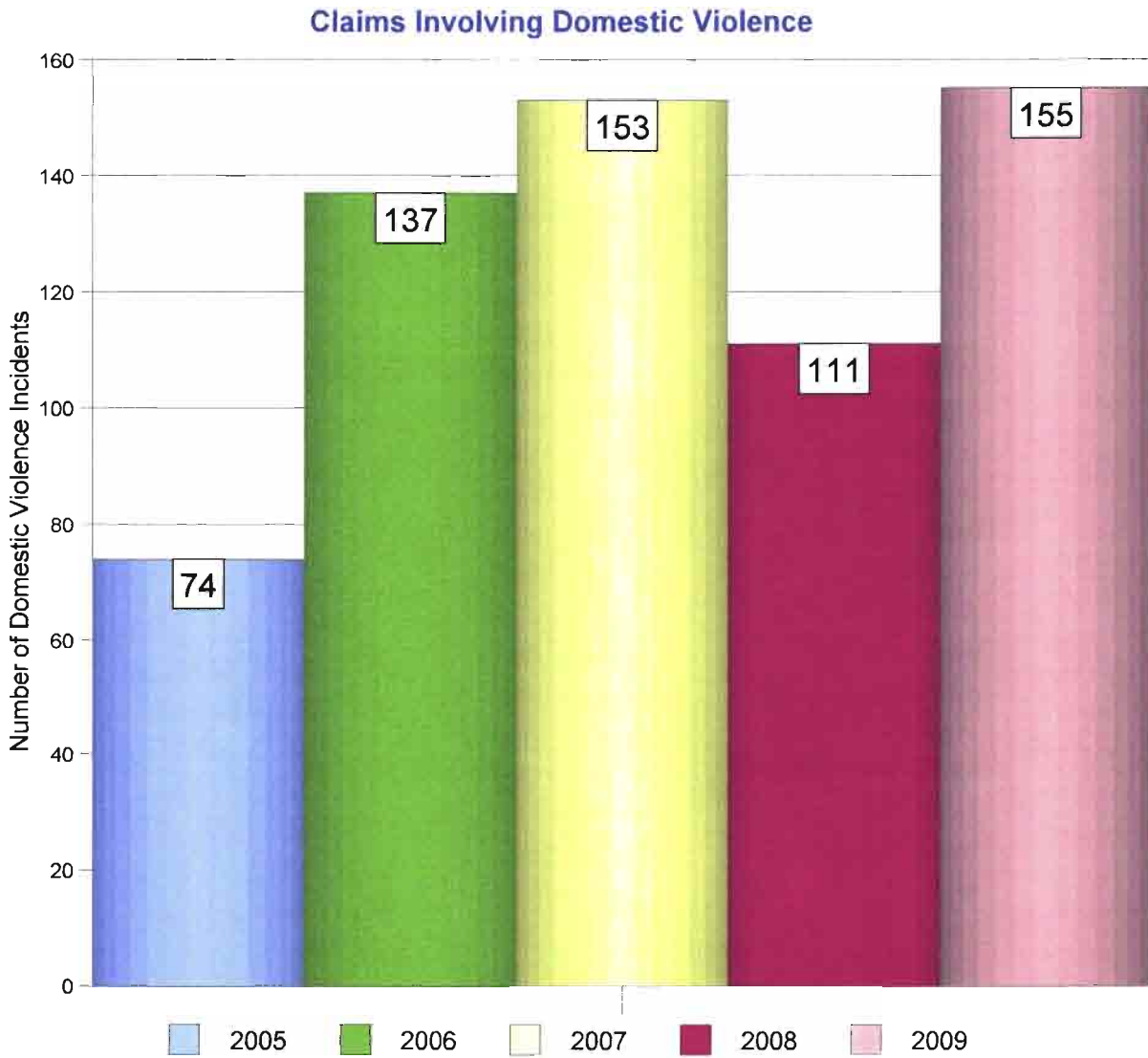
October 1 - September 30



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

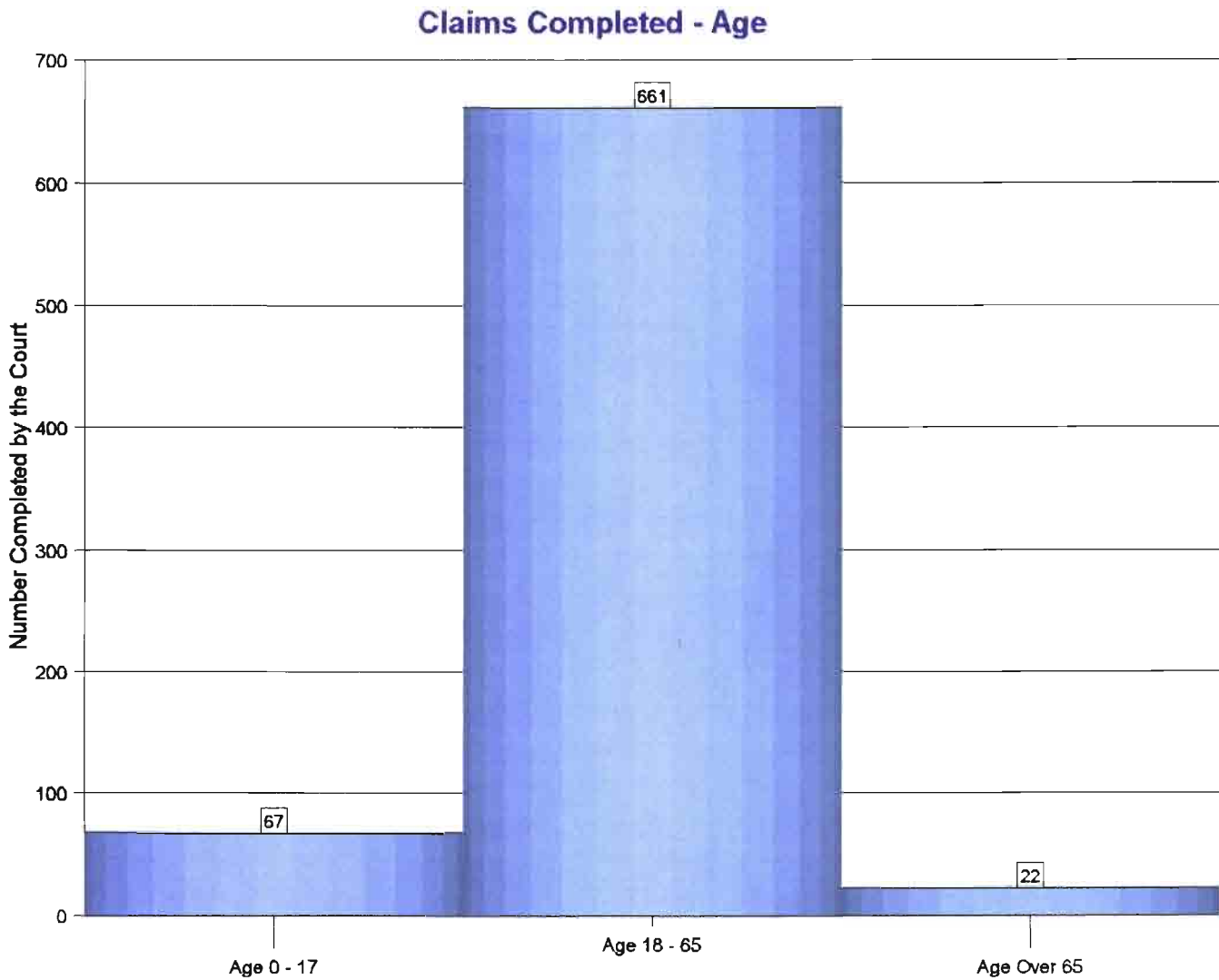
Crime Victims Compensation Fund

October 1 - September 30



Crime Victims Compensation Fund

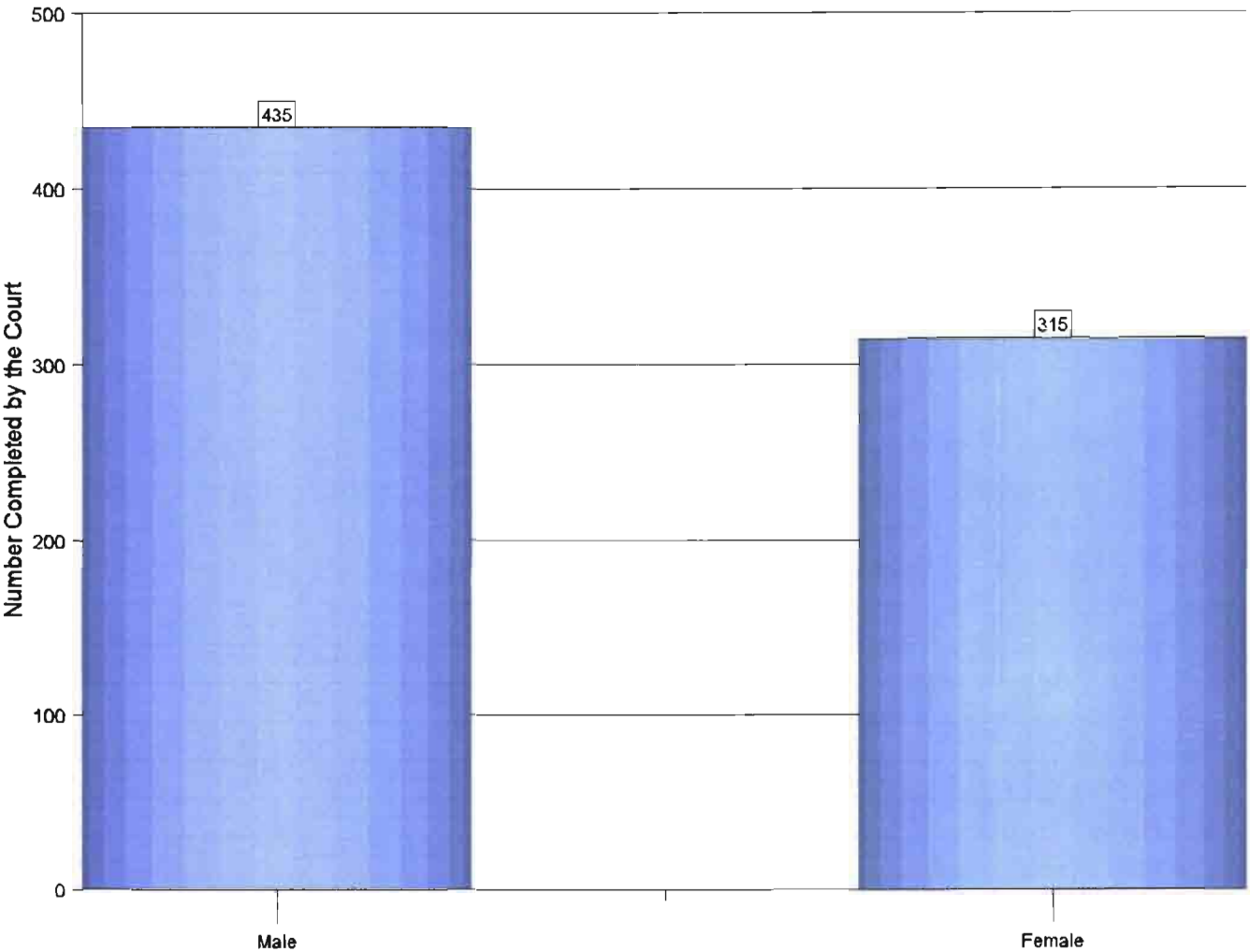
October 1 - September 30



Crime Victims Compensation Fund

October 1 - September 30

Claims Completed - Gender



Crime Victims Compensation Fund

Denied Claims

October 1 - September 30

<u>Reason for Denial</u>	<u>Number</u>
Claim for loss of property	15
Claim not filed within two years	12
Crime not reported timely to law enforcement	13
Crime occurred outside West Virginia	3
Crime not compensable	25
Duplicate claim	1
Held in abeyance	2
Incomplete information supplied	9
No economic loss*	20
Secondary victim not qualified	1
Undetermined conduct	7
Unjust benefit to offender	2
Victim failed to cooperate with police or claim investigator	64
Victim guilty of contributory misconduct	<u>107</u>
TOTAL:	281

* 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.

Summary of Benefits

Category	Effective Date	Award Amount
Awards paid direct to provider	06/12/1987	
Awards paid directly to funeral home	07/01/1988	
Claimant travel to other country to get minor	04/01/2008	3,000
Claimant travel to other state to get minor	04/01/2008	2,000
College tuition allowable expense	03/02/1999	
Crime scene cleanup - excluding meth lab	01/01/2002	1,000
Crime scene cleanup -meth lab	04/01/2008	5,000
Criminal injurious conduct outside US	07/01/2009	
Death award limit	07/01/2008	50,000
Disability injury	01/01/2002	100,000
Funeral award limit	07/01/2008	7,000
Hit and run included in criminal conduct	04/01/2008	
Personal injury limit	07/01/2009	35,000
Victim relocation	07/01/2009	2,000
Victim travel to court reimbursement	01/01/2002	
Victim travel expenses to/from treatment facility	07/01/2009	
Work loss for parent of minor	04/01/2008	
Fee amounts	06/07/1996	\$8 munic cts. \$10 oth. courts plus 20% of DUI fines and \$50 ea. felony conv.
Victim's mileage reimbursement	01/20/2009	0.445/mile

Bold text: New for 2009

West Virginia Crime Victims Compensation Fund
Claims Heard on Appeal

- **CONTRIBUTORY MISCONDUCT**
- **CRIMINAL CONDUCT**
- **ECONOMIC LOSS**
- **FAILURE TO REPORT CRIME**
- **INNOCENT VICTIM**
- **MENTAL HEALTH EXPENSES**

The following is a compilation of head notes representing decisions from July 1, 2008 to June 30, 2009.

CONTRIBUTORY MISCONDUCT

CV-07-255 Issued November 19, 2008

On June 8, 2006, the claimant's twenty-four-year-old daughter was the alleged victim of criminally injurious conduct in Moundsville, Marshall County. The victim was at her residence with four other individuals including the offender. The individuals were taking injections of heroin and because the victim was unable to inject herself, the offender injected heroin into the top of the victim's left hand. The victim fell unconscious. The offender then delayed in calling 911 in order to try home remedies to revive the victim. When EMS arrived on the scene, the victim was unconscious but had a pulse. She was taken to Reynolds Memorial Hospital where she was pronounced dead. The Court initially denied an award on the grounds of contributory misconduct. The Court upheld that ruling. Claim disallowed.

CV- 08-0537 Issued June 18, 2009

On July 23, 2008, the fifty-year-old claimant was the victim of criminally injurious conduct in Nitro, Kanawha County. The claimant testified that the offender struck him multiple times and knocked him over a fence. The initial Order denied this claim based on the claimant's contributory misconduct. The Court determined that the claimant satisfied his burden of proving he was an innocent victim of crime. The Court found that the claimant did not provoke the physical altercation with the offender. Award of \$25,000.00.

CV-07-0158 Issued July 16, 2008

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 and the neighbor's guest. 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.

CV-07-0327 Issued December 17, 2008

On May 26, 2007, the claimant's fifty-five-year-old husband was the victim of criminally injurious conduct in Shinnston, Harrison County. The victim's family and neighbor's family were feuding for some time. The claimant contends that the neighbor's family members came to their property. When the victim

approached them and asked them to leave, the victim and a male neighbor were involved in a physical altercation. The victim retrieved a baseball bat from his residence and approached the neighbor. Another physical altercation ensued. Another male walked outside and observed the victim on top of the first male. He retrieved a shovel and hit the victim in the head. The victim was taken to Ruby Memorial Hospital where he was pronounced deceased on May 27, 2007. The Court found that while the victim had earlier been engaged in an altercation, that struggle had de-escalated. The claimant met her burden of proof in demonstrating that her husband was an innocent victim of crime. Award of \$5,788.31.

CV-06-0359 Issued July 16, 2008

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 had thrown the dog excrement over the porch with a shovel. The claimant walked over to the neighbor's house to find out why he had thrown dog excrement on his porch. The neighbor 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 the offender and his roommate. The Court concluded that the claimant's actions did not, in fact, constitute contributory misconduct. Award of \$8,177.31.

CV-03-409 Issued October 24, 2008

The claimant seeks to recover funeral and ambulance expenses on behalf of his father, who was tragically killed on January 2, 2003, at the age of fifty-eight. The events leading to the victim's death occurred at the Tillotson's Valley Motel in Burlington, Mineral County. The victim and the offender exchanged words and the victim punched the offender in the mouth. The men proceeded to fight in the parking lot of the motel. The offender knocked the victim to the ground and hit and kicked him. When the offender realized that the victim had no pulse and had stopped breathing, he called 911. At 8:36 p.m., the victim was pronounced dead at the scene. At the hearing, the parties stipulated that the claimant's award should be reduced by twenty percent (20%) based on the contributory misconduct of the victim. Award of \$3,129.74.

CV-07-0278 Issued February 26, 2009

On August 28, 2005, the forty-six-year-old claimant was the victim of criminally injurious conduct in Summers County. The claimant testified that he was at his mother's residence when he observed the offenders riding their all-terrain vehicles on W.Va. Route 61 adjacent to the residence. One of the offenders then stopped his vehicle in front of the residence and told the claimant to stay away from his mother. The claimant believed that the offender was reaching for a gun. When the claimant approached the offender he was struck in the head with an aluminum baseball bat. As the claimant struggled to take the bat from the offender's possession, he broke several bones in his hand. The Court found that the claimant was not an innocent victim of crime because he failed to retreat from the altercation. Claim disallowed.

CV-05-605 Issued July 1, 2008

On July 9, 2005, the claimant's twenty-four-year-old son was the victim of a homicide in Wheeling, Ohio County. The victim was standing at the intersection of 15th Street and Wood Street when a green Jeep Cherokee drove to the area. The offender exited the vehicle and fired several shots at the victim. 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 claimant 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.

CV-08-0150 Issued June 23, 2009

On January 24, 2008, the twenty nine-year-old claimant was the victim of criminally injurious conduct in Charleston, Kanawha County. The claimant was driving the offender home when the offender shot the claimant in the face. As a result of the incident, the claimant lost the vision in his left eye, and suffered facial fractures and other injuries. Initially, the Court made an award in the amount of \$25,000.00. In addition, prorated payments were made to four separate health care providers whose bills totaled \$61,559.07. On appeal, claimant sought to recover lost wages, an award for child support arrearages, and \$5,000.00 to repay his family for their support during the time of his injury. The Court affirmed its previous ruling and determined that the claimant was ineligible for an additional award. Claim disallowed.

CV-08-0047 Issued December 4, 2008

On September 18, 2007, the claimant became the victim of criminally injurious conduct in New Martinsville, Wetzel County. Due to the severity of the injuries that the claimant sustained on the night of this incident, she had no recollection of the subject events. The claimant's mother testified that the claimant and her friends went to an establishment called the Candlelight for dinner and drinks. They were celebrating the claimant's graduation from flight attendant school. After dinner, the group went to Bruce Bowling Lanes and then to Fox's night club. At approximately 3:00 a.m., the claimant was found unconscious in the parking lot of Fox's night club. The claimant sustained a serious brain injury while suffering a concussion. The Court found that there was no evidence that the claimant was guilty of contributory misconduct. Award of \$246.37.

CV-05-615 Issued February 27, 2008

The claimant's 32-year-old husband was the victim of criminally injurious conduct. The claimant testified at the hearing of this matter that her husband "took off and went camping" by himself, and the next thing she knew, she heard he was killed. The Court has carefully reviewed the testimony of the investigating State trooper and the statements provided to the Court by other witnesses in this tragic case. It would appear that while the victim was indeed the victim of a homicide, there is credible evidence that he was involved in "contributory misconduct." The Court is aware that the criminal investigation in this case is ongoing. Should subsequent investigation reveal that the unfortunate victim in this case was not involved in any contributory misconduct, the claimant is encouraged to contact the Crime Victims Compensation Fund for reconsideration of this matter.

CRIMINAL CONDUCT

CV-07-0179 Issued July 16, 2009

On May 28, 2006, the claimant's one-year-old son was severely attacked by a dog belonging to the offender. The claimant has 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(c). 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 by the claimant. Claim disallowed.

CV-07-578 Issued February 19, 2009

During the hearing, the claimant could not pinpoint an instance of criminally injurious conduct as defined by W.Va. Code § 14-2A-3(c) which would serve as the basis for a claim under the Crime Victims Compensation Act. Claim disallowed.

ECONOMIC LOSS**CV-03-0498 Issued December 4, 2008**

The claim was submitted to the Court for decision upon a Stipulation Agreement entered into by the parties. The Court concluded that the claimant was entitled to recover a scholarship that she received from Davis and Elkins College in the amount of \$4,000.00, which constituted a full and complete settlement of the claim.

CV-07-153 Issued September 25, 2008

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

FAILURE TO REPORT CRIME**CV-05-0487 Issued June 18, 2009**

On February 17, 2004, the twenty-three-year-old claimant was the victim of criminally injurious conduct in Huntington, Cabell County. The claimant was at the Fusion Bar where he was assaulted by two men. The Court's initial denial of an award was based on the Claim Investigator's finding that the claimant did not cooperate with the police in their investigation. The Court, on appeal, determined that the claimant had cooperated with the police to the extent possible with regard to this incident. Award of \$1,661.43.

INNOCENT VICTIM**CV-06-433 Issued July 17, 2008**

The claimant seeks to recover on behalf of her granddaughter who she claims was a dependent of the her daughter, the victim. On March 27, 2006, the victim 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 the offender. They were traveling south on Route 17 when the offender lost control of his vehicle, and it ran off the right edge of the roadway surface. Then the offender over-corrected the vehicle in reentering the roadway, and it came to rest crossways in the northbound lane, with the passenger side facing south. A second vehicle, driven slammed into the passenger side of the offender's vehicle, killing the victim. The Court finds that the victim's association with the offender placed her in the position of extreme peril, and she could not be considered an innocent victim. In addition, the victim was not a dependent under W.Va.

Code § 14-2A-3(d). Claim disallowed.

CV-03-0580 Issued May 28, 2009

The Court determined that the claimant's father was an innocent victim of criminal conduct. Funeral expenses of \$3,419.36 and burial expenses of \$2,634.00 were incurred, for a total of \$6,053.36. Based upon a Stipulation entered into by claimant and respondent, the parties agreed to settle the claim in the amount of \$6,000.00, representing the maximum award for funeral and burial expenses allowed under W.Va. Code § 14-2A-3(f)(2) in effect at the time of the incident.

MENTAL HEALTH EXPENSES

CV-04-613A Issued November 19, 2008

On December 22, 2004, the claimant's thirteen-year-old son was the victim of criminally injurious conduct in Charleston, Kanawha County. The victim witnessed an argument between the claimant and her husband (the offender), and the offender threatened the claimant with physical and emotional violence. During the altercation, the offender threw a shoe at the victim. The Court initially denied the claimant's request for an award because the victim's twenty-nine (29) counseling expenses were conducted by an unlicensed counselor. The Court's "Guidelines for Mental Health Counseling Services" took effect approximately three months after the claimant filed her claim with the Crime Victims Compensation Fund on September 22, 2005. The Court concluded that the Domestic Violence Counseling Center was entitled to compensation in the amount of fifty dollars (\$50.00) for each of the twenty-nine (29) counseling sessions that the Center provided to the victim. Award of \$1,450.00.

CV-07-0670 Issued March 27, 2009

On January 9, 2007, the claimant and his minor son were the victims of criminally injurious conduct in Charleston, Kanawha County. The claimant and his wife were arguing during marital counseling. The wife became belligerent and shoved the claimant. The Court initially found that the claimant was not entitled to recover counseling expenses since the counseling services were rendered by a non-licensed counselor. The Court found that the "Guidelines for Mental Health Counseling" were adopted by the Court to interpret when "mental health counseling" constitutes an "allowable expense" pursuant to W.Va. Code § 14-2A-3(f)(1). Since the "Guidelines for Mental Health Counseling" were in effect at the time that the claimant received services from the Domestic Violence Counseling Center, the Court denied the claim. Claim disallowed.

2009 State Victim Assistance Academy



State Victim Assistance Academy (SVAA)

The first West Virginia State Victim Assistance Academy was held on the beautiful campus of West Virginia State University from July 26 through 31, 2009. The Academy's first day brought to reality the dream and faithful efforts of a dedicated group of individuals. The primary partners in this initiative were West Virginia State University, the West Virginia Division of Criminal Justice Services, and the West Virginia Crime Victim Compensation Fund, supported by eight other federal, state, and community-based organizations. The project is funded by a three-year grant from the US Department of Justice, Office of Victims of Crime. The Academy's goal is the delivery of a comprehensive, academically- based, fundamental education for victim assistance providers, victim advocates, criminal justice personnel, and allied professionals who routinely work with crime victims. Through the creation and implementation of this Academy, we hope to improve the level of knowledge and skills of those working with crime victims in our state, thereby ultimately improving the services provided to these individuals. Crime victims deserve the best services available to help them not only navigate the criminal justice system, but begin the sometimes long process of restoring wholeness to lives that have been shattered.



State Victim Assistance Academy (Cont'd)

Forty-nine individuals from across West Virginia representing forty-five different agencies made up our first graduating class. After the week of education and training, mixed with fun activities and trips, all were eager to take their newly-acquired skills and knowledge back to their own communities. Quoting Sharon Webb, from the Huntington CONTACT Rape Crisis Center "This was an intense week where I felt I broadened my perspective on victim experiences and gained a very good overview of issues relating to victims of all crime." "Collaboration" was a common thread throughout all that was taught during the week. The attendees developed new friendships as well as professional relationships that will aid in their efforts. Some of the training topics were: Impact of Crime; Navigating the Criminal Justice System; Victim's Rights; Case Management; Crime Victim Fund; Death Notification; and Mental Health Issues. Nineteen different topics were addressed, delivered by twenty-three different instructors. We feel that the Academy is the initial step to providing consistency and continuity to victim service provider training, thereby ensuring that victims throughout West Virginia receive the same comprehensive services.