Looking a Gift Horse in the Mouth—The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims

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I. INTRODUCTION

Every year, millions of individuals in the United States become victims of crime.[1] Crime imposes indirect burdens that impact communities and society at large.[2] Crime victims have countless needs, which may include medical treatment and counseling. The needs of domestic violence crime victims are even more acute because, in addition to medical treatment and counseling, they may also need shelter, relocation assistance, and in some circumstances, food and clothing.[3] Over twenty-five years ago, Congress enacted the Victims of Crime Act of 1984 ("VOCA"), which addressed some of the needs of victims of violent crime, including domestic violence victims.[4] VOCA provides federal funding to eligible state Crime Victim Compensation ("CVC") programs.[5] CVC programs directly reimburse victims for crime-related expenses and are sponsored by the federal and state governments.[6]

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1. Jennifer L. Truman, BUREAU OF JUSTICE STATISTICS, *Criminal Victimization* 2010 1 (2011), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/cv10.pdf. In 2010, nearly nineteen million people were victimized by crime. *Id.* According to the most recent data from the Department of Justice, the crime victimization rate in 2010 was 14.9 per 1,000 persons age 12 or over for violent crimes and 120.2 per 1,000 households for property crimes. *Id.* at 2.

2. Crime decreases productivity, impacts health-care costs, increases criminal justice and victim services costs, increase fear, and decreases community stability. *See* SUSAN HERMAN & MICHELLE WAUL, REPAIRING THE HARM: A NEW VISION FOR CRIME VICTIM COMPENSATION IN AMERICA, 13–14 (The National Center for Victims of Crime ed., 2004), *available at* http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=38573.

3. *See* discussion *infra* Part II.

4. 42 U.S.C. § 10602 (2010).

5. *Id.*

6. Crime can result in many unforeseen expenses. Covered expenses related to crime may

CVC programs incorporate principles of distributive and restorative justice by addressing the harm and economic burden of victimization.[7] Distributive justice involves the "fair distribution of common burdens and benefits,"[8] while restorative justice focuses in part on community involvement to address the harm experienced by victims.[9] Justice for crime victims "requires that society take responsibility for making the victim whole again. Emergency financial assistance, medical care, legal services, and justice are the rights of every victim and the moral obligation of society."[10]

Crime can have a lasting impact on a victim physically, emotionally, and economically. Domestic violence is no different than other crimes in this regard; however, domestic violence is particularly complex because the victim is in an intimate relationship with the offender. Despite the unique financial assistance

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include property damage, lost wages, medical expenses, counseling fees, crime scene clean-up, and funeral or burial services. *See, e.g.*, Dan Eddy, National Association of Crime Victim Compensation Boards, State Crime Victim Compensation Programs: Nature & Scope 1 (2003), *available at* http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=32593. Some states include special programs for domestic violence victims, including relocation services. *See* discussion *infra* Part III.B.

7. Distributive justice refers to "justice owed by a community to its members, including the fair allocation of common advantages and sharing of common burdens." BLACK'S LAW DICTIONARY 942 (9th ed. 2009). Restorative justice focuses on "repairing the harm done, meeting the victim's needs, and holding the offender responsible for his or her actions." *Id.* at 1428. *See also* Hayden P. Smith, *Violent Crime and Victim Compensation: Implications for Social Justice*, 21 VIOLENCE & VICTIMS 307, 308 (2006) (describing restorative justice as a "distributive or needs-based form of justice as the emphasis is placed on the needs of the victim rather than the nature of the offense or characteristics of the offender). CVC funds are an imperfect illustration of restorative justice because, although they are victim-focused, they have less to do with offender accountability than with society's obligation to crime victims. Restorative justice generally has two components: 1) a focus on making the victim whole, and 2) helping the offender accept responsibility for his actions. *See* Brenda V. Smith, *Battering, Forgiveness & Redemption: Alternative Models for Addressing Domestic Violence in Communities of Color*, *in* DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE, CLASS, GENDER & CULTURE 321, 330 (Natalie Sokoloff ed., 2005).

8. *See* Peter Benson, *The Basis of Corrective Justice and Its Relation to Distributive Justice*, 77 IOWA L. REV. 515, 515–16 (1992).

9. *See generally* RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN (James Ptacek ed., 2010) (collecting international articles discussing restorative justice for gendered crimes). *See also* Peter Benson, *The Basis of Corrective Justice and Its Relation to Distributive Justice*, 77 IOWA L. REV. 515, 515–16 (1992) (discussing distributive justice's relation to society's general problems instead of distributive justice's focus on interaction between private parties). Restorative justice frequently involves informal mediation and attempts to "decrease the role of the state in responding to crime and increase the involvement of personal, familial, and community networks in repairing the harm caused by crime." RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN, *supra*, at ix. An important aspect of restorative justice is the goal of community involvement in addressing the harm. *See* Loretta Frederick & Kristine C. Lizdas, *The Role of Restorative Justice in the Battered Women's Movement*, *in* RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN 42–3 (James Ptacek ed., 2010). As one commentator explained, "restorative justice is a victim-centered response to crime that provides opportunities for those most directly affected by crime—the victim, offender, their families, and representatives of the community—to be directly involved in responding to the harm caused by the crime." *Id.* at 43. Restorative justice practices that involve mediation-type practices are very controversial in domestic violence cases and are outside the scope of this article.

10. ROBERT REIFF, THE INVISIBLE VICTIM: THE CRIMINAL JUSTICE SYSTEM'S FORGOTTEN RESPONSIBILITY 16 (1979) (italics omitted).

CVC funds can offer domestic violence victims,[11] the standards for distribution may have a depressive effect on the number of domestic violence related claims that are filed.[12] When victim compensation programs were first enacted, there was an inherent bias against domestic violence victims because programs feared that providing compensation to a domestic violence victim would only result in enriching the batterer.[13] To overcome this bias, VOCA expressly prohibits the denial of "compensation to any victim because of that victim's familial relationship to the offender or because of the sharing of a residence by the victim and the offender."[14]Nonetheless, despite the prevalence of domestic violence and VOCA's inclusive language, domestic violence victims remain one of the most underrepresented groups receiving CVC funds.[15]

The underutilization of CVC funds by domestic violence victims, and the barriers to compensation, may lead one to ponder the true purpose of CVC funds and to ask whether the funds are merely a charitable gift or a humanitarian obligation to crime victims. A gift can be withheld or distributed as the government sees fit, but an entitlement must be distributed fairly. This article contends that the goal of CVC funds should be victim assistance due to society's moral obligation to assist crime victims, including domestic violence victims. While such an argument should perhaps not be controversial, the eligibility requirements suggest that CVC funds have a competing goal of promoting law enforcement efforts. Helping victims and law enforcement efforts are not naturally competing goals, but in the case of domestic violence, they can be. An old proverb cautions against looking a gift horse in the mouth, suggesting that it is improper to criticize or examine a gift to assess its value.[16] Instead, the recipient is encouraged to be grateful for the gift without questioning it. CVC funds are an important resource for all crime victims, but they are also similar to a gift horse[17] that requires further examination in the context of domestic violence.

This article seeks to identify and explore the underlying theories behind CVC funds and the barriers preventing domestic violence victims from utilizing

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11. *See* discussion *infra* Part III.B.

12. In distributive justice terms, the standards for distributing CVC funds are the restrictive eligibility requirements. *See* discussion *infra* Part IV (stating "poor publication, the 'innocent victim' requirement, and the cooperation requirement" of CVC programs may lead to underutilization of the funds by domestic violence victims).

13. *See* Julie Goldscheid, *Crime Victim Compensation in a Post-9/11 World*, 79 TUL. L. REV. 167, 189–90 (2004) (comparing and highlighting the stark difference between crime victim compensation programs for victims of domestic and sexual violence with government programs for victims of the September 11, 2001 terror attacks). The assumption was that the domestic violence victim would return to the abuser. *See id.*

14. 42 U.S.C. § 10602(b)(7) (2010).

15. *See, e.g.*, Fran S. Danis, Note, *Domestic Violence and Crime Victim Compensation: A Research Agenda*, 9 VIOLENCE AGAINST WOMEN 374, 382–83 (2003). *See also* discussion *infra* Part III.D. and Table I.

16. *See* WOLFGANG MIEDER, THE DICTIONARY OF AMERICAN PROVERBS 311 (1992).

17. Part of the issue is whether compensation funds truly constitute a "gift," reimbursement, or an entitlement. The idea that CVC funds and other domestic violence resources bestow benefits that should be exempt from scrutiny makes it similar to a gift horse. This article proposes that these funds are not really a gift but an obligation or entitlement that needs improvement.

them.[18] The primary goal of CVC funds should be to assist crime victims. Refocusing on this goal of assisting victims would ultimately benefit victims of domestic violence as well. First, the need for CVC funds by domestic violence victims is great because, oftentimes, other resources are inadequate.[19] In the face of such substantial need, the goal of CVC funds must be victim assistance. Second, eligibility requirements that do not advance the primary goal of victim assistance should be dismantled. Specifically, requirements that a victim cooperate with law enforcement and not have a criminal record or "negative social history" can be problematic in domestic violence cases.[20] Finally, victim assistance should be the primary goal because it fulfills the moral obligation society has towards all crime victims.

The article is written in seven parts. Part II examines the unique needs of domestic violence crime victims as distinct from the needs of victims of other types of crime. Domestic violence victims have numerous needs, many of which relate to finances. CVC funds may be able to address some of the financial needs.

Part III summarizes VOCA and explains the purpose and history of CVC funds. VOCA expressly extends eligibility for compensation funds to domestic violence victims,[21] so the section discusses some of the specific benefits CVC funds can provide to domestic violence victims and summarizes the underlying theories supporting victim compensation. Despite this express inclusion, however, domestic violence victims are still underrepresented in receiving compensation funds.[22] The eligibility requirements may be impacting the number of claims.

Part IV outlines potential barriers for domestic violence victims receiving CVC funds, including unnecessary eligibility restrictions, which conflict with the primary mission of aiding victims. Many of the restrictions relate to benefiting law enforcement efforts as opposed to crime victims, but Part IV argues that the state's interest in assisting law enforcement should not take precedence over helping domestic violence victims. To that end, legislators must choose whether the primary goal is to support law enforcement efforts or to aid victims of crime regardless of their willingness to testify.

Part V considers whether crime victim compensation funds are superfluous for domestic violence victims in light of the availability of other resources, including domestic violence shelters, restitution, tort law, private insurance, and

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18. This is not meant to suggest that domestic violence victims are the only victims who underutilize CVC funds; however, the unique nature of domestic violence cases coupled with the historical bias against domestic violence victims in CVC funds leads to the focus of this paper.

19. HON. LOIS HAIGHT HERRINGTON ET AL., PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME FINAL REPORT 37, 38 (1982), *available at* http://www.ojp.gov/ovc/publications/presdntstskforcrprt/87299.pdf. *See* discussion *infra* Part V.

20. *See generally* Njeri Mathis Rutledge, *Turning a Blind Eye: Perjury in Domestic Violence Cases*, 39 N.M. L. Rev. 149, 177–82 (2009) (discussing the wide-spread problem of domestic violence victims choosing to not cooperate with law enforcement). *See also* Michelle S. Jacobs, *Prostitutes, Drug Users, and Thieves: The Invisible Women in the Campaign to End Violence Against Women*, 8 TEMPL. POL. & CIV. RTS. L. REV. 459, 474 (1999).

21. 42 U.S.C. § 10602(b)(1) (2010).

22. *See* Danis, *supra* note 15, at 382–83.

welfare. Part V argues that crime victim compensation funds fulfill a unique need for emergency assistance that is not satisfied by other available resources.

Part VI recommends five ways to ensure CVC funds are a more effective and accessible resource: increasing data collection, adopting uniform guidelines, advertising and aggressive outreach, eliminating the contributory misconduct requirement, and relaxing the reporting requirement.

Finally, Part VII concludes that CVC funds are not a gift but rather a moral obligation of society. Focusing on victim assistance and dismantling unnecessary eligibility requirements will thus result in an increased use of compensation funds by domestic violence victims.

II. THE UNIQUE NEEDS OF DOMESTIC VIOLENCE VICTIMS

Domestic violence accounts for the majority of crimes committed against women in the United States.[23] A victim of domestic violence has numerous needs, particularly if she[24] has made the decision to leave her batterer.[25] Violence tends to increase when a victim separates herself from her abuser;[26] consequently, one of her first and most crucial needs may be for safety.[27] Actions to increase a victim's safety may include changing the locks or moving and finding a new place to live. Establishing a new residence often requires security and utility deposits, which can be difficult for victims of domestic violence to afford.[28] In addition, the financial burden of moving increases as new furniture

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23. In 2010, crimes by intimate partners against women constituted 22 percent of all violent crimes committed. Truman, *supra* note 1, at 10. Intimate partners were responsible for 30 percent of female homicides between 2001 and 2005. DR. SHANNON CATALANO, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES, http://www.ojp.usdoj.gov/bjs/intimate/ipv.htm.

24. Domestic violence impacts individuals of both genders; however, since statistically victims of domestic violence are predominantly female, this article will focus on female victims of domestic violence. *See* Rutledge, *supra* note 20 at 151 n.14.

25. It would be presumptuous to assume that every victim of domestic violence desires to end the abusive relationship. There are many reasons a battered woman would remain in an abusive relationship, including but not limited to fear of separation assault, a concern for children, and a desire to preserve the relationship. *Id.* at 163–75 (identifying psychological trauma, finances, children and coercion as common motivations for some domestic violence victims to recant a true allegation of abuse). Money and financial dependence is rarely discussed, yet finances are one of the primary reasons a battered woman might remain. *Id.* at 172–73 (discussing how loss of housing, employment, or financial support may impact victims of domestic violence). Anecdotally, I recall discovering this fact as a young prosecutor when I was trying to convince a domestic violence victim to cooperate with her husband's prosecution. The victim did not deny the abuse; rather, she explained she could not afford to leave. I naively believed the victim was just making excuses and I identified the many resources available for victims. She indicated that the resources would not pay for her mortgage or medical care for her sick son. Unfortunately, she was right.

26. Separation assault is the term used to describe the phenomenon of increased violence when a victim separates from the batterer. *See* Shelby A. D. Moore, *Understanding the Connection Between Domestic Violence, Crime, and Poverty: How Welfare Reform May Keep Battered Women from Leaving Abusive Relationships*, 12 TEX. J. WOMEN & L. 451, 471–72 (2003) (discussing additional problems for domestic violence victims who leave, resulting in separation assault). *See also* Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65 (1991) (describing an abuser's rage when unable to control the victim).

27. Rutledge, *supra* note 20, at 174–75.

28. Danis, *supra* note 15, at 378 (identifying "a lack of income" to cover these types of expenses

and other household goods must be purchased.[29] The victim's basic needs, and potentially the needs of her children,[30] must be addressed, including food, clothing, and diapers.[31] Child care may be another necessary expense. A domestic violence victim may also require legal assistance to address issues of custody and divorce if she desires to terminate the relationship.[32] Other needs may mirror the needs of any victim of violent crime and may include medical treatment and/or counseling.[33] If a victim lacks insurance, she may not have means to pay for medical services or counseling.[34]

In other words, domestic violence victims require a great deal of financial resources. The relationship between domestic violence and financial resources is very troubling to society,[35] largely because financial dependence can be a significant factor in the decision to remain in an abusive relationship.[36] A battered woman who leaves her abuser has a 50 percent chance of falling below the poverty line.[37] Moreover, domestic violence is a leading cause of homelessness for women[38] and has impacted the number of women on welfare.[39] Annually, domestic violence victims "lose a total of nearly 8.0 million days of paid work—the equivalent of more than 32,000 full time jobs—and nearly 5.6

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as a factor that forces many women to stay with an abusive partner).

29. *Id.*

30. Domestic violence victims frequently experience birth control sabotage. Heike Thiel de Bocanegra, *Birth Control Sabotage & Forced Sex: Experiences Reported by Women in Domestic Violence Shelters,* 16 VIOLENCE AGAINST WOMEN 601, 605–06 (2010). Reproductive health is another area where batterer's exercise control; consequently there is a high likelihood that a domestic violence victim will have children. *Id.* at 601–02.

31. Some victims who leave suddenly may only have the bare essentials in their possession at that very moment. Danis, *supra* note 15, at 377–78.

32. *Id.* at 378.

33. HERMAN & WAUL, *supra* note 2, at 9–13.

34. *See* discussion *infra* Part V.C.iii.

35. Domestic violence is a crime that spans various geographic locations, religions, races, and socio-economic levels. *See, e.g.*, Meghan Condon, Note, *Bruise of a Different Color: The Possibilities of Restorative Justice for Minority Victims of Domestic Violence,* 17 GEO. J. ON POVERTY L. & POL'Y 487, 488 (2010) (noting that while domestic violence impacts women "from all races, ages, religions, education levels, and socio-economic statuses, minorities are disproportionately affected by domestic violence."). *See also* Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 86–87 (2008); Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 U.C. DAVIS L. REV. 1061, 1078 (2006).

36. *See generally* Rutledge, *supra* note 20, at 170–73 (exploring the issues of finances and concern for children as a motivation for domestic violence victims to recant allegations of abuse). Financial dependence in domestic violence cases often results from economic coercion. *See* discussion *infra* Part V.D.i.a and note 407.

37. Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 YALE J.L. & FEMINISM 359, 368 (1996).

38. Kristen M. Driskell, *Identity Confidentiality for Women Fleeing Domestic Violence*, 20 HASTINGS WOMEN'S L.J. 129, 130 (2009). *See also* Steven R. Morrison, *The Fourth Amendment's Applicability to Residents of Homeless Shelters*, 32 HAMLINE L. REV. 319, 320–21 (2009) (stating "domestic violence is the immediate cause of homelessness for many women, and it was the second most frequently stated cause of homelessness for families").

39. Felicia Kornbluh, *Is Work the Only Thing that Pays? The Guaranteed Income and Other Alternative Anti-Poverty Policies in Historical Perspective*, 4 NORTHWESTERN J. L. & SOC. POL'Y 61, 65 (2009).

million days of household productivity as a result of the violence."[40] Crime imposes both emotional and financial tolls on all victims;[41] however, domestic violence can have particularly devastating financial consequences on its victims.[42] Because other resources for domestic violence victims are limited,[43] access to CVC funds is imperative.

III. VOCA AND CRIME VICTIM COMPENSATION PROGRAMS

A. The Historical Development of Victim Compensation

Providing financial assistance to victims of crime as a civic duty dates back thousands of years to the Code of Hammurabi and other ancient religious texts.[44] In theory, CVC programs focus on the needs and rights of victims. In fact, a concern for victims' rights led to the development of modern-day CVC programs.[45] Margery Fry, a British social reformer, was a pioneer in the area of victim's rights during the 1950s and is credited with renewing interest in providing financial assistance to victims.[46] Fry wrote a letter to the *London Observer* after she learned that restitution from two criminals could only compensate a victim if he lived "another 422 years."[47] She advocated for a type of government compensation for crime victims that was similar to a form of insurance.[48] Her letter led to a symposium, prompting the British Government to sponsor a study of restitution.[49] Subsequently, New Zealand enacted the first comprehensive CVC program.[50] The first victim compensation program in the United States was developed two years later, in California, in 1965.[51] Over half of the individual states established victim compensation programs before

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40. DEPARTMENT OF HEALTH AND HUMAN SERVICES, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 1 (2003). *See also* Herman & Waul, *supra* note 2, at 13 (reciting that "domestic violence victims miss nearly eight million days of paid work because of the violence in their lives—equal to 30,000 fulltime jobs. This violence also results in an annual loss of over five million days in household work"); Caroline Bettiyer-Lopez, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19, 68 (2008) (estimating total cost at $67 billion when including costs from property loss, police response, ambulance services and the criminal justice process); Driskell, *supra* note 38, at 130 (estimating the economic costs of domestic violence to be $8.3 billion nationwide including health costs, loss of productivity and loss of earnings).

41. *See* HERMAN & WAUL, *supra* note 2, at 7–13.

42. *See* De Sanctis, *supra* note 37, at 368 (stating, "when a battered woman leaves her abuser, there is a 50% chance that her standard of living will drop below the poverty line"). *See also* Rutledge, *supra* note 20, at 172–73 (reinforcing that the impact of financial stressors are underestimated by the judicial system).

43. *See* discussion *infra* Part V.

44. Herman & Waul, *supra* note 2, at 19.

45. *See* Goldscheid, *supra* note 13, at 181.

46. *Id.*

47. LeRoy L. Lamborn, *The Propriety of Governmental Compensation of Victims of Crime*, 41 GEO. WASH. L. REV. 446, 448 (1972).

48. DANIEL MCGILLIS & PATRICIA SMITH, COMPENSATING VICTIMS OF CRIME: AN ANALYSIS OF AMERICAN PROGRAMS 3 (Nat'l Inst. of Justice ed., 1983). *See* Margery Fry, *Justice for Victims*, THE OBSERVER (LONDON), 1957, *reprinted in* 8 J. PUB. L. 191, 192 (1959).

49. Lamborn, *supra* note 47, at 448.

50. Criminal Injuries Compensation Act 1963 (N.Z.). *See also* Lamborn, *supra* note 47, at 448–49.

51. Eddy, *supra* note 6, at 2.

VOCA's enactment in 1984.[52] Currently, crime victim compensation programs exist in all fifty states, the District of Columbia, and U.S. territories.[53]

The 1980s was a significant decade for victims' rights in the United States.[54] "The victims' rights movement grew out of a widespread sentiment that the legal system did not accord victims the respect or sympathy they deserved, and this lack of support resulted in negative interactions with the criminal justice system."[55] In 1982, President Ronald Reagan appointed a Task Force on Victims of Crime, which issued a Final Report making numerous recommendations.[56] The publication of the Task Force's Final Report was a defining moment in the Victims' Rights Movement[57] because it prompted legislative reform, including Congress' passage of VOCA.[58] One of the Final Report's most significant recommendations proposed federal funding for existing state victim compensation programs.[59]

VOCA has provided financial resources to state victim programs through the Crime Victims' Fund for over twenty-five years.[60] The Crime Victims' Fund is administered through the Department of Justice's Office for Victims of Crime (OVC).[61] A unique aspect of the Crime Victims' Fund is that it receives no funding through taxes but is funded primarily through fines, penalties, and forfeitures in federal criminal cases.[62] To ensure stability of the Crime Victims Fund, the total funds that can be distributed are capped each year.[63] A formula

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52. *Id. See also* OFFICE FOR VICTIMS OF CRIME, U.S. DEP'T OF JUSTICE, NEW Directions FROM THE FIELD: VICTIMS' RIGHTS AND SERVICES FOR THE 21ST CENTURY 325 (1998), *available at* https://www.ncjrs.gov/ovc_archives/directions/pdftxt/direct.pdf [hereinafter New Directions].

53. *See, e.g.*, Eddy *supra* note 6, at 2.

54. A number of grassroot organizations became particularly active during this period including campaigns educating the public about child abductions following the kidnapping and murder of Adam Walsh, the founding of Mothers Against Drunk Drivers, and the enactment of several state victims' rights laws. *See* NATIONAL CENTER FOR VICTIMS OF CRIME, CRIME VICTIMS' RIGHTS IN AMERICA: AN HISTORICAL OVERVIEW 3 (2009), *available at* http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspxnz?DocumentID=46247.

55. Megan A. Mullett, Note, *Fulfilling the Promise of* Payne*: Creating Participatory Opportunities for Survivors in Capital Cases*, 86 IND. L.J. 1617, 1622 (2011).

56. Exec. Order No. 12,360, 47 Fed. Reg. 17,975 (Apr. 27, 1982); HERRINGTON, ET AL., *supra* note 19, at 37. *See, e.g.*, Eddy *supra* note 6, at 3–5 (describing various ways to fund crime victim compensation funds).

57. MELISSA HOOK & ANNE SEYMOUR, OFFICE FOR VICTIMS OF CRIME, A RETROSPECTIVE OF THE 1982 PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME 2 (2004), *available at* https://www.ncjrs.gov/ovc_archives/ncvrw/2005/pdf/retrospective.pdf.

58. 42 U.S.C. § 10601 (2010). *See generally* HERRINGTON ET AL., *supra* note 19, at 37–47 (proposing federal action to assist state CVC programs).

59. HERRINGTON ET AL., *supra* note 19. The Report also supported restitution for victims. *Id.* at 38.

60. LISA NEWMARK ET AL., THE NATIONAL EVALUATION OF STATE VICTIMS OF CRIME ACT ASSISTANCE AND COMPENSATION PROGRAMS: TRENDS AND STRATEGIES FOR THE FUTURE 1 (Urban Inst. ed., 2003), *available at* http://www.urban.org/uploadedPDF/410924_VOCA_Full_Report.pdf.

61. 42 U.S.C. § 10605(c)(1) (2010).

62. 42 U.S.C. § 10601(b) (2006).

63. OFFICE FOR VICTIMS OF CRIME, U.S. DEP'T OF JUSTICE, OVC 2009 REPORT TO THE NATION: FISCAL YEARS 2007-2008: PUTTING VICTIMS FIRST, at 4 (2009), *available at* http://www.ojp.usdoj.gov/ovc/welcovc/reporttonation2009/ReporttoNation09full.pdf [hereinafter 2009 Report to the Nation].

determines how monies in the Crime Victims' Fund are distributed through grants, which are then used to supplement states' assistance programs.[64] The Crime Victims' Fund is primarily used to support both Victim Assistance Programs and CVC Programs.[65] Victim Assistance programs are generally community based programs which provide services to crime victims[66] such as domestic violence shelters and rape crisis centers.[67]

In contrast to Victim Assistance Programs, Crime Victim Compensation programs directly reimburse victims for expenses associated with violent crime.[68] CVC is considered "the first type of organized victim assistance in the United States."[69] Victims can be compensated for funeral expenses, counseling, medical bills, lost wages, crime scene clean-up, and, sometimes, relocation expenses.[70] CVC programs are structured to be the "payers of last resort;"[71] consequently, they cover only those expenses not already compensated through other sources.[72] The VOCA formula grants comprise 20–25 percent of the state compensation

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The cap for 2009 was set at $635 million, *id.*, and a cap of $800 million was proposed in President Obama's 2011 budget. National Association of Crime Victim Compensation Boards, *VOCA Compensation Grants Total Record $200 million,* 2010 Crime Victim Compensation Quarterly, no. 2, at 3, *available at* http://www.nacvcb.org/NACVCB/files/ccLibraryFiles/Filename/000000000021/20102.pdf. From 2000-2008, the cap fluctuated from $500 million to $625 million. *OVC Fact Sheet*, OFFICE FOR VICTIMS OF CRIME (last visited Jan. 2, 2012) http://www.ojp.usdoj.gov/ovc/publications/factshts/cvf2010/intro.html. In 2009, $100 million of additional one-time funding was provided to the Crime Victim Compensation and Victim Assistance formula grants through the American Recovery and Reinvestment Act. *Grants & Funding: Recovery Act Funds*, Office for Victims of Crime (last visited Oct. 6, 2011), http://www.ojp.usdoj.gov/ovc/grants/recoveryformula.html (last visited Oct. 6. In 2010, the cap was set at $705 million, an increase of $70 million from 2009. *About OVC: Crime Victims Funds*, Office for Victims of Crime (last visited Oct. 6, 2011), http://www.ojp.usdoj.gov/ovc/about/victimsfund.html.

64. 42 U.S.C. § 10602(a) (2010). States are prohibited from using federal funds to replace state funds intended for victim compensation. NEWMARK ET AL., *supra* note 60 at 6. States can receive a grant "equal to [sixty] percent of its total state compensation awards from the previous year." HERMAN & WAUL, *supra* note 2, at 23.

65. NEWMARK ET AL., *supra* note 60, at 1; EDDY, *supra* note 6, at 3 (noting that funding supports "domestic violence shelters, rape crisis programs, and prosecutor-based victims assistance"). VOCA funds are disbursed to various programs prior to the Victim Assistance and Crime Victim Compensation formula grants. 2009 REPORT TO THE NATION, *supra* note 63, at 8. First, the Children's Justice Act receives a maximum award of $20 million, salaries to support the U.S. Attorney's victim witness coordinators and FBI victim-witness specialist is deducted, as well as $5 million to the Federal Victim Notification System. *Id.* at 9. Since the 1995 Oklahoma City bombing, $50 million from the Crime Victims Fund may be placed in an Antiterrorism Emergency Reserve Account. *Id.* at 39. Following the disbursements, 5 percent of the balance is put aside for discretionary grants, a maximum of 47.5 percent is allocated to state compensation formula grants, and the other 47.5 percent is allocated to state victim assistance grants. *Id.* at 9.

66. 2009 REPORT TO THE NATION, *supra* note 63, at 7.

67. Danis, *supra* note 15, at 376–77.

68. NEWMARK ET AL., *supra* note 60, at 5.

69. *Victim Compensation: An Overview*, National Association of Crime Victim Compensation Boards), http://www.nacvcb.org/index.asp?bid=14 (last visited Oct. 6, 2011).

70. Danis, *supra* note 15, at 375.

71. Eddy, *supra* note 6, at 7; Goldscheid, *supra* note 13, at 190.

72. Goldscheid, *supra* note 13, at 190 (internal quotation omitted).

program budgets.[73] Federal CVC grants match up to 60 percent of the state monies CVC programs spend.[74]

B. The Unique Role CVC Funds Can Play in Domestic Violence Cases

CVC funds can address many of the financial needs of domestic violence victims. Under VOCA, all state programs provide resources for medical or dental expenses, mental health counseling, lost wages, and funeral expenses.[75] Some CVC resources may be particularly helpful for domestic violence victims. For instance, VOCA also permits state programs to cover other expenses, including temporary lodging, replacement or repair of windows and locks, crime scene clean-up, attorneys' fees, financial counseling, limited dependent care, and pain and suffering, although state programs differ regarding additional covered expenses.[76]

Some state CVC programs reserve additional benefits specifically for domestic violence victims, including relocation expenses.[77] A 2007 survey of state compensation programs found that almost half of the state CVC programs will pay for relocation expenses, and a smaller number of states will pay for rent and utility fees.[78] The survey also found that 20 percent of the states pay for lost support from the offender.[79] States covering relocation expenses provide stipends that range from $1,000–$5,000.[80] For example, in Texas, the state with one of the largest CVC programs, domestic violence victims may receive a one-time award of $3,800 ($2,000 for relocation and a maximum $1,800 for rental expenses).[81] These relocation funds may be used to pay for "moving expenses, utility deposits, moving vans and rent."[82] Texas also helps with deposit waivers

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73. *Victim Compensation*, *supra* note 69, at 2.

74. 2009 REPORT TO THE NATION, *supra* note 63, at 7. Formula grant money is calculated based on the state payout two years prior to the year of the grant. *Id.*

75. 42 U.S.C. § 10602 (b)(1)(A)–(C) (2010); Victims of Crime Act Victim Compensation Grant Program, 66 Fed. Reg. 27,158, 27,162 (2001); EDDY, *supra* note 6, at 3. Most states assess a small fee that is deposited in the Crime Victim's Fund. *Id.* Federal funding is from federal criminal fines that are deposited in the Crime Victim's Fund. *Id.* at 4.

76. 66 Fed. Reg. at 27,162.

77. *See* Danis, *supra* note 15, at 375.

78. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *Survey Shows Both Accord & Diversity in Compensation Program Operation*, 2008 CRIME VICTIM COMPENSATION Q., no. 1, at 5, 6, *available at* http://www.nacvcb.org/NACVCB/files/ccLibraryFiles/Filename/000000000030/ 20081.pdf.

79. *Id.* Unfortunately obtaining proof of loss of support may be difficult if the records remain in the violent home from which the victim escaped. *See* 2009 COLORADO STATE WIDE ASSISTANCE REPORT (Colo. Div. of Criminal Justice Ed., 2009), *available at* http://www.ojp.usdoj.gov/ovc/grants/sbsmap/ovcpf09co1.htm.

80. According to a grant report by the Urban Institute, at least twenty-one state compensation programs allow relocation expenses. Newmark et al., *supra* note 60, at 11–16 (identifying Alabama, Alaska, California, Colorado, Delaware, Florida, Illinois, Kansas, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wyoming, and the District of Columbia as CVC programs which include monies for moving expenses). A number of other programs also have emergency funds available. *Id.*

81. *Rent and Relocation*, ATT'Y GEN. OF TEX. (Mar. 24, 2011), http://www.oag.state.tx.us/victims/relocation.shtml.

82. *Id.*

for gas, telephone, and electric services.[83] Alaska, however, currently provides the largest relocation benefit of $5,000, which can subsidize rent, including first and last months' rent and security deposit, utility deposits and connection fees, emergency food expenses, clothing, household essentials, and replacement furniture.[84] In addition, Florida's compensation program is particularly attentive to domestic violence victims. Florida was recognized for spending almost 20 percent of its total compensation payments on relocating domestic violence victims.[85] During the 2009 fiscal year, Florida spent over 6.8 million dollars on domestic violence relocation expenses alone.[86] Florida provides $1,500 on a single claim and a lifetime maximum of $3,000 for domestic violence relocation assistance.[87] When considering the fact that financial independence is critical for domestic violence victims, the availability of financial assistance for relocation, medical treatment, and counseling makes CVC funds an important resource.

C. The Underlying Theories in Support of CVC Funds

Scholars have identified three theories to justify crime victim assistance: shared risk, welfare, and legal rights.[88] CVC programs have been justified under the theory of risk spreading and cost sharing, which is the basis for most forms of social insurance.[89] The shared risk rationale includes the premise of "a moral concern for the well-being of citizens."[90] Under this rationale, crime is considered a "social problem" that impacts some citizens.[91] CVC programs are viewed as "distributing the costs of crime across society."[92] Instead of victims alone bearing the costs, "[s]ociety should provide a program which is available to all members of society on an equal basis, with each member of society

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83. *Id.*

84. VIOLENT CRIMES COMPENSATION BOARD, DESK MANUAL FOR VICTIM ADVOCATES 13 (2010), *available at http://doa.alaska.gov/vccb/pdf/DeskManualVictimAdvocates.pdf.*

85. Eddy, *supra* note 6, at 10; HERMAN & WAUL, *supra* note 2, at 22.

86. Office of Attorney General (Florida), Division of Victim Services and Criminal Justice Programs Annual Report 2009-2010 3 (2010), *available at* http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8C8KU5/$file/2009-10AnnualReport.pdf.

87. FLA. STAT. § 960.198 (2012).

88. *See generally* Goldscheid, *supra* note 13, at 211–22 (assessing arguments "propounded to support victim compensation programs"); Charlene L. Smith, *Victim Compensation: Hard Questions and Suggested Remedies,* 17 RUTGERS L.J. 51, 61–71 (1985) (exploring rights theory, welfare theory, shared risk theory, or cooperation with criminal justice system as possible rationales for compensation schemes); MCGILLIS & SMITH, *supra* note 48, at 12–13 (stating the reasons for developing victim compensation programs); Lamborn, *supra* note 47, at 462–65 (suggesting the duty theory, societal responsibility theory, or combination of the two as arguments in support of government compensation of crime victims).

89. Goldscheid, *supra* note 13, at 218. Professor Goldscheid also addressed other rationales to support CVC programs including legal obligation, social welfare, support to the criminal justice system, and tort substitutes. *Id.* at 212–24.

90. C. Smith, *supra* note 88, at 67. *See also* Goldscheid, *supra* note 13, at 219 (stating "[g]overnment funding could be defended as a way to spread the costs of the unexpected attack and to shield particular industries and individuals from bearing the cost when they played no role in creating the risk").

91. C. Smith, *supra* note 88, at 67.

92. Goldscheid, *supra* note 13, at 218.

contributing to the establishment of that program."[93] CVC programs do not fit perfectly under this theory, as society does not contribute to CVC programs, but criminals do through payment of fines and fees.[94] Initially, several state CVC programs adopted the shared risk theory, and some states delegated the operation of their CVC program to worker's compensation departments.[95]

A second rationale to support CVC programming is the welfare theory, which advocates that only impoverished crime victims should recover.[96] Welfare theorists contend that the government has a "humanitarian obligation" to crime victims similar to the obligation to veterans and the unemployed.[97] Some states consider financial need as part of their eligibility requirements for CVC funds.[98] California's program, the first CVC program in the United States, apparently adopted this view at one time and initially delegated its CVC decisions to the state's welfare department.[99]

A third relevant theory regarding CVC programs is the legal rights theory.[100] Under this theory, the government has a legal obligation to compensate its citizens because it failed to protect them from the crime.[101] Variations of this theory have their underpinnings in tort and contract law.[102] Although the legal rights theory has been explicitly rejected by legislatures for fear of increased liability,[103] there is a common thread in all the theories—that victims deserve society's aid.[104] One of the earlier scholars in the area of victim compensation, Professor LeRoy Lamborn, explained:

> [t]he language of the compensation statutes reflects the varied rationales underlying the institution of such programs. Hawaii merely expresses a purpose "to aid victims of criminal acts." California declares that indemnification of

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93. C. Smith, *supra* note 88, at 67.

94. Professor Goldscheid concludes that the programs advance an incomplete "vision of distributive justice" since CVC funds are funded exclusively from fines and fees with no government contributions. Goldscheid, *supra* note 13, at 219.

95. MCGILLIS &SMITH, *supra* note 48, at 50.

96. C. Smith, *supra* note 88, at 63. Although this theory has been rejected by some, the eligibility requirements and the fact that CVC funds are payers of last resort result in benefiting more impoverished individuals with little resources.

97. *Id.*

98. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, PROGRAM HANDBOOK II-4 (1992) (noting that eight jurisdictions require a financial means test for compensation). *See also* MCGILLIS & SMITH, *supra* note 48, at 69–71 (stating one-third of programs require demonstration of financial hardship to consider compensation claim).

99. MCGILLIS & SMITH, *supra* note 48, at 28.

100. *See* C. Smith, *supra* note 88, at 61–63 (discussing "rights" theory); MCGILLIS & SMITH, *supra* note 48, at 4 (mentioning "rights" theory); Lamborn, *supra* note 47, at 462–63 (discussing "duty" theory). *See generally* Goldscheid, *supra* note 13, at 212–14 (exploring "legal obligation" theory).

101. *See* C. Smith, *supra* note 88, at 61–63.

102. MCGILLIS & SMITH, *supra* note 48, at 4 (stating: "common law legal foundations for the 'right' theory of victim compensation are based upon analogies to tort law (the state is a tortfeaser for failing to prevent criminal activity) and analogies to contract law (the citizen agreed to restrict his use of physical force and weapons in return for the protection of the state)"). *See also* Goldscheid, *supra* note 13, at 214 (indicating that states have some duty to provide safety to their citizens).

103. MCGILLIS & SMITH, *supra* note 48, at 4–5. *See also* Goldscheid, supra note 13, at 213–14 (noting that courts often reject the legal rights theory).

104. *See* discussion *infra* Part IV.E.

> needy victims of crime "serves a public purpose, and is of benefit to the state." Maryland and New York find that "there is a need for governmental assistance"; accordingly, aid is provided as "a matter of moral responsibility" or "grace."[105]

The diverse rationales supporting state CVC programs ultimately impact program requirements and missions. As Professor Julie Goldscheid noted, crime victim compensation programs have always included restrictions "designed to limit eligibility."[106] If the eligibility requirements are used to disqualify victims and are not related to the underlying rationales for CVC programs, they should be reevaluated. Adopting a clear mission and rationale is the first step to ensuring that any barriers restricting domestic violence victims from accessing CVC funds are dismantled.

D. The Underutilization by Domestic Violence Victims

Professor Fran Danis has examined the relationship between crime victim compensation and domestic violence victims.[107] She found, based on 1999 data, that domestic violence victims accounted for 53.46 percent of recipients of services for victim assistance programs, but only 13.40 percent of compensation dollars were awarded to domestic violence victims.[108] Current data continues to show a wide disparity between the number of domestic violence victims receiving services from Victim Assistance programs and the number receiving compensation monies.[109]

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105. Lamborn, *supra* note 47, at 465.
106. Goldscheid, *supra* note 13, at 190.
107. *See generally* Danis, *supra* note 15.
108. *Id.* at 382.
109. *See infra* Table 1.

TABLE 1[110]

	2009	2008	2007
No. Domestic Violence Victims Receiving Victim Assistance	1,797,669	1,792,481	1,859,912
No. of Successful Domestic Violence Crime Victim Compensation Claims	43,203	29,684	27,444
No. of Total Victims Receiving Victim Assistance	3,526,736	3,780,068	4,116,648
Number of Successful Crime Victim Compensation Claims	203,424	151,643	143,214
Percentage of Victim Assistance Programs who are Domestic Violence Victims	51%	47%	45%
Percentage of Crime Victim Compensation Claims Involving Domestic Violence Victims	21%	20%	19%

The available data illustrates that domestic violence victims are not utilizing CVC funds in proportional numbers.[111] According to the OVC's Annual Report, during the combined fiscal years of 2007 and 2008, approximately 3.6 million domestic violence victims received services through Victim Assistance programs,[112] compared to approximately 57,000 who received compensation through CVC funds.[113] State Victim Assistance and Compensation Programs are required to provide reports during the year regarding their programs and expenditures. Based on the data from state programs in 2009, even though 1.7 million domestic violence victims received services through Victim Assistance programs, only 43,000 domestic violence related claims were paid through CVC funds.[114] Domestic violence victims represented 46 percent of the total victims served by VOCA Victim Assistance programs in 2007 and 2008.[115] Yet, during the same combined fiscal years, domestic violence claims represented less than 20 percent of all crime victim compensation claims.[116]

The statistics raise several issues involving domestic violence victims and CVC funds, including whether domestic violence victims are: 1) aware that CVC

110. The data for the above referenced table was compiled from the VOCA nationwide performance report which analyzes number of victims served, victim types, and service categories. The U.S. Department of Justice Office for Victims of Crime maintains this data on its website at http://www.ojp.usdoj.gov/ovc/grants/vocareps.html. The Office for Victims of Crime does not require states and territories to submit statistics on claims that might have been denied. See E-mail from the National Criminal Justice Reference Service, to author (July 18, 2011, 15:02 CST) (on file with author). Also, compensation in dollars is reported by the states as a total and is not broken into categories, such as domestic violence. *Id.*

111. *See generally VOCA Nationwide Performance Reports*, OFFICE FOR VICTIMS OF CRIME (last visited Dec. 9, 2011), http://www.ojp.usdoj.gov/ovc/grants/vocareps.html.

112. 2009 REPORT TO THE NATION, *supra* note 63, at 23.

113. *Id.* at 16.

114. *See supra* Table 1.

115. 2009 REPORT TO THE NATION, *supra* note 63, at 22.

116. *Id.* at 16.

funds exist, 2) choosing not to apply, or 3) having their claims denied. State compensation boards and researchers acknowledge that domestic violence victims are underrepresented as recipients of CVC funds.[117] Unfortunately, the available data raises more questions than it answers. The OVC has identified domestic violence, sexual assault, and child abuse as priority categories, and it mandates that 10 percent of Victim's Assistance Funds be allocated to those categories.[118] The OVC, however, has not identified priority categories for CVC funds.[119] One possible motivation for OVC's decision to focus on Victim Assistance programs such as shelters is the belief that indirect services constitute a better allocation of resources than direct payment to domestic violence victims, which may ultimately enrich the batterer. Of course, such motivation would be based on the premise that domestic violence victims cannot be trusted with direct compensation.[120]

One could speculate that victims are choosing not to apply for CVC funds because other resources are available. To definitively address this issue, the OVC would need to publish data related to the total number of domestic violence claims made, the total number of CVC claims denied, the number of domestic violence CVC claims denied, and the reasons for denial.[121] Information about the average compensation award for domestic violence victims compared to other crime victims would also be helpful to ensure that domestic violence victims are being treated equitably. Although there is some limited data available, more data is still necessary to definitively determine whether the underutilization is due to fewer willing applicants, institutional priorities, or claim denials. The significant number of domestic violence victims receiving services through Victim Assistance programs suggests that domestic violence victims have extensive needs. The following sections of this article will show that many of these needs can be best addressed through CVC funds.

IV. SHORTCOMINGS OF CVC PROGRAMS

CVC funds can be a vital resource for domestic violence victims. Nevertheless, domestic violence victims are not receiving CVC funds in large numbers,[122] and the potential benefits of CVC funds for domestic violence

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117. Goldscheid, *supra* note 13, at 190–91 (noting "program administration and program evaluators alike perceive the programs as underutilized"); Danis, *supra* note 15, at 382–83 (stating "[s]tate VOCA administrators recognize domestic violence victims as a primary underserved group"). *See also* Newmark et al., *supra* note 60, at 32–33 (arguing that victims of domestic violence are among the "leading underserved groups" for CVC funds). *But see* Eddy, *supra* note 6, at 12 (arguing that "domestic violence, rape and child abuse victims are not underrepresented in comparison to other crimes").

118. 2009 REPORT TO THE NATION, *supra* note 63, at 24.

119. *See id.*

120. Although the OVC has never issued a statement that access to direct compensation should be limited from domestic violence victims, the statistics certainly beg the question.

121. The OVC has indicated that it does not collect data regarding the number of domestic violence claims made, claim denials, or reasons for denial. Moreover, individual state CVC programs are not required to collect the data. *See* E-mail from the National Criminal Justice Reference Service, to author (July 18, 2011, 15:02 CST) (on file with author). *See also* Nat'l Ass'n of Crime Victim Compensation Boards, *supra* note 98, at I-2–I-3.

122. *See supra* Table 1.

victims have not yet been fully realized. Historically, program requirements served as barriers for domestic violence claimants.[123] The first impediment to domestic violence victims receiving CVC funds was a restriction against victims who resided with, or had a sexual relationship with, the offender.[124] New Zealand, the first to adopt a CVC program, was also the first to enact legislation to exclude an offender's relatives or household members from receiving CVC funds.[125] A number of states in the United States adopted this restriction.[126] The justification for the provision was to prevent fraud and unjust enrichment;[127] however, it resulted in making many domestic violence victims ineligible for CVC funds.[128] This unspoken assumption that victims who lived with the offender were not deserving, or were not "innocent victims," was fueled by a belief that, by living with an offender, victims contributed to their own victimization.[129] In a relatively progressive move for its time, President Reagan's Task Force's Final Report cautioned against blanket exclusions based on familial status or residency.[130] VOCA required that state CVC programs follow certain criteria.[131] Although Congress responded to the Task Force's concerns by requiring the inclusion of domestic violence offenses, domestic violence victims continue to be underrepresented in CVC programs.[132] Instead, assault claims

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123. *See* Goldscheid, *supra* note 13, at 190; MCGILLIS & SMITH, *supra* note 48, at 64.

124. MCGILLIS & SMITH, *supra* note 48, at 64. *See also* Goldscheid, *supra* note 13, at 190 (listing excluded victims who were ineligible for recovery as family members of offender).

125. *See* Criminal Injuries Compensation Act 1963 (N.Z.) § 18(2). *See also* MCGILLIS & SMITH, *supra* note 48, at 33 (noting that the New Zealand and British statutes were "routinely replicated in American statutes as if they were of proven value rather than having been tentative policy choices made by the developers of the foreign bills").

126. MCGILLIS & SMITH, *supra* note 48, at 33. *See also* Desmond S. Greer, *A Transatlantic Perspective on the Compensation of Crime Victims in the United States,* 85 J. CRIM. L. & CRIMINOLOGY 333, 346–47 (1994).

127. Greer, *supra* note 126, at 346–48; MCGILLIS & SMITH, *supra* note 48, at 64.

128. *See* New Directions, *supra* note 52, at 326 (noting that "lack of coverage for domestic violence victims due to provisions barring victims living with their batterers from receiving compensation was one of the issues addressed by the President's Task Force."); Greer, *supra* note 126, at 346–47; MCGILLIS & SMITH, *supra* note 48, at 64.

129. MCGILLIS & SMITH, *supra* note 48, at 64.

130. HERRINGTON ET AL., *supra* note 19, at 41. The committee seemed particularly concerned with child and adult victims who were unable to leave the home. *See also* NEW DIRECTIONS, *supra* note 52, at 326.

131. To satisfy VOCA grant eligibility the state compensation programs must meet the following four criteria: 1) include compensable crimes and specifically lists drunk driving and domestic violence; 2) cover the minimum compensable expenses of medical, mental health and counseling, lost wages, and funeral expenses; 3) promote victim cooperation; and 4) not deny compensation based on familial relationship or shared residence. *See* 42 U.S.C. § 10602(b) (2010); Victims of Crime Act Victim Compensation Grant Program, 66 Fed. Reg. 27,158, 27,161–62 (May 16, 2001). *See also* Newmark et al., *supra* note 60, at 5–6. The government instituted the fourth criteria to address the historic bias towards domestic violence victims. MCGILLIS & SMITH, *supra* note 48, at 64; Goldscheid, *supra* note 13, at 190; Greer, *supra* note 126, at 347. Other requirements include certifying that the grant money will not be used to supplant state funds otherwise available to crime victim compensation, allowing compensation awards to nonresidents of the State and victims of Federal Crimes based on the same criteria as residents, allowing awards to residents who are victims outside the State if the State where the crime occurred does not have an eligible compensation program, and not providing compensation to anyone convicted of a federal offense. 42 U.S.C. § 10602(b) (2010).

132. *See, e.g.*, Danis, *supra* note 15. *See supra* Part III.D. Others who underutilize victim

that do not involve domestic violence comprise the highest number of claims compensated by CVC funds.[133]

As the agency responsible for administering VOCA, the OVC's mission statement asserts that it is "committed to enhancing the Nation's capacity to assist crime victims and to providing leadership in changing attitudes, policies, and practices to promote justice and healing for all victims of crime."[134] The restrictive eligibility requirements established by VOCA and state CVC programs, though, do not appear to support that mission,[135] and they may instead make it more difficult for domestic violence victims to receive the benefits that VOCA provides to other crime victims.

Although CVC programs are managed by individual states, their eligibility requirements are very similar.[136] Programs generally require that the victim: 1) report the crime promptly to law enforcement, 2) cooperate with police and prosecutors in the investigation and prosecution of the case, 3) submit a timely application to the compensation program, 4) have a loss not covered by insurance or some other collateral source, and 5) be innocent of criminal activity or significant misconduct that caused or contributed to the victim's injury or death.[137]

Commentators and scholars have identified a number of shortcomings in the eligibility requirements and administration of CVC funds,[138] which may explain the underutilization by domestic violence victims. Shortcomings that could have an adverse impact on domestic violence claims include poor publication, the "innocent victim" requirement, and the cooperation requirement.[139] These potential obstacles for domestic violence victims bear little relationship to OVC's stated goal of assisting victims and should be modified to

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compensation include victims of "elder abuse, child physical and sexual abuse, . . . adult sexual assault, [as well as] non-English speakers and racial minorities." Goldscheid, *supra* note 13, at 191. A discussion of these victims is beyond the scope of this article. The unique nature of domestic violence cases, the historical legislative bias against domestic violence victims, and the federal government's attempt to address the bias makes underutilization by domestic violence victims unique. *See* discussion *supra* Parts II–III.

133. 2009 REPORT TO THE NATION, *supra* note 63, at 16. The most common types of expenses compensated are medical and dental expenses. *Id.* at 17. *See also VOCA Nationwide Performance Reports*, *supra* note 111.

134. *Id.* at ix.

135. *See* discussion *infra* Part IV.E.

136. *See* Eddy, *supra* note 6, at 6 (stating, "While eligibility requirements vary somewhat from state to state, nearly all programs have the same basic criteria"). *See also* Herman & Waul, *supra* note 2, at 20.

137. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98. The Urban Institute concluded that CVC programs "have a dual mission: to meet victims' financial needs as fully as possible, while also complying with regulations limiting payments to certain conditions and guarding against misuse of public funds through fraud or abuse." Newmark et al., *supra* note 60, at 126.

138. HERMAN & WAUL, *supra* note 2, at 26.; NEWMARK ET AL., *supra* note 60, at 21–35 (evaluating state compensation programs and recommending a number of improvements to enhance program effectiveness).

139. Greer, *supra* note 126, at 370–71; HERMAN & WAUL, *supra* note 2, at 26 (noting that "significant shortcomings still exist, including underutilization, inadequate outreach, limited coverage, and over-reliance on offender fines and penalties").

better align with this goal.

A. Inadequate Knowledge

Inadequate knowledge of CVC funds is one barrier to their use by victims of domestic violence. Many individuals have no knowledge of the availability of CVC funds.[140] Unfortunately, becoming a crime victim does not automatically provide one with such knowledge, as CVC funds are not well publicized.[141] Information about the funds' existence typically comes from the police, prosecutor, or victim services. Although programs that receive VOCA Victim Assistance funds, like shelters and hotlines, are required to inform clients about CVC funds,[142] less than half of VOCA assistance clients are aware of the existence of CVC funds.[143] Some states require police officers to provide information about CVC funds,[144] but this seems to provide no greater assurance that victims will receive the information necessary to take advantage of the funds, as one survey measuring police referrals to victim compensation resources found that approximately 24 percent of the officers had no knowledge of a victim compensation fund.[145] The finding was particularly troubling because the law required police officers to educate victims about the fund.[146] All of the agencies responsible for compensation funds appear to maintain websites, but a victim would first need to know that this resource existed before searching for it. Moreover, websites mean little to victims without computer access.

B. Innocent Victim Requirement

The eligibility requirements of cooperation and being an innocent victim are the most significant barriers keeping domestic violence victims from utilizing CVC funds.[147] Both requirements stem from "preconceived notions of the 'deserving' victim,"[148] and all state compensation programs restrict eligibility

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140. HERMAN & WAUL, *supra* note 2, at 28–29; Newmark et al., *supra* note 60, at 110.

141. *See* HERMAN & WAUL, *supra* note 2, at 29.

142. *Id.*

143. *Id.*

144. Eric J. Fritsch et al., *Police Referrals of Crime Victims to Compensation Sources: An Empirical Analysis of Attitudinal and Structural Impediments*, 7 POLICE Q. 372, 376–77 (2004). Eighty-three percent of states require criminal justice officials (police and prosecutors) to inform victims of CVC Funds. HERMAN & WAUL, *supra* note 2, at 29.

145. Fritsch et al., *supra* note 144, at 382–83.

146. The study also found that officers who held positive perceptions of the victim were 1.5 times more likely to provide information on the fund. *Id*. at 382–84. This is troubling in light of previous research concluding that attitudes about "domestic violence . . . can negatively influence [officer] interactions with and the performance of their duties regarding specific victims." *Id.* at 387. Previous studies regarding negative police officer perceptions of family violence cases make this study disturbing when it comes to information sharing. *See id.* Although police officers are a logical choice to disseminate information, additional avenues should be considered. *See, e.g., id.* at 389–90 (suggesting pamphlets or informational guides to give to victims instead of police being responsible for telling victims the information).

147. *See* NEWMARK ET AL., *supra* note 60, at 30–31; Greer, *supra* note 126, at 359–68. *See also* Goldscheid, *supra* note 13, at 191–94.

148. C. Smith, *supra* note 88, at 57. As scholar Aya Gruber explained, "[w]ithin popular political discourse, victims are not racial, cultural or socioeconomic others. They are white, middle-class, law-

based on this "innocent victim" requirement, or for contributory misconduct.[149]

Contributory misconduct is the most frequent reason for denial of all claims.[150] State boards have taken different positions on what contributory misconduct means.[151] One definition of contributory misconduct is "actions by the victim that may have provoked, precipitated, facilitated, or caused the crime to be committed and that make the victim ineligible for compensation."[152]

Additionally, some states have taken the position that only an "innocent victim" is eligible for compensation funds.[153] The innocent victim requirement is justified using an example of a gang member or drug dealer who is murdered;[154] states do not want to provide compensation to victims who "caused their own injuries or deaths through their criminal activity or 'misconduct.' "[155] A majority of state programs consider whether the illegal activity occurred at the time of the crime and, depending on the allegation, whether the illegal activity is causally connected to the crime.[156] Eligibility based on contributory misconduct is typically made on a "case-by-case basis."[157] Some states will reduce claim amounts for contributory misconduct, while others will deny them outright.[158] The extremist view taken by some states is that any victim with a criminal record is ineligible; consequently, victims with a criminal record may be automatically excluded, even if their record is unrelated to their victimization.[159] Further, the purported misconduct is not limited to criminal activity and may also include "negligence."[160] In some states, the board will examine the social history in making its determination of "innocence,"[161] which may include drug use or

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abiding citizens who have been subjected to horrific violence and demand harsh punishment of offenders." Aya Gruber, *A Distributive Theory of Criminal Law,* 52 WM. & MARY L. REV. 1, 66 (2010). Professor Goodmark noted that the term victim "implies whiteness, a construction that deprives African American women of victim status and its associated protections." Goodmark, *supra* note 35, at 86.

149. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at VI-1–VI-4 (noting legislative intent to only provide compensation for innocent victims of crime although what innocence is varies depending on the state law); EDDY, *supra* note 6, at 8–9.

150. NEWMARK ET AL., *supra* note 60, at 30. *See also* Danis, *supra* note 15, at 385 (defining contributory misconduct, the most frequent reason for nonpayment of CVC funds, as "actions by the victim that may have provoked, precipitated, facilitated, or caused the crime to be committed"). A research report funded by the DOJ concluded that 28 percent of denials across the states were due to contributory misconduct. NEWMARK ET AL., *supra* note 60, at 30; HERMAN & WAUL, *supra* note 2, at 25.

151. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-4.

152. Danis, *supra* note 15, at 385.

153. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at VI-1–VI-2. *See* Greer, *supra* note 126, at 359–66.

154. *See, e.g.*, Eddy, *supra* note 6, at 8 (using the frequent assault of drug dealers as an example of a group denied from receiving compensation).

155. *Id.* at 8. *See also* HERMAN & WAUL, *supra* note 2, at 21 n.9 (listing Arkansas, Louisiana, Missouri, Ohio, and Rhode Island as states that deny claimants with criminal records).

156. NEWMARK ET AL., *supra* note 60, at 31.

157. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at VI-1 (acknowledging the discretion and lack of uniformity in defining contributory misconduct).

158. *Id.* at VI-1–2.

159. *See* Eddy, *supra* note 6, at 8–9.

160. *See* NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-4.

161. *Id.* at VI-2 (identifying Ohio as a state which considers unrelated "criminal lifestyle" when

possession.[162]

Reviewing the criminal and social history of a domestic violence victim can have an adverse impact on successful CVC claims by domestic violence victims.[163] The notion of labeling a victim as innocent or deserving improperly shifts the focus away from the perpetrator's criminal conduct and resulting hardship and onto the victim's past indiscretions. Moreover, the existence of substance abuse or a criminal record may be an unfortunate consequence of domestic violence rather than evidence that the victim is unworthy of assistance. Some battered women use drugs and alcohol as a means of psychological escape.[164] Additionally, some "battered women commit crimes in the company of or in fear of their batterers" because of confounding circumstances having to do with the abuse itself.[165] Issues with addiction, or a past criminal record, should not automatically disqualify victims from receiving compensation because those issues do not negate the victimization experienced. For illustration, a prostitute who is brutally gang raped and beaten in her home should have the same access to justice and crime victim compensation as the housewife who is victimized in the same manner. Both victims would suffer emotional and physical trauma as well as economic costs associated with medical bills and counseling costs. Under this hypothetical, the prostitute would be deemed ineligible in some states. Allowing claim processors to identify some victims as deserving and others as "asking for it" is an invitation for arbitrary decision-making based on individual principles.

The decision to delve into a victim's criminal past and social history can undoubtedly discourage domestic violence victims, as well as victims of other crimes. A significant problem with assessing victim conduct in domestic violence cases is that compensation boards and officers have substantial discretion.[166] Discretion amongst claim processors can lead to inconsistent decisions and arbitrary results.[167] Addressing contributory misconduct places claim processors in an undesirable position of evaluating whether a domestic violence victim who reconciled, fought back, or began an argument facilitated, provoked, or invited the crime. As a result, a claims processor could use his or

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determining whether to allow a claim). *See also* Greer, *supra* note 126, at 363–64 (describing international schemes that also allow subjective evaluation of whether a victim is innocent so as to receive funds).

162. NEWMARK ET AL., *supra* note 60, at 31. A survey of state VOCA administrators revealed if a victim was using drugs 60 percent of the states would assess contribution if it was "causally connected to the crime, while about one-quarter of the states would assess contribution" even if there was no causal relationship. *Id.*

163. *See* Moore, *supra* note 26, at 466 (emphasizing that crimes of drug use and possession may actually be a result of the violence and should not be used again the victims who need the most help).

164. *Id*. *See also* HERMAN & WAUL, *supra* note 2, at 10 (noting battered women are fifteen times more likely to abuse alcohol and four times more likely to abuse drugs).

165. Moore, *supra* note 26, at 469. Determining when abuse introduces a victim to "criminal activity and where the battered woman's own agency has taken over" can be difficult. Jacobs, *supra* note 20, at 474.

166. Diane M. Purvin, *At the Crossroads and in the Crosshairs: Social Welfare Policy and Low-Income Women'sVulnerability to Domestic Violence*, 54 SOC. PROBS. 188, 191 (2007).

167. For example, studies of the family violence option for welfare benefits have found that discretion may result "in disparities in abused women's access to policy protections." *Id.* at 191.

her discretion to conclude that a domestic violence victim who makes a choice that is contrary to what the claims processor believes is undeserving. As one scholar noted, the issue of contributory misconduct could arise in a domestic violence case "as the victim may be viewed as 'provoking' the attacker towards violence."[168]

Reviewing the police report may be of little assistance. Possible officer bias against domestic violence cases may impact how police reports are drafted.[169] If self-defense is used, and the officer is unable or unwilling to identify the primary aggressor, the victim may be charged under a dual arrest policy.[170] Unfortunately, a dual arrest policy may not accurately reflect the situation because "mutual battering is extraordinarily rare: a domestic violence relationship is typified by a persistent batterer and a designated victim. A survivor's use of force in response to certain situations does not make her a batterer."[171] Dual arrest policies have an especially poor effect on minority victims.[172] Professor Adele Morrison explained the reason for this discrepancy: "because of racial privilege, the law better serves white women than women of color. This is not to say that white women are perfectly served, or even well served, by domestic violence law, but that women of color are disserved or even harmed by the current legal system."[173] Women of color may be particularly vulnerable for failing to meet an administrator's definition of an innocent victim.[174] Allowing CVC employees to determine contributory misconduct in domestic violence cases is problematic because it shifts the focus from assisting victims to blaming them.

C. Cooperation Requirement

Another potential barrier for domestic violence victims is the cooperation requirement. To be eligible for VOCA funds, state CVC programs must promote "victim cooperation with the reasonable requests of law enforcement authorities."[175] In turn, every state program includes cooperation as an eligibility

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168. H. Smith, *supra* note 7, at 311.

169. Rutledge, *supra* note 20, at 179 (discussing the visceral response some officers have towards domestic violence cases due to personal safety concerns, lack of training, and belief that it is a private matter).

170. *Id.* Anecdotally, I once prosecuted a forty year old batterer for severely assaulting his twenty year old girlfriend. The victim admitted she was using drugs at the time of the assault, but she did not begin abusing drugs until she became involved with the batterer. In my experience, it is also not unusual for a seasoned batterer to call 911 to preclude the actual victim from calling or at least undermine her credibility. A violent episode may also occur after a victim has been drinking or using drugs with her batterer.

171. Sarah M. Buel, *Access to Meaningful Remedy: Overcoming Doctrinal Obstacles in Tort Litigation Against Domestic Violence Offenders*, 83 OR. L. REV. 945, 958–59 (2004).

172. Condon, *supra* note 35, at 491–92. As one researcher explained, "mandatory arrest laws that were put in place to end police biases about domestic violence end up working against the minority victim." *Id.* There is an increased likelihood that a minority victim will be arrested under a dual arrest policy. *Id.* Researchers have also concluded that African American women and lesbians are more likely to fight back. Goodmark, *supra* note 35, at 104.

173. Morrison, *supra* note 35, at 1064–65.

174. *See id.*

175. 42 U.S.C. § 10602(b)(2) (2010).

requirement.[176] The OVC allows state programs to use discretion in defining cooperation.[177] Cooperation, like contributory misconduct, may have diverse meanings for different compensation boards. As part of its regulations, the OVC acknowledges that victims may be unwilling to cooperate due to fear for their safety.[178] Consequently, the OVC encourages state boards to take safety concerns into account. Minimum guidelines for cooperation under the OVC regulations may include an initial report to the police.[179] State programs have defined cooperation to include reporting the crime to the police, providing information to police and prosecutors, appearing in court, and testifying.[180] Failure to cooperate is frequently identified as a basis for closing or denying claims.[181] A survey of CVC administrators found that 53 percent attribute reporting and cooperation requirements as depressing claims in underserved groups.[182] Despite these statistics, only a minority of CVC programs has responded by relaxing reporting requirements for domestic violence and sexual assault victims.[183]

D. Why Cooperation Requirements Can Adversely Impact Domestic Violence Victims

Requiring victim cooperation is not unreasonable, but it is short-sighted given what we know about domestic violence victims. Deciding not to cooperate and recanting allegations are significant issues in domestic violence cases.[184] Significant numbers of domestic violence victims fail to testify in court, request

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176. HERMAN & WAUL, *supra* note 2, at 21; NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-3.

177. Victims of Crime Act Victim Compensation Grant Program, 66 Fed. Reg. 27,158, 27,162 (May 16, 2001). The issue of victim cooperation is frequently tied to reporting requirements. NEWMARK ET AL., *supra* note 60, at 5 n.7. Some states have relaxed the time limits for reporting. *See* EDDY, *supra* note 6, at 6–7; NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-3. For the reporting requirement to be satisfied the report to law enforcement has to be timely—usually within 72 hours. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 87, at II-3. *See also* Herman & Waul, *supra* note 2, at 20. A minority of statutes have recognized the need for extended reporting times, particularly in cases of domestic violence. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-3 (noting that states may recognize crimes like rape, child abuse, and domestic violence are not always reported immediately). *See also* Herman & Waul, *supra* note 2, at 20 (identifying California, Texas, Utah, Vermont, Wyoming, New Jersey and Washington as utilizing more relaxed time requirements). For example, in New York victims must report the crime "within a reasonable amount of time considering all circumstances." NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-3. Similarly, Alaska uses a five day reporting requirement with an exception based on "fear of reprisal from an offender" or incapacity because of severe injuries. DESK MANUAL FOR VICTIM ADVOCATES, *supra* note 84, at 5.

178. Victims of Crime Act Victim Compensation Grant Program, 66 Fed.Reg.27,158, 27,159 (May 16, 2001).

179. *Id.* at 27,162.

180. *See, e.g.*, NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-3.

181. Greer, *supra* note 126, at 371. However, the president for the National Association of Crime Victim Compensation Boards argues that lack of cooperation after the police report "rarely comes to the attention of the typical compensation program." EDDY, *supra* note 6, at 7.

182. NEWMARK ET AL., *supra* note 60, at 33.

183. *See* discussion *infra* Part VI.

184. Tom Lininger, *Prosecuting Batterers After Crawford*, 91 VA. L. REV. 747, 768 (2005); De Sanctis, *supra* note 37, at 367–68. *See also* Rutledge, *supra* note 20, at 149 (discussing how recanting may lead to perjury in domestic violence cases).

charges be dropped, or refuse to cooperate.[185] Some scholars consider the failure to cooperate an "epidemic" in domestic violence cases.[186] The reasons a domestic violence victim may decide not to cooperate often mirror why some victims remain with their abusers and include fear, financial needs, concern for children, or a desire to maintain or repair the relationship.[187] The decision to not cooperate with the prosecution of a batterer can be an act of survival or an exercise of autonomy. The decision to not fully cooperate may be further complicated when issues of racial loyalty are involved.[188] For instance, some racial minorities who feel targeted by the criminal justice system are reluctant to participate in a system they view as oppressive.[189]

Requiring cooperation through trial deligitimizes safety concerns expressed by domestic violence victims and prioritizes the interests of the state above the interests of domestic violence victims.[190] For example, although prosecutors always have the option to use subpoena power for a reluctant witness, domestic violence is the primary context where mandatory prosecution policies exist.[191] Scholars have characterized the criminal justice system's treatment of domestic violence victims as hostile and paternalistic.[192] In light of the tension that can arise between domestic violence victims and the criminal justice system, conditioning CVC funds on law enforcement cooperation seems extortionary. A domestic violence victim is left with an unappealing choice—either relinquish her own autonomy or forego much needed financial assistance. Further, instead of being seen as a victim worthy of society's support, she is recast as a villain. Characterizing crime victims as either deserving or undeserving does not advance the concept of distributive justice nor any of the theories which have impacted the development of CVC funds. Since the OVC has acknowledged that there are circumstances wherein a victim may be unable to cooperate, one must question the purpose of such stringent standards. The answer lies in the underlying purpose of CVC funds.

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185. Rutledge, *supra* note 20, at 149 n.5.

186. Douglas E. Beloof & Joel Shapiro, *Let the Truth Be Told: Proposed Hearsay Exceptions to Admit Domestic Violence Victims' Out of Court Statements As Substantive Evidence*, 11 COLUM. J. GENDER & L. 1, 3 (2002) (describing non-cooperation by recantation or failure to appear as an epidemic in domestic violence cases).

187. *Id*. at 163–74.

188. Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A., Why Abuse Victims Stay*, COLO. LAW., Oct. 1999, at 19, 20 (explaining how cultural expectations affect the opinions of both abusers and victims). *See* BETH E. RITCHIE, COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BATTERED BLACK WOMEN 95 (1996) (explaining African-American culture's apprehension of the criminal justice system in general and what the implications are for African-American domestic violence victims).

189. *Id.*

190. *See generally* LEIGH GOODMARK, A TROUBLED MARRIAGE: DOMESTIC VIOLENCE AND THE LEGAL SYSTEM (New York: NYU Press 2011).

191. In domestic violence cases the prosecutor may proceed with the prosecution in spite of the victim's protest because of mandatory prosecution policies. Leigh Goodmark, *Law Is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 16–17 (2004); Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 591 (1999); Rutledge, *supra* note 20, at 179–81.

192. *See, e.g.*, Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 HOUS. L. REV. 237 (2005).

E. Rediscovering the True Purpose of CVC Funds

Compensation boards and legislatures must determine whether CVC funds are a gift reserved for only the "deserving" or whether they are a right stemming from some form of societal obligation to victims. To better address the needs of domestic violence victims in particular, and crime victims in general, compensation programs must identify their primary goals and missions. The primary mission of CVC funds, however, is unclear. On one hand, the mission is "putting victims first,"[193] while on the other hand, the eligibility requirements suggest the mission is to promote law enforcement efforts. Reviewing criminal and social histories of victims, particularly when they bear no relationship to the victimization, and requiring cooperation with law enforcement beyond initial reporting[194] do not necessarily advance the goal of assisting victims.

For example, California's Compensation Board has a special provision regarding domestic violence victims' failure to cooperate.[195] Under this provision, a domestic violence victim is disqualified from receiving CVC funds in California if she formally requests charges be dropped, ignores a subpoena, commits perjury, or fails to provide information or evidence in a timely manner.[196] In other words, California's provision disqualifies domestic violence victims for doing what research has shown domestic violence victims tend to do. In fact, several feminist legal scholars have argued that mandatory prosecution policies are coercive; consequently, the government's paternalistic approach may lead some victims to commit perjury, ignore subpoenas, and request that charges be dropped.[197] California's decision to exclude victims who decide against participating in criminal prosecution is clearly punitive. A program designed to assist victims should not elevate the state's interest in punishment above victim's needs. Although members of law enforcement may express frustration when victims fail to cooperate, victim compensation should not be used as a tool of retaliation. The National Association of Crime Victim Compensation Board's Handbook provides that "[v]ictims who frustrate law enforcement efforts should not be rewarded with public funds."[198] Further, the Handbook explains that the purpose of the reporting requirement is to "assist police in capturing offenders or otherwise dealing with crime as soon as possible after an offense is committed. Police with 'fresh' information stand a better chance to apprehend criminals and prevent further victimizations."[199]

The language used in the Handbook and the innocent victim and cooperation requirements suggest that the primary goal is not to assist victims

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193. 2009 REPORT TO THE NATION, *supra* note 63, at viii.

194. *See* discussion *supra* Parts IV.B.–C.

195. CAL. CODE REGS. tit. 2 § 646.60(b)(1)–(4) (2011)

196. *Id.*

197. *See* Rutledge, *supra* note 20, at 186 (arguing that committing perjury and recanting can seem more self-serving to victims depending on their situations and can also be an assertion of power). As Professor Miccio summarized, "autonomy and conceptions of will and resistance do not exist only in the absence of oppression; they are manifest in the face of oppression and terror." Miccio, *supra* note 192, at 320.

198. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-3

199. *Id.*

but actually to assist law enforcement. Under this view, CVC funds are an auxiliary tool of law enforcement used in a quid pro quo relationship to incentivize victims. In other words, CVC funds are merely gifts that the government can withhold or distribute as it sees fit. California's § 649.60[200] and the provision in the NACVB Handbook[201] are just two examples of subordinating the needs of the victim under the goals of the state. Arguably, the state's goals are prioritized above domestic violence victims during most interactions with the criminal justice system.[202]

The goal of promoting law enforcement is included in VOCA[203] and mirrored in the state statutes;[204] however, it was not identified as a primary goal justifying the passage of VOCA.[205] According to the legislative history, the purpose of VOCA was "to provide limited Federal funding to the states with minimal bureaucratic 'strings attached,' for direct compensation and service programs to assist victims of crime, including victims of [f]ederal crime."[206] Professor Charlene Smith describes the law enforcement cooperation goal as a "secondary" rationale.[207] It is partly based on the belief that victims who may be reluctant would participate in the criminal justice system if encouraged.[208] Moreover, compensation would "promote the feeling that society is responsive to victims."[209] There has been no evidence that CVC programs have resulted in increased participation or satisfaction with the criminal justice system.[210] Professor Smith argues:

> One explanation why victim compensation does not appear to have generated the expected 'spill-over' or 'halo' effect is that it is premised upon the notion that if victims of crime see other victims of crime being compensated, they too will file claims. However, only a very small percentage of victims actually file a claim. Therefore, there is no broad basis of granted claims to create the spill-over effect. Even among the small percentage of victims who do file claims, there is often no halo effect.[211]

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200. CAL. CODE REGS. tit. 2 § 646.60(b)(1)–(4) (2011).

201. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at II-3

202. In the criminal justice system a conviction should satisfy the goals of punishment, retribution, and perhaps rehabilitation. A criminal prosecution may mean very little to a domestic violence victim depending on the circumstances. A few days in jail may provide little assistance for the domestic violence victim who wants to end the relationship and flee. Similarly, a conviction would provide little utility for the victim who wants to remain in the relationship out of hope that the relationship can be fixed. *See generally* GOODMARK, *supra* note 190. A victim may also successfully barter her cooperation for an uncontested divorce or custody.

203. 42 U.S.C. § 10602(b)(2) (2010). *See also* Victims of Crime Act Victim Compensation Grant Program, 66 Fed. Reg. 27,158, 27,161 (May 16, 2001).

204. *See generally* CAL. CODE REGS. tit. 2 § 646.60(b)(1)–(4) (2011).

205. *See* S. REP. NO. 98-497, at 1 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3607.

206. *Id.* That is not to suggest that supporting the criminal justice system was irrelevant. There was a general hope that CVC programs "would advance the criminal justice system's need for victim cooperation." Goldscheid, *supra* note 13, at 217.

207. C. Smith, *supra* note 88, at 68.

208. *Id.* at 69.

209. *Id.*

210. *Id. See also* Goldscheid, *supra* note 13, at 217.

211. C. Smith, *supra* note 88, at 70.

States that enacted CVC legislation were motivated by various rationales, thus making it difficult to identify Congress' primary mission.[212] While it is common for programs to pursue multiple objectives, it is still important to identify a primary mission to ensure continuity in decisions. Moving forward, compensation boards must ensure that the policies and requirements are consistent with the primary mission to ensure fairness.

If CVC funds are used as an incentive program for victim cooperation, then they constitute a gift.[213] Similarly, if CVC funds are viewed under a risk sharing or welfare theory, then they are also a gift, and the government can certainly impose restrictions on the beneficiaries.[214] CVC funds, however, do not squarely fit under a welfare or risk sharing theory, and no CVC program describes itself as a rewards program.[215] In fact, some scholars evaluated the various theories and concluded that there is no clear theory present in CVC funds.[216] Professor Smith, for example, concluded that CVC funds do not actually operate based on policy but rather on "symbolism."[217] Perhaps a more realistic view of CVC funds is as a type of restitution pool since criminal fines and fees are essentially transferred to crime victims.[218] The receipt of restitution is premised on the existence of a criminal offender and a victim, not a victim's quality or behavior.

Regardless of the theory used in support of CVC funds, all the theories share the notion that compensating victims is the right thing to do and is an important component of social justice, embodying distributive justice in "its purest form."[219] Many early scholars viewed CVC funds as "a simple humanitarian response to a compelling human need."[220] The humanitarian rationale has been described as "the most commonly discussed underpinning for victim compensation legislation."[221] Another scholar noted: "[o]pposing [CVC] is rather like attempting to put together forceful and compelling arguments against compassion, mercy, and decency."[222] If CVC funds are based, at least in part, on restoring victims and society's moral obligation, then they are more than a gift.

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212. *See* MCGILLIS & SMITH, *supra* note 48, at 4–5 (including considerations of safety, the role of the state as a tortfeasor or in breach, and humanitarian duties). *See also* discussion *supra* Part III.C.

213. Victim cooperation is considered one of the underlying policies for CVC funds. *See* C. Smith, *supra* note 88, 68–69.

214. *See* Goldscheid, *supra* note 13, at 214–20.

215. *Id.*

216. C. Smith, *supra* note 88, at 89.

217. *Id.*

218. Researcher Hayden Smith describes federal and state CVC programs as a source of restitution. *See* H. Smith, *supra* note 7, at 308–10 (describing VOCA as a way to recoup any loss from domestic issues).

219. *Id.* at 311.

220. MCGILLIS & SMITH, *supra* note 48, at 5.

221. *Id. But see* Goldscheid, *supra* note 13, at 214–16 (arguing that the idea of a "humanitarian obligation" to crime victims is a popular rationale for CVC programs but, by failing to include public funding support, the United States has rejected this approach).

222. MCGILLIS & SMITH, *supra* note 48, at 32.

V. WHY CVC FUNDS ARE NEEDED IN SPITE OF OTHER RESOURCES

Even if CVC funds are a societal obligation, their underutilization by domestic violence victims suggests that CVC funds either cannot address the special needs of domestic violence victims or the funds are superfluous in light of other resources available to them. Arguably, if victims are receiving adequate assistance through other sources, there is no need for CVC funds for domestic violence victims. But despite the many resources available, including domestic violence shelters, welfare, and restitution, a close examination demonstrates that CVC funds play a vital role in helping domestic violence victims.[223] As one provider explained: "[f]or victims to truly survive and be safe, all the pieces have to be in place and supported."[224] Although there are other resources for domestic violence victims, CVC funds can, and should, be part of the pool of resources that domestic violence victims can utilize.

Financial independence is critical for domestic violence victims,[225] and CVC funds fulfill a unique role in making domestic violence victims financially whole.[226] Many other programs that benefit domestic violence victims provide funding for services but not direct financial assistance for victims.[227] For example, the Violence Against Women Act (VAWA) has provided funding for several victim services, including grants for prosecutor and law enforcement training, grants for shelters and community programs, a national hotline, and funds for research and data collection.[228] Although the passage of VAWA marked a turning point for victims of domestic and sexual abuse,[229] VAWA does not provide funds directly to victims; rather, it supports victim services and research.[230] CVC programs, on the other hand, can provide more immediate help

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223. *See infra* Parts V.A–D.

224. NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS 2010: A 24-HOUR CENSUS OF DOMESTIC VIOLENCE SHELTERS AND SERVICES, 9 (2011), *available at* http://nnedv.org/docs/Census/DVCounts2010/DVCounts10_Report_BW.pdf.

225. *See supra* Part II.

226. *See supra* Part III.B.

227. *See* Brady J. Miller Clevenger & Dominique Roe-Sepowitz, *Shelter Service Utilization of Domestic Violence Victims*, 19 J. HUM. BEHAV. SOC. ENV'T 359, 362 (2009) (listing "counseling services, legal and medical advocacy, parenting classes, assistance with securing employment, housing, education, and more immediate needs such as food and clothing" as services provided by shelters). In contrast, CVC funds can cover expenses ranging from dependence care to pain and suffering, depending on the program. *See* Victims of Crime Act Victim Compensation Grant Program, 66 Fed. Reg. 27,158, 27,162 (May 16, 2001). *See also* discussion *supra* Part III.B.

228. Jill Tiefenthaler et al., *Services & Intimate Partner Violence in the United States: A County-Level Analysis*, 67 J. MARRIAGE & FAMILY 565, 567 (2005). *See also* Office on Violence Against Women, http://www.ovw.usdoj.gov/overview.htm (last visited Oct. 19, 2011). Victim Assistance Programs can provide emergency financial support, but that is not their primary purpose. *See* 2009 REPORT TO THE NATION, *supra* note 63, at 23 (stating a "small percentage" of victims seek emergency financial assistance). Further, the number of victims receiving emergency financial assistance compared to other indirect services is very low. *Id.*

229. VAWA addressed the issue of violence against women as an issue of gender discrimination. J. Rebekka S. Bonner, Note, *Reconceptualizing VAWA's "Animus" for Rape in States' Emerging Post-VAWA Civil Rights Legislation*, 111 YALE L.J. 1417, 1417 (2002). It also created the first civil rights remedy, but the remedy was later found unconstitutional. *Id.* at 1418, 1455.

230. *See, e.g.*, NEWMARK ET AL., *supra* note 60, at 134.

to victims.[231]

There are several resources available to assist domestic violence victims. For example, domestic violence shelters may help with relocation and provide immediate shelter.[232] Further, for compensation and financial support, victims may bring civil actions for damages, seek restitution from the courts, and apply for welfare.[233] Despite the strengths and benefits of other available resources, however, these resources are not a substitute for CVC funds.

The National Association of Crime Victims' Compensation Boards recognized the unique role of CVC funds as compared to other resources.[234] Its handbook reads:

> A significant number of perpetrators are never found. If they are, prosecutors may fail to request restitution in criminal trials, judges often fail to order it, court clerks and probation and parole authorities may be lax in collecting it. In any event, many offenders don't, and never will have, resources to pay. Similarly, civil suits filed by victims or compensation programs against offenders or third parties are relatively rare, since civil litigation is expensive and time consuming and the outcome is uncertain.[235]

In this section, a review of the most common resources—domestic violence shelters, restitution, civil litigation, and welfare—shows that, standing alone, they are inadequate in making domestic violence victims whole.

A. The Inadequacy of Domestic Violence Shelters

One of the most important and well-known domestic violence resources is the domestic violence shelter. As one scholar explained, shelters are crucial because "[t]hey provide a safe, secure environment for victims and their families and offer immediate protection and the opportunity for long-term life change."[236] Domestic violence shelters may have been originally instituted to provide lodging and protection, but now they also provide a variety of services to domestic violence victims, including counseling, parenting classes, job assistance, legal assistance, medical assistance, housing, and education, as well as meet immediate needs involving food and clothing.[237] Domestic violence shelters are a vital resource for all domestic violence victims because they often serve as a gateway to other services, regardless of whether a victim ultimately seeks

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231. Greer, *supra* note 126, at 384.

232. *See* discussion *infra* Part V.A.

233. *See* Jennifer Wriggins, *Domestic Violence Torts*, 75 S. CAL. L. REV. 121, 129-31 (2001) (discussing civil actions); NEW DIRECTIONS, *supra* note 52, at 355–56 (discussing restitution); Ellen K. Scott et al., *Dangerous Dependencies: The Intersection of Welfare Reform and Domestic Violence*, 16 GENDER & SOCIETY 878, 881 (2002) (discussing welfare).

234. NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at VIII-1.

235. *Id.*

236. Clevenger & Roe-Sepowitz, *supra* note 227, at 360.

237. *Id*. at 362. *See also* Kathleen A. Ham-Rowbottom, et al., *Life Constraints and Psychological Well-Being of Domestic Violence Shelter Graduates*, 20 J. FAMILY VIOLENCE 109, 110 (2005) (stating that "[i]n addition to providing protection and respite, shelters seek to increase women's knowledge of community resources and services and to provide counseling, training, and education").

shelter.[238] For purposes of this article, the focus will be on the housing aspect of domestic violence shelters.

Generally, domestic violence shelters can be divided into two groups: 1) first-stage, or emergency shelters; and 2) second-stage, or transitional, housing.[239] Emergency shelter provides "short-term living space for victims in response to an immediate crisis and includes both safe houses and paid hotel rooms."[240] Transitional housing is defined as "temporary shelter designed to house residents after their stay in emergency shelter and before they make permanent living arrangements."[241]

In 2005, there were an estimated 1,637 domestic violence shelters in the United States, with eight shelters in the United States territories.[242] Domestic violence shelters, and the programs sponsored by the shelters, have had a tremendous impact on the lives of countless women.[243] Notwithstanding the success of domestic violence shelters, they can neither eradicate all of the harms associated with domestic violence alone, nor can they replace the role of CVC funds. Even if shelters could fulfill every need of a domestic violence victim, they are not available, or desirable, for all victims.[244] The limited capacity and restrictions involving shelters may make a CVC program, which provides monies for rent or relocation, a preferred option.[245]

i. Shelters and Limited Space

Although shelters can be powerful tools for domestic violence victims, they have limited space and resources.[246] As a result, shelters are only available to a small number of victims.[247] A domestic violence program in Florida estimated that they turn away about seventy-six people each month due to lack of space.[248] Similarly, a program in Kansas has turned away over 600 women and children each year.[249] In some parts of the country, shelters and domestic violence programs are considered a luxury because "the majority of counties in the United States do not have any program to service victims of intimate partner violence."[250] Domestic violence programs tend to be located in well-resourced, highly educated communities with smaller minority populations.[251]

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238. Clevenger &Roe-Sepowitz, *supra* note 227, at 362.

239. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 224, at 4–5.

240. *Id*. at 4.

241. *Id.* at 5.

242. *Domestic Violence Shelters in the U.S.–2005*, NAT'L DOMESTIC VIOLENCE HOTLINE (last visited Jan. 2, 2012), http://www.ncdsv.org/images/DVSheltersUS.pdf.

243. *See* Clevenger & Roe-Sepowitz, *supra* note 227, at 360.

244. *See* discussion *infra* Part V.A.2.

245. *See* discussion *supra* Part III.B.

246. Tiefenthaler et al., *supra* note 228, at 571; Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DePaul L. Rev. 949, 982 (2007) (noting that domestic violence shelters have limited space and are overcrowded).

247. *See* Tiefenthaler et al., *supra* note 228, at 571.

248. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 224, at 7.

249. *Id.*

250. Tiefenthaler et al., *supra* note 228, at 571.

251. *Id.* at 572. Moreover, "the existence of a top-ranked college or university in the county is a

Economic conditions and budget cuts also impact shelters.[252] One study concluded that "77% of programs reported funding cuts in 2010, although 82% of programs reported an increase in demand for services."[253] Researchers who examined battered women's shelters throughout the United States in 2005 found that the number of shelters during that time (1,386) provided a total capacity of 31,429 beds.[254] Based on the prevalence of domestic violence, researchers estimated that "there are almost 50 self-identified victims for each shelter bed."[255]

For the past five years, the National Network to End Domestic Violence has conducted a national survey using a "snapshot methodology" to determine the number of victims and the type of resources provided in a single 24-hour period.[256] On a single day in 2007, over 25,000 adults and children were given shelter in either emergency shelters or transitional housing.[257] When the same survey was given on a single day in 2010, over 37,000 adults and children used emergency shelters or transitional housing.[258] What is particularly troubling is the number of victims who were turned away.

According to the 2007 National Network to End Domestic Violence Survey, during a single day, 4,676 requests for emergency shelter and transitional housing went unmet.[259] Based on the 2010 Survey by the same organization, there were 5,686 unfulfilled requests for emergency shelter or transitional housing.[260] The respondents in the survey cited reduced staff, funding cuts, and no available beds as reasons for the unmet needs.[261] Because of limited shelter resources, victims may be turned away or put on a waiting list.[262] Most women who turn to domestic violence shelters have children with them;[263] however, some shelters are not equipped to accept children, [264] and some shelters disallow male children or have age limits for male children.[265] One domestic violence

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strongly significant predictor" that a domestic violence program will be present. *Id.* at 574.

252. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 224, at 6.

253. *Id.*

254. Tiefenthaler et al., *supra* note 228, at 571.

255. *Id.*

256. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 224, at 1, 3.

257. *Id.* Specifically on September 25, 2007, 8,249 adults and 8,432 children stayed in emergency shelters while 3,587 adults and 5,053 children were living in transitional housing. *Id.* at 4–5.

258. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 224, at 1. Specifically on September 15, 2010, 11,905 children and 11,838 adults were given emergency shelter while 8,501 children and 5,275 adults were in transitional housing. *Id.* at 4.

259. *Id.* at 7.

260. *Id.* at 6.

261. *Id.* at 6–7.

262. *Developments in the Law: Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1506–09 (1993).

263. Ann Poole, et al., *Direct and Indirect Services for Children in Domestic Violence Shelters*, 23 J. FAM. VIOLENCE 679, 679 (2008).

264. Buel, *supra* note 188, at 24.

265. *See generally* NAT'L COAL. AGAINST DOMESTIC VIOLENCE, NATIONAL DIRECTORY OF DOMESTIC VIOLENCE PROGRAMS: 30 YEARS OF WORKING TO KEEP WOMEN & CHILDREN SAFE (2008). For example, of the nineteen shelters listed in Idaho, eight had age limits for males and half of those with age limits accepted a maximum age of twelve years old. *Id.* In fact, the nation-wide directory has a column which indicates if there is an age limit for males. *See id.*

survivor who had to leave her three sons behind elaborated:

> My kids are nine, [eleven], [thirteen], and [fourteen]. Most of the shelters don't take kids over [thirteen] and most of the ones that do separate them overnight. I had to go all the way to New Mexico to get a shelter that would take me and my boys. Nobody here would take us . . . . [sic] I wasn't going to leave them alone in someplace I didn't know. I told them, "[l]ook, if you can't find someplace for all of us then we have no choice but to go back. You're pushing me to go back because now I've left and it's going to be twice as bad when I go back."[266]

When a victim overcomes barriers to leaving her relationship and actually makes contact with a shelter, being turned away can be devastating. As one domestic violence service provider noted, "[w]hen a survivor reaches out for help and help is not available, there is a greater chance that the survivor will not seek help again."[267] Moreover, a victim who is turned away from a shelter may be placed in a more dangerous position than she was in before leaving her abuser.[268] A shelter provider involved in the 2007 census recounted one particular victim who had to be turned away:

> A woman called our program today looking for shelter. Our shelter was full and all of our funds had been expended. There were no available resources in the community. We tried to refer her to a local mission, but they were full and she was turned away. Later that evening, she was raped. After we got a call from the emergency room, our sexual assault counselor went to provide crisis counseling at the hospital. If our community had more resources, this could have ended differently.[269]

In spite of all the good that shelters accomplish, limited space and funding make the benefits difficult to access for some victims.

ii. Shelters and Negative Perceptions

Even if a domestic violence shelter is available, some victims have negative perceptions of shelters.[270] As a result, domestic violence shelters are sometimes not the first choice of domestic violence victims.[271] Rather than turning to shelters, most first seek help from family and friends.[272] When asked to rank twenty-four various resources in order of helpfulness, the victims in a recent study ranked shelters as the tenth most helpful resource.[273] Marginalized victims

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266. Angela M. Moe, *A Sheltered Life: Observations on a Domestic Violence Shelter*, *in* FEMALE VICTIMS OF CRIME: REALITY RECONSIDERED 180, 186 (Venessa Garcia et al. eds., 2010)

267. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 224, at 7 (emphasis removed).

268. *See* NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 224, at 7.

269. *Id.*

270. *See* Moe, *supra* note 266, at 180–95. S*ee also* Judy L. Postmus, et al., *Women's Experiences of Violence and Seeking Help*, 15 VIOLENCE AGAINST WOMEN 852, 853 (2009).

271. Postmus, *supra* note 270, at 853.

272. *Id.*

273. *Id.* at 860. Resources with the highest perceived helpfulness included subsidized day care support, religious or spiritual counseling, subsidized housing, welfare, educational support, food bank, job training/employment counseling, unemployment compensation, rape crisis or other sexual assault services, and then domestic violence shelters. *Id.* A comparison of domestic violence victims who use non-residential programs to victims residing in shelters led one study to conclude that

may also decide against going to a shelter.[274] For instance, battered lesbians may feel unwelcomed and view shelters "as the province of heterosexual women."[275]

Although domestic violence shelters offer a wide array of services, many battered women who seek the services of shelters "are primarily seeking refuge from violence, not counseling or other interventions."[276] In fact, residents who feel pressured into counseling and other services may resent life in a shelter. As one domestic violence shelter resident explained:

> Not many women that have kids and don't have a car are able to hurry up and get a job within [thirty] days. Hurry up and get a place in [thirty] days. It's a lot of pressure and deadlines living here. I'm thinking that a shelter is a place for [victims] to gain their self-esteem, to get out of that controlling situation, and give them the will power to be self-sufficient and independent and really there's more stress here with all the rules and extensions and groups and time limits . . . . [sic] it's not helpful to me at all.[277]

Life in a shelter can present an interesting dichotomy. On one hand, shelters strive to make residents feel empowered and independent; however, the shelter experience can feel paternalistic and disempowering.[278] "A peculiar contradiction is thus created, wherein the supposed goals of the shelter—to provide a nurturing and empowering environment for residents so that they may become independent and self-sufficient—are couched against a structure that relies on obedience and conformity."[279] In order to run efficiently, shelters need rules.[280] For example, shelters typically dictate when and where basic activities like "mealtime, recreation, and bedtime [take] place."[281] These rigid rules can be

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victims residing in shelters "have lower incomes, less education, and more children." Ham-Rowbottom, *supra* note 237, at 110.

274. For example, some authors have noted that Latina domestic violence victims may find "family members or Latino/a run social service agencies more helpful than domestic violence shelters, particularly when shelters do not have bilingual personnel and are not located in Latino communities." JYL JOSEPHSON, *The Intersectionality of Domestic Violence and Welfare in the Lives of Poor Women*, *in* DOMESTIC VIOLENCE AT THE MARGINS: READINGS ON RACE, CLASS, GENDER AND CULTURE 83, 86 (Natalie J. Sokoloff ed., 2005).

275. Goodmark, *supra* note 35, at 110 (noting that both shelter residents and staff have expressed homophobic attitudes towards battered lesbians). "Even professionals who are open to assisting battered lesbians may feel precluded from doing so by the homophobia of the residents or the organization." *Id*.

276. Poole, *supra* note 263, at 683. *See also,* Clevenger & Roe-Sepowitz, *supra* note 227, at 361–72 (exploring the differences between victims who choose to utilize shelters and services and those victims who choose not to).

277. Moe, *supra* note 266, at 193.

278. *See* Moe, *supra* note 266, at 190–91 (noting shelter residents' complaints about having no control over their curfew to having to ask for diapers).

279. Sarah L. DeWard & Angela M. Moe, *"Like A Prison!": Homeless Women's Narratives of Surviving Shelter,* 37 J. SOC. & SOC. WELFARE 115, 122 (2010). The researcher who made this statement was evaluating homeless shelters. *Id.* However, a similar observation can be made with respect to domestic violence shelters. Further, because of overcrowding, some domestic violence victims reside in homeless shelters.

280. *See id. See also* Moe, *supra* note 266, at 182 (stating that "supervision over residents [is] often seen as a necessity not only for maintaining order but for creating a structure that is, of all things, facilitative of self-sufficiency").

281. DeWard & Moe, *supra* note 279 at 121.

demoralizing for some victims.[282] A victim escaping the rigid rules of an abuser may be unwilling to subject herself to the additional rules and control of an institution. A domestic violence shelter resident elaborated: "as far as the curfews and stuff, I guess I kind of agree with them, but you know, they're like 'Oh my God, you were controlled and that's just so horrible.' And I don't know, they kind of control you here too."[283]

The potential for excessive staff discretion, and potential misuse of authority, can make shelters feel more like institutions than temporary residences. One study involving domestic violence shelter graduates, however, found most graduates had positive feelings about their experience and maintained contact with the agency.[284] Undoubtedly, the quality of the staff can have a tremendous impact on a resident's experience.[285]

iii. Domestic Violence Shelters Compared to CVC Funds

Despite all the potential benefits to utilizing a shelter, there are legitimate reasons why entering a shelter may not be a domestic violence victim's first choice, assuming that shelter space is even available to her. Marginalized victims may refuse to go to a shelter because they feel they will be unwelcomed,[286] and victims with older male children may be refused outright.[287] It may be less paternalistic to directly hand a victim funds to make her own living decisions, rather than directing her to a domestic violence shelter, with monies for housing or relocation all the while encouraging independence. Even when shelters are used, they are not permanent solutions.[288] The drawbacks to shelter life, and the limited availability of beds, further underscore the need for CVC funds, particularly in states where funds are used for relocation expenses.[289]

Many domestic violence shelters receive funding through VOCA under the Victim's Assistance Program.[290] In fact, significant amounts of money are distributed to domestic violence shelters by federal and local governments.[291]

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282. *See id.* (relating a homeless shelter resident's story of frustration over having the resident's children watch her take orders from staff). Although a homeless shelter is very distinct from a domestic violence shelter the sentiment from the shelter resident above could apply to either situation.

283. Moe, *supra* note 266, at 190.

284. Ham-Rowbottom et al., *supra* note 237, at 118. The study focused on shelter "graduates" who successfully completed the programs as opposed to residents who left early or "bounced" around different shelters. *Id.*

285. *See* NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 239, at 7 (stating: "We are understaffed even when we have every position filled, and our salaries are so low that we have constant turnover. This affects our services because we are operating with skeleton crews who lack sufficient experience to deal with the needs of our population"). *See also* Moe, *supra* note 266, at 191 (stating: "They're not consistent. I've noticed that you have to be on their good side for them to help you. You have to come into the office and ask them how they're doing. . . . [sic] 'cause women are women and they have their own issues at home too").

286. Goodmark, *supra* note 35, at 110.

287. *See generally* NAT'L COAL. AGAINST DOMESTIC VIOLENCE, *supra* note 265.

288. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 239, at 4–5.

289. *See* discussion *supra* Part III.B.

290. NEWMARK ET AL., *supra* note 60, at 132.

291. *See* Purvin, *supra* note 166, at 190.

Domestic violence victims are not underserved by VOCA Victim Assistance programs;[292] rather, in the combined fiscal years of 2007–2008, 46 percent of victims served by VOCA assistance programs were domestic violence victims.[293] Moreover, in the combined fiscal years of 2007–2008, the OVC allocated over $300 million to state compensation programs, compared to over $600 million in state victim assistance programs.[294] The OVC's aggressive targeting of domestic violence victims for indirect victim assistance, as opposed to direct reimbursement, is remarkable because it increased the number of victims who received services. However, why millions of domestic violence victims that benefit from shelters and other services are not applying for crime victim compensation dollars remains unanswered.

CVC funds used for relocation expenses are particularly important in communities without shelters or without space in shelters.[295] CVC funds can also help with counseling expenses.[296] CVC funds differ from domestic violence shelters because CVC funds are intended for emergency support shortly after the crime.[297] Domestic violence shelters, on the other hand, can be accessed at any time and can provide education and emotional support that CVC funds cannot.[298] Both resources are necessary to fully address the needs of domestic violence victims.

B. The Inadequacy of Restitution

Restitution is one of the oldest criminal sanctions.[299] Restitution is similar to CVC in that it is intended "to compensate victims for out-of-pocket expenses that are the direct result of crime."[300] Despite this similarity, restitution and CVC are distinct resources.[301] Restitution is a sanction imposed by the court wherein the offender compensates the victim.[302] Historically, restitution was used in property crimes, but it is now applied to a variety of cases, including reimbursing victims of violent crime.[303] The perennial issue for restitution is the lack of offender resources; consequently, restitution is considered "a remote

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292. 2009 REPORT TO THE NATION, *supra* note 63, at 21–22.

293. *Id.* at 22.

294. *Id.* at 89–92.

295. *See* discussion *supra* Parts III.B.–C.

296. 42 U.S.C. § 10602(b)(1)(A)–(C) (2010). *See also* Eddy, *supra* note 6, at 3.

297. *See* discussion *supra* Parts II, IV.E.

298. While CVC funds may offer direct compensation for important expenses, shelters can "provide counseling services and support groups that offer the opportunity for individuals to listen to other victims' stories about their own situations." *See* Clevenger & Roe-Sepowitz, *supra* note 227, at 360.

299. Linda F. Frank, *The Collection of Restitution: An Often Overlooked Service to Crime Victims*, 8 St. John's J. Legal Comment. 107, 109 (1992).

300. NEW DIRECTIONS, *supra* note 52, at 355.

301. *See* HERMAN & WAUL, *supra* note 2, at 20 (identifying restitution and civil actions as additional means of financial assistance for victims).

302. Burt Galaway, *Differences in Victim Compensation and Restitution*, 41 SOCIAL WORK 57, 57 (1979); Benedict J. Monachino, *Enhancing Victims' Rights: Crime Victims Compensation*, 80 N.Y. ST. B.J. 36, 36–37 (2008).

303. NEW DIRECTIONS, *supra* note 52, at 355. *See generally* Galaway, *supra* note 302.

possibility in many cases."[304] President Reagan's Task Force on Victims of Crime addressed both issues of restitution and the need for victim compensation in its Final Report. The Task Force concluded:

> Ordering the offender to pay restitution is a laudable goal that should be actively pursued, but its limitations must be recognized. A restitution order cannot even be made unless the criminal is caught and successfully prosecuted. Even when such an order is imposed, it does not help the victim if the defendant is without resources or if the ordering court does not enforce its order. In addition, even if complete restitution is made, it may take years to be accomplished. In the interim, the victim is left to bear the cost as well as he is able.[305]

In contrast, victim compensation is a publicly administered type of social insurance program where society, rather than the offender, takes "responsibility for making the victim whole."[306] Although reliance on restitution and victim compensation both increased through the Victims Rights Movement, CVC funds provide a far more effective avenue through which victims can recover.[307]

i. The Historical Development of Restitution

Prior to the Victims' Rights Movement, restitution was "infrequently used and indifferently enforced."[308] Congress enacted the Victim Witness Protection Act (VWPA) in 1982, which required federal judges to either order restitution in criminal cases or state their reason for not doing so on the record.[309] The VWPA also required courts to consider the defendant's "financial resources . . . and earning ability"[310] when awarding restitution. Although the VWPA increased victim's rights, there was concern that victims were still not receiving restitution.[311] Critics of the legislation believed that requiring courts to consider the defendant's financial resources led to the victim's financial situation being subordinated to the defendant's.[312]

In 1996, Congress enacted the Mandatory Victims Restitution Act (MVRA), which mandated restitution "without consideration of the economic circumstances of the defendant."[313] Today, nearly every state has some

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304. Frank, *supra* note 299, at 115.

305. *See* HERRINGTON ET AL., *supra* note 19, at 38.

306. Frank, *supra* note 299, at 115. *See also* Galaway, *supra* note 302, at 57 (differentiating between victim compensation as an administrative program and restitution as integral to criminal justice).

307. *See* HERRINGTON ET AL., *supra* note 19, at 38; HERMAN & WAUL, *supra* note 2, at 20.

308. Matthew Dickman, *Should Crime Pay?: A Critical Assessment of the Mandatory Victims Restitution Act of 1996*, 97 CALIF. L. REV. 1687, 1688 (2009).

309. Victim & Witness Protection Act of 1982, Pub. L. No. 97-291, § 3579, 96 Stat. 1248, 1253 (codified as amended at 18 U.S.C. § 3664).

310. *Id.* at 1255. *See also* Dickman, *supra* note 308. In 1995, however, restitution became mandatory in federal domestic violence and sexual assault cases. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 40113, 108 Stat. 1796, 1904 (codified as amended at 18 U.S.C. § 2248). A number of states followed the federal restitution model and enacted various provisions. Frank, *supra* note 299, at 111 (noting that by 1988 twenty-three states made restitution mandatory).

311. Dickman, *supra* note 308, at 1690–91.

312. *Id.* at 1690.

313. 18 U.S.C. § 3664(f)(1)(A) (2010).

restitution provision,[314] and some states have made restitution a constitutional right.[315] In a publication on victim's services, the Department of Justice Office for Victims of Crime stated that "[d]espite the passage of federal and state legislation, restitution remains one of the most underenforced victim right [sic] within the criminal and juvenile justice systems."[316] Restitution could be a promising resource for domestic violence victims, but the significant barriers to collection make it an unlikely benefit.

ii. Barriers to "Mandatory" Restitution

Restitution is an ineffective resource for crime victims in general, and domestic violence victims in particular, for a number of reasons. Because restitution is a criminal sanction, restitution depends on both the apprehension and conviction of an offender.[317] Realistically, it is also important the offender has resources to pay restitution. "Over 85% of federal criminal defendants are indigent at the time of their arrest, and nearly half of offenders made less than $600 during the month prior to their offense."[318] In a restitution survey, one judge described why restitution is an ineffective resource for crime victims:

> You can't get blood out of a stone. When you have rapes, aggravated assaults, gun-point robberies of those with no skills who have never held a job, what good is restitution? They will be in jail for five to ten years and have no assets. [Restitution is] the exception, not the rule, in the major cases in a large city.[319]

Prior to the passage of the MVRA, a federal judge testified before the Senate Judiciary Committee that mandatory restitution "without consideration of a

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314. Robert C. Davis & Carrie Mulford, *Victim Rights & New Remedies: Finally Getting Victims Their Due*, 24 J. CONTEMPOR. CRIM. JUST. 198, 201 (2008); Goldscheid, *supra* note 13, at 179 (stating: "[t]oday all states have statutes addressing restitution; however they vary widely in their scope of coverage and the extent to which they are enforced."); Frank, *supra* note 299, at 112. *See also* Monachino, *supra* note 302, at 36 (noting that "every state court may order restitution but not every state is mandatory").

315. For example, crime victims in Texas and Michigan have a constitutional right to restitution. TEX. CONST. art. I, § 30(b)(4); MICH. CONST. art. 1 § 24(1). *See* Don Rogers, *The Crime Victim's Constitutional Right to Restitution in Texas Criminal Proceedings*, 2009 HOUSTON LAW. 18, 19; Brian Moody & Janet A. Napp, *Restitution and the Rights of Crime Victims*, 79 MICH. B. J. 682, 682 (2000).

316. NEW DIRECTIONS, *supra* note 52, at 357.

317. Galaway, *supra* note 302, at 57. *See also* Goldscheid, *supra* note 13, at 179–80. In spite of the mandatory language in the federal statute and some state statutes, in practice restitution is not ordered if the victim fails to request it. *E.g.*, R. Barry Ruback, *The Imposition of Economic Sanctions in Philadelphia: Costs, Fines, and Restitution*, 2004 FED. PROBATION 21, 24. Unfortunately, it is not always communicated to victims that they must request it. *See id.* Skeptical judicial attitudes may influence the number of restitution orders. *Federal Judiciary Voices Concerns with Mandatory Restitution*, U.S. COURTS (Nov. 8, 1995), http://www.uscourts.gov/news/NewsViews/95-11-08/Federal_Judiciary_Voices_Concerns_with_Mandatory_Restitution.aspx. Judge Maryanne Barry, former chair of the Committee on Criminal Law of the Judicial Conference, remarked that "[t]he Administrative Office of the U.S. Courts should not be responsible for privatized criminal debt collection efforts." *Id.* Undoubtedly, a significant factor underlying judicial cynicism regarding restitution is frustration over most defendants' lack of resources. *See id.* Most criminal defendants lack financial resources to comply with restitution orders and any assets seized by the government are unavailable for restitution. Dickman, *supra* note 308, at 1695.

318. Dickman, *supra* note 308, at 1695.

319. Ruback, *supra* note 317, at 25.

defendant's ability to pay would be a misallocation of judicial resources, and taxpayer dollars, and is unlikely to result in any appreciable increase in compensation to victims of crime."[320]

The concerns voiced by the judiciary have proven valid. An estimated 96 percent of federal restitution is outstanding.[321] The federal criminal debt consists of approximately $50 billion in outstanding sanctions; almost $40 billion of that stemmed from restitution orders.[322] Although strides have been made towards enforcing restitution orders, the cost associated with enforcement is roughly $2,000 for one case.[323] Moreover, it takes officials approximately fifty-five hours to enforce a restitution order.[324] As one commentator summarized, "for many restitution judgments, the government is spending considerably more than the offender can be expected to pay or the victim can be expected to receive."[325]

Apart from the obstacles to recovery, restitution can be a powerful tool for some victims.[326] However, as Professor Julie Goldscheid explained, restitution "is less useful for victims of domestic and sexual violence, crimes for which underreporting, underprosecution, and low conviction rates are notorious."[327] Consequently, for a number of reasons, restitution may not be an available option for a domestic violence victim.

iii. Restitution Compared to CVC Funds

A victims' rights proponent estimated that restitution can only help 3 percent of victims.[328] Thus, for a victim whose offender is never captured, is never convicted, or is unable to pay, CVC funds may be that victim's only source

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320. U.S. COURTS, *supra* note 317.

321. Dickman, *supra* note 308, at 1697.

322. *Id.* at 1692.

323. *Id.* at 1708.

324. *Id.*

325. *Id.* at 1709–10.

326. Rogers, *supra* note 315, at 20 (noting "[t]he availability of these far-reaching enforcement options is a compelling reason why restitution should be ordered in any applicable case when desired by the crime victim regardless of the offender's present financial circumstances"). Restitution orders can be enforced as civil judgments which can be pursued by victims or third-parties, including state CVC programs. NEW DIRECTIONS, *supra* note 52, at 361. Civil enforcement options may include real property liens, wage garnishment and attaching assets. *Id.*

327. Goldscheid, *supra* note 13, at 180. The relationship between domestic violence victims and the criminal justice system has been turbulent. *See* Rutledge, *supra* note 20, at 175–82 (discussing the "peculiar and strained relationship between domestic violence victims and the criminal justice system"). At one time, society considered domestic violence a private matter, so cases were not aggressively prosecuted. *Id.* at 179–80. Mandatory prosecution policies have led some victims to make difficult choices about seeking to drop charges, recanting allegations, and ignoring subpoenas. *See id.* at 186 (exploring why domestic violence victims may be more fearful than other victims of violence "because [their] batterers are likely to have greater access than other criminals to their victims"). Further, some domestic violence cases are resolved by referrals to batterer intervention programs, with or without convictions. *See* Judith A. Smith, *Battered Non-Wives and Unequal Protection-Order Coverage: A Call for Reform*, 23 YALE L. & POL'Y REV. 93, 113 (2005).

328. Frank, *supra* note 299, at 113–14 (quoting John Heinz who explained: "since less than 20% of all crimes lead to an arrest, less than 10% of the accused are ever prosecuted, and less than three per cent [sic] of those arrested are actually convicted, 97% of all victims would go unaided if restitution were their only means of assistance or retribution").

of compensation.[329] Even where there are restitution orders, they are often left unfulfilled, and CVC funds are the only way to provide financial assistance to these victims.[330] Further, since CVC funds are structured to be the payer of last resort, if a victim was entitled to or received restitution, the CVC program could reduce its award amount or seek reimbursement so victims are only compensated once.[331] In part, CVC funds can be viewed as an improved restitution method. The monies from criminal defendants are essentially redirected to a general fund for victims. While CVC funds may not fully realize restorative justice goals by requiring offenders take responsibility, they help to ensure that the needs of crime victims are met.

C. The Inadequacy of Civil Lawsuits

Just like any other crime victim, domestic violence victims have the right to sue their abusers in court.[332] Several scholars have explored potential civil causes of action under various tort theories.[333] In the late 1990s, the Violence Against Women Act included a specific civil remedy provision that could benefit domestic violence victims.[334] Despite the availability of civil remedies, however, domestic violence victims rarely bring suits against their batterers.[335] And when they do bring suits, they tend to be unsuccessful.[336] A number of barriers to domestic violence victims'civil lawsuits underscore the need for CVC funds.

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329. *See* Galaway, *supra* note 302, at 57 (noting: "Although restitution may benefit the comparatively small number of victims of captured and converted offenders, it will not be an effective program for meeting the victims' need"). *See also* Dickman, *supra* note 308, at 1708 (noting: "[T]he cost of staffing and running [restitution] programs relative to the funds collected might suggest that public monies would be better provided directly to crime victims through crime victim compensation programs"); Goldscheid, *supra* note 13, at 179–80 (noting that restitution will probably never be adequate enough to fully compensate crime victims); Monachino, *supra* note 302, at 37 (describing barriers to restitution and easier paths to other types of compensation).

330. *See* HERRINGTON ET AL., *supra* note 19, at 38. *See also* Herman & Waul, *supra* note 2, at 20.

331. *See* Greer, *supra* note 126, at 379, 384. A program could pay a victim who has a restitution order and "either ask the court to have restitution paid directly to the compensation program, or expect the victim to repay them if restitution is received." EDDY, *supra* note 6, at 8.

332. Herman & Waul, *supra* note 2, at 20 (stating "[e]very crime victim has the right to file a civil lawsuit against the perpetrator ").

333. *See, e.g.*, Wriggins, *supra* note 233, at 129–31 (2001) (explaining the use of battery, assault, and intentional infliction of emotion distress claims in civil courts to address domestic violence issues). *See also* Buel, *supra* note 171, at 945 (noting that under tort law there are multiple causes of action, but they are not often used).

334. *See* 42 U.S.C. § 13981(a) (2010).

335. Rhonda L. Kohler, *The Battered Woman and Tort Law: A New Approach to Fighting Domestic Violence*, 25 LOY. L.A. L. REV. 1025, 1029 (1992).

336. *See* Jennifer B. Wriggins, *Domestic Violence in the First-Year Torts Curriculum*, 54 J. LEGAL EDUC. 511, 512 (2004) (noting that "intentional tort cases are only a small proportion of tort cases dealt with by the legal system. Domestic violence tort cases, in turn, are likely to be a tiny proportion of intentional tort cases filed"). *See also* Kohler, *supra* note 335, at 1048; Buel, *supra* note 171, at 945.

i. Civil Lawsuits Under the Short-lived Civil Remedy Provision of the Violence Against Women Act

Civil lawsuits are not a viable option for domestic violence victims.[337] Probably the only civil remedy currently available for domestic violence victims lies in tort law.[338] Until it was struck down in 2000, the Violence Against Women Act included a civil remedy provision which permitted a cause of action, in either state or federal court, for compensatory and punitive damages, as well as injunctive and declaratory relief for victims of gender motivated crimes.[339]

When the civil remedy provision of VAWA was first proposed, opponents criticized it as potentially overrunning the court system.[340] Contrary to the expressed fears, very few lawsuits were actually filed under VAWA.[341] Professor Jennifer Wriggins identified eleven lawsuits in which domestic violence victims based their claims on the provision during the five-year life of the civil remedy.[342] Establishing a cause of action was more difficult under VAWA than traditional tort law because of VAWA's requirements that the crime be a felony motivated by a gendered animus.[343]

ii. Civil Actions Under Tort Law

Victims of domestic violence could conceivably sue under tort theories of assault, battery, and intentional infliction of emotional distress,[344] but tort claims are infrequently used by domestic violence victims.[345] For a tort action to succeed, a plaintiff must be able to afford an attorney, and the defendant must

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337. *See* Kohler, *supra* note 335, at 1029 (noting that women who have sued for personal injuries have had "minimal success"). *Cf.*, Tom Lininger, *Is It Wrong To Sue For Rape?*, 57 DUKE L.J. 1557, 1578 (2008) (stating "[r]ape survivors who are indigent may not find civil remedies very useful both because these survivors lack the resources to hire attorneys and because their assailants typically lack resources as well").

338. Wriggins, *supra* note 233, at 128.

339. United States v. Morrison, 529 U.S. 598, 617 (2000); 42 U.S.C. § 13981(b) (2010). *See also* Wriggins, *supra* note 233, at 123, 132. A gender motivated crime was defined as a "crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." 42 U.S.C. § 13981(d)(1) (2010). Crimes of violence were limited to crimes that would constitute a felony. 42 U.S.C. § 13981(d)(2)(A) (2010). The provision was ultimately struck down because its enactment exceeded Congress' power under the Commerce Clause. *Morrison*, 529 U.S. at 617. In spite of the brevity of the civil remedy provision, it is important to consider its effectiveness before it was found unconstitutional.

340. Bonner, *supra* note 229, at 1423; Wriggins, *supra* note 233, at 134.

341. Wriggins, *supra* note 233, at 132–34 n.57. Professor Wriggins located seventy-three reported decisions that discussed the civil remedy provision. *Id.*

342. *Id.* at 132 n.57–58 (citing cases).

343. *Id. See also* 42 U.S.C. § 13981(d)(1)–(2) (2010).

344. Wriggins, *supra* note 233, at 129-31; Jerry J. Phillips, *What is a Good Woman Worth?: Tort Compensation for Domestic Violence*, 47 LOY. L. REV. 303, 308 (2001) (concluding that domestic violence torts are typically based on theories of battery or intentional infliction of emotional distress); Kohler, *supra* note 335, at 1048–49 (noting that "most interspousal tort cases are brought by battered spouses, and three-fourths of these cases are based on assault and battery"). Other potential tort theories include false imprisonment, and fraud. *See* Wriggins, *supra* note 233, at 131; Buel, *supra* note 171, at 956–57. Scholar Rhonda Kohler advocates for a tort specific to domestic violence, but it has not been adopted legislatively. *See* Kohler, *supra* note 335, at 1067–72.

345. Wriggins, *supra* note 336, at 512; Wriggins, *supra* note 233, at 132 n.57.

have "deep pockets to pay damages."[346] Even if a defendant has significant assets, many attorneys operate under the false assumption that all batterers lack resources and, therefore, cannot satisfy a judgment, perhaps leading some attorneys to decline to represent domestic violence victims at all.[347]

iii. Lack of Insurance and Its Impact on Civil Lawsuits

One of the most important factors in obtaining legal representation is the availability of insurance because insurance proceeds can serve as another source for recovery.[348] Scholars have identified lack of insurance as a significant factor in the dearth of tort claims involving domestic violence victims.[349] As Professor Jennifer Wriggins aptly noted, "[t]orts and insurance cannot be understood in isolation from one another."[350] Many attorneys may not consider a case worth pursuing when the batterer lacks insurance coverage, particularly if the batterer has few assets.[351] If a victim does not receive information about potential tort actions from her divorce attorney or a plaintiff's attorney, she may never know that recovery is possible.[352]

Most domestic violence victims do not even have the option of turning to insurance for compensation. The most commonly available individual insurance policies include life, health/casualty, homeowners, renters, and automobile policies.[353] Notably, low-income batterers are less likely to have access to private insurance.[354] In fact, "private insurance contains an inherent bias toward heterosexual and middle/upper class" victims.[355] Furthermore, victims are usually barred from coverage due to the intentional nature of the acts and family

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346. Craig Brown & Melanie Randall, *Compensating the Harms of Sexual and Domestic Violence: Tort Law, Insurance and the Role of the State*, 30 QUEEN'S L.J. 311, 313 (2004) (focusing on the problem of victim compensation in Canada although there are several U.S. parallels). Although many attorneys work on a contingency fee in other cases, contingency fee cases will typically only be accepted if they involve the opportunity for substantial recovery. *See* Wriggins, *supra* note 233, at 137–38. There may not be a similar opportunity for substantial recovery in a domestic violence tort case unless the batterer is affluent. *See id.* Some batterers are essentially judgment proof because they lack significant assets. *Id.* at 138. *See* discussion *supra* Part V.B.2. Moreover, the "largest asset[, a home,] may be jointly owned . . . [or] protected by a homestead exemption." Wriggins, *supra* note 233, at 138.

347. Buel, *supra* note 171, at 951.

348. Wriggins, *supra* note 233, at 135, 139.

349. *Id.* at 135.

350. *Id.*

351. *See* Peter J.M. Romary, *Affecting Women: Recovery for Domestic Abuse*, TRIAL, Aug. 2003, at 30, 30; Wriggins, *supra* note 233, at 139 (stating that "[g]etting a private attorney to take a case on a contingency basis where there are neither assets nor insurance is difficult, if not impossible").

352. *See* Wriggins, *supra* note 233, at 141–42. "Moreover, unlike injuries from car accidents, for which people have grown to expect compensation through a highly regulated insurance system, there is no such expectation of compensation for domestic violence injuries." *Id.* at 142 (citation omitted).

353. H. Smith, *supra* note 7, at 309. *See also* Wriggins, *supra* note 233, at 135–36. Insurance policies can be important resources for victims. For example, if a batterer uses his vehicle as a weapon against a victim, she may consider suing under his automobile policy. Romary, *supra* note 351, at 30.

354. Wriggins, *supra* note 233, at 135.

355. H. Smith, *supra* note 7, at 309. For example, renters are not required to have insurance and homeowners tend to have greater resources than renters. *Id.* at 309–10.

member exclusions.[356] Most homeowner's policies define the insured as all owners or residents, thus excluding claims by insureds against each other.[357] The practical application of this is that a battered woman covered by insurance could not be reimbursed under a homeowner's policy shared with her partner. Liability insurance does not cover acts that the insured intentionally commits because of "the public policy against indemnifying a person for their own wrong doing."[358] Although a small number of litigants have prevailed, prevailing is rare;[359] therefore, lack of insurance serves as another barrier and discourages lawsuits by domestic violence victims.[360]

iv. Procedural Barriers to Civil Lawsuits

Assuming a domestic violence victim knows she has a claim and is able to secure an attorney, she still faces an uphill battle to victory in court. If a victim decides to and is able to leave, she must still overcome the emotional barrier of fear of potential retaliation.[361] Should the victim overcome this fear, she would then face procedural barriers.[362] The statutes of limitations for torts such as battery and assault are short, typically one to two years,[363] but it may take several years before a victim realizes that she has a cause of action.[364] To further complicate matters, a victim may have feelings of low self-esteem because of the battery.[365] As Professor Sarah Buel explained, this low self-esteem may make it "hard for [domestic violence victims] to conceptualize themselves as deserving any legal remedies, let alone monetary damages."[366] These victims might not feel worthy enough to file any complaint at all. Statutes of limitations begin to run once a victim "discovers or should have discovered" the tort,[367] not when the victim is educated by the law or gathers enough resources to proceed with a claim. By the time a woman ends an abusive relationship, learns of her rights,

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356. Wriggins, *supra* note 233, at 135–36.

357. *Id.* at 137.

358. STEVEN PLITT ET AL., COUCH ON INSURANCE § 127:20 (Thompson Reuters/West ed., 3d ed. 2008). In some cases courts have distinguished "intended acts [from] unintended consequences" and have allowed recovery. Romary, *supra* note 351, at 30. Many policies now include broad criminal or illegal acts exclusions. *Id.* at 31.

359. PLITT ET AL., *supra* note 358.

360. Wriggins, *supra* note 233, at 137.

361. Retaliation could include custody disputes, harassing phone calls, stalking, and separation assault. Separation assault refers to the phenomenon of increased violence when a victim separates from her abuser. *See* Rutledge, *supra* note 20, at 164 n.123 (revealing that a "majority of domestic violence homicides occur when a victim decides to leave"). *See also* Buel, *supra* note 171, at 957 (defining the term "separation violence" as the "all too common abuse that the batterer inflicts after the victim has fled").

362. Wriggins, *supra* note 233, at 135–44 (including insurance, assets, statutes of limitations, and divorce as potential barriers for domestic violence tort claims). *See also* Buel, *supra* note 171, at 949–55, 1000–01; Phillips, *supra* note 344, at 308–10 (highlighting divorce and statutes of limitations as main barriers to domestic violence torts). *See generally* Kohler, *supra* note 335, at 1037–65 (chronicling development of interspousal immunity and barriers to domestic violence tort claims).

363. Wriggins, *supra* note 233, at 139.

364. Buel, *supra* note 171, at 954.

365. *Id.*

366. *Id.*

367. Phillips, *supra* note 344, at 308.

decides to sue, and finally finds an attorney to represent her, the statute of limitations will probably have run out.[368] A few jurisdictions recognize domestic violence as a continuing tort and will toll limitations.[369]

If a victim can overcome the issues with statutes of limitations, she may face additional barriers if she is married to her abuser.[370] Some jurisdictions have mandatory joinder provisions that require tort claims for abuse during the marriage be asserted and handled simultaneously with a divorce, or else the claims will be disallowed under res judicata.[371] Even if joinder is permissive, some divorce settlements include broad release provisions that include release from tort claims.[372] Other courts have applied waiver and equitable estoppel to halt domestic violence tort actions filed after a divorce is complete.[373]

At one time, interspousal tort immunity existed to prevent spouses from seeking civil damages against each other.[374] Although interspousal tort immunity has been abrogated in most jurisdictions, insurance exclusions and negative judicial attitudes have served as a form of "de facto interspousal tort immunity."[375] Even in the rare instances when a victim can overcome all of the obstacles to recovery, she may still be undercompensated due to judges and juries minimizing and misunderstanding the mental injuries caused by battering.[376]

v. Civil Actions Compared to CVC Funds

Bringing a civil action through tort law may be superior to accessing CVC funds because it has the potential to provide the victim an opportunity to confront her abuser and empower her as the one in control of the litigation.[377] In criminal actions, the government is in charge of the litigation, particularly in jurisdictions that adopt mandatory prosecutions for domestic violence offenders.[378] Further, tort compensation includes damages that are unavailable through CVC funds, or even divorce, including compensation for pain and

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368. Wriggins, *supra* note 233, at 140.

369. Phillips, *supra* note 344, at 308. *See also* Buel, *supra* note 171, at 988 (arguing that, as it is in many jurisdictions, "the statute of limitations for tort claims should be tolled if the abuse constitutes 'a continuous and unbroken wrong' ").

370. Buel, *supra* note 171, at 1000–01; Wriggins, *supra* note 233, at 141.

371. Buel, *supra* note 171, at 1000–01; Wriggins, *supra* note 233, at 141.

372. Buel, *supra* note 171, at 1001; Wriggins, *supra* note 336, at 513.

373. Wriggins, *supra* note 233, at 141.

374. Kohler, *supra* note 335, at 1038–40.

375. *See* Jennifer Wriggins, *Interspousal Tort Immunity and Insurance "Family Member Exclusions": Shared Assumptions, Relational and Liberal Feminist Challenges*, 17 WIS. WOMEN'S L.J. 251, 252 (2002) (describing insurance exclusions as a form of "*de facto* interspousal tort immunity"); Buel, *supra* note 171, at 985 (explaining that although interspousal immunity is not recognized, some jurisdictions "impose[] an elevated standard of outrageousness" in intentional infliction of emotional distress cases involving domestic violence victims).

376. Kohler, *supra* note 335, at 1049, 1053.

377. Ronen Perry, *Empowerment and Tort Law*, 76 TENN. L. REV. 959, 979–81 (2009).

378. *See generally* Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849 (1996) (discussing mandatory prosecution policies). *See also* ANGELA DAVIS, ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR 66 (2007).

suffering,[379] mental distress, and punitive damages.[380] A victim could also recover monies for lost wages in a tort action.[381] However, because of the numerous obstacles to tort recovery, CVC funds are an essential resource, as they may be the only option for victims to be compensated for their losses.

On the other hand, a domestic violence victim may be more concerned with immediate safety needs and may have little desire to bring a civil lawsuit. Civil lawsuits take time and cannot address some of the more pressing needs a victim may face. Notably, one could file a CVC claim without having to further interact with the batterer, as opposed to a civil lawsuit which would include depositions, court appearances, and possibly mediation.[382] A lawsuit, which would involve additional contact with the batterer, "may be the last thing a survivor wants to initiate."[383] Although civil lawsuits are a resource for domestic violence victims, the procedural barriers, lack of insurance, and lack of legal representation make CVC funds a more viable option, particularly since they address some of the more immediate needs of victims.

D. The Inadequacy of Welfare and the Family Violence Option

The final resource that could benefit domestic violence victims and make CVC funds superfluous is welfare through the Temporary Assistance for Needy Families Program. Welfare is considered a "critical resource" for women surviving domestic violence,[384] but similar to the other available resources for domestic violence victims, it has significant limitations.[385] The relationship between domestic violence and poverty is well-documented.[386] An estimated 50–60 percent of adult female welfare recipients experience domestic violence in their lifetime.[387] Theoretically, welfare should serve as a "bridge to economic independence" for impoverished domestic violence victims.[388]

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379. *See* discussion *supra* Part V.C.i.–ii. A minority of state CVC funds, however, do include awards for pain and suffering. *State Compensation Laws*, THE NAT'L CENTER FOR VICTIMS OF CRIME (1999), http://www.ncvc.org/ncvc/main.aspx?dbName=Documentviewer&DocumentID=35278.

380. *See* Wriggins, *supra* note 375, at 253 n.17; Phillips, *supra* note 344, at 309.

381. *See* Wriggins, *supra* note 233, at 125 n.13.

382. *See* Wriggins, *supra* note 336, at 514.

383. Goldscheid, *supra* note 13, at 13.

384. Scott, et al., *supra* note 233, at 881.

385. *See* Lauria Pompa, *The Family Violence Option in Texas: Why it is Failing to Aid Domestic Violence Victims on Welfare and What to Do About It*, 16 TEX. J. WOMEN & L. 241, 246–57 (2007) (discussing time limits for benefits). *See* Taryn Lindhorst et al., *Longitudinal Effects of Domestic Violence on Employment and Welfare Outcomes*, 22 J. INTERPERSONAL VIOLENCE 812, 812 (2007) (discussing minimum work requirements).

386. *See, e.g.*, LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH & JUSTICE 105 (Mary M. Brabeck ed., 2008) (stating that "[h]ousehold income level is one of the most important overall predictors of the likelihood of partner violence against women: the lower the income, the more likely there will be violence").

387. Pompa, *supra* note 385, at 243. *See also* GOODMAN & EPSTEIN, *supra* note 386, at 105 (describing a complex "relationship between class and partner violence" because "poverty increases women's vulnerability to intimate abuse" and "domestic violence, in turn, dramatically contributes to women's poverty").

388. Pompa, *supra* note 385, at 242.

Nonetheless, recent studies suggest that welfare reform efforts to move mothers into the workforce may contribute to the cycle of returning to abusive relationships for financial survival.[389] As one victim explained: "I was in like a trap. I thought to myself, like if I got rid of him, I would lose [child care and] my job. And if I got back on welfare, you know what I'm saying? That's another type of trap." Similarly, a group of sociologists opined:

> [Victims] have few economic or social resources. Therefore, it makes sense that despite histories of violence and abuse, they turn to one of the only sources of assistance available as they juggle the demands of paid labor and single parenthood: former partners and fathers of their children. Typically, the threat of potential violence is less immediate than the need to resolve crises involving the management of transportation, child care, and finances.[390]

In addition to potentially contributing to the cycle of violence, many victims may be ineligible for welfare benefits due to eligibility restrictions.[391] Although the Family Violence Option provides additional protection to welfare clients experiencing domestic violence,[392] utilization of the Family Violence Option has been disappointing.[393] To fully understand the potential benefits and shortfalls of welfare, it is necessary to review the impact of reform measures.

i. Welfare Reform and the Temporary Assistance for Needy Families Program (TANF)

For over sixty years, under the Aid to Families with Dependent Children (AFDC) program, simply meeting income requirements and other program requirements allowed clients to receive welfare benefits indefinitely.[394] In 1996, however, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act, which replaced AFDC with the Temporary Assistance for Needy Families Program (TANF).[395] The crux of the program is included in its title: it is meant to provide *temporary* support.[396] TANF is intended to encourage independence and to help individuals move into the workforce.[397] Unfortunately, a number of barriers prevent domestic violence victims from obtaining and maintaining employment.[398]

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389. Lindhorst et al., *supra* note 385, at 812–13. *See also* Holly Bell, *Cycles Within Cycles: Domestic Violence, Welfare and Low-Wage Work*, 9 VIOLENCE AGAINST WOMEN 1245, 1253 (2003) (describing how a woman who "had to fulfill work requirements as a result of receiving public assistance" allowed her abuser back into the household to provide childcare while she worked).

390. Scott et al., *supra* note 233, at 893.

391. *See* Pompa, *supra* note 385, at 247–50 (describing restrictions, particularly minimum work requirements, time limits, and cooperation with child support enforcement).

392. 42 U.S.C. § 608(a)(7)(c) (2010).

393. *See* discussion *infra* Part V.D.2.

394. Pompa, *supra* note 385, at 246.

395. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193 § 408, 110 Stat 2105, 2134–42 (codified at 42 U.S.C. § 608).

396. *See* Pompa, *supra* note 385, at 247 (summarizing the aggregate five-year time period in order to receive benefits under TANF).

397. Melinda Pilkinton, *TANF Recipients' Barriers to Employability: Substance Abuse and Domestic Violence*, 20 J. HUM. BEHAV. SOC. ENV'T 1011, 1011–12 (2010).

398. *Id.* at 1015–16.

Some domestic violence victims may be under-educated or under-trained and limited to low-paying jobs.[399] Child care can be a significant problem, particularly for impoverished victims with little education, because low-wage work may require irregular hours.[400] Several of the provisions under TANF may be daunting for domestic violence victims, including the time limit for benefits,[401] the minimum work requirement, and the child support recovery requirement.[402] The minimum work requirement in particular can be difficult for some domestic violence victims.[403]

a. Minimum Work Requirements

Encouraging welfare recipients to work is a laudable goal. However, for domestic violence victims, "employment may be the road to self-sufficiency and freedom from abuse, or it may be an expectation that cannot be fulfilled."[404] Domestic violence victims have an increased likelihood of dropping out of job training placement activities, being fired, or quitting.[405] Some researchers have argued that domestic violence victims are "often unprepared to start a job search and cultivate the needed social skills and mental confidence to be successful in the workplace."[406] Further, batterers are known to sabotage work efforts and job training in order to control their victims, and they may engage in other forms of economic coercion.[407] In addition, a domestic violence victim who has left her

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399. *Id.*

400. *See* Bell, *supra* note 389, at 1250 (pointing out how low-wage work available to these women had irregular hours at night and on weekends that did not fit child care hours, or allow time off for sick children or for mandatory visits to welfare agencies).

401. *See* 42 U.S.C. § 608(a)(7) (2010). The time limit on benefits is a significant distinguishing feature of TANF compared to the former AFDC program. Pompa, *supra* note 385, at 246–47. TANF imposes a five-year federal maximum time limit for benefits regardless of whether or not the years are consecutive. *Id.* at 247. Notably, many states have limitations that are significantly less than five years, with some states imposing a cumulative cap of two or three years. OFFICE OF FAMILY ASSISTANCE, U.S. DEP'T OF HEALTH & HUMAN SERV., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM (TANF): EIGHTH REPORT TO CONGRESS 121 (2009*), available at* http://www.acf.hhs.gov/programs/ofa/data-reports/annualreport8/TANF_8th_Report_111908.pdf. For example Texas' cumulative cap is three years and Louisiana's is two. Pompa, *supra* note 385, at 247; Taryn Lindhorst & Julianna D. Padgett, *Disjunctures for Women and Frontline Workers: Implementation of the Family Violence Option*, 79 SOC. SCI. REV. 405, 410 (2005). The time limit is particularly significant for domestic violence victims who may exhaust their benefits before permanently leaving an abuser. Pompa, *supra* note 385, at 247.

402. Under the child support recovery requirement, recipients are required to provide information and assistance with child support enforcement. *Id.* at 248. Victims and advocates have expressed concern that the requirement may jeopardize confidentiality and lead to increased harassment. *Id.* at 248–49. "If a victim is forced to have contact with her abuser through courts, collection agencies and welfare offices, it becomes much easier for her abuser to ascertain information about her." *Id.* at 248. It is not unusual for a domestic violence victim to decide against pursuing child support to prevent angering the batterer. *Id.* at 248–49.

403. Lindhorst et al., *supra* note 385, at 813; Lindhorst & Padgett, *supra* note 401, at 409.

404. Lindhorst et al., *supra* note 385, at 813.

405. *Id.* at 814; Lindhorst & Padgett, *supra* note 401, at 409.

406. Pompa, *supra* note 385, at 245.

407. *See id.* at 244; GOODMAN & EPSTEIN, *supra* note 386, at 105–06. Some ways identified include: "destroying homework assignments, keeping women up all night with arguments before key tests or job interviews, turning off alarm clocks, destroying clothing, inflicting visible facial injuries before job

batterer and has been accepted in a shelter may find herself having to quit her job because of transportation or safety concerns. For example, some shelters require victims to terminate their employment as a safety precaution so the shelter location will not be discovered by an abuser following his victim from work.[408] This places the victim in a difficult position of prioritizing safety and housing over employment and welfare benefits.

b. The Adoption of the Family Violence Option

Domestic violence advocates successfully lobbied to amend TANF so it could serve domestic violence victims more effectively.[409] In response, in 1997 the Family Violence Option (FVO) was enacted to establish a hardship exception to compliance with some of TANF's provisions.[410] According to TANF's Annual Report, thirty-nine states, Puerto Rico, and the District of Columbia have adopted the FVO.[411] States that adopted the FVO are required to "screen all welfare applicants for domestic violence, provide identified victims with appropriate referrals to community resources and waive program provisions such as time limits, child support enforcement and work requirements if these would endanger a woman or were beyond her ability to comply because of domestic violence."[412]

A number of researchers have concluded that waivers are rarely provided by states that have adopted the FVO.[413] For instance, one study found that out of "180,000 welfare recipients, [only] 3,028 were referred to domestic violence liaisons, and of this number, only one-third received domestic violence waivers."[414] The deficiency of waivers, compared to the significant numbers of domestic violence victims who utilize welfare, suggests the FVO has not fulfilled its mission of assisting domestic violence victims.

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interviews, disabling the family car, threatening to kidnap the children from child care centers, and harassing women on the job." *Id.* at 106. Sabotage can also include "more passive tactics such as refusing to cooperate with child care." Scott et al., *supra* note 233, at 881.

408. Buel, *supra* note 188, at 24.

409. *See* Purvin, *supra* note 166, at 191 (stating: "Advocates were able to amend TANF to allow states to provide waivers of program requirements that would place an abused woman in danger (via the Family Violence Option or FVO)").

410. 42 U.S.C. § 608(a)(7)(c) (2010). The FVO would provide resources and extend time limits for domestic violence victims. Pilkinton, *supra* note 397, at 1016.

411. OFFICE OF FAMILY ASSISTANCE, *supra* note 312, at 131–32.

412. Lindhorst & Padgett, *supra* note 401, at 406. *See also* Pompa, *supra* note 385, at 250 (stating that out of 180,000 welfare recipients in New York, 3,028 were referred to domestic violence liaisons and only one third of those received domestic violence waivers). In theory, if a domestic violence victim is identified, she could be provided with services and an exception to some of TANF's provisions in the form of a "good cause domestic violence waiver." *See* 45 C.F.R. § 260.55. A good cause waiver must identify which program requirements are being waived and be accompanied by a service plan designed to lead to work. *Id.*

413. Lindhorst et al., *supra* note 385, at 6; Pompa, *supra* note 385, at 243, 250; Lindhorst & Padgett, *supra* note 401, at 407, 409; Katie Scrivner, *Domestic Violence Victims After Welfare Reform: Looking Beyond the Family Violence Option*, 16 WIS. WOMEN'S L.J. 241, 249–50 (2001).

414. Pompa, *supra* note 385, at 250.

ii. The Limitations of Welfare and the Family Violence Option

The low number of waivers and services provided under the FVO means that, in practice, domestic violence victims are not being granted the benefits the FVO offers.[415] The missions of supporting domestic violence victims and decreasing caseloads are distinct and are not really compatible goals.[416] While states may be successful at decreasing welfare caseloads, it has been on the backs of poor domestic violence survivors whose benefits were terminated. One case that demonstrates this point involves a victim who suffered from Post Traumatic Stress Disorder and severe panic attacks after being taken hostage and stabbed by her abuser.[417] Her psychological problems made it difficult to maintain employment.[418] Despite providing her caseworker with newspaper clippings about her abduction as well as police documents, she was informed that she was not eligible for a waiver, and her TANF benefits were subsequently terminated.[419]

An essential component in the implementation of the FVO is frontline caseworkers that bear the important responsibility of identifying domestic violence victims through screening.[420] A study of frontline workers and domestic violence victims found that many victims are never informed of the FVO policy.[421] A separate study concluded that screening for domestic violence is rare, and disclosure by victims is uncommon.[422] Some caseworkers maneuver victims through paperwork without probing the issue of domestic violence;[423] caseworkers who did employ screening strategies were ineffective.[424] One caseworker identified time constraints as a significant issue.[425] She explained that "you just don't have time to pull [domestic violence] out of somebody, unless they come here with visible observations [such as bruises] which doesn't happen often."[426] In some instances, the application form may provide an applicant with her sole notice about the FVO.[427] The opportunity for meaningful screening will likely continue to decrease as applicants are encouraged to apply for benefits online and over the telephone rather than appearing in person.[428]

iii. CVC Funds Compared to Welfare Benefits

CVC funds cannot replace welfare because they have different functions.[429]

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415. *See id.*
416. Lindhorst et al., *supra* note 385, at 25.
417. *See* Lindhorst & Padgett, *supra* note 401, at 420.
418. *Id.*
419. *Id.* at 420–21.
420. *Id.*
421. *Id.* at 416 (stating: "Giving and withholding information are discretionary activities that public bureaucracies can use to ration services when resources are limited").
422. Lindhorst et al., *supra* note 385, at 16.
423. *Id.* at 20.
424. *Id.* at 18.
425. Lindhorst & Padgett, *supra* note 401, at 423
426. *Id.* (second and third alteration in original).
427. Pompa, *supra* note 385, at 252.
428. *Id.*
429. *See* discussion *supra* Part V.D.

CVC funds do not contain work requirements,[430] requirements that, when they do exist, may be impossible for some victims to fulfill. Moreover, CVC funds reimburse victims for counseling expenses[431] and, in some states, lost wages and relocation expenses,[432] which may help victims obtain economic independence and employment in a safe environment. Domestic violence victims may need both CVC funds and welfare to be made financially whole.

Additionally, recent studies and data suggest welfare will not be available for all domestic violence victims.[433] Victims who have not exceeded the time limit may receive benefits, but it is unlikely that they will receive any of the specific services or waivers available to domestic violence victims. Without the waivers, the stringent TANF requirements will be a recipe for failure for some victims who may cycle back to abusive relationships. Consequently, some poor victims of domestic violence may not be able to rely on welfare as an option. Without the safety net of welfare, it is little wonder that statistics for homeless domestic violence victims are so staggeringly low.[434]

VI. RECOMMENDATIONS FOR MAKING CVC FUNDS EFFECTIVE FOR DOMESTIC VIOLENCE VICTIMS

Although CVC funds can meet many of the needs of domestic violence victims, the restrictive eligibility requirements should be changed so CVC funds can serve even more victims. CVC administrators identified contributory misconduct and cooperation and reporting requirements as significant reasons for claim denials.[435] Further, cooperation and reporting requirements can be particularly problematic in domestic violence cases. Unfortunately, a definitive answer as to why domestic violence victims underutilize CVC funds cannot be provided without additional data. For example, a lack of published data should not prevent legislatures from taking measures to assist domestic violence victims. This is not to suggest that all eligibility criteria should be eliminated for domestic violence victims. Rather, eligibility requirements that do not advance the goal of assisting victims and are impediments to domestic violence victims should be reevaluated. This article proposes additional published data on domestic violence claims,[436] uniform guidelines for all compensation boards, aggressive outreach and advertising, elimination of the contributory misconduct requirement, and relaxing of the cooperation requirement in domestic violence

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430. In contrast, TANF contains a minimum work requirement for eligibility. *See* Pilkinton, *supra* note 397, at 1015–16.

431. *See* Victims of Crime Act Victim Compensation Grant Program, 66 Fed. Reg. 27,158, 27,162 (May 16, 2001).

432. *See id.*

433. *See* Purvin, *supra* note 166, at 191–92.

434. United States v. Morrison, 529 U.S. 598, 631 (recounting statistic that nearly 50 percent of homeless women are escaping domestic violence). *See generally Domestic Violence and Homelessness*, NAT'L COAL. FOR THE HOMELESS (Aug. 2007), *available at* http://www.nationalhomeless.org/publications/ facts/domestic.pdf (showing that 63 percent of homeless women have experienced domestic violence in their adult lives).

435. *See, e.g.*, NEWMARK ET AL., *supra* note 60.

436. Since the need for additional data has been addressed previously this section will focus on the remaining proposals. *See* discussion *supra* Part III.D.

cases.

First, the federal government should require uniform policies for all CVC programs. Currently, all CVC programs include contributory misconduct, cooperation, and reporting in their eligibility criteria, but programs have been free to use varying definitions.[437] The substantial sums coming from the Crime Victim's Fund should be accompanied by additional guidance in domestic violence cases. CVC funds should be more victim-centered as opposed to law-enforcement centered. Currently, the result of a CVC claim from a domestic violence victim who defended herself could have different results depending on the individual evaluating the claim and the jurisdiction. Uniform guidelines would eradicate this problem and assure uniformity and fairness.

Second, CVC programs should also be more diligent in trying to reach victims. If anyone can be the victim of a crime, then everyone should know CVC funds exist. Crime Stoppers serves as a good example of a program with excellent outreach. Crime Stoppers is an international program which strives to provide "support [to] law enforcement agencies throughout the world."[438] Part of Crime Stoppers' success is due to its partnership with the media. Although CVC funds do not appear to enjoy a similar partnership, one could be developed. Further, CVC programs should increase advertisement efforts in multiple languages. Crime Stoppers publicizes its program through billboards and print ads.[439] Advertising and additional outreach requires financial resources. Currently, CVC funds are restricted from using more than 5 percent on administrative costs and training, which may include outreach materials.[440] The provision should be amended to allow greater resources for outreach.

Third, the issue of contributory misconduct should not be considered in domestic violence cases. Considering contributory misconduct is merely an invitation for CVC employees to impose their subjective feelings about cases and victims. Assuming one were to take the unreasonable and misogynistic view that a domestic violence victim is somehow responsible for her own battering, it would not "eradicate the criminality" of battering.[441] Instead of focusing on assisting victims, the contributory misconduct provision blames victims. VOCA should be amended to prohibit the consideration of contributory misconduct in domestic violence cases.

Finally, states should relax cooperation and reporting requirements for domestic violence victims. The minimum cooperation requirement of reporting the crime to police should suffice in satisfying the policy concern of victim cooperation and participation. Relaxing reporting and cooperation requirements for domestic violence victims would not encourage fraud or abuse of the system. In fact, requiring an initial report satisfies OVC requirements and helps curb

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437. *See* NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at VI-1 (noting that state "statutes generally fail to define clearly 'misconduct' or 'contribution.' This has permitted wide discretion on the part of compensation boards in their decision making.").

438. CRIME STOPPERS INTERNATIONAL (last visited Sept. 30, 2011), http://www.c-s-i.org/index.php?q=about.

439. *See id.*

440. 2009 REPORT TO THE NATION, *supra* note 63, at 7.

441. LeRoy L. Lamborn, *Toward A Victim Orientation in Criminal Theory*, 22 RUTGERS L. REV. 733, 760 (1968)

fraud.[442] Researchers contracted by the OVC agree, and they recommend that reports to third parties or other agencies should satisfy the reporting requirement.[443] Programs that have relaxed reporting requirements consider initial reporting from sources outside the police, including testimony from civil protection orders.[444] The existence of supporting evidence, including emergency room records and 911 calls, could also help prevent fraud in the absence of a police report. Requiring additional participation, including attending hearings, meeting with prosecutors, and testifying, may further law enforcement efforts, but it does not advance one of the primary goals of VOCA, which is to assist crime victims or, as a recent annual report stated, to "put victims first."[445] Formidable cooperation requirements do not put the needs of victims first; rather, they advance the needs of the criminal justice system. Adopting these proposals will be an important step in prioritizing the needs and goals of domestic violence victims above the goals of the state.

VII. CONCLUSION

Responsibility to citizens, and not the promotion of the criminal justice system, should drive CVC programs. CVC funds should not be characterized as an incentive program for victim participation in the criminal justice system but rather as a humanitarian obligation to assist crime victims. For CVC funds to have greater impact, legislatures must prioritize the interests of crime victims. The message disseminated to domestic violence victims is that, if they leave their abusers, resources will be available to them. As this article has demonstrated, resources are limited and may be inadequate. An illusory promise of assistance to victims in great need is unconscionable. Victims who leave and are given inadequate resources may have no choice but to return to a situation that may have worsened. CVC funds should not be viewed as a gift with strings attached or an ancillary tool of law enforcement but as a moral responsibility.

Additional data collection and uniform policies for all CVC programs are the first steps necessary to ensuring access to CVC funds for domestic violence victims. Further, the cooperation and reporting requirements should be relaxed, and the contributory misconduct requirement eliminated, in domestic violence cases. The discretionary use of eligibility requirements which have little relationship to the funds' primary goal and mission should be dismantled so domestic violence victims may receive their due compensation.

Supreme Court Justice Anthony Kennedy stated: "[f]irst and foremost, as a

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442. *See* Greer, *supra* note 126, at 367.

443. NEWMARK ET AL., *supra* note 60, at 21. *See also* NAT'L ASS'N OF CRIME VICTIM COMPENSATION BOARDS, *supra* note 98, at XIV-2 (noting in domestic violence cases "programs should consider waiving reporting and filing requirements when appropriate").

444. A small number of states have relaxed reporting and cooperation requirements. *See, e.g.*, 2011 Ill. Legis. Serv. 45/6.1(c) (West) (stating: "The applicant has cooperated . . . [i]f the applicant has obtained an order of protection or a civil no contact order"). In California, in the absence of a police report, the Compensation Board may consider medical records, mental health records, and/or the attainment of a restraining order. CAL. GOV'T CODE § 13956(b)(2) (West 2006). In Delaware, a claimant has several ways to go around a reporting time limit including protective orders or agency reporting. DEL. CODE tit. 11, § 9010(a)(5) (2005).

445. 2009 REPORT TO THE NATION, *supra* note 63, at i.

simple matter of distributive justice, a decent and compassionate society should recognize the plight of its victims and design its criminal justice system to alleviate their pain, not increase it."[446] Restrictive eligibility requirements only increase the burdens experienced by domestic violence victims. If CVC programs are sincere about assisting crime victims, including domestic violence victims, they must reclaim their primary mission of putting victims first and changing their policies to reflect exactly that.

446. George Nicholson, *Victims' Rights, Remedies, and Resources: A Maturing Presence in American Jurisprudence,* 23 Pac. L.J. 815, 828 (1992).