



# Avoiding Insolvency of the Texas Crime Victim Compensation Fund

**Crime Victims' Institute**

at the Criminal Justice Center at Sam Houston State University

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## Purpose

Victim compensation is financial assistance paid to eligible victims for some of their non-reimbursed expenses incurred as a direct result of a violent crime perpetrated against them. While no amount of money can fully compensate victims for their trauma and grief, financial assistance can be critical in helping victims restore the stability and dignity of their lives and the lives of their families by paying medical costs, counseling costs, lost wages, and funeral expenses.

## History and Background Information

The commitment in Texas to crime victim compensation is longstanding.

- 1979 The Crime Victims Compensation Act (S.B. 21, 66<sup>th</sup> Leg.; Art. 56.3, Code of Criminal Procedure) was enacted and the CVC Fund was created.
- 1989 The Texas Constitution was amended to include the Rights of Crime Victims in Article 1, §30 – Bill of Rights.
- 1997 The Texas Constitution was amended to specify that money deposited in the CVC Fund was to provide only for delivering or funding victim-related compensation, services, or assistance (Article 1, §31, Texas Cons.).

- 1993 The court costs payable to the CVC Fund increased.
- 1997 The amounts of awards and types of benefits covered for crime victims increased.
- 1997 Chapter 412 of the Government Code funded the Crime Victims' Institute from the CVC Fund.
- 1997 Art.56.541 of the Code of Criminal Procedure allowed the Legislature to appropriate excess money in the CVC Fund to state agencies providing victim related services or assistance.
- 1999 Art. 56.32(9)(H) of the Code of Criminal Procedure provided for reimbursement of relocation expenses for victims of domestic violence from the CVC Fund.
- 2000 The method of finance changed from the General Revenue Fund to the CVC Fund for the Texas Department of Criminal Justice (TDCJ) Victim Services Division and the TDCJ Battering Intervention and Prevention Project (BIPP).
- 2002 Legal services grants, a statewide victim notification system, foster care, courts, child protective services, and adult protective services were appropriated money from the CVC Fund.

## *...from the Director*

The idea of providing reparations to victims of crime through civil redress – either through restitution from offenders to victims or state compensation programs – has a long history of support. In ancient Babylonia, the Hammurabi code specified that:

*If a man has committed robbery and is caught, that man shall be put to death. If the robber is not caught, the man who has been robbed shall formally declare what he has lost...and the city...shall replace whatever he has lost for him" (Sections 22-24).*

Victims and their families may suffer crushing financial losses in the aftermath of violent crime. Huge hospital bills, substantial lost wages due to serious injuries or death, and unanticipated funeral bills can be an overwhelming burden. Some victims may need only small amounts - like a child who needs a few months of trauma counseling - but these costs are just as important, and must be paid quickly to speed a full and effective recovery.

The goal of crime victimization programs should be simple: to place more CVC funds in the hands of victims who need financial help in the recovery process.

The advantage of providing compensation through a state compensation program is the possibility of expeditious case disposition and relatively speedy reimbursements of losses. But, it also demonstrates social concern.

The Texas Crime Victims' Compensation Fund is facing insolvency in just a few years. This brief is designed to acquaint Texas Legislators with the nature of the problem and the alternatives that might be helpful in resolving the threats facing the solvency of our CVCF.

*Glen Kercher*

*Director of the Crime Victims' Institute*

## Projections of Insolvency of the CVC Fund

Due to funding of new programs, increase to existing programs, and a change in the method of finance from general revenue to the CVC Fund, appropriations from the CVC Fund for the 2002-03 biennium increased by \$149 million over estimated expenditures in the 2000-01 biennium (Texas Senate Finance Subcommittee on Crime Victims Compensation, *Executive Summary*, November 2002).

Due to expanded use of the CVC Fund over the past several biennia, the Office of the Attorney General is projecting the CVC Fund will become insolvent by 2008 or 2011. When this actually occurs depends on whether some items funded during the 2002-03 biennium were one time expenditures or will continue to receive funding beyond the current biennium (Texas Senate Finance Subcommittee on Crime Victims Compensation, *Executive Summary*, November 2002).

## Revenue Sources for the Crime Victim Compensation Fund

State revenue makes up more than 86% of the annual deposits in the CVC Fund. The largest source of revenue is from court costs collected by municipal, county, district, and justice-of-the-peace courts on felony and misdemeanor convictions. The remaining state deposits into the fund are from parole fees, restitution, subrogation, and grants and donations.

The federal Victims of Crime Act (VOCA) Crime Victims Fund (Chapter 112, Title 42, U.S. Code) provides another 14% of annual deposits in the CVC Fund.

VOCA compensation grants are provided to help with the financial assistance provided to victims and is based on a percentage of the amount a state spent on victims of crime two years before the year of the grant. Currently, the federal government provides states an annual grant equal to 60% of the total amount awarded to victims during the preceding fiscal year (§10602(a)(3), Chapter 112, Title 42, U.S. Code).

In addition, each state receives \$500,000 annually in VOCA victim assistance grants and is eligible for additional assistance grants based on population. States competitively award VOCA assistance grants to local service providers for victim crisis intervention, advocacy, and social service needs. VOCA assistance funds may only be used for direct service to crime victims (Texas Senate Finance Subcommittee on Crime Victims Compensation, *Executive Summary*, November 2002).

## A Comparison: Funding of Other States' Victims Assistance Programs

Every state administers a crime victims' compensation program to provide financial assistance to victims of both federal and state crimes.

### Texas

- \$45 for each felony conviction
- \$35 for each Class A and B misdemeanor
- \$15 for Class C misdemeanors

### California

- Penalties assessed on fines (50% of income)
- Fines on felonies, misdemeanors (50% of income)
  - \$200-\$10,000 on felonies,
  - \$100-\$1,000 on misdemeanors, fines on traffic offenses, infractions, and civil violations.

### Florida

- Mandatory court-cost assessments (86% of income)
  - \$50 for each felony, misdemeanor, criminal traffic offense, and juvenile adjudication
  - 5% surcharge on criminal offense fines.

### Georgia

- \$20 per month parole fee
- Up to \$25 DUI fee
- \$9 per month probation fee

### Iowa

- \$100 civil penalty for reinstatement of driver's license after a DUI conviction

### Oregon

- \$105 for each felony
- \$65 for each misdemeanor
- \$95 for drunk driving
- \$35 for offenses punishable only by a fine

### Washington

- \$500 for each felony
- \$250 for each misdemeanor

Texas has a maximum award limit to a victim of \$50,000, with up to an additional \$75,000 for permanent injuries. Only three states have higher base limits than Texas—California has a \$70,000 base limit, New York has no limit on medical payments, and Washington has a \$150,000 medical limit.

California is the largest program in the country and awards over \$90 million annually. Texas is the next largest program, and pays out over \$40 million each year

## Special Assessments to Fund Particular Crime Victim Programs

### California

\$100 fine on convicted offenders for various violent and sexual offenses against children to support child abuse prevention programs (Cal. Penal Code §§ 266k, 288 (Deering 2001)).

Courts are given the option of ordering the defendant to pay up to \$5,000 to a battered women's shelter in lieu of ordering a fine (Cal. Penal Code § 243 (Deering 2001)).

### Florida

Fines imposed on those who violate protective orders, and the fines are used to fund domestic violence programs (Fla. Stat. Ch 741.30 (2001)).

### Iowa

Civil penalty up to \$5,000 for consumer fraud against the elderly and these funds are used to fund investigation and prosecution of such offenses (Iowa Code §714.16A (West 2002)).

## Non-offender Based Fees (often in addition to fines and penalties)

- A surcharge when issuing a marriage license
- Fee for filing for divorce
- Special license plate fee
- Allowing jurors to donate their fees to crime victim-related programs
- Tax on food, beverages, and alcoholic beverages

Crime victim assistance is an essential public service and, as such merits the states' commitment to adequate funding. As states strive to create funding sources for victim assistance, they have a wide variety and range of legislative options, including adoption of offender-based penalties and charging non-offenders' fees for governmental services that are logically connected to crime victim needs. These examples provide a framework by which to review relevant legislation in Texas and to work toward providing adequate financial support for services to help victims in the aftermath of crime.

## Court Cost Collections

Municipal, Justice of the Peace, County and District courts in Texas collect a wide variety of fees for numerous state funds. They also collect a variety of local court costs and fines. As an incentive, local governments are allowed to keep 10% of the money collected if they remit the court

costs to the Comptroller in a timely manner (Art. 56.56(c)), Code of Criminal Procedure).

Nevertheless, it is estimated that only 50% of the allowable court fees are collected and deposited in the CVCF.

Under Art. 56.59 of the Code of Criminal Procedure, the Texas Attorney General is given authority to ensure that CVC court costs are being assessed and collected. Specifically, the Attorney General can issue a warning letter to a court or governing body if the Attorney General believes that a court has not been assessing costs due to the CVC Fund or has not been making reasonable effort to collect those costs (Art. 56.59(a), Code of Criminal Procedure).

If the court or governing body does not respond or if the Attorney General considers the response inadequate, the Attorney General may request the comptroller to audit the records of the court, collector of costs, or treasury of the governmental unit in which the court is located (Art. 56.59(c)), Code of Criminal Procedure).

If the Attorney General finds that a court is not assessing costs due to the CVC Fund, the Attorney General may refuse to award CVC compensation to residents served by the court or notify the State commission on Judicial Conduct of the findings (Art. 56.59(e), Code of Criminal Procedure). Failure to comply with the collection of CVC court costs constitutes official misconduct and is grounds for removal from office (Art. 56.59 (f), Code of Criminal Procedure). The Attorney General has not exercised this authority (Texas Senate Finance Subcommittee on Crime Victims Compensation, *Executive Summary*, November, 2002).

## Common Problems in the collection of fines and court costs

- Failing to make a single position accountable for performance
- Absence of management-reporting information for fine collection programs
- Lack of commitment by court personnel
- Excessive allowance of delayed or partial payments (commonly associated with misconceptions about offender abilities to pay)
- Failure to take quick and authoritative action in response to nonpayment.

(<http://www.ncsconline.org/WC/FAQs/ColFinFAQ.htm>)

## Characteristics among successful collection programs

- Whatever the fine collection strategy adopted, the court must minimize delay between sentencing and payment
- Courts must practice consistent sentence enforcement and related policies so that similar defendants are treated alike.

## Alternative Funding of the CVC

In 1997 and in response to arguments presented by a number of court administrators, the 75<sup>th</sup> Texas Legislature agreed to consolidate eight state fees into one aggregated fee and directed the Comptroller to allocate the consolidated revenue to the programs supported by fees. Fees included in the consolidated state court cost include Crime Stoppers, Breath Alcohol Testing, the Bill Blackwood Institute, Law Enforcement Officers' Standards and Education, Comprehensive Rehabilitation, Operators and Chauffeurs, Criminal Justice Planning, and Fair Defense (H.B. 2272, 75<sup>th</sup> Leg.). The CVC fee was not included in the consolidated court costs due to concerns by CVC Fund administrators that revenue could be adversely impacted.

In March 2000, the Comptroller's report recommended consolidation of all state court costs and fees levied on criminal convictions including the CVC fee. Similarly, the Comptroller recommended all civil costs and fees in district courts be consolidated (Issues and Recommendations Regarding the Structure of State Court Costs and Fees, Comptroller of Public Accounts, March, 2001).

## Recommendations

1. To insure solvency of the CVCF, the Legislature should set a minimum balance target for the CVCF (Texas Senate Finance Subcommittee on Crime Victims Compensation, November, 2002).

### Options

- Increase fees
  - Expand fees to specific offenses or to non-offender based fees
  - Introduce procedures to improve the collection of fees, such as increasing the percentage of the fees collected which are returned to the county
  - Include CVCF fees in a consolidated court cost
2. All programs receiving an appropriation from the CVCF should be reviewed to insure that each program meets the statutory and constitutional restrictions on use of the CVCF. Services deemed inappropriate for CVC funding should be funded with another source of revenue.
  3. Include CVC fees in a consolidated court cost to simplify collection procedures and enhance compliance (Texas Senate Finance Subcommittee on Crime Victims Compensation, November, 2002).

## References

- California Penal Code § 266k, 288 (Deering 2001).  
California Penal Code §243 (Deering2001).  
Florida Stat. Ch.741.30 (2001).  
Iowa Code §714.16A (West 2002).  
Issues and Recommendation Regarding the Structure of State Court Costs and Fees, Texas Comptroller of Public Accounts, March 2001.  
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