



TESTIMONY IN SUPPORT OF HB 861:

Criminal Procedure – Victim Compensation – Alterations

TO: Members of the House Judiciary Committee

FROM: **Heather Warnken, Center for Criminal Justice Reform, Univ of Baltimore School of Law**

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My name is Heather Warnken and I am the Executive Director of the University of Baltimore School of Law’s Center for Criminal Justice Reform. Prior to my current role, I served for over five years as a Visiting Fellow at the U.S. Department of Justice, in the first-ever position dedicated to bridging the gap between research, policy and practice to improve the response to individuals and communities impacted by crime victimization. Through this role I facilitated collaboration across federal, state and local government partners, practitioners, researchers, and directly impacted communities in the design and implementation of equitable, data-informed policies, programs and funding streams nationwide. A substantial piece of this work included advising and collaborating with DOJ’s Office for Victims of Crime (OVC) and its constituencies of state administering agencies and victim service programs across the country on the administration of the Victims of Crime Act (VOCA) Victim Assistance and Victim Compensation programs at the federal and state level.

Based on this background and experience, I submit this testimony strongly in favor of HB 861.

Financial compensation for the expenses incurred as a result of being a victim of crime is an important aspect of helping to heal and rebuild the lives of those who have been victimized. Across the country, notwithstanding the profound potential of victim compensation to meet the needs of survivors, interrupt cycles of harm, and promote system legitimacy, these programs have notoriously been inaccessible to the majority of victims, especially those most marginalized and in need of this support.

Maryland’s Criminal Injuries Compensation Board (CICB), the entity responsible for this state’s program providing financial assistance for crime victims is no exception; and tragically, is viewed as especially problematic on the continuum of such programs nationwide. CICB disproportionately disqualifies, alienates and denies Black applicants and families from receiving compensation at alarming rates, especially Black men and youth impacted by gun and other forms of community violence. Despite the fact that these groups experience the highest rates of victimization, research affirms that Black male youth living in low-income urban communities are least likely to be seen and served as victims of crime.¹

¹ Warnken, H., & Lauritsen, J. (2019). Who experiences violent victimization and who accesses services? Findings from the National Crime Victimization Survey for expanding our reach. Center for Victim Research, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/who-experiences-violent-victimization-and-who-accesses-service>

Domestic violence victims are also greatly underserved by the current compensation system. In 2019, there were 36,499 total domestic violence incidents, along with 20 female and 14 male domestically related homicide victims. Yet year after year, a small fraction of victims receive compensation, and in 2022, no domestic violence related claims have yet been paid.²

This is not just about supporting the healing and dignity of crime victims; this is about public safety. By assisting with the destabilizing expenses that come with the trauma of violent victimization, such as medical and mental health care, funeral and burial and lost wages, compensation helps reduce the risk of future victimization and the long-term costs of violence to the state. Research indicates that victims who are able to cover the costs associated with their victimization are less likely to develop post-traumatic stress and related symptoms. Furthermore, the USDOJ’s OVC provides states with matching funds to help victims avoid these outcomes. With these federal matching funds, states reduce the toll and suffering associated with untreated medical and mental health disorders, which contribute to the nation’s and Maryland’s costly overreliance on emergency rooms, prisons and jails.

Victim compensation is a payor of last resort, intended specifically to support victims who are low-income and do not have insurance or other financial resources. This makes it especially troubling that it has long been least accessible to those very groups. There are a range of other deeply problematic aspects of the program currently undermining its effectiveness, including:³

- **A paradoxical reliance on reimbursement.** One of the most challenging structural issues with CICB is that it uses a reimbursement model which requires victims to pay upfront the costs of compensable expenses even though the program is specifically intended for people who lack such resources. This is compounded by the long processing timelines for claims, which even when approved can take several months or more to pay out.
- **Unreasonable and discriminatory attempts to promote victim “cooperation” and reporting.** In its federal enabling statute, VOCA compensation requires that states “promote victim cooperation with the reasonable requests of law enforcement authorities, except if a program determines such cooperation may be impacted due to a victim’s age, physical condition, psychological state, cultural or linguistic barriers, or any other health or safety concern that jeopardizes the victim’s wellbeing.” While the VOCA Fix Act recently clarified this longstanding policy that victims need not be coerced in order to be helped,⁴ states like Maryland have continued with strict victim “cooperation” mandates and additional administrative practices that exclude substantial percentages of victims from accessing assistance. As in other states, in

s; A Vision for Equity in Victim Services: What Do the Data Tell Us About the Work Ahead. Warnken (2021) <https://ovc.ojp.gov/media/video/12971>.

² <http://goccp.maryland.gov/wp-content/uploads/FL-%C2%A7-4-516a-GOCPYVS-Domestic-Violence-Program-FY-2020-Annual-Report-MSAR-8611.pdf>.

³ This testimony draws heavily from a forthcoming report coauthored with John Maki in partnership with NYU’s Marron Institute, funded by the Joyce Foundation.

⁴ <https://ovc.ojp.gov/about/crime-victims-fund/voca-fix>.

Maryland this includes an overreliance on law enforcement certifications as a gatekeeping mechanism for who is eligible, and far more strict than many other jurisdictions, a requirement to report the victimization to police within 48 hours. It is clear that the current CICB process alienates victims from applying based on lack of willingness to report and/or “cooperate” with investigation and prosecution once they do. This is especially unjust for those who may fear or distrust police,⁵ or who may have prior involvement with the criminal legal system (for whom this perception of “uncooperative” or “involved” is often furthered by a discriminatory reliance on past criminal arrest or conviction records alone). Research has also consistently shown that about half of all victimization is never reported to law enforcement.⁶ These laws, policies, and practices needlessly shut out many of the most victimized people from accessing one of the primary dedicated victim resources.

- **Blaming the victim.** Relatedly, CICB routinely rejects victims determined to somehow be responsible for their own victimization, operating on a model of only supporting “innocent” victims. This framework is not only fundamentally flawed in its dehumanization of those in need of support, it is often downright inaccurate, basing categorizations of “innocence” and “worthiness” on race or other discriminatory factors described above. A recent citywide assessment which I led while in my prior role at USDOJ detailed the numerous ways that Black and brown victims of gun violence in particular are routinely criminalized in the aftermath of their victimization rather than supported, regardless of the circumstances of the underlying events.⁷ The report also details the ways in which these practices undermine public safety, and offers numerous recommendations for changing this, including an unequivocal need to reform the policy and practices of CICB through legislative action.⁸
- **A harmful reliance on criminal justice system fines and fees.** A significant portion of the funding used to pay claims comes not from a meaningful investment in state general funds toward CICB’s important goals, but rather, from people who are cycling in and out of the criminal legal system who are disproportionately low-income and Black and brown. In this sense, the current structure of compensation functions as a tax on many of the same families and communities it should serve. When individuals who pay into the fund through this mechanism are then violently victimized and should be eligible for these benefits, they are often denied for one or more of the other barriers discussed (including their ongoing criminalization or categorization of someone whose conduct “contributed” to their own victimization). This promotes an unjust and counterproductive false binary between “victims” v. “perpetrators”, and “worthy” v. “unworthy”

⁵ There are many reasons for this distrust, including that Black people are three times more likely to be killed by police, <https://mappingpoliceviolence.us/>.

⁶ Warnken, H., & Lauritsen, J. (2019). Who experiences violent victimization and who accesses services? Findings from the National Crime Victimization Survey for expanding our reach. Center for Victim Research, www.ojp.gov/ncjrs/virtual-library/abstracts/who-experiences-violent-victimization-and-who-accesses-services.

⁷ Warnken et al., *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021; <https://www.baltimorepolice.org/sites/default/files/2022-08/PSP%20Victim%20Services%20Assessment%20FINALB.pdf>.

⁸ Id.

applicants, which is often not even based on the facts surrounding the underlying victimization. A program designed to stabilize should not be reliant on a system that often destabilizes.

HB 861 seeks to address these barriers, and clear pathways for all victims to get access to the support and dignity they deserve. After decades of well known challenges, this bill is the product of collaboration by a large and growing coalition of diverse organizations and directly impacted people representing the overlapping constituencies of victims and survivors facing these barriers everyday. Beyond victim services, this includes those working on violence prevention, criminal justice reform, reentry, racial justice and more.

This collaboration is emblematic of the common ground we occupy, especially the desire to see the return on investment to public safety through this bill.

For example, a well functioning victim compensation program plays an important role in community violence intervention efforts; a role we have yet to realize in Maryland.. Regarding gun-violence reduction, perhaps the most promising potential is that it could provide ways to help support and stabilize people engaged in behaviors and relationships associated with gun violence.⁹ From their experience working with perpetrators and victims of gun violence, trauma recovery specialists and community-violence interventionists know that people caught up in cycles of violence often want to change their lives, but can also resist, face barriers, and be wary about accepting help. Research shows that this kind of ambivalence is a common feature of desistance from engaging in violence.¹⁰ In the aftermath of violent victimization, this ambivalence can break down, and people can become more open to change and receiving assistance.¹¹

Access to CICB benefits can thus provide community-violence interventionists, trauma-recovery specialists, law enforcement, and others who work with people caught up in cycles of violence, victimization, and trauma an important tool and tangible resources to help meet their needs, connect them to services, and set them on a path of healing and desistance. This is especially powerful from a victim services lens, given that too often Black and brown victims of gun violence are criminalized and unlikely to be seen and served as victims of crime.¹²

⁹ Berg, M. T., & Schreck, C. J. (2022). The meaning of the victim–offender overlap for criminological theory and crime prevention policy. *Annual Review of Criminology*, 5, 277–297. Papachristos AV, Wildeman C, Roberto E. (2015). Tragic, but not random: the social contagion of nonfatal gunshot injuries. *Social Science & Medicine*, 125, 139–150.

¹⁰ Carlsson, C. (2017). The transition to adulthood and the ambivalence of distance. In *The Routledge International Handbook of Life-Course Criminology* (pp. 324–341). Healy, D. (2010). Betwixt and between: The role of psychosocial factors in the early stages of desistance. *Journal of Research in Crime and Delinquency*, 47(4), 419–438.

¹¹ Turanovic, J. J. (2019). Victimization and distance from crime. *Journal of Developmental and Life-Course Criminology*, 5, 86–106.

¹² Warnken et al., *Victim Services Capacity Assessment Report*, USDOJ National Public Safety Partnership, July 2021; <https://www.baltimorepolice.org/sites/default/files/2022-08/PSP%20Victim%20Services%20Assessment%20FINALB.pdf>.

As will inevitably be debated regarding this bill, *how do we pay for it?*, our coalition poses what the research tells us is a more apropos question: *how do we not?*

A well functioning CICB program can also help reduce state and local costs of violence and unaddressed trauma. Research indicates that victims who are able to cover the costs associated with their victimization are less likely to develop post-traumatic stress and other related symptoms.¹³ Left untreated, these symptoms can have devastating effects on people’s lives, including loss of employment, substance use, an overreliance on emergency rooms to manage pain and suffering, and, in some cases, justice involvement and cycling through jail and prison. Victim compensation, with supplemental funds from the federal government, supports state efforts to help highly victimized people avoid these outcomes..

These much-needed improvements to the CICB process in Maryland can help foster social trust and legitimacy. Research shows that low levels of social trust and legitimacy have especially strong relationships to high levels of violent crime, particularly homicide (LaFree 1998; Tapio Lappi-Seppälä, 2008, 2017; Tyler, 1990; Roth, 2012, 2017). One way in which the trauma of violent victimization perpetuates cycles of violence is wounding the basic trust and capacity to rely on one’s friends and neighbors that all people need to live safe and healthy lives (Bell et al., 2019; Eagle & Kaminer 2013; Harvey, 2007). In disproportionately low-income Black and and brown communities where violent victimization is concentrated, the impact of trauma combines with the legacy of racism, chronic disinvestments, a lack of supportive services, and an overreliance on police, jails, and prisons. These conditions can break down social trust and breed cynicism toward government (Kirk & Matsuda, 2011; Kirk & Papachristos, 2011; Morenoff et al., 2001; Sampson et al., 1997).

A victim compensation program that supports rather than alienates victims in their worst moments has the potential to help interrupt these cycles. By helping victims pay for the financial costs of their victimization, CICB gives state government a different way to respond to violent victimization outside of the criminal legal framework of arrest, prosecution, and incarceration, actions that are often divorced from meeting a victim’s material and emotional needs. In so doing, the program provides an opportunity for government agencies and community-based organizations to work together and build trusting relationships that are necessary to support underserved victims, reduce violence and solve crime.

HB 861 provides the opportunity to transform victim compensation in Maryland. It applies sound evidence and lessons learned from other states, while also setting up Maryland to be a leading example for others throughout the country working toward reform.

For these reasons, we urge a favorable report on HB 861.

¹³ Alvidrez, J., Shumway, M., Boccellari, A., Green, J. D., Kelly, V., & Merrill, G. (2008). Reduction of state victim compensation disparities in disadvantaged crime victims through active outreach and assistance: A randomized trial. *American Journal of Public Health, 98*(5), 882–888. Ozer, E. J., Best, S. R., Lipsey, T. L., & Weiss, D. S. (2003). Predictors of posttraumatic stress disorder and symptoms in adults: a meta-analysis. *Psychological Bulletin, 129* (1), 52.