

2013

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

Presiding Judge

The Honorable J. David Cecil

Judges

The Honorable T. C. McCarthy Jr.

The Honorable George F. Fordham

Cheryle M. Hall, Clerk

Becky A. Ofiesh, Chief Deputy Clerk

Prepared by Therese St. Germain., Business Manager



West Virginia Court of Claims
Crime Victims Compensation Fund

Presiding Judge
J. David Cecil.

Judges
T. C. McCarthy Jr.
George F. Fordham

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

Honorable Members of the
West Virginia State Legislature

It is my honor and privilege to present to you, in accordance with West Virginia Code §14-2A-21, the Annual Report of the West Virginia Crime Victims Compensation Fund. This report covers the activities for the Federal fiscal year 2013.

Respectfully,

A handwritten signature in blue ink that reads "Cheryle M. Hall".

Cheryle M. Hall,
Clerk

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Summary of Program

Created in 1981, and effective January 1, 1982, the compensation program is administered by the West Virginia Court of Claims.

FUNDING

The program receives \$50 per felony, \$10 per misdemeanor, \$8 for each municipal infraction except parking tickets, and 20% of assessed fines in drunk-driving cases. The program also receives an annual VOCA grant from the U.S. Department of Justice that equals 60% of the State's awards.

ELIGIBILITY REQUIREMENTS

- Reporting period: 72 hours
- Filing period: 2 years.
- Exceptions: Reporting period may be waived for good cause; time periods begin when child victims attain age of majority.

PROCEDURES

Applications are submitted to the Court of Claims. An investigator performs an investigation and prepares a report that includes findings of fact and a recommendation. The report is sent to the applicant who has 30 days to respond. This initial response is handled informally by the investigator who reviews and comments on the response. One judge will review the file and issue an order to award or deny.

Appeals: The applicant has 21 days to request a hearing, which is held before a judge other than the initially deciding judge. The hearing judge's order is final.

BENEFITS

Maximum award:

- \$35,000 in personal injury cases
- \$100,000 in permanent disability cases (in addition to the \$35,000)
- \$50,000 in death cases

Compensable expenses:

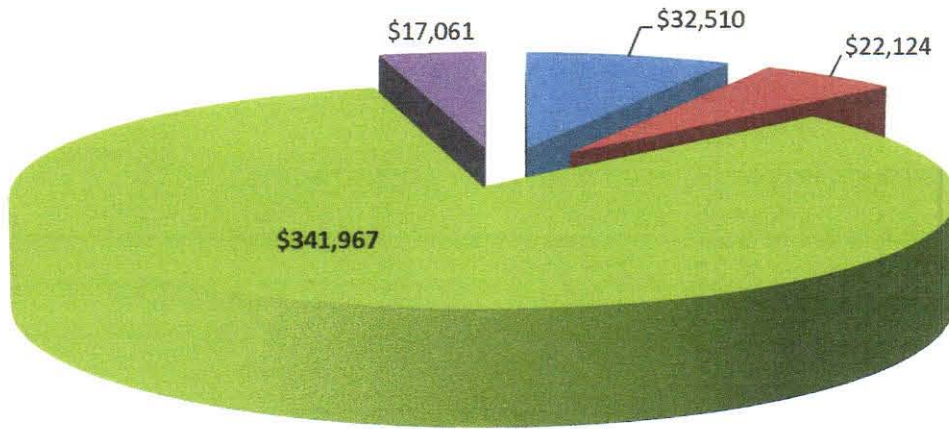
- Medical expenses
- Mental health counseling
- Mental health counseling for secondary victims up to \$1,000
- Lost earnings/support
- Funeral/burial up to \$10,000
- Relocation up to \$2,000
- Travel to medical treatment facility
- Travel to criminal proceeding
- Travel to return minor from out-of-state/out-of-country
- Replacement services
- Crime-scene cleanup up to \$1,000
- Meth lab cleanup (property owners) up to \$10,000
- Rehabilitation
- Attorney fees (public defender rates)



Crime Victims Compensation Fund

Administrative Funds

October 1 – September 30

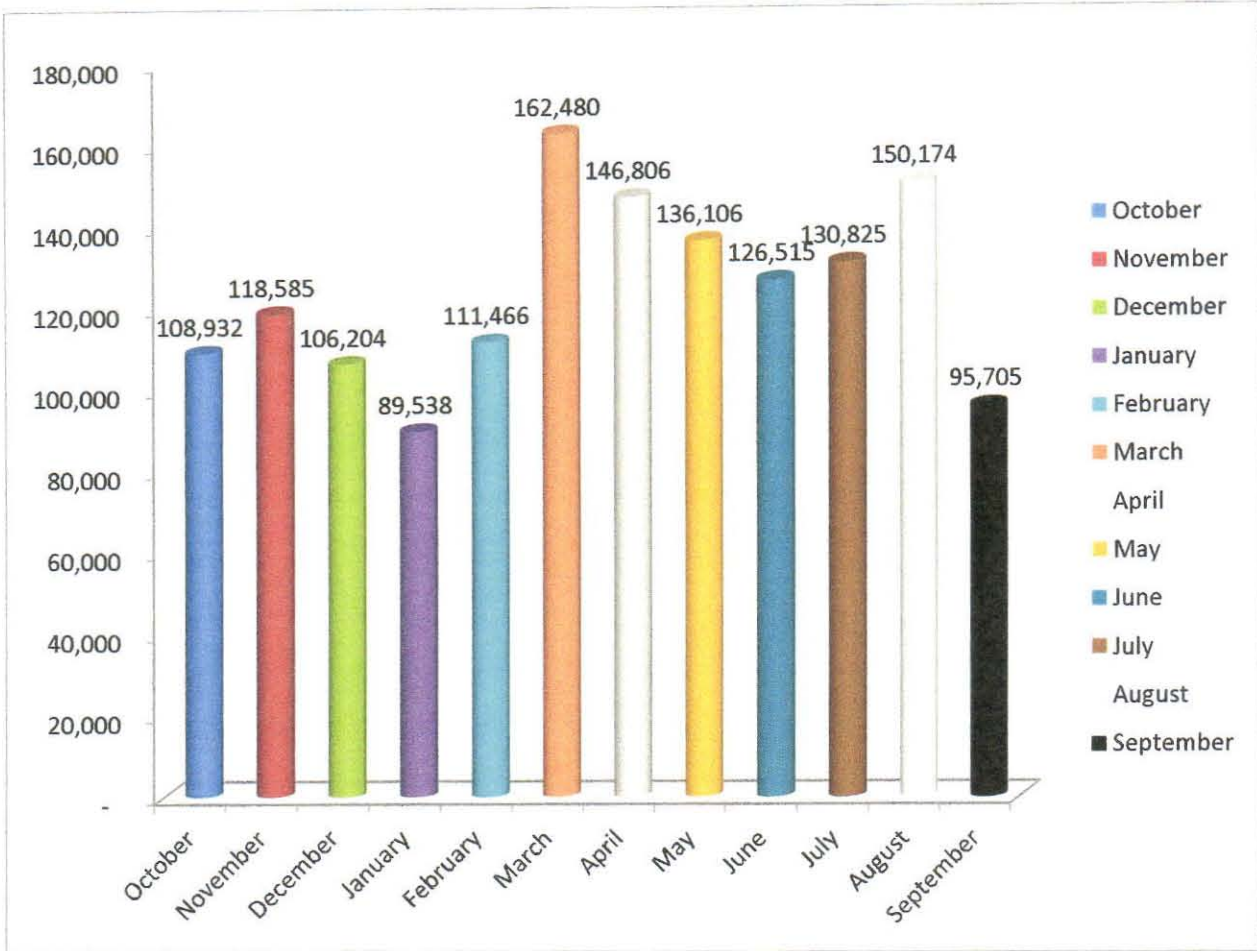


- Compensation of Judges
- Administrative Costs
- Personnel and Benefits
- Attorney Fees

TOTAL: \$413,662

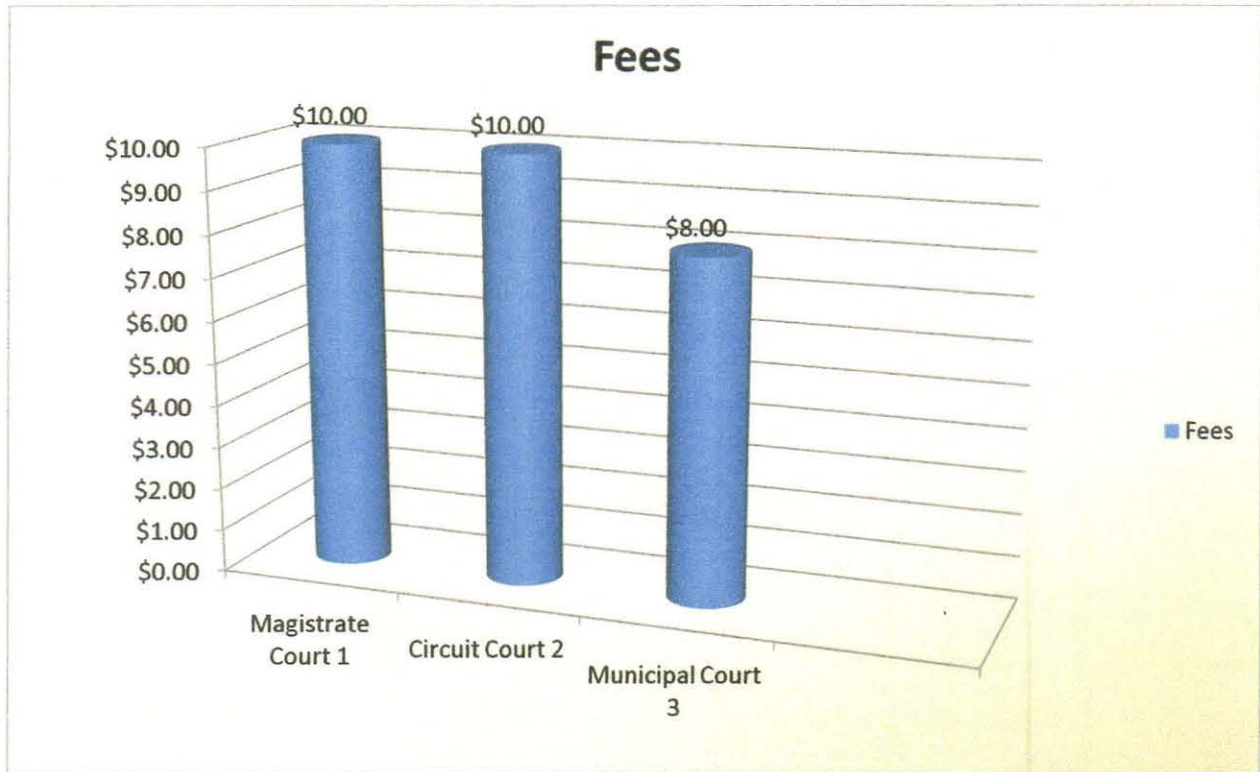
Crime Victims Compensation Fund
State Funds Collected by Month

COURT COSTS
October 1 – September 30



Total: \$1,483,338

Fee Sources

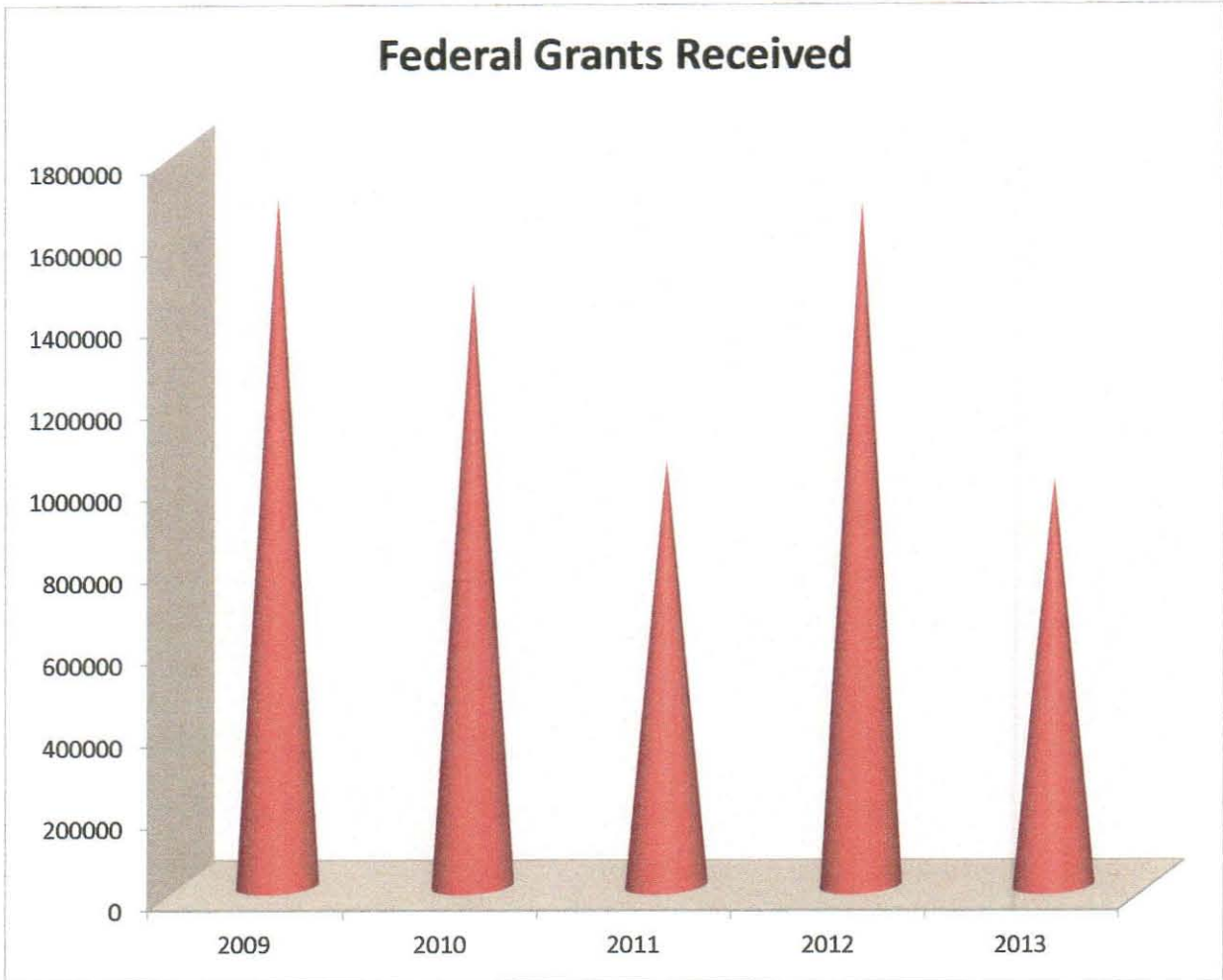


- 1 Plus 20% of DUI fines
- 2 Plus 20% of DUI fines & \$50 for each felony conviction
- 3 Plus 20% of DUI fines – only moving violations

Under the Federal Victims of Crime Act (VOCA) of 1984, federal monies became available to state compensation programs and victim assistance programs.

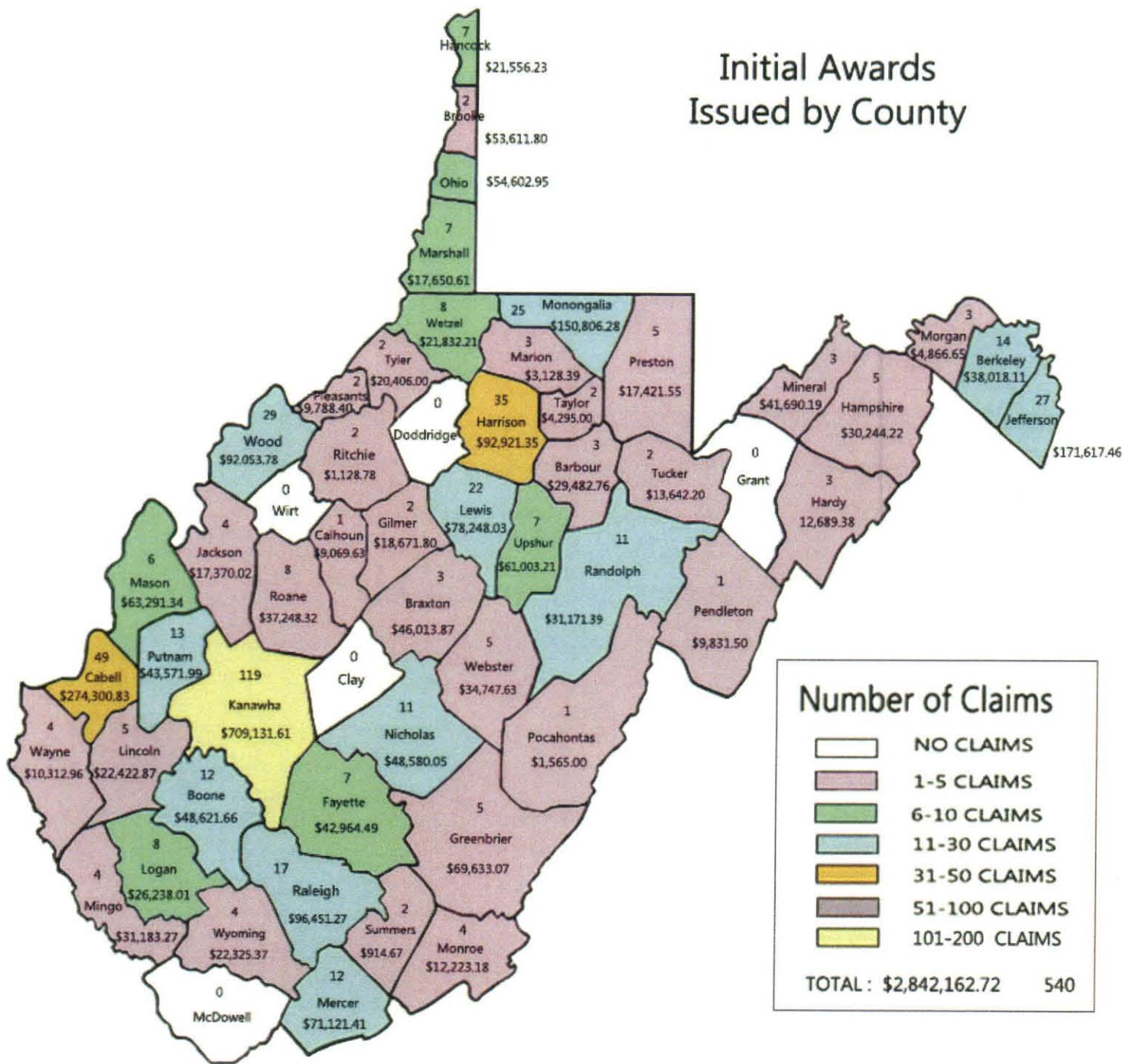
The U.S. Department of Justice, Office of Justice Programs, allocates these funds to state compensation programs based on a formula of 60% of the previous fiscal year's awarded claims.

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



West Virginia has received a total of \$18,105,230 in federal funds for its compensation program since 1986 (the first grant year). The 2009 amount includes a one-time stimulus grant of \$348,230.

Initial Awards Issued by County



Number of Claims

- NO CLAIMS
- 1-5 CLAIMS
- 6-10 CLAIMS
- 11-30 CLAIMS
- 31-50 CLAIMS
- 51-100 CLAIMS
- 101-200 CLAIMS

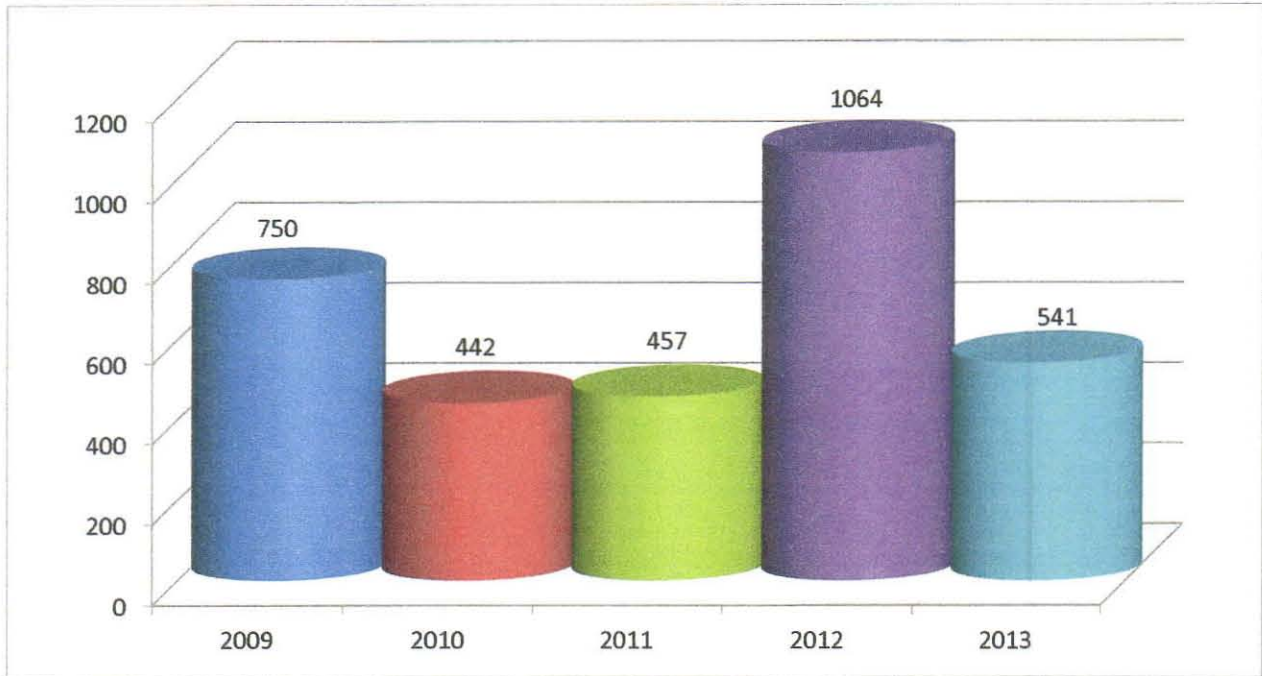
TOTAL : \$2,842,162.72 540

Crime Victims Compensation Fund

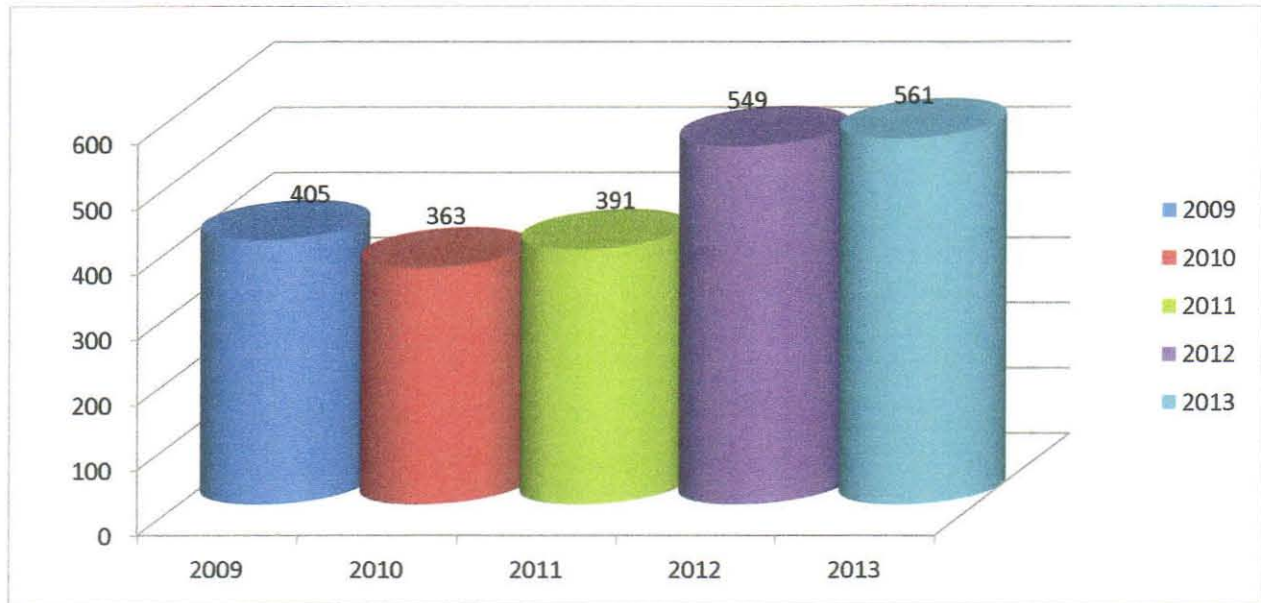
Claims Filed Per Year



Crime Victims Compensation Fund
Orders Issued by the Court - INITIAL

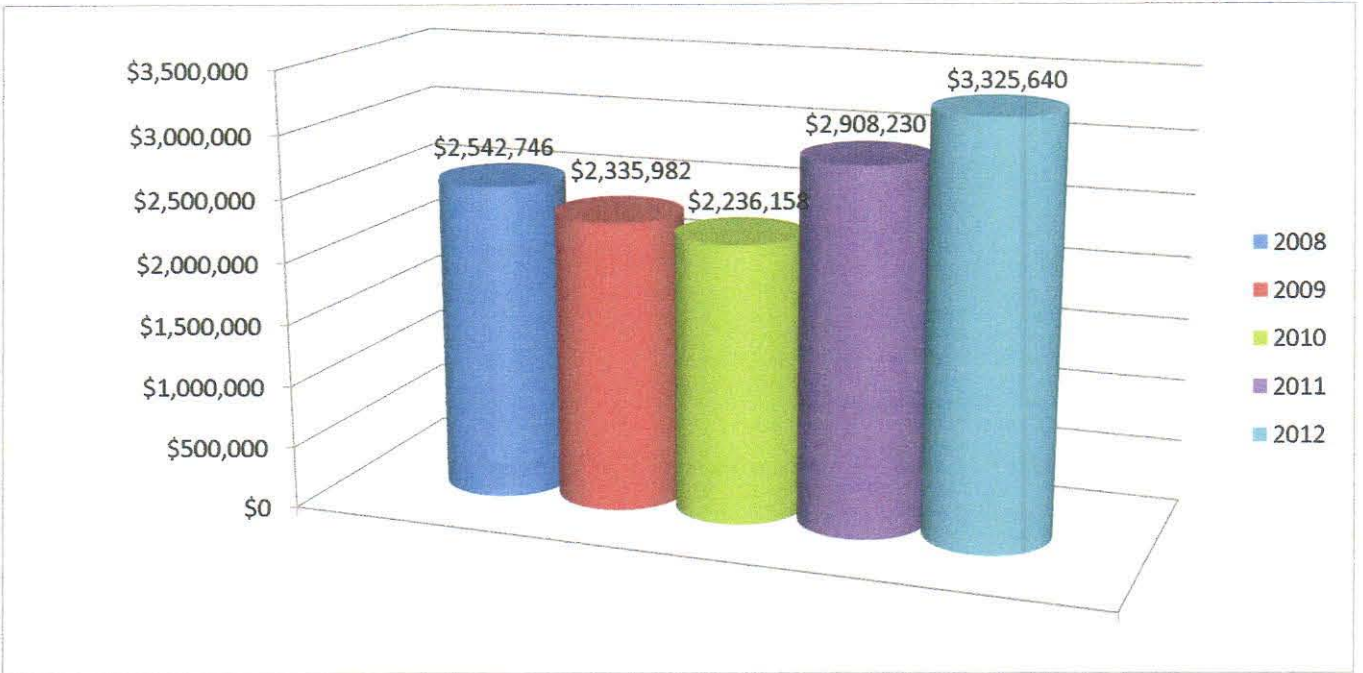


Orders Issued by the Court – SUPPLEMENTALS
(Additional award after initial award)

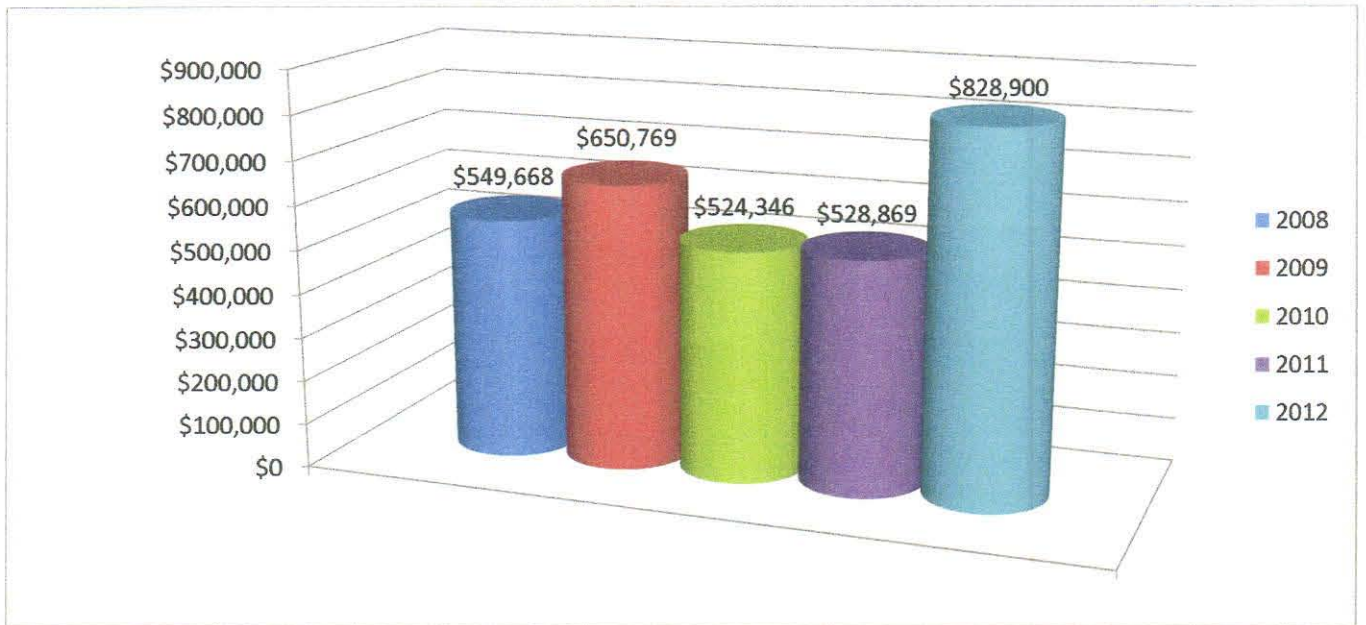


Crime Victims Compensation Fund

Initial Awards

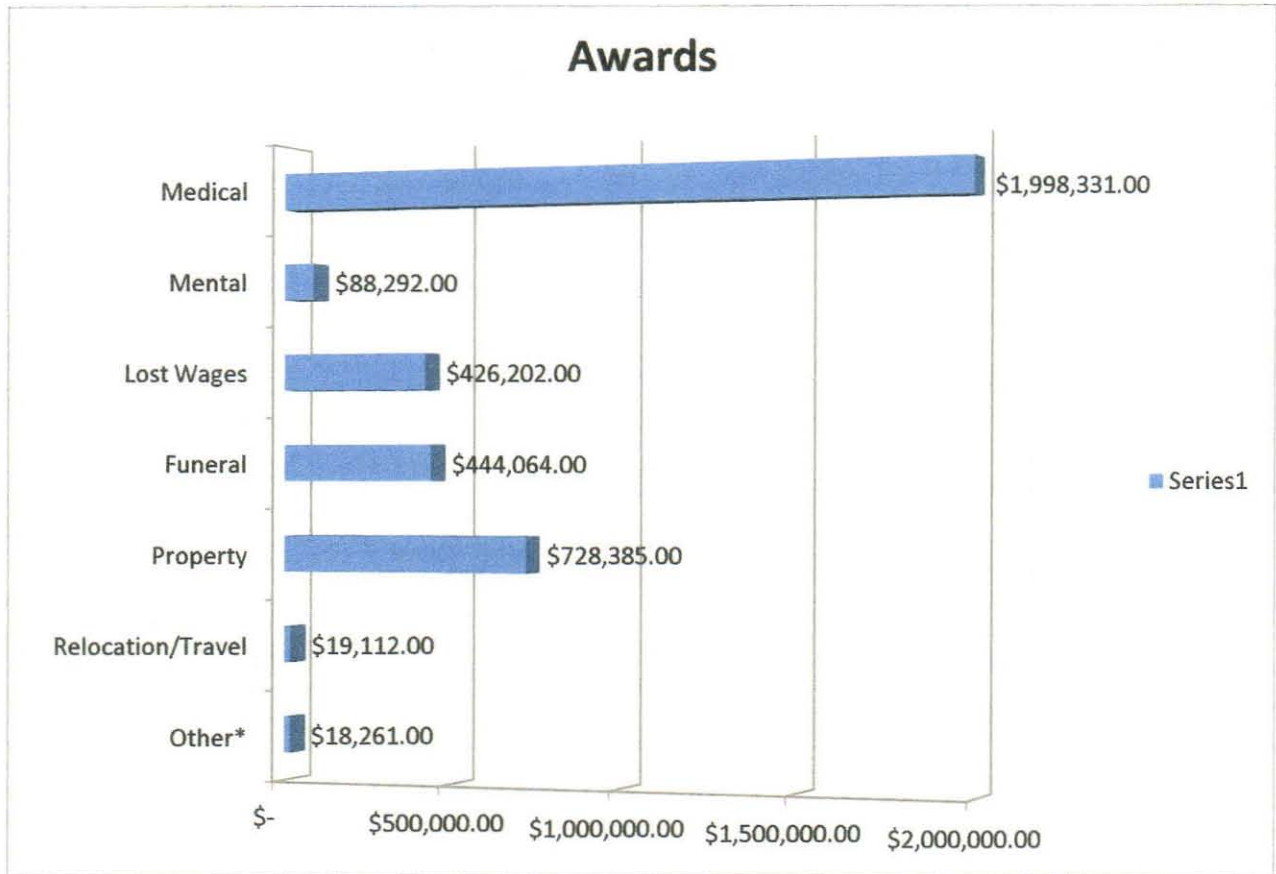


Supplemental Awards (Additional award after initial award)



Crime Victims Compensation Fund

Total Awards by Type

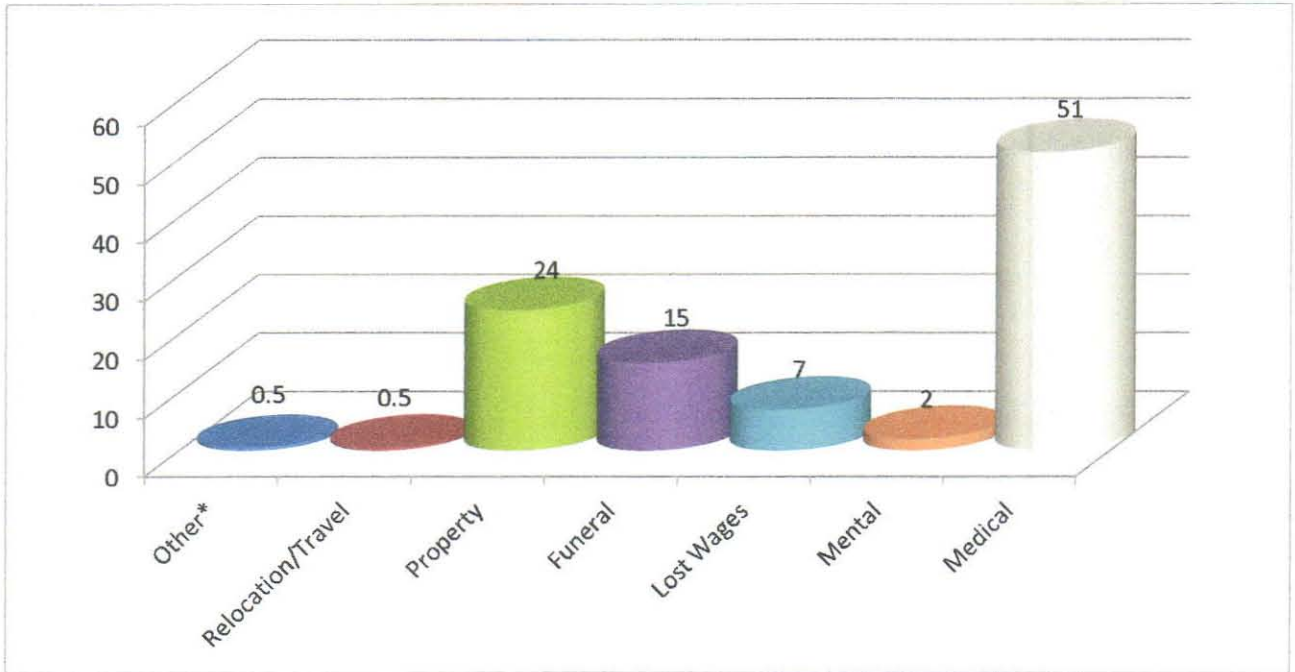


*Includes: Replacement Services Loss, Dependent's Economic Loss, and Lost Scholarships.

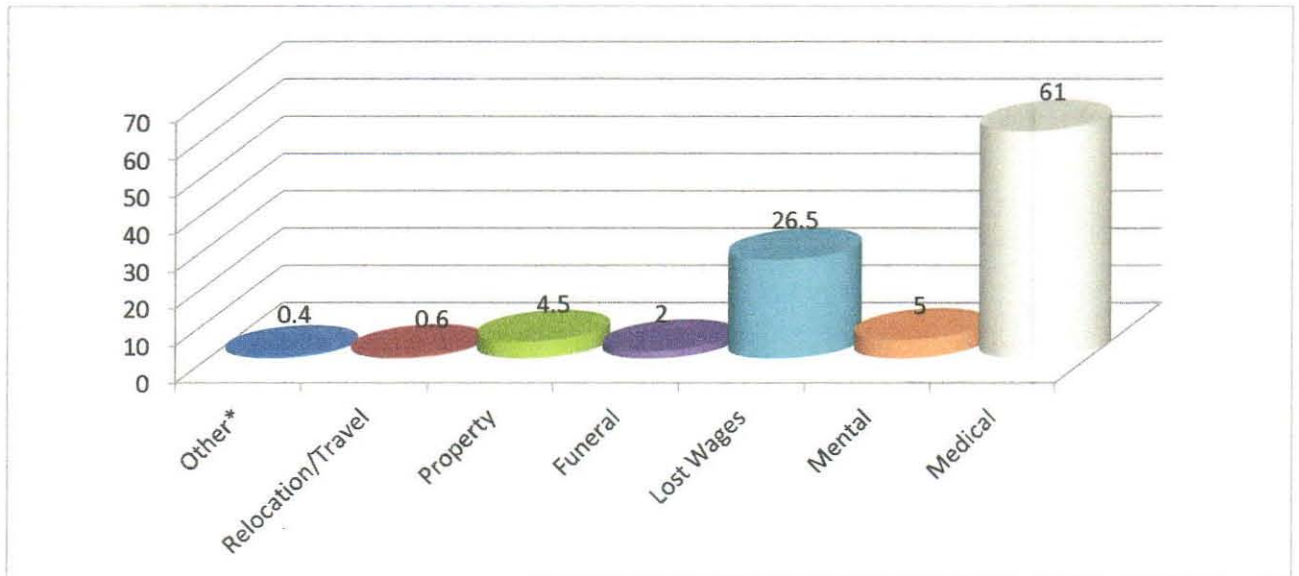
Crime Victims Compensation Fund

Percent of Total Awards by Type

INITIAL AWARDS

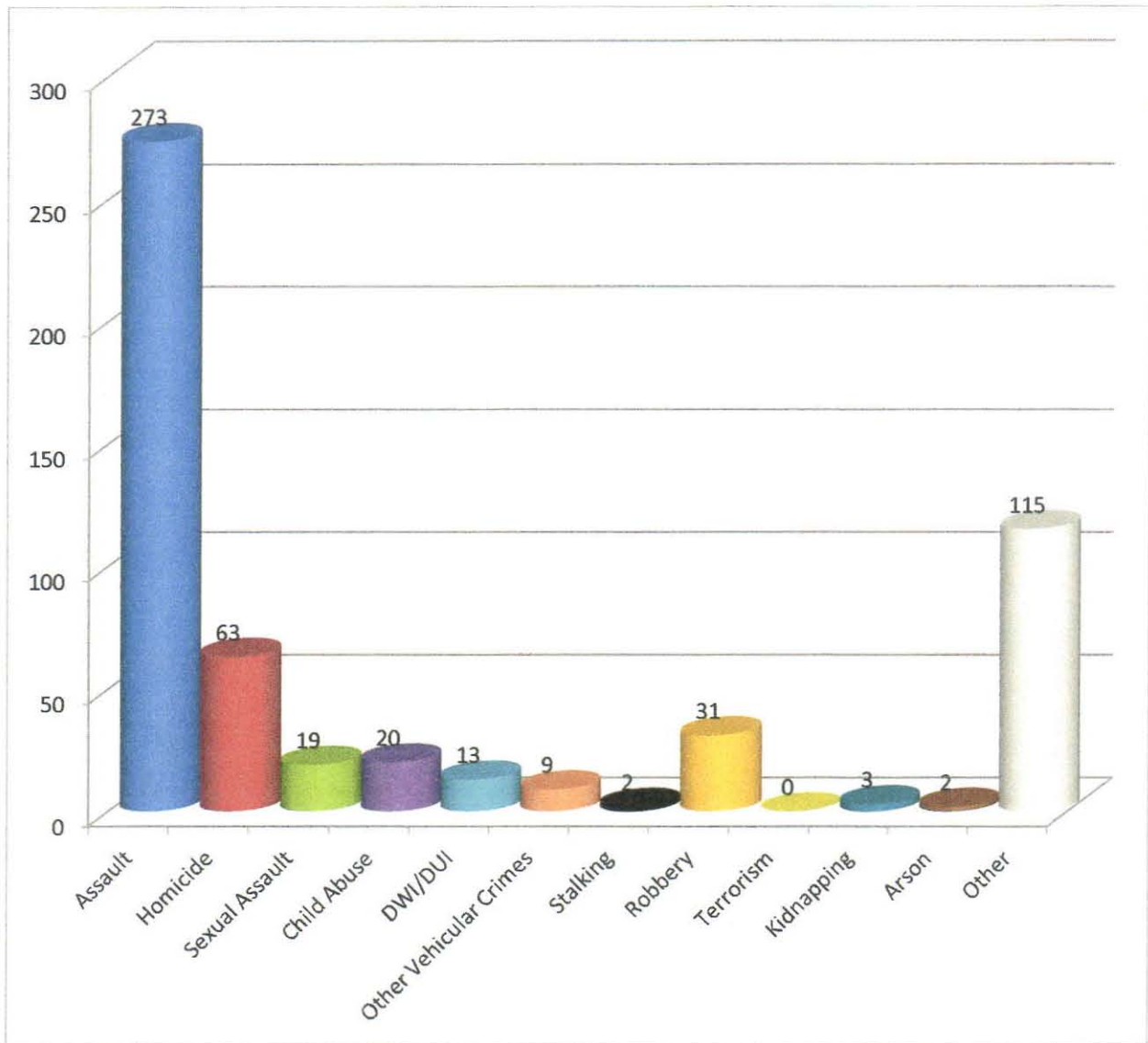


SUPPLEMENTAL AWARDS



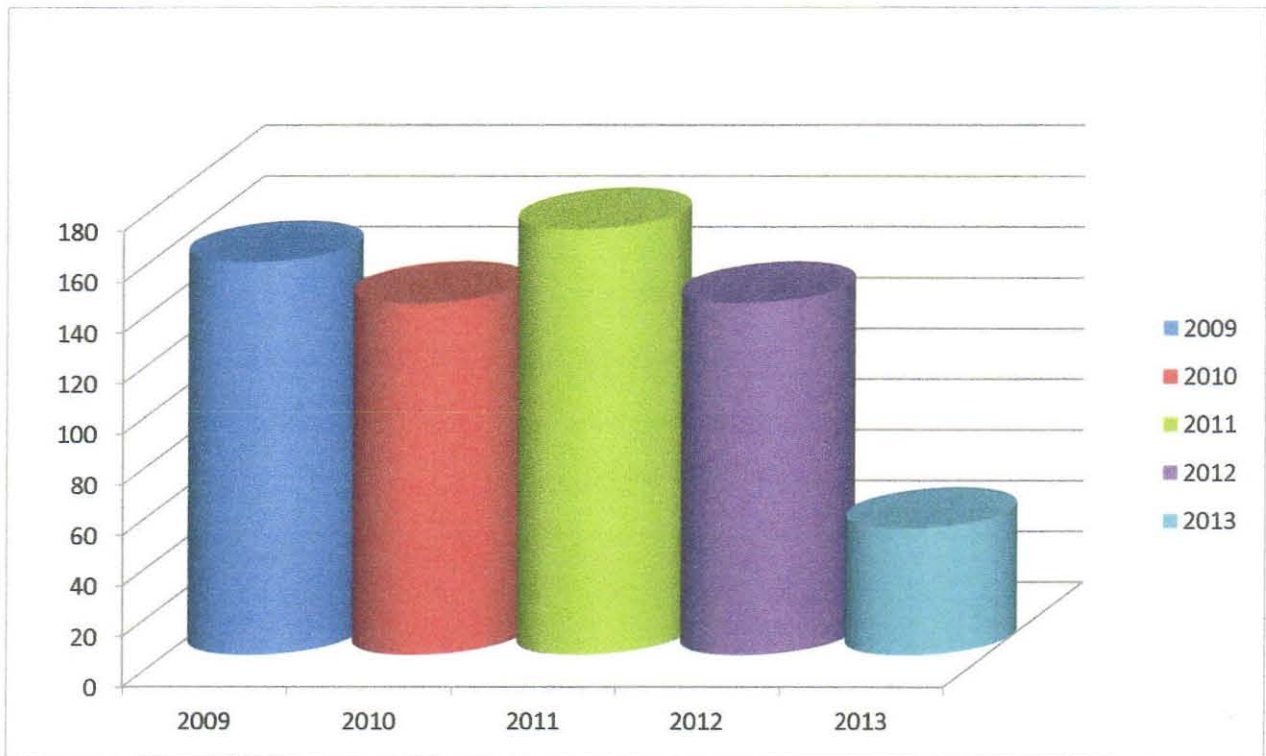
*Includes: Replacement Services Loss, Dependent's Economic Loss, and Lost Scholarships.

Crime Victims Compensation Fund
Claims Paid by Type of Crime

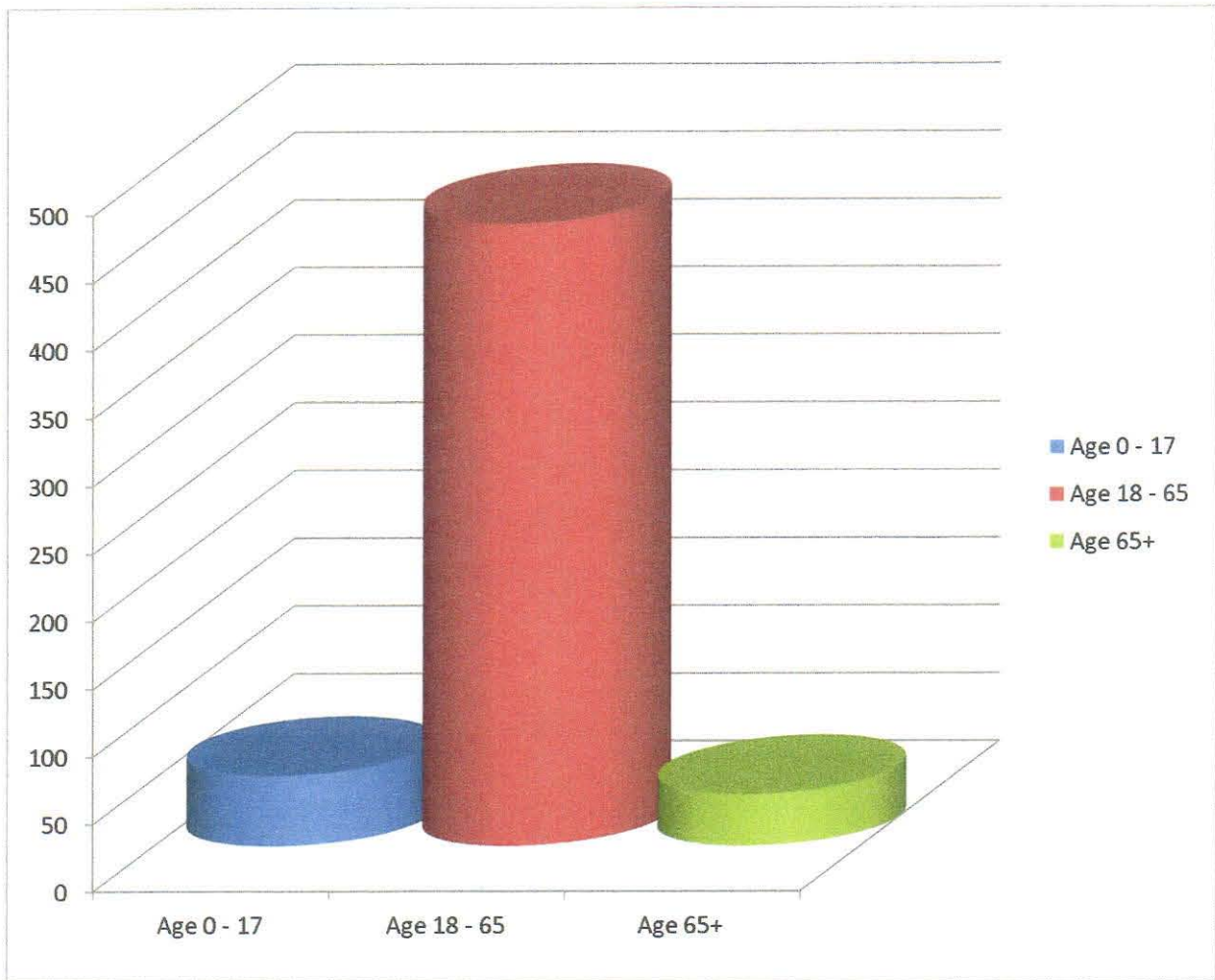


- Includes: harboring a vicious animal – arson – hunting accident – road rage

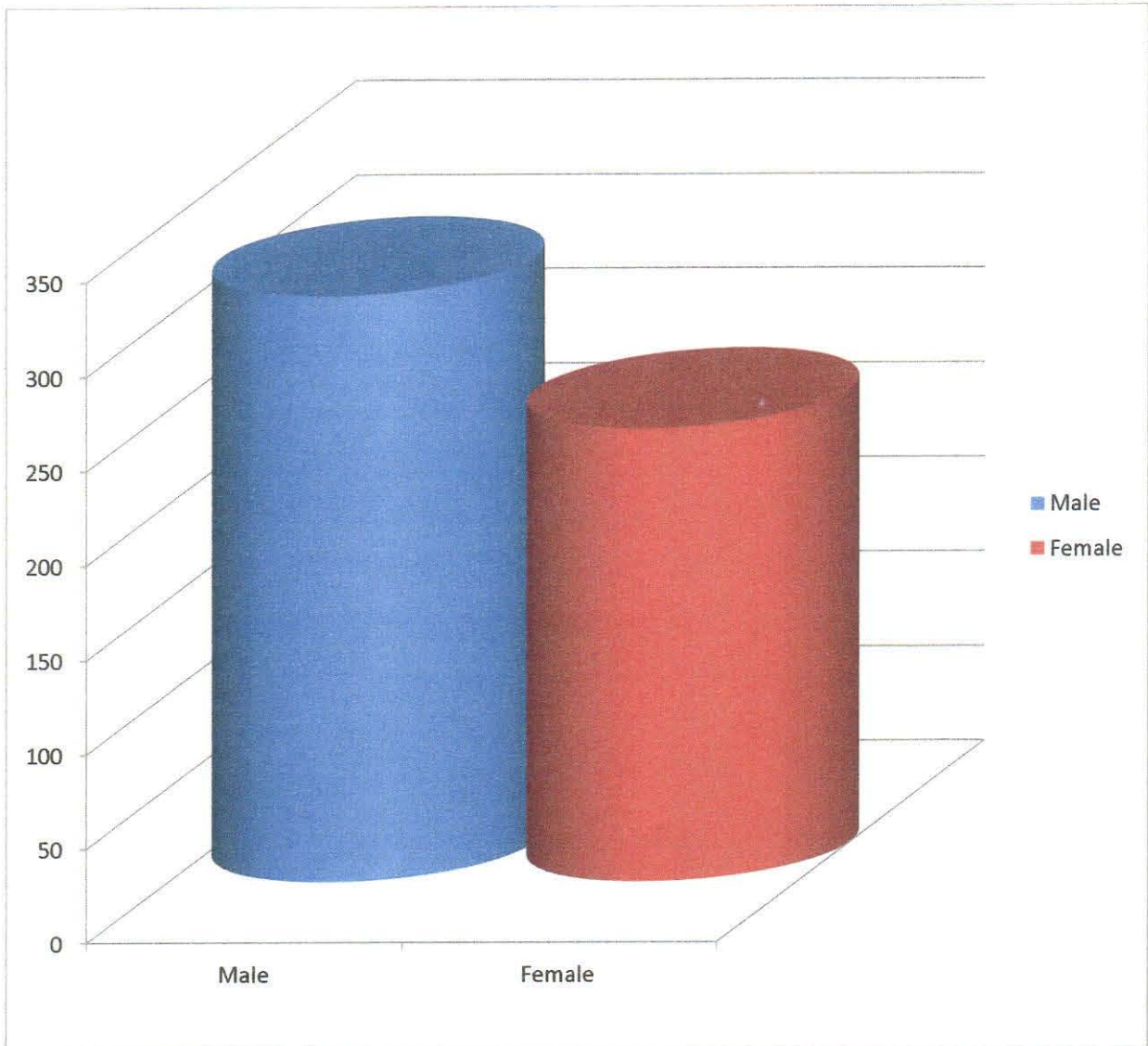
Crime Victims Compensation Fund
Claims Involving Domestic Violence



Crime Victims Compensation Fund
Claims Completed by AGE



Crime Victims Compensation Fund
Claims Completed by GENDER



Crime Victims Compensation Fund

Denied Claims

October 1 - September 30

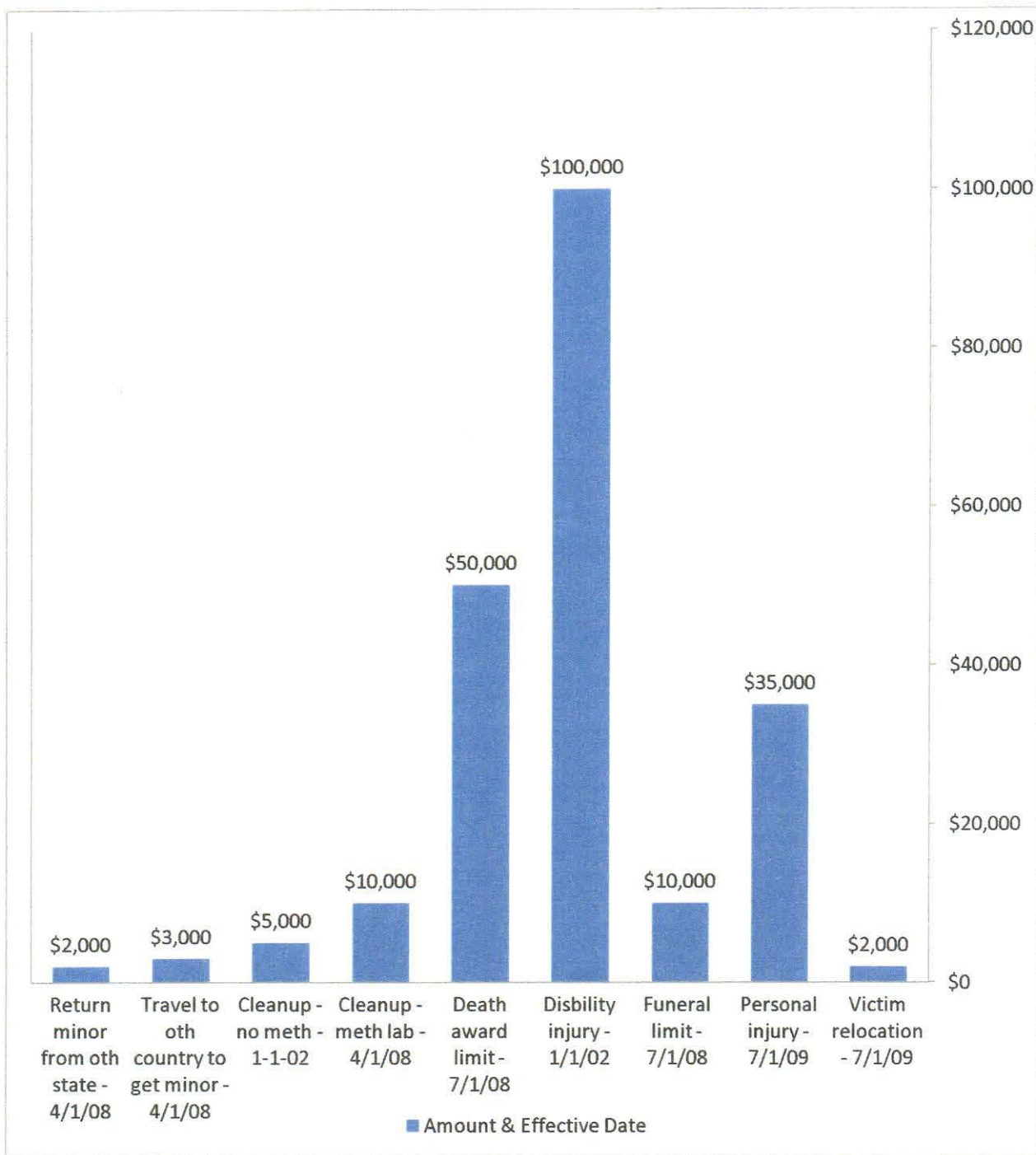
The Court denied 421 claims for various reasons which include:

- Contributory misconduct
- Statute of limitations
- Claim withdrawn
- Incident not reported
- Crime occurred in prison/jail
- Duplicate claim
- No economic loss *
- Failure to cooperate
- Offender would benefit
- No crime established

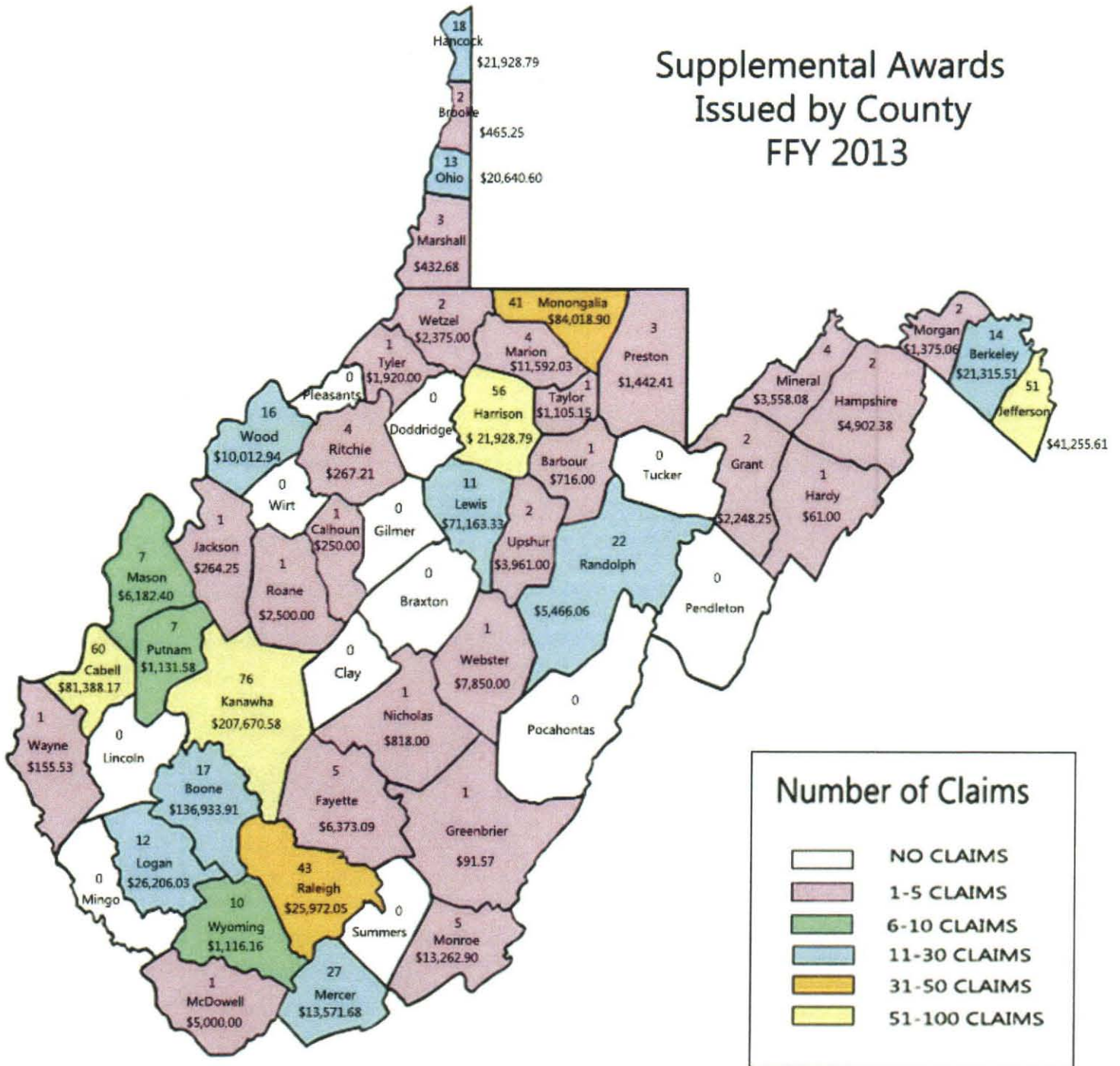
* These claims were denied because no economic loss was established at the time. However, if at a later date the victims suffer an economic loss, the Court may make an award.

Crime Victims Compensation Fund

Summary of Benefits



Supplemental Awards Issued by County FFY 2013



West Virginia Crime Victims Compensation Fund

Reference to Opinions

- **CONTRIBUTORY MISCONDUCT/INNOCENT VICTIM**
- **ECONOMIC LOSS**
- **LOST SCHOLARSHIP**

The following is a compilation of head notes representing decisions from July 1, 2011 to June 30, 2012.

CONTRIBUTORY MISCONDUCT/INNOCENT VICTIM

CV-09-0200-Y T.W. I

On February 19, 2009, Claimant T.W. was the alleged victim of criminally injurious conduct in Raleigh County. Claimant alleges that he was at his home when the alleged offender, E.M., entered uninvited and went directly to the bathroom. The Claimant then alleges that E.M. ran from the home with a handful of unknown pills. Claimant promptly informed the police as he began his own pursuit of the alleged offender. After the police arrived to detain the alleged offender, the Claimant returned home where he suffered a stroke due to his pursuit of the alleged offender. There are no court records associated with this incident. The Court refused to make an award because the Claimant did not prove that he was an innocent victim as defined by the statute. Claim disallowed.

CV-09-0197-Y T.W. II

On February 21, 2009, Claimant T.W. was the alleged victim of criminally injurious conduct in Raleigh County. Claimant alleges that he was at his home when the alleged offender, E.M., entered uninvited and went directly to the bathroom. The Claimant then alleges that E.M. ran from the home with a handful of unknown pills. Claimant promptly informed the police as he began his own pursuit of the alleged offender. After the police arrived to detain the alleged offender, the Claimant returned home where he suffered a stroke due to his pursuit of the alleged offender. There are no court records associated with this incident. The Court refused to make an award because the Claimant did not prove that he was an innocent victim as defined by the statute. Claim disallowed.

CV-07-0160-X J.E.H.

On February 26, 2007, the Claimant's son, T.E.H., was the victim of criminally injurious conduct in Huntington, Cabell County. The Claimant's son was visiting the home of R.L. when an altercation arose in which the Claimant's son suffered two fatal gunshot wounds. The West Virginia State Police Report of Criminal Investigation, as well as testimony given by the assailants in their criminal prosecution, suggests that T.E.H. was engaged in the act of making a drug deal when the criminal conduct occurred. The Claimant did not offer testimony to refute evidence that his son was engaged in the act of selling drugs. Therefore the Court refused to make an award because the Claimant's son was found to have engaged in contributory misconduct. Claim disallowed.

CV-07-0679-X S.B.F.

On December 13, 2005, the Claimant's daughter (hereinafter referred to as "D.F.") was riding the school bus when an altercation arose between two students seated adjacent to her. As a result of the altercation, one student was stabbed in the upper torso by the offender using a pocket knife. As the fight continued to unfold, the students were physically on top of the victim. They were so close to her that the injured student's blood stained D.F.'s clothing. Furthermore, she was forced to remain drenched in the injured student's blood until the police and ambulance arrived. Adding to D.F.'s shock, she was then confined to the bus for a period of hours while an investigation ensued. As a result of the incident, D.F. has suffered severe emotional distress and has been diagnosed with post traumatic stress disorder (PTSD). She has undergone numerous evaluations and has expressed thoughts of suicide. In fact, D.F. has attempted suicide and continues to cut herself. The Court held that the Claimant's daughter was more than just a witness to the criminally injurious conduct and, in fact, was an innocent victim. Therefore, the Court made an award to the Claimant in the amount of \$3,566.55.

CV-11-0428 R.E.S.

On May 18, 2011, C.K. (daughter of the Claimant), age twenty-eight, was the alleged innocent victim of criminally injurious conduct in St. Albans, Kanawha County. Police and paramedics responded to the residence of C.K. and C.T.M. on the date of the incident. Once inside the residence, the police observed C.T.M. kneeling over C.K. attempting to perform cardiopulmonary resuscitation. The police and paramedics then ordered C.T.M. to vacate the bedroom where C.K. was shortly thereafter pronounced deceased. The Court held that the Claimant did not meet her burden of proof with regard to establishing that C.K. was an innocent victim as defined by the statute. Therefore, the claim was disallowed.

CV-09-0214-X J.P.C.

On April 27, 2007, the Claimant was the alleged victim of multiple batteries occurring in Inwood, Berkeley County. Claimant became engaged in an altercation with two individuals over the building of a road. The Claimant suffered injuries as a result of the altercation, but the Court heard evidence that the Claimant had numerous opportunities to avoid the altercation. Therefore, the Court denied the claim due to the Claimant's contributory misconduct. Claim disallowed.

ECONOMIC LOSS

CV-10-0788-Z M.J.P.

On August 13, 2010, the 32-year-old Claimant was the alleged victim of criminally injurious conduct in Huntington, Cabell County. The Claimant was at his home checking his mail when he was assaulted by three offenders. The Claimant testified at the hearing that he and the principal offender were both engaged in the business of tree trimming and are neighbors. Due to a string of thefts involving tree-trimming equipment in the area, the Claimant was approached by the local police and questioned. In response to the officer's question concerning who the Claimant thought was responsible for the string of thefts, the Claimant told the officer that he believed his neighbor (offender) was the culprit. The Claimant offered this information only because he was informed that he would remain anonymous. On August 13, 2010, while checking his mailbox, the Claimant was approached by the offender. The Claimant testified that he attempted to avoid the situation, but was suddenly attacked by the principal offender and two coworkers. The Claimant stated that he was struck on the head with brass knuckles. The Claimant attempted to defend himself, but he was not successful. The Claimant suffered severe injuries as a result of the beating. His medical bills totaled \$4,120.31. The Court granted an award for the the Claimant's work loss and medical bills, which together totaled \$19,041.81.

CV-10-0712-Y B.J.H.

On July 2, 2010, the Claimant's daughter, age 14, was the alleged innocent victim of a sexual abuse/assault allegedly perpetrated by the alleged victim's half brother. The alleged offender has since been charged with twenty counts of sexual assault in the 3rd degree and twenty counts of incest. The criminal case is still awaiting disposition. This Court issued an Order on April 27, 2011, awarding \$599.58 for unreimbursed mileage and expenses. The Claimant appealed, seeking an additional amount for her work loss, sustained when she attended court proceedings and met with counsel. The Court refused to award the Claimant's claim because the Claimant was not actually the victim of the crime—her daughter was. Work loss is reserved for victims only. Claim disallowed.

CV-11-0253-Y P.C.R.

On November 4, 2008, Deputies with the Kanawha County Sheriff's Department charged and arrested two alleged offenders named C.J. and R.C. for operating a clandestine drug laboratory on property owned by the Claimant. The Claimant, an innocent victim by all accounts, incurred great expense in order to demolish the dwelling in accordance with state law. The Claimant sought recovery for those expenses. The issue for the Court was whether or not the Claimant filed within the two-year statutory period. The Court held that the Claimant did not meet the statute of limitations. Claim disallowed.

LOST SCHOLARSHIP

CV-09-0776-Y A.Y.S.

On July 5, 2008, the Claimant's 25-year-old son, D.N., was the tragic victim of criminally injurious conduct in Huntington, Cabell County. The Claimant's son was shot and killed by the offender, J.G., who was indicted for murder. It is undisputed that the Claimant's son was an innocent victim of crime. Moreover, this Court's initial Order granted payments to medical providers and reimbursement of funeral and burial expenses which totaled \$8,184.99. At issue on appeal was whether the reimbursement of student loans could be made as "lost scholarship" within the provisions of the Crime Victims Compensation Act. The Court held that the key feature of lost scholarship awards is that the student possesses the award and has some vested interest. Another key feature of these types of awards is that the student is not generally obligated to repay the award. The Claimant sought reimbursement for private student loans. The Court held that student loans do not qualify as lost scholarship under the statute. Claim disallowed.