



2012 Annual Report



CVCF

West Virginia
CRIME VICTIMS
COMPENSATION FUND

Court of Claims
Cheryle M. Hall, Clerk

2012

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 John P. Fulks Sr., Business Manager



West Virginia Court of Claims
Crime Victims Compensation Fund

Presiding Judge
J. David Cecil.
Judges
T. C. McCarthy Jr.
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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 2011.

Respectfully,

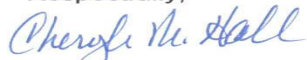

Cheryle M. Hall,
Clerk

TABLE OF CONTENTS

	<u>Page</u>
Administrative costs	8
Claims:	
Age	20
Appeals	25-27
Award percentage by type of crime	15
Awards	14
Awards by county (map).....	16
Denials	22
Domestic violence	19
Filed	12
Filed by county	17
Gender	21
Orders issued	13
Processed by county (map).....	11
Types of crimes.....	18
Federal grants	10
Funding	9
Summary of program.....	7
Summary of benefits.....	23

Summary of Program

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

FUNDING

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

ELIGIBILITY REQUIREMENTS

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

PROCEDURES

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

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

BENEFITS

Maximum award:

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

Compensable expenses:

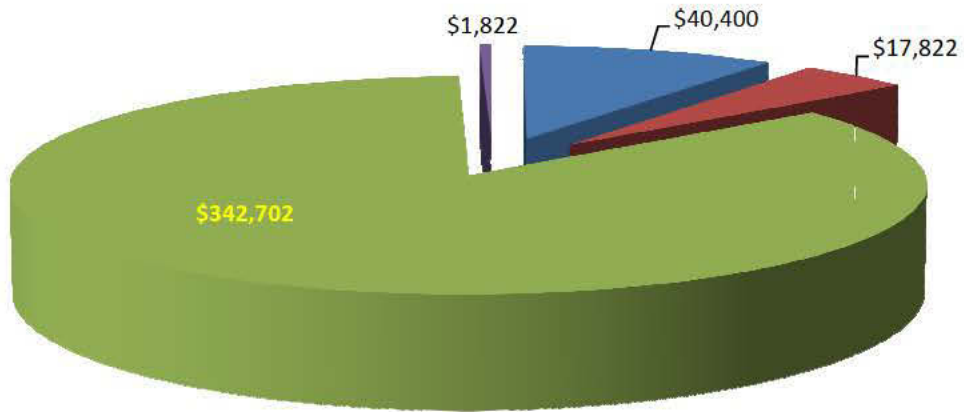
- Medical expenses
- Mental health counseling
- Mental health counseling for secondary victims Up to p to \$1,000
- Lost earnings/support
- Funeral/burial up to \$10,000
- Relocation up to \$2,000
- Travel to medical treatment facility
- Travel to criminal proceeding- Travel to return minor from out-of-state/out-of-country
- 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

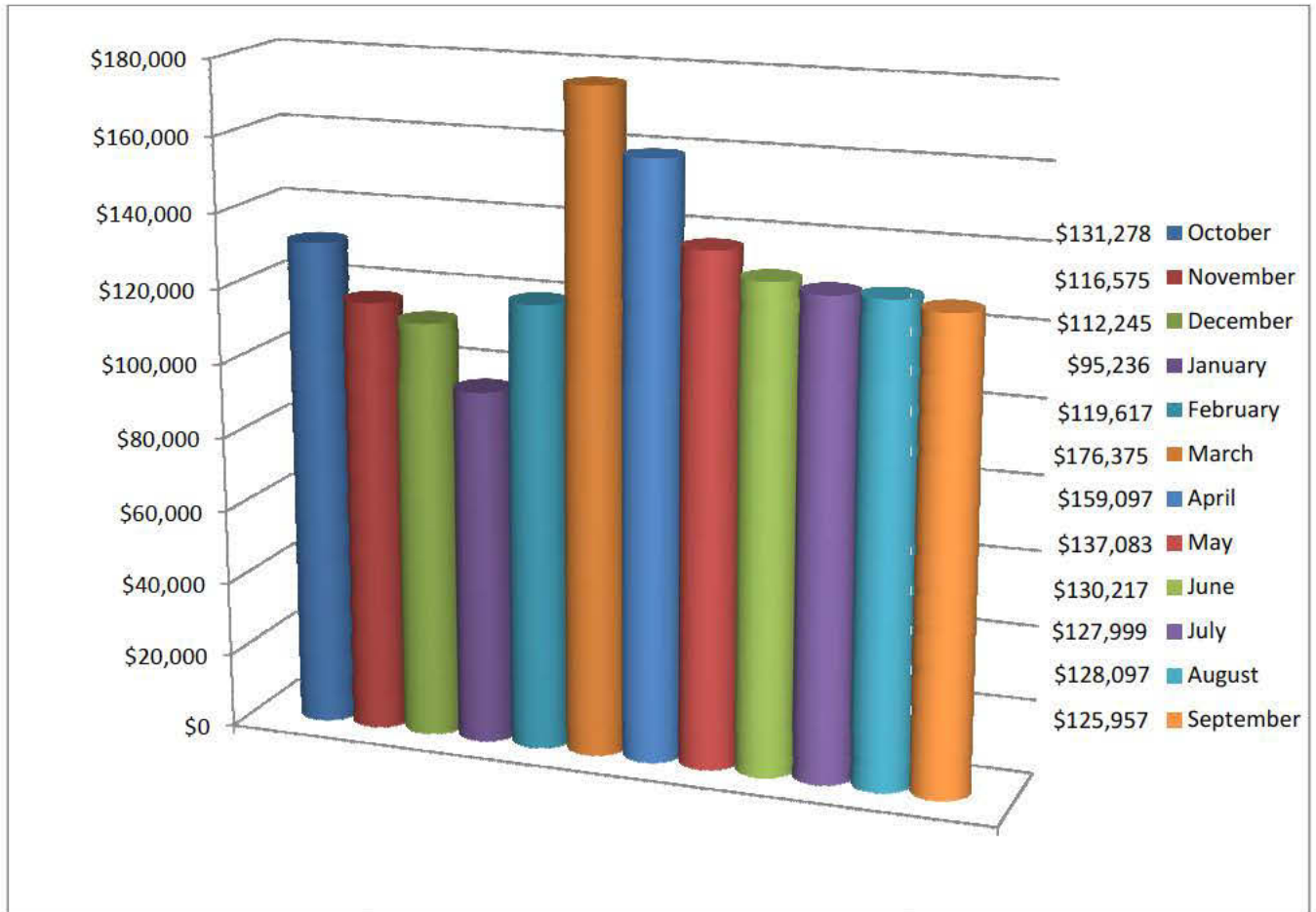


- Compensation of Judges
- Administrative Costs
- Personnel and Benefits
- Attorney Fees

TOTAL: \$402,746

Crime Victims Compensation Fund

State Funds Collected by Month
October 1 – September 30



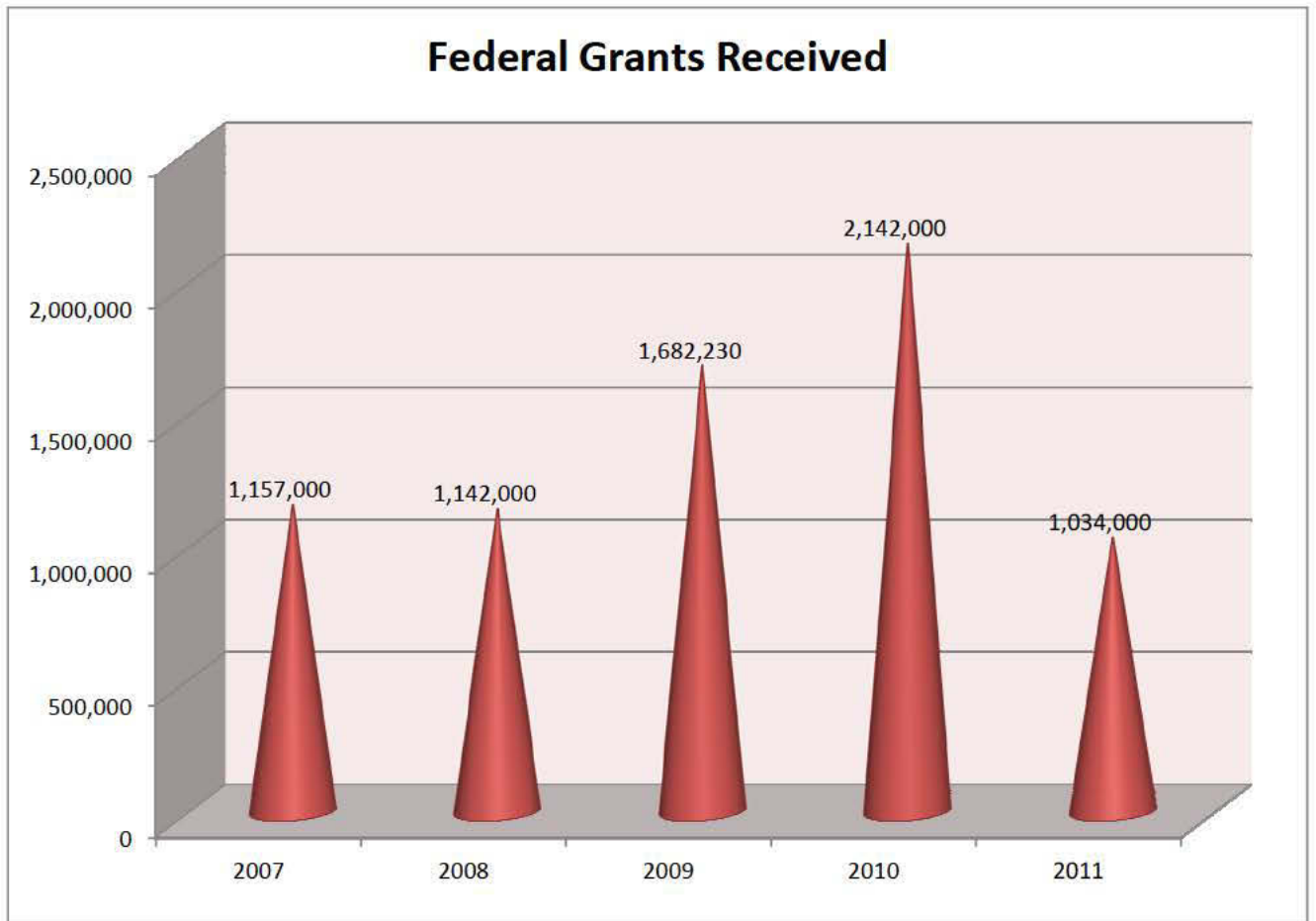
Total: \$1,559,777

Federal Grants

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

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

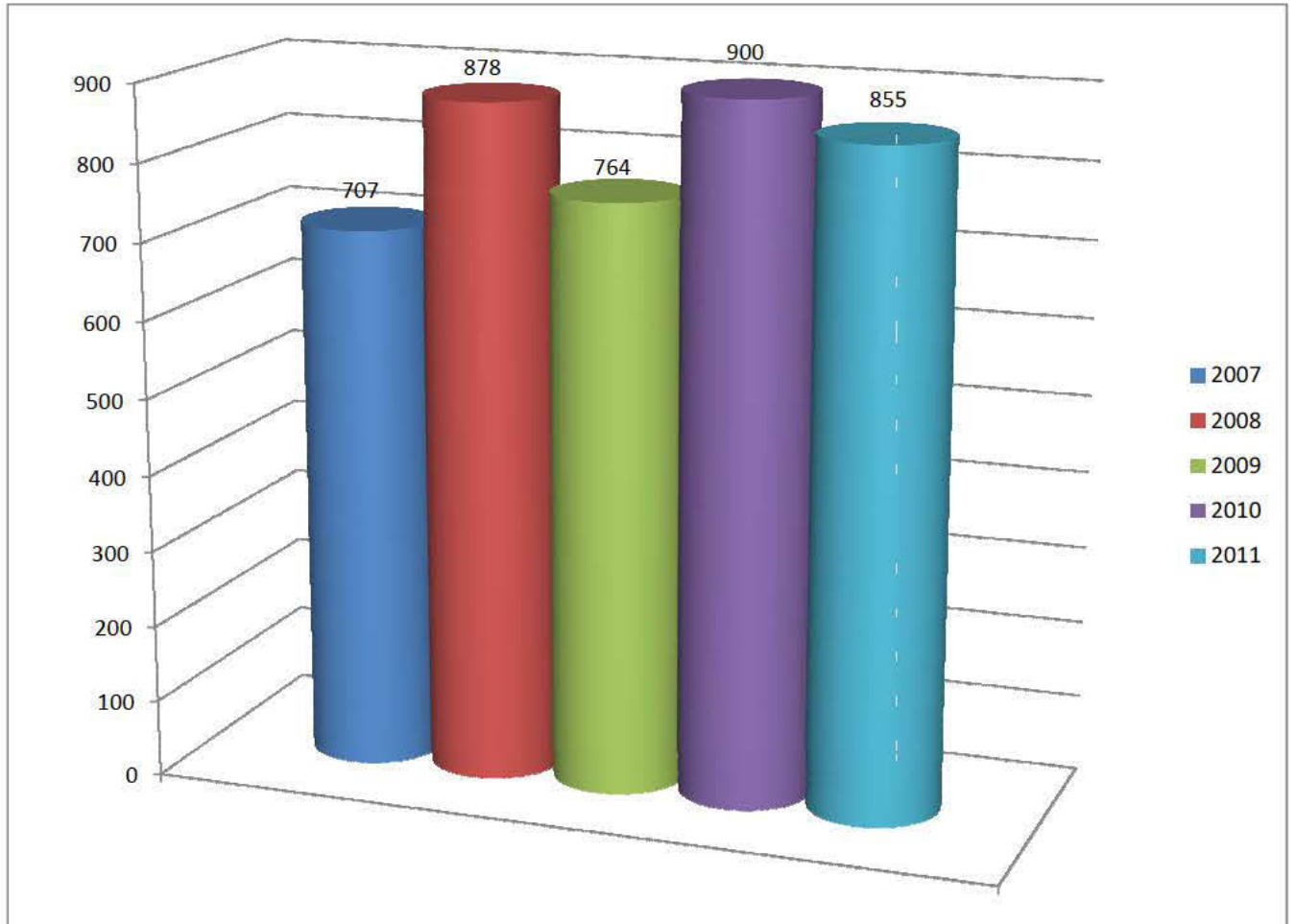
Beginning with the 1995 grant, programs are permitted to use up to 5% for administrative expenses, which includes purchasing equipment, hiring personnel, and travel expenses. However, the administrative expenses may not supplant state funds.



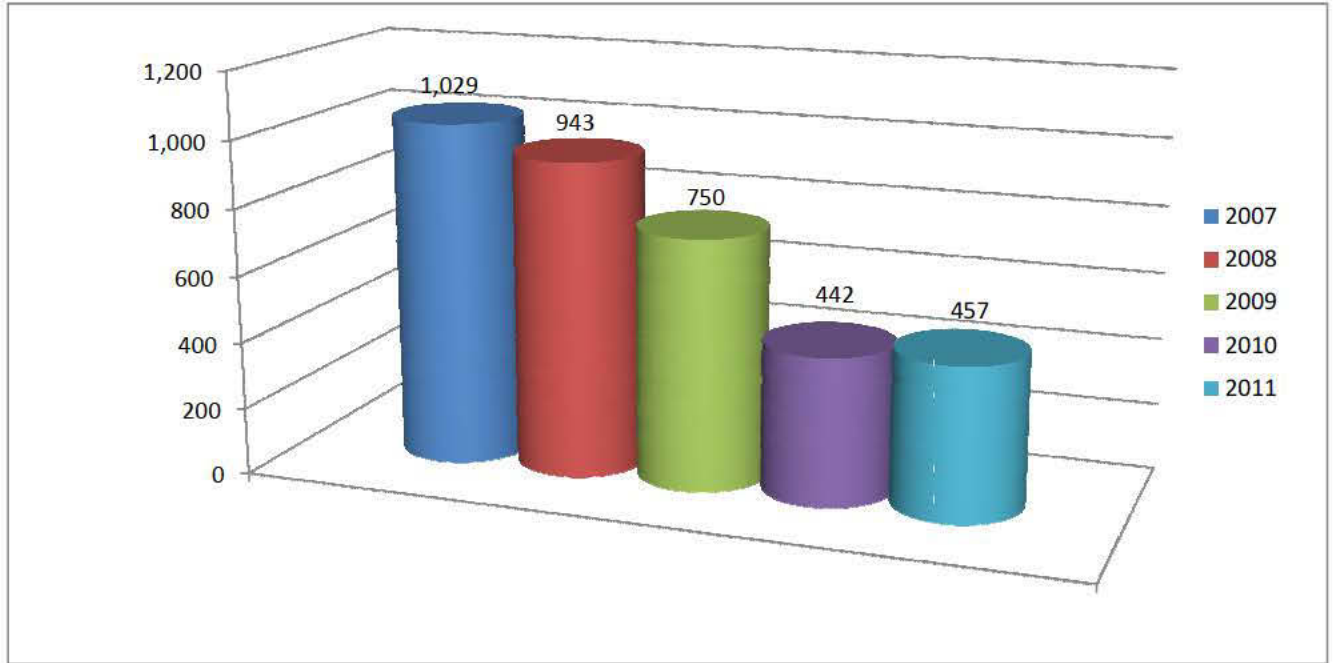
West Virginia has received a total of \$16,435,230 in federal funds for its compensation program since 1986 (the first grant year). The 2009 amount includes a one-time stimulus grant of \$348,230.

Crime Victims Compensation Fund

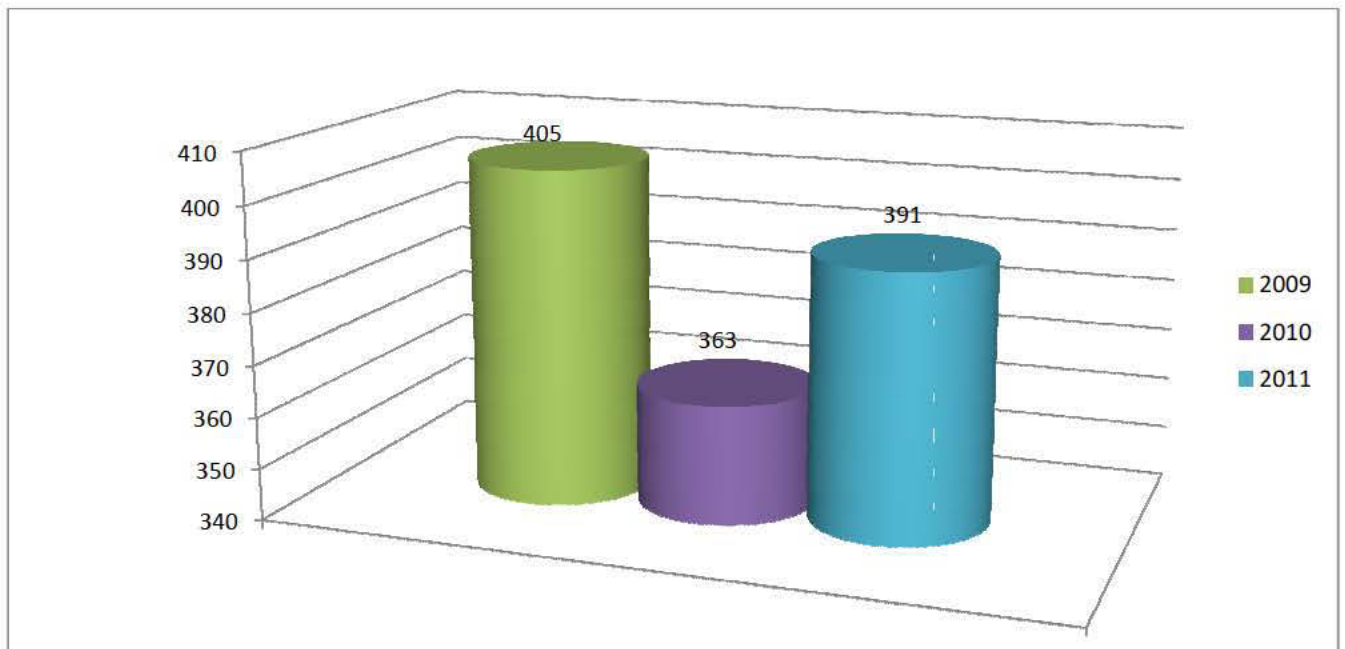
Claims Filed Per Year



**Crime Victims Compensation Fund
Orders Issued by the Court Per Year - INITIAL**

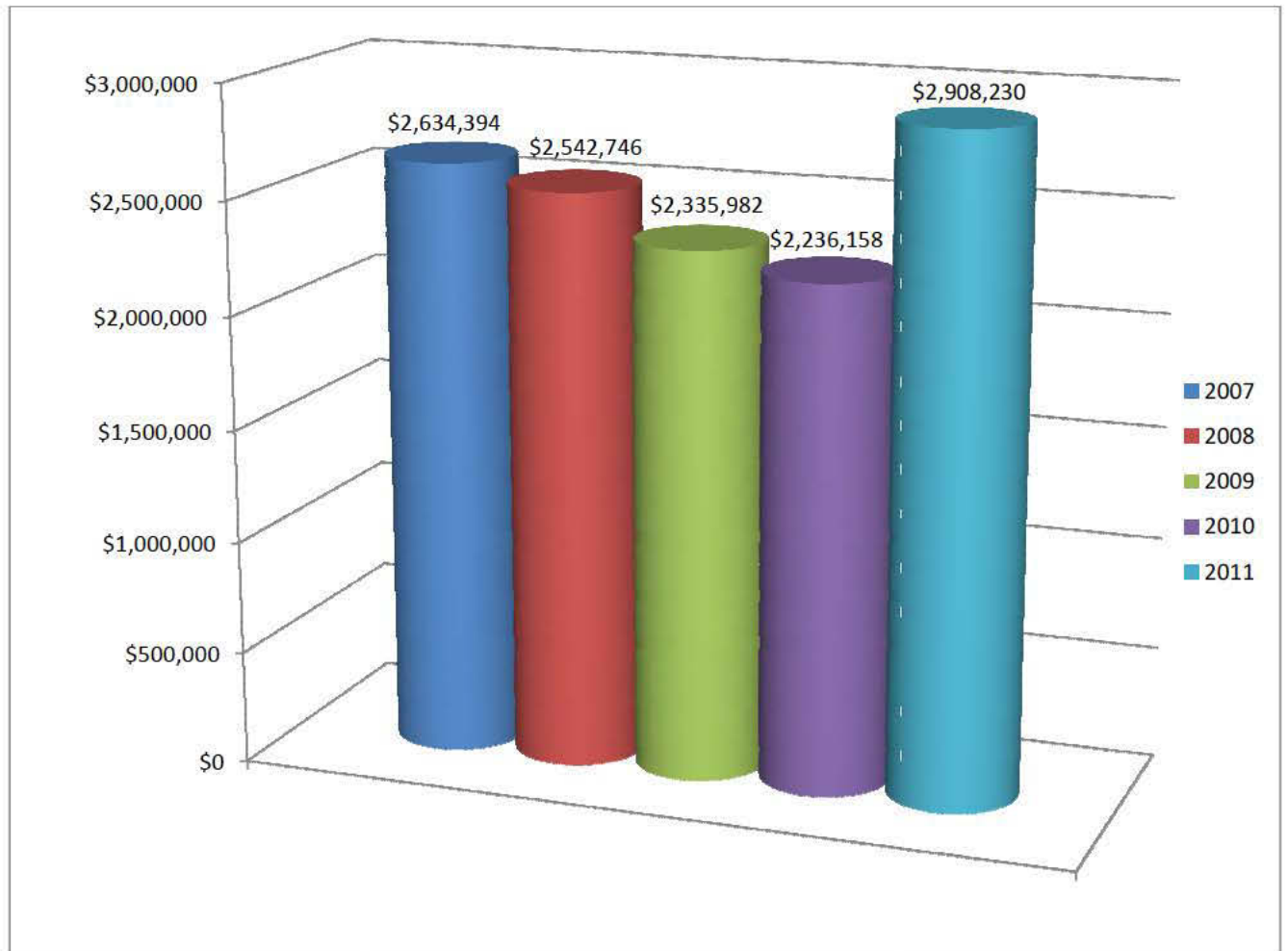


Orders Issued by the Court Per Year – SUPPLEMENTALS



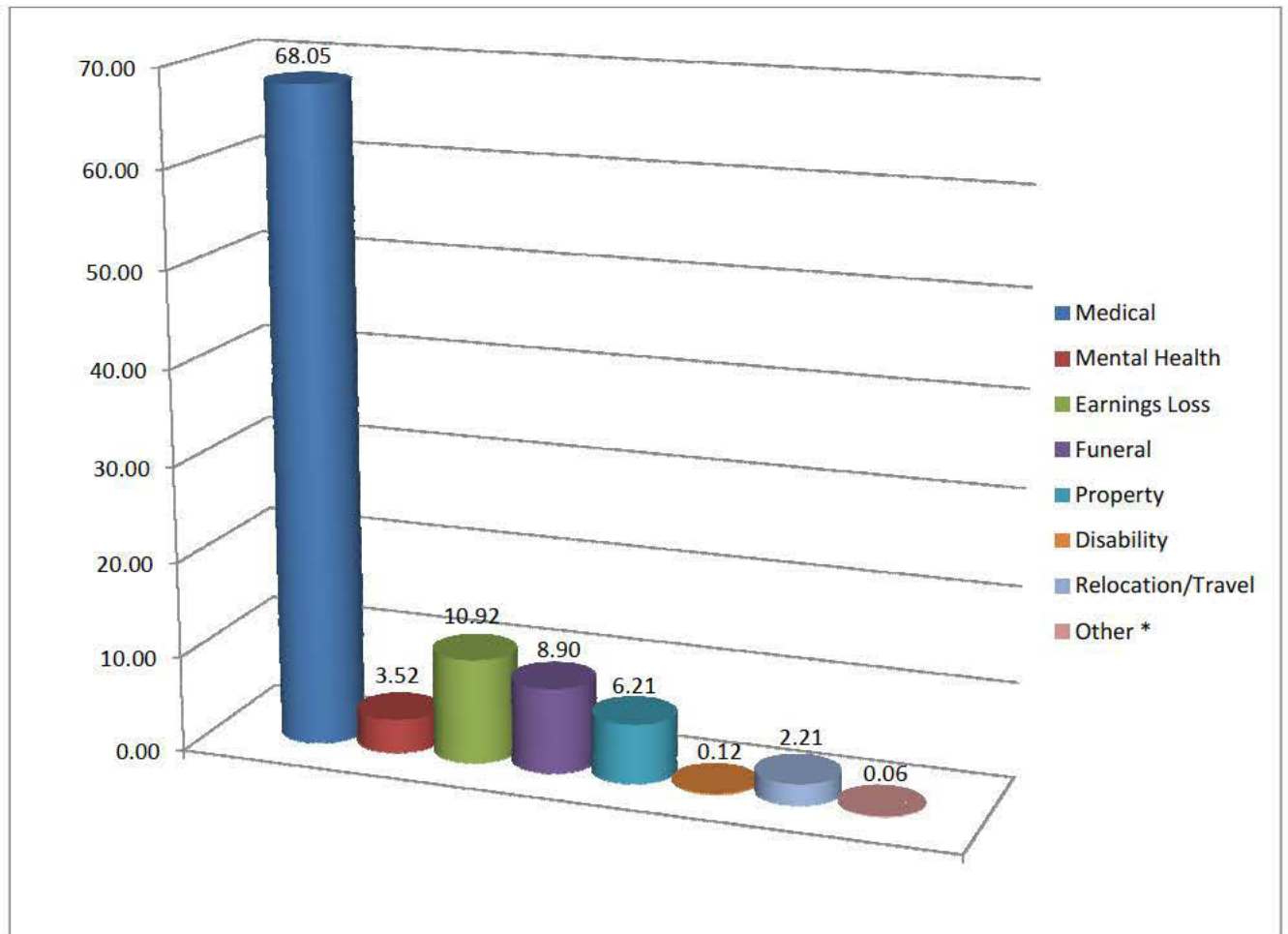
Crime Victims Compensation Fund

Awards



Years prior to 2009 included supplemental awards.

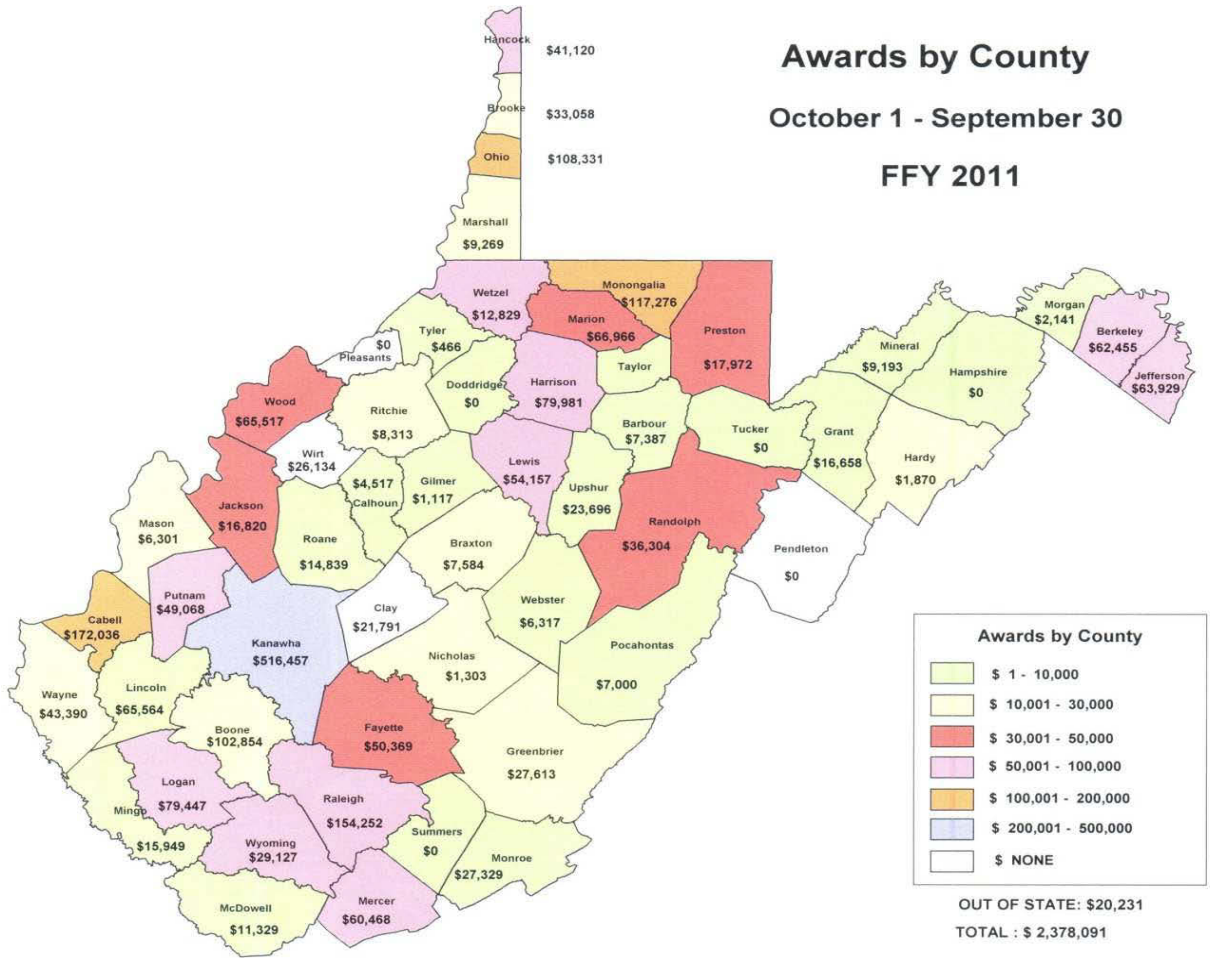
Crime Victims Compensation Fund
Percent of Total Awards by Type



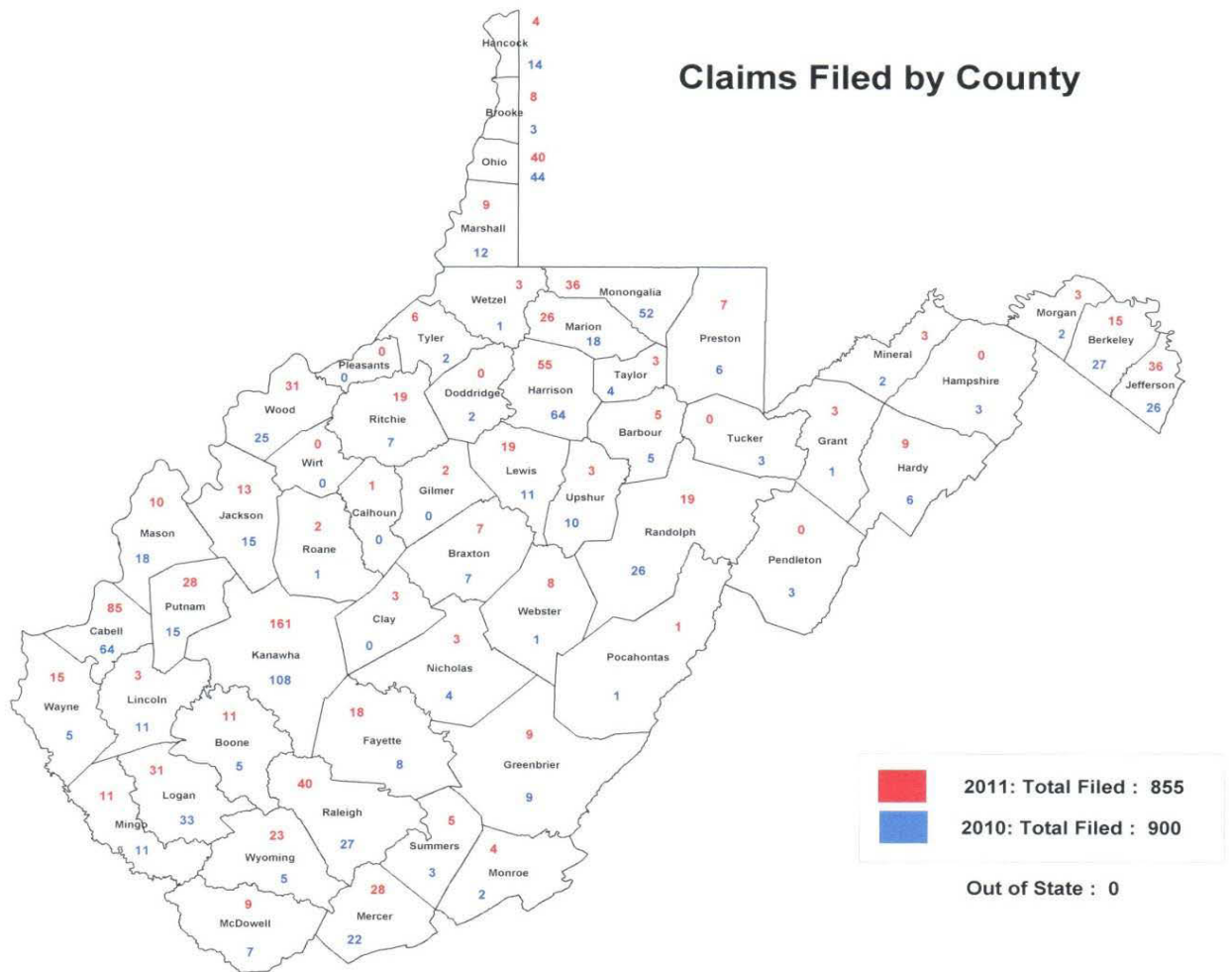
*Includes: Replacement Services Loss, Dependent's Economic Loss, and Lost Scholarships.

Awards by County

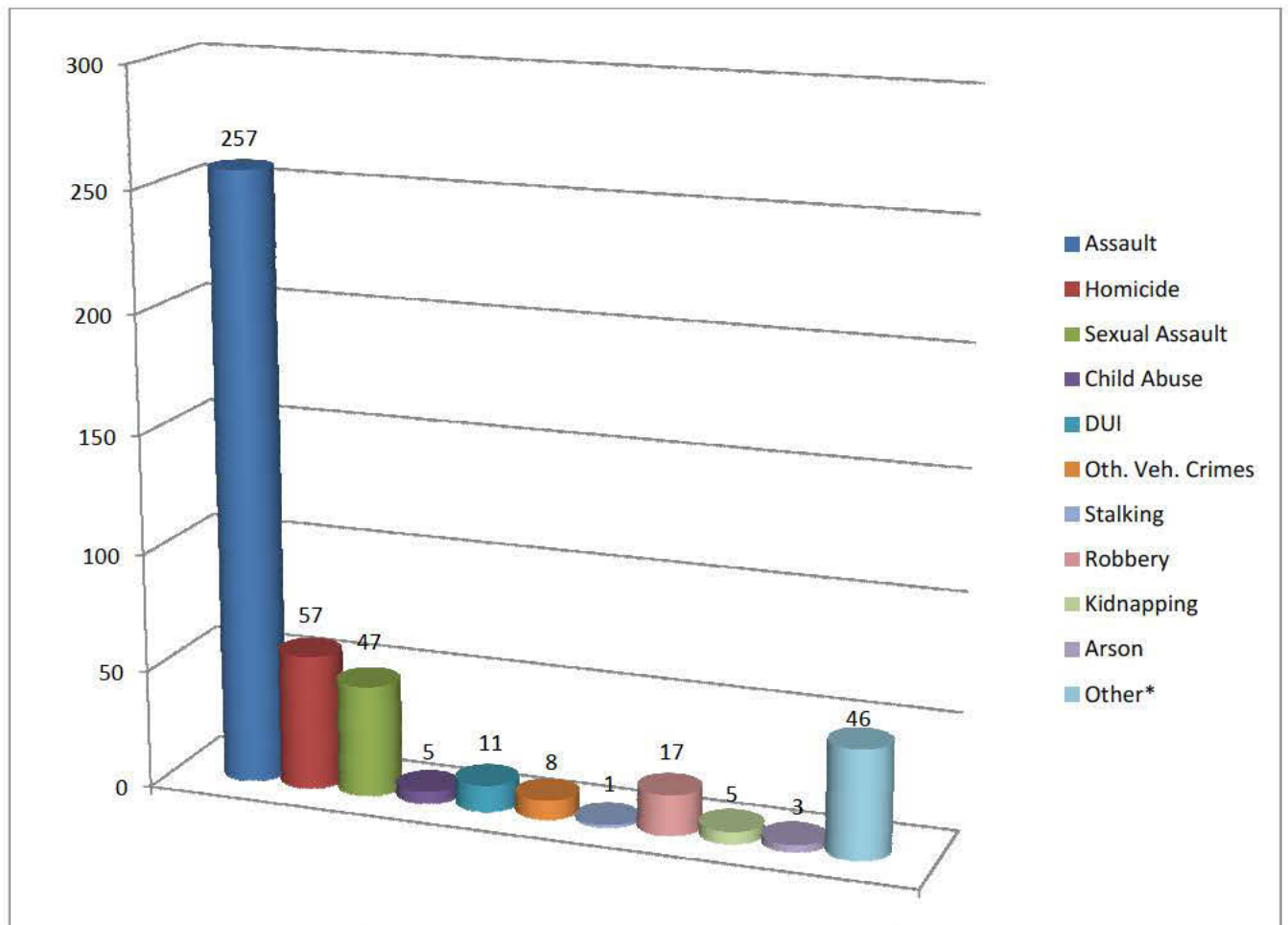
October 1 - September 30
FFY 2011



Claims Filed by County



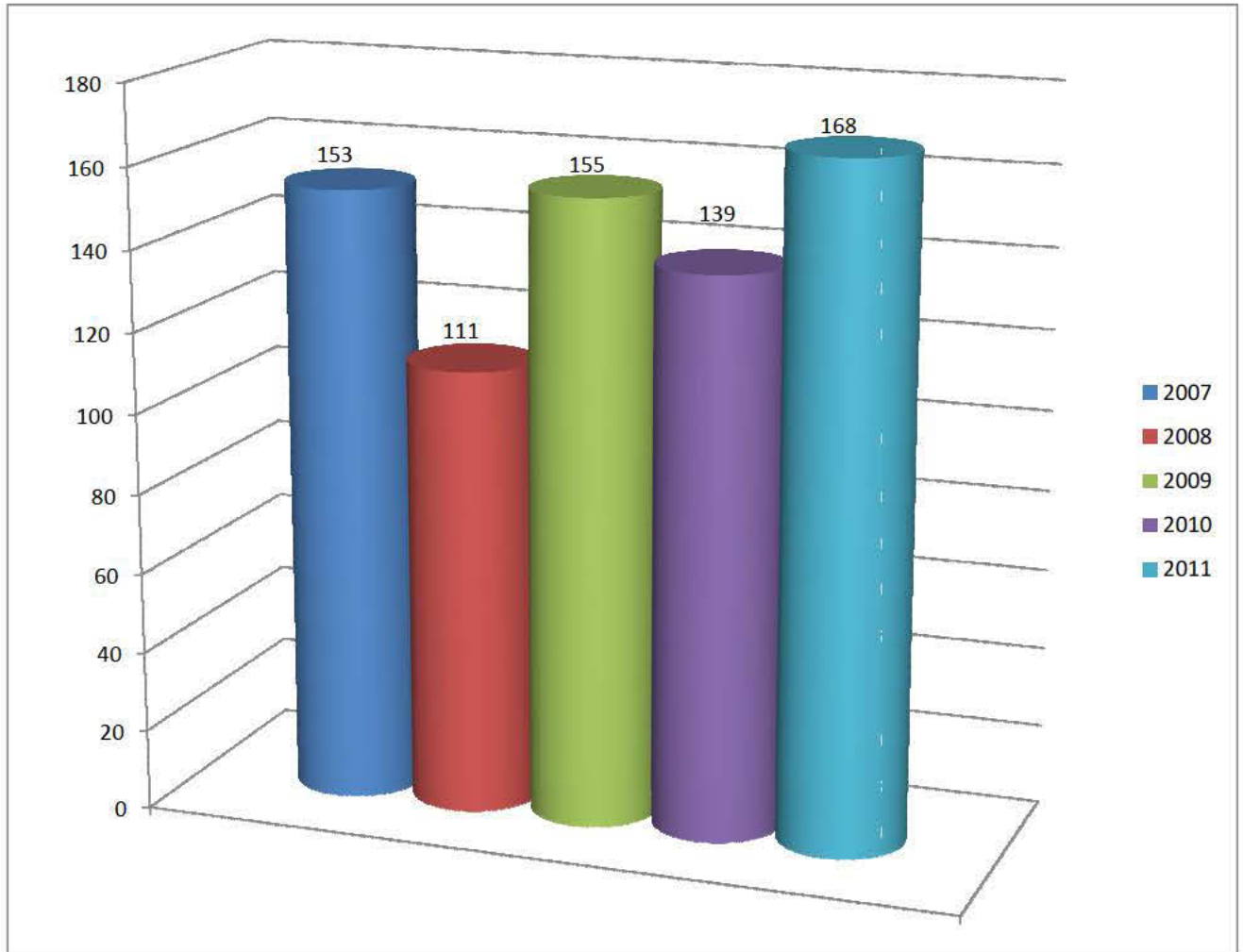
Crime Victims Compensation Fund
Claims Paid by Type of Crime



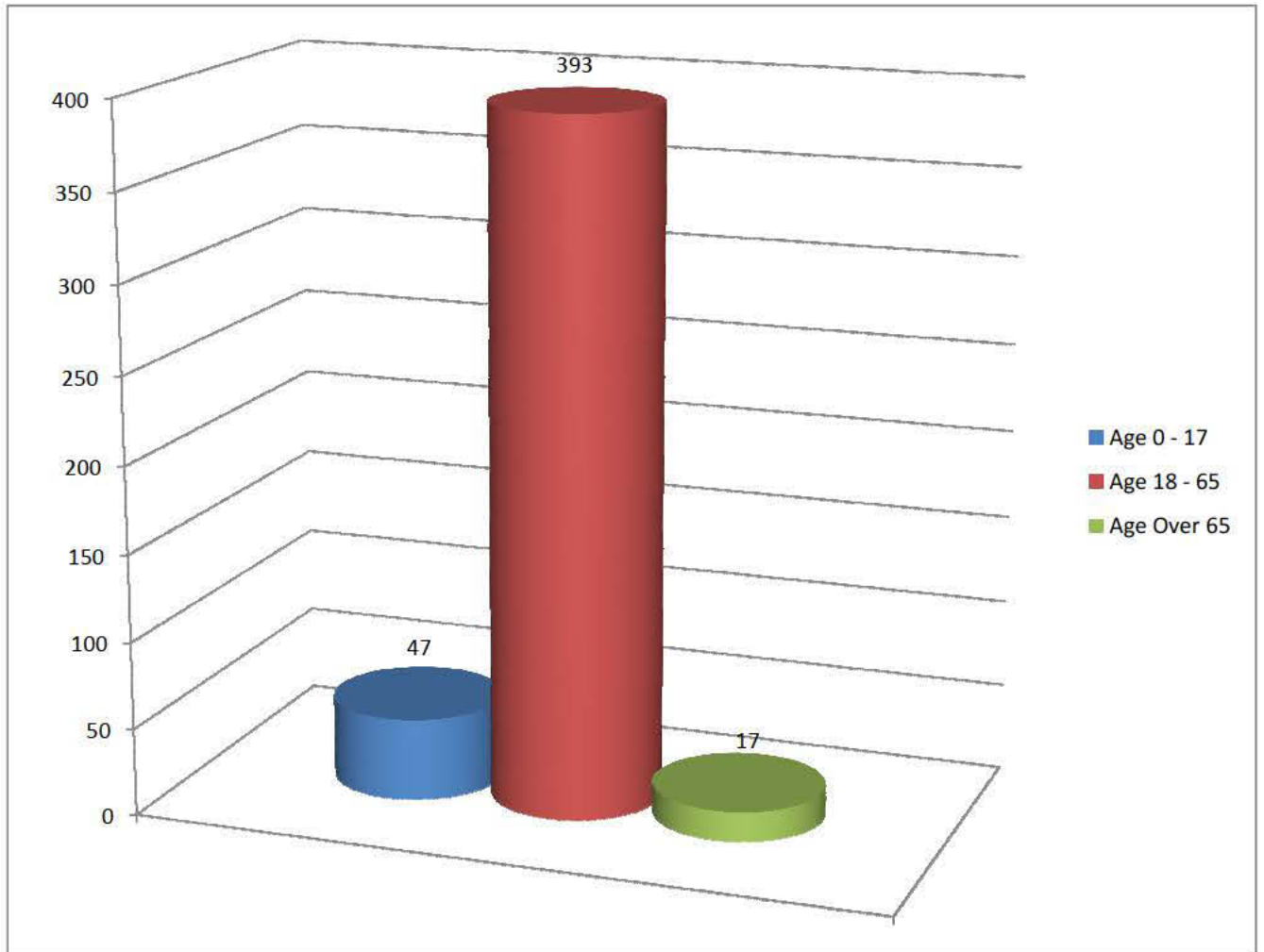
- Includes: dog bite – arson – hunting accident – road rage

Crime Victims Compensation Fund

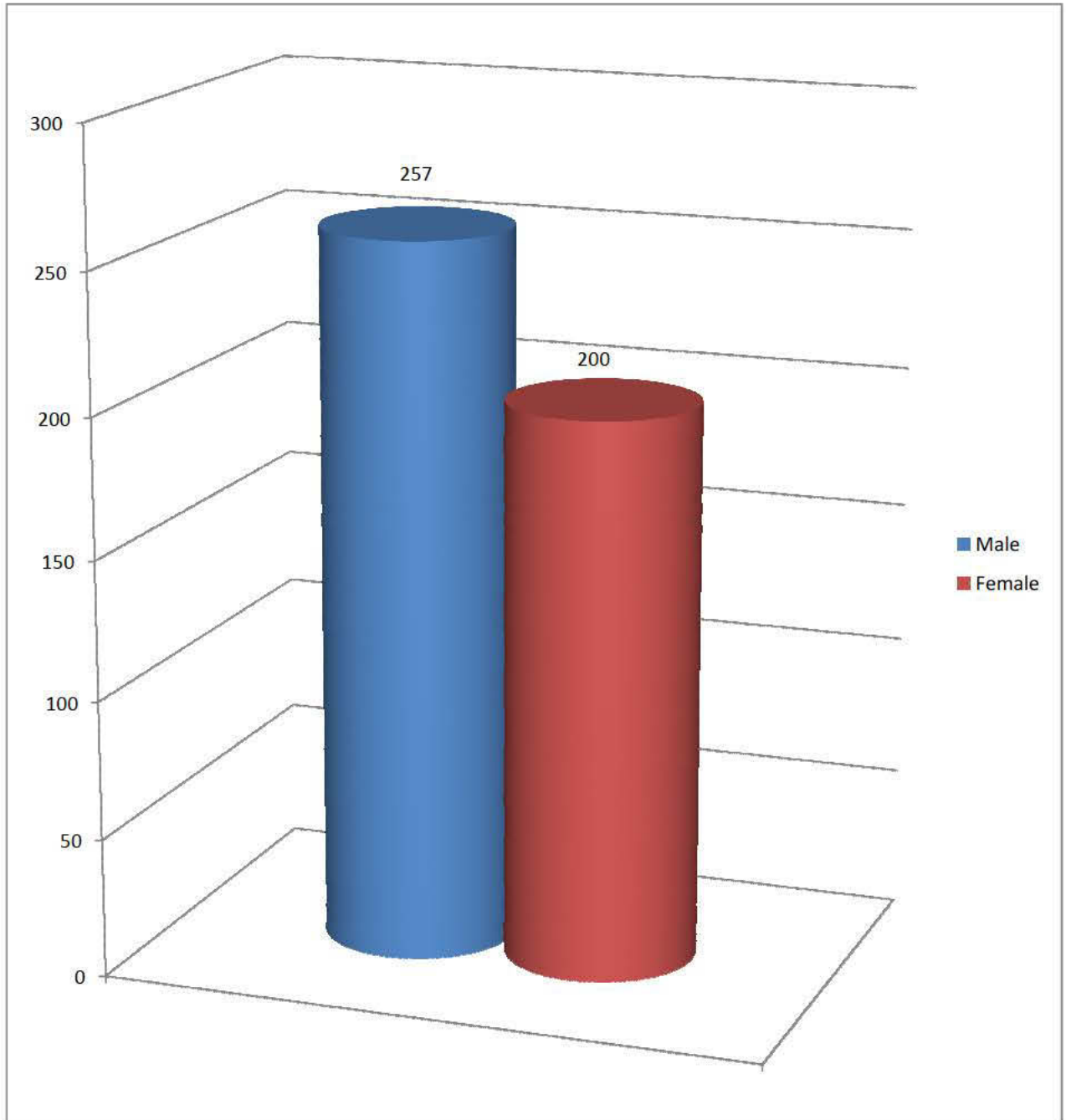
Claims Involving Domestic Violence



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

<u>Reason for Denial</u>	<u>Number</u>
Claim not filed within two years	9
Claim withdrawn	1
Crime not reported timely to law enforcement	11
Crime within penal institution.....	2
Duplicate claim	6
Further awards denied	2
No economic loss*	12
Non-compensable crime	36
Undetermined conduct.....	5
Unjust benefit to offender.....	4
Victim failed to cooperate with police or claim investigator	58
Victim guilty of contributory misconduct.....	<u>75</u>
	TOTAL: 221

* The claim was denied because no economic loss was established at the time. However, if at a later date the victim suffers an economic loss, the Court may make an award.

Crime Victims Compensation Fund

Summary of Benefits

<i>Category</i>	<i>Effective Date</i>	<i>Award Amount</i>
Awards paid directly to provider	06/12/1987	
Awards paid directly to funeral home	07/01/1988	
Claimant travel to other country to get minor	04/01/2008	3,000
Claimant travel to other state to get minor	04/01/2008	2,000
College tuition allowable expense	03/02/1999	
Crime scene cleanup - excluding meth lab	01/01/2002	5,000
Crime scene cleanup - meth lab	04/01/2008	10,000
Criminal injurious conduct outside US	07/01/2009	
Death award limit	07/01/2008	50,000
Disability injury	01/01/2002	100,000
Funeral award limit	07/01/2008	10,000
Hit and run included in criminal conduct	04/01/2008	
Personal injury limit	07/01/2009	35,000
Victim relocation	07/01/2009	2,000
Victim travel expenses to court	01/01/2002	
Victim travel expenses to/from treatment facility	07/01/2009	
Work loss for parent of minor	04/01/2008	
Fee amounts	06/07/1996	\$8 munic cts. \$10 oth. courts plus 20% of DUI fines and \$50 ea. felony conv.
Victim's mileage reimbursement	07/20/2011	0.47/mile

West Virginia Crime Victims Compensation Fund

Reference to Opinions

- CONTRIBUTORY MISCONDUCT/INNOCENT VICTIM
- CRIMINAL CONDUCT NOT ESTABLISHED
- ECONOMIC LOSS
- METHAMPHETAMINE
- STATUTE OF LIMITATIONS

The following is a compilation of head notes representing decisions from July 1, 2010 to June 30, 2011.

CONTRIBUTORY MISCONDUCT/ INNOCENT VICTIM

CV-09-0224 V.L.P.

Claimant's 24-year-old son was the victim of criminally injurious conduct on April 16, 2007, in St. Albans, Kanawha County. The victim was fatally shot outside the residence of the offender. The police report concluded that the victim and other individuals had gone to the offender's apartment to rob him. A struggle ensued between the victim and the offender, wherein the victim was shot. The police investigation concluded that the victim was shot as a direct result of his attempt to rob the offender, who was acting in self-defense. The Court found that the decedent intended to commit felonious criminal mischief, to the extent he intended to perpetrate the crime of robbery, and thus, the Court could not make the required finding that the decedent was an innocent victim of crime. Claim disallowed.

CV-07-0211-X J.H.S

At approximately 10:21 p.m. on March 31, 2007, the Claimant's 21-year-old son was the victim of criminally injurious conduct near Alpena, Randolph County. The victim was hosting a party at Lower Cheat. The victim's younger brother was also present at the camp area. The offender, who harbored animosity toward the victim, provoked the victim by propositioning his younger brother for sex, knowing full well this would incite a confrontation with the victim. The victim was unarmed when he approached the offender and justifiably took umbrage at the inappropriate solicitation. The victim's actions were predictable as far as the offender was concerned and a reasonable inference exists that the offender's behavior was intended to inflame the passions of the victim given the history of animosity between the two that stemmed from their high school days. Consequently, the Court found that the victim was unjustifiably shot to death by the offender. Award of \$13,918.20.

CV-06-0058 W.C.S.

The 60-year-old Claimant was a victim of criminally injurious conduct in Grant Town, Marion County on December 12, 2005. The Claimant was drinking at the bar of his local tavern when the offender entered and sat three bar stools away. Claimant testified that he and the offender got into a verbal exchange and the offender got up from his seat with fists raised. The Claimant testified that he never touched the offender during the altercation and only remembers falling to the ground. This claim was initially denied because the facts surrounding the incident were unclear, and it could not be determined whether the Claimant was an innocent victim. The Court was of the opinion that while the Claimant was heavily intoxicated, which had a negative impact upon his judgment and resulted in a heated exchange with the offender, such contributory misconduct was not the cause of the subsequent altercation; therefore an award was granted. However, because the victim's intoxication contributed to the verbal altercation resulting in the fight, the Claimant's award was reduced by forty percent (40%).

CV-08-0131 M.T.Y.

On December 30, 2007, the 23-year-old Claimant was the victim of criminally injurious conduct in Beckley, Raleigh County. The Claimant and his girlfriend were at a bar in the Beckley Mall with their friends. An altercation began on the sidewalk outside the bar. One of the Claimant's friends directed racial slurs at one of the offenders. One of the offenders struck the Claimant while another one of the offenders kicked him. The Claimant was taken to Raleigh General Hospital where he was treated for multiple facial fractures. There was credible

evidence indicating that it was not the Claimant who directed racial slurs at the offenders, even though the Claimant was in the presence of a friend who may have used such language. The Claimant testified that he was trying to avoid conflict with the offenders and was trying to de-escalate the situation. Thus, the Court found that the Claimant was an innocent victim of crime, free from contributory misconduct. Award of \$2,772.33.

CRIMINAL CONDUCT NOT ESTABLISHED

CV-07-0211 A.B.M.

The 20-year-old claimant was the alleged victim of sexual assault at a college party. The claim was initially denied because of the vague facts surrounding the incident. The claimant had been drinking, and could only remember part of what happened. Although the claimant cooperated with police, there was no DNA evidence upon which prosecution could be based, and the offender was not charged with a crime. Upon appeal, the Court upheld its previous ruling, and no award was granted. Claim disallowed.

ECONOMIC LOSS

CV-09-0212 J.A.M.

Claimant's deceased daughter was a victim of criminally injurious conduct on March 25, 2008, in Wheeling, Ohio County. She was traveling in a vehicle being operated by the alleged offender when the vehicle left the road and rolled. Both the victim and the offender were intoxicated at the time of the accident, and the victim died as a result of the injuries she sustained. The Claimant sought to recover dependents' economic loss because she and her husband would have depended on the victim to provide for them in their elder years. A collateral source was available to the Claimant upon the victim's death in the amount of \$220,775.57, which exceeds the maximum award available for death benefits through the fund (\$50,000). Thus, the economic loss that Claimant sought to recover is not compensable under W. Va. Code § 14-2A-14(f).

Claim disallowed.

CV-07-0497 T.F.S.

The 38-year-old Claimant was shot in the leg by an assailant in Pennsboro, Ritchie County. He subsequently lost part of the leg due to infection. Awards totaling \$3,203.09 were granted for the Claimant's medical expenses. At issue upon appeal was whether the Claimant was entitled to recover additional out-of-pocket expenses for: reconstruction of his porch for wheelchair-accessibility; installation of a downstairs shower; child care costs; in-home health care costs; purchase of a refrigerator to store his medications; the cost of miscellaneous medical supplies; vacation pay for his wife; and travel expenses related to his medical care. The Court approved the costs for the porch reconstruction, downstairs shower, and refrigerator. The Court found that the child care and in-home health care were provided by relatives, not certified providers, and that the wife's vacation pay was not an allowable expense under the statute. Medical supplies and mileage expenses were ruled compensable if the proper documentation is later submitted. Award of \$5,280.07.

METHAMPHETAMINE

CV-08-0678-Z T.M.U.

Claimant's deceased mother's property was damaged by the operation of a methamphetamine laboratory. No award was recommended by the Claim Investigator because it was believed that an award would unjustly benefit the offender, the sister of the Claimant, who occupied the property and was charged with operating a methamphetamine laboratory. Claimant testified that her mother passed away in 2006 and willed her property to the Claimant and the offender; however, the property was never transferred to them. Although the Claimant was not in fact the owner of the property, she demonstrated that she voluntarily paid the obligations of her deceased mother, and thus qualified as a Claimant entitled to compensation. The Court further found that the offender, Claimant's sister, would not unjustly benefit from an award. Award of \$5,000.00.

CV-08-0664 H.A.F.

The claimant's property was damaged by the operation of a methamphetamine laboratory. The residence was occupied by the claimant's stepson, who was charged with operating a clandestine drug laboratory. The claim

was initially denied because since the claimant lived in close proximity to the residence, it was unlikely that he was unaware of the illegal activity. Testimony adduced at the hearing revealed that the claimant worked nights and that he and his wife seldom had occasion to visit the stepson. The Court granted an award of \$5,000.00 for the cleanup of the property. Award of \$5,000.00.

STATUTE OF LIMITATIONS

CV-08-0666 P.S.V.

The 55-year-old Claimant was the victim of criminally injurious conduct on October 29, 2006, in Huntington, Cabell County. This claim was initially denied because the application was not filed until October 30, 2008, more than two years after the date of the criminally injurious conduct, beyond the statute of limitations. Claimant testified that he was aware of the two-year statute of limitations, and went to the Cabell County Prosecutor's Office to speak with a victim's advocate who advised the Claimant that she would prepare an application for him to sign the next day. Claimant testified that he discussed the statute of limitations with the victim advocate, who told him that she would fax the application if necessary. Although the Court was sympathetic to the Claimant, the evidence submitted established that the claim was received by the Court on October 30, 2008, one day past the filing deadline, by regular mail. Claim disallowed.