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Taking Care of Its Own: Comparing the United States Military's Transitional Compensation Program with State Victim Compensation Programs

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Domestic Violence is an offense against the institutional values of the Military Services of the United States of America. It is an affront to human dignity, degrades the overall readiness of our armed forces, and will not be tolerated in the Department of Defense (DoD). Thus, doing everything possible to prevent incidents of domestic violence within our military communities, and dealing effectively with both victims and offenders when incidents do occur, is not only the right thing to do, it is a military necessity.  

INTRODUCTION

The U.S. Army prides itself on its commitment to “take care of its own.” The ethos signifies that service members and their families all comprise a larger “Army Family” that protects one another. Accordingly, a service member’s family is as much a

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2 See, e.g., U.S. ARMY CHIEF OF STAFF, THE ARMY FAMILY 15 (1983), available at http://www.whs.mil/library/Dig/AR-M620U_20080911.pdf (providing “[t]he age-old slogan, ‘[t]he Army takes care of its own’ . . . is a challenge for all of us in ‘the Army Community’ to work together, as equal partners, applying our talents, skills, creativity and time to taking care of our own and improving the community as a whole.”).

3 See, e.g., Fort Hood: The Army Takes Care of its Own - in a Time of Need, STAND TO! A DAILY COMPENDIUM OF NEWS, INFO., & CONTEXT FOR ARMY
part of the "Military Family" as the service member. But how does this ethical standard endure when the service member is committing acts of domestic violence against his family? In 1994, part of the National Defense Authorization Act implemented a program through which the military continues to pay a former service member’s dependents if he is discharged from the military for domestic abuse. How does this compensation

4 See, e.g., DV DEFENSE TASK FORCE REPORT, supra note 1 ("Taking care of all members of the military family is an institutional value crucial to the success of America's Armed Forces and is one of the most important jobs of commanding officers and leaders at every level."); Sgt. 1st Class Mark Bell, Army Reserve Opens Second Army Strong Community Center, www.ARMY.Mil (May 17, 2010), http://www.army.mil/-news/2010/05/16/39213-army-reserve-opens-second-army-strong-community-center-in-brevard-nc-may-15/ (quoting of Lt. Gen. Jack Stultz) ("To be successful as a military and against the fight against terror, [I] need four things: a Soldier, that Soldier's family, the Soldier's employer and a supportive community.") (last visited Mar. 10, 2011).

5 Because domestic violence occurs against males as well, and in same-sex relationships as well as heterosexual relationships, I use gender neutral language in this article whenever possible. However, when necessitated, I use female pronouns to describe victims because females make up the majority of victims in the United States. See, e.g., CTR. FOR DISEASE CONTROL & PREVENTION, UNDERSTANDING INTIMATE PARTNER VIOLENCE, FACT SHEET (2011), available at http://www.cdc.gov/violenceprevention/pdf/IPV_fact sheet-a.pdf ("Each year, women experience about 4.8 million intimate partner related physical assaults and rapes. Men are the victims of about 2.9 million intimate partner related physical assaults.") [hereinafter CDC FACT SHEET]; Cybele K. Daley, Acting Assistant Attorney Gen., Office of Justice Programs, Address at the Department of Justice's Observation of Domestic Violence Awareness Month (Oct. 23, 2007) ("It is estimated that about 1.3 million women and 835,000 men experience domestic violence annually.")], available at http://www.ojp.usdoj.gov/newsroom/speeches/2007/07_1023daley.htm.

6 For the purposes of Transitional Compensation, the applicable definition of “dependent” is a spouse, former spouse, or dependent child of the service member. 10 U.S.C. §§ 1059(c)-(d) (2006).

7 U.S. Dep’t of Army, Reg. 608-18, The Army Family Advocacy Program 110-11 (Oct. 2007) [hereinafter AR 608-18] (The Army defines domestic violence as: “[a]n offense under the United States Code, the Uniform Code of Military Justice, or state law that involves the use, attempted use, or
program measure up to states’ efforts to compensate victims of crimes? This article sets out to investigate who takes better care of whom, and whether the two systems can learn from each other.

Victim compensation is crucial for domestic violence victims, as financial concerns are a main reason victims choose to stay with their batterer. Domestic violence activist and scholar, Sarah M. Buel, discussed why victims stay with their abusers:

Financial despair quickly takes hold when the victim realizes that she cannot provide for her children without the batterer’s assistance . . . . A comprehensive Texas study found that 85 percent of the victims calling hotlines, emergency rooms, and shelters had left their abusers a minimum of five times previously, with the number one reason cited for returning to the batterer being financial despair. These victims were simply unable to provide for themselves and their children without emergency assistance, and many who had such assistance were still in financial trouble. Moreover, such victims had no idea how to access emergency assistance.8

threatened use of force or violence against a person of the opposite sex, or a violation of a lawful order issued for the protection of a person of the opposite sex, who is (a) A current or former spouse; (b) A person with whom the abuser shares a child in common; or (c) A current or former intimate partner with whom the abuser shares or has shared a common domicile”). See also Marcia L. Klein, Commanders Can Fill the Gap for Transitional Compensation, U.S. Army Cmty. & Family Support Ctr. (CFSC) Release #00-42 (Mar. 16, 2000) [hereinafter CFSC Release].

In addition to keeping victims from leaving their abusers, financial problems are often a leading reason why women do not want to cooperate with prosecution. Prosecution can seem like a losing battle for domestic violence victims. In particular, if prosecution is unsuccessful, the abuser is likely to return and subject the victim to subsequent severe abuse. However, if prosecution is successful, possible jail time may keep the victim safe from abuse but financially incapable of supporting her family. Thus, a more robust victim compensation program could mitigate significant barriers to victims using the criminal justice system, encourage cooperation with prosecutions, and ultimately lead to more just outcomes for women in the area of criminal law.

This article compares the National Defense Authorization Act’s compensation program, Transitional Compensation, with the states’ efforts to compensate victims of crimes, and to investigate whether the two systems can learn from one another. Specifically, Part II of this article details the specifics of the military’s Transitional Compensation Program: its goals, structure, and implementation. Part III takes a broad look at state compensation programs, beginning with the Victim’s of Crime Act

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10 See Tuerkheimer, supra note 9 (“The dynamics of abuse put unique pressures on a battered woman to ally herself with the defendant, against the State. In domestic violence cases, cooperating with prosecutorial efforts may jeopardize a victim’s financial resources, immigration status, children, living arrangements, employment, and relations with friends, family, and the larger community. A victim may also resist testifying against her batterer because of a ‘continued emotional connection’ that ‘entrap[s]’ her in the abusive relationship. Most likely, however, she is uncooperative because she fears—often rightly—that by assisting prosecutors she will cause more severe abuse.”).
of 1984; the requirements for the states to obtain federal funding; and three sample state programs, Illinois, Massachusetts and Arizona. Finally, Part IV of this article compares the military’s program with the states’ programs, looking at the pros and cons of each, and assessing which aspects, if any, could be shared.

II. UNITED STATES MILITARY TRANSITIONAL COMPENSATION PROGRAM

Military installations are small microcosms of the larger civilian communities outside their gates. Like small towns, many installations have their own schools, shopping centers, and police forces. However, there are also significant differences, particularly the rigid hierarchy of the military system, which permeates all aspects of life on the base. This part explores how this hierarchy impacts domestic violence in the military, specifically how it can encourage or dissuade victims reporting abuse, and, likewise, how it can help or hinder the response to those reports. Next, this part looks at how the military has tried to take a proactive approach to domestic violence response through the Transitional Compensation Program by investigating the eligibility requirements and general implementation. Finally, this part examines in detail the benefits recipients of the compensation receive.

A. Domestic Violence in the Military

Domestic violence victims whose abusers are service members in the United States Military face a multitude of hurdles that victims of non-military individuals do not have to face. For example, if a service member domestically abuses an individual and the abuse is reported to the police, the commander in charge of the abuser (essentially his or her supervisor) must also

be notified. Depending on the severity of the abuse, the commander also has discretion over what repercussions the abuser should face. Thus, the abuser's supervisor is not only aware of the abuse but has authority over the outcome. As a result of this command structure, intervention can occur more rapidly inside the military than in civilian sectors. Working with the local military resources, the commander can determine an appropriate treatment plan or punishment and ensure the service member cooperates with such treatment plan. These punishments often take the form of pay freezes or a decrease in rank, both of which affect the abused spouse's subsistence. Thus, even without prosecution, reporting domestic abuse within the military realm can result in financial hardship for the victim.

Both inside and outside the military, one of the main reasons victims choose not to report abuse is for financial reasons: victims fear that if the abuser is prosecuted, they will not be able to financially support their family. Particularly within the military sector, whether punishment is a temporary pay decrease, a permanent reduction in rank, or a discharge from the military, the abused dependent's financial situation will suffer when the service member's pay is negatively affected.

14 Commanders have the ability to use non-judicial punishment against service members as a way to “further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.” Other than civil protective orders or individual tort actions pursued by the victim, the civilian world does not have a comparable non-criminal justice action. Civil protective orders are quick procedures, but do not inflict punishment on the offender, only a restriction on his movements. Tort actions can inflict punitive damages; however, the civil suit to attain such remedies is not a quick, non-judicial process. See generally AR 27-10, supra note 13.
15 See id. See also AR 608-18, supra note 7, § 4-4.
16 See AR 27-10, supra note 13, § 3-19.
17 See supra note 8 and accompanying text.
B. Transitional Compensation – Goals and Implementation

To combat this iniquitous corollary on the abused dependent, the U.S. Military created the Transitional Compensation Program. In addition to mitigating a major impediment to victims reporting abuse, Transitional Compensation was enacted to provide the support needed for dependents of an abusive service member to transition both out of the abusive relationship and out of the military system. As such, Transitional Compensation is also tailored to remove the threat of financial retribution by the abusive service member.

Transitional Compensation consists of a robust set of benefits, including a generous monthly stipend for the abused spouse and her children, access to military family assistance programs, and access to the commissary and exchange store. Recipients are also entitled to medical and dental coverage, including mental health services. If space is unavailable at the military facilities,

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18 See U.S. Dep't of Army, Reg. 608-1, Army Community Service Center § 4-12(b) (Sept. 19, 2007) (“Congress established this entitlement for victims of dependent-abuse in the National Defense Authorization Act of FY 94 in order to reduce victim disincentives to reporting abuse.”) [hereinafter AR 608-1]. Throughout this paper, where possible, I will cite to both the U.S.C. and the Army Regulation covering Transitional Compensation. Thus, the reader can see what Congress authorized and how one of the branches of service has implemented that authorization. The Army’s version of Transitional Compensation is representative of this implementation as it is essentially the same as that of the other branches of service. See Frederick Pang, Dep’t of Def. Instruction # 1342.24, Transitional Compensation for Abused Dependents § 2 (May 23, 1995) (“This instruction applies to [t]he office of the Secretary of Defense and the Military Departments (including Coast Guard when it is operating as a Service in the Navy”)) [hereinafter DODI 1342.24].

19 See CFSC Release, supra note 7.

20 See Tuerkheimer, supra note 9, at 477-79 (describing various modes of financial retaliation abusers can take if the victim reports an incident or proceeds with prosecution).

21 Available family service organizations include Army Community Service, Family Advocacy Program, Army Emergency Relief, among others.


23 See AR 608-1, supra note 18, app. § G-8.
the military will fund the medical coverage through a private insurance system.\textsuperscript{24}

\textbf{C. Determining Eligibility}

An abused dependent is eligible if the service member is discharged from the military, either administratively or through a court-martial proceeding, at least in part, because of the abuse.\textsuperscript{25} The severity of the abuse is not dispositive as long as it is listed as a reason for the discharge.\textsuperscript{26} Accordingly, the service member could have been discharged for any number of military offenses, but may also have committed relatively "minor" domestic violence offenses. If that violence contributed to the overall pattern of misconduct for which the service member was separated from the army, the abused dependent is eligible.\textsuperscript{27}

If the service member is discharged from the military through a court-martial proceeding, and the sentence includes a domestic violence offense, then the abused dependent is eligible once the sentence is approved by the convening authority.\textsuperscript{28} Because a court-martial requires the same general procedural structure as any criminal justice proceeding in the United States, a court-

\textsuperscript{24} See id. The TRICARE insurance system is the private healthcare plan for Active Duty service members and their families. Tricare beneficiaries can receive healthcare at both military and nonmilitary facilities. For more information, see http://www.tricare.mil/.

\textsuperscript{25} 10 U.S.C. § 1059(b), (e) (2006).

\textsuperscript{26} See AR 608-18, \textit{supra} note 7, § 4-4(e).

\textsuperscript{27} See 10 U.S.C. § 1059(c). From my personal experience with Transitional Compensation cases, the severity of the injury in Transitional Compensation cases varied tremendously. For example, some of my Transitional Compensation cases involved life threatening incidents (a woman's head being held over a gas flame stove), whereas in others, the conduct was comparatively less dangerous (pushing the victim into an object so she fell and injured herself). Although the cases seem very different, both service members were separated administratively from the Army; the first for the domestic abuse alone, the second for a pattern of misconduct, including domestic abuse. Because both cases mentioned domestic violence, both spouses received the benefit and were able to transition to a safer life.

\textsuperscript{28} See AR 608-1, \textit{supra} note 18, app. §§ G-1(a)(1),(2), G-2(a).
martial can take months if not years before such sentence is approved.\textsuperscript{29}

If the separation is administrative, the abused dependent is eligible as soon as the separation papers are filed by the service member’s commander.\textsuperscript{30} An administrative separation is the most expeditious method because it does not involve a full criminal justice proceeding. However, if the commander does not explicitly state that the separation was due in part to domestic abuse, the dependents will not be eligible regardless of whether domestic violence was a key factor in the separation.\textsuperscript{31} This is an important point because commanders often use general language (such as “for the good of the Army”) in the separation papers, instead of giving incriminating details.\textsuperscript{32}

A commander’s use of general language can also be problematic because many commanders fail to consider the Transitional Compensation Program or the financial ramifications for the abused dependent if the service member is separated.\textsuperscript{33} Although all military officers receive training on domestic violence and military programs, such as Transitional Compensation, these are just a few of hundreds of training programs commanders receive throughout the course of their careers. Training and readying soldiers for deployment is enough to keep commanders entirely occupied; when they have to take care of family mem-

\textsuperscript{29} See generally AR 27-10, supra note 13, at ch. 5 (procedures for Court-Martials).
\textsuperscript{30} See AR 608-1, supra note 18, app. § G-1(a)(2).
\textsuperscript{31} See CFSC Release, supra note 7.
\textsuperscript{32} See id.
\textsuperscript{33} See id. (statement from Lt. Col. James Jackson, chief of ACS)(“In the vast majority of cases, we believe the program has been very effective in helping families make the transition from being part of the military to . . . re-establishing their lives outside the military community. But, we may not have done the best job we could have done in terms of educating commanders . . . .”). See also AR 608-1, supra note 18, § 4-12(e) (“Commanders should ensure that when a Soldier is separated as a result of a dependent-abuse offense that the victim and the offense are clearly specified in the separation action to document the basis for this entitlement.”).
bers, the tendency is often to try to resolve the matter as quickly as possible.\textsuperscript{34}

Even without the requisite language specifying abuse occurred, there is a possibility the abused dependent could fall under an "exceptional eligibility" exception.\textsuperscript{35} In 2008, the Undersecretary of Defense for Personnel and Readiness issued a Department of Defense policy memorandum detailing an "exceptional eligibility for Transitional Compensation for Abused Dependents" exception.\textsuperscript{36} The memorandum grants the Secretary of the Army authority to approve Transitional Compensation benefits for domestic violence offenses in which the service member's separation papers fail to mention a domestic violence offense as a reason for the separation.\textsuperscript{37} To proceed on a separation that does not cite a domestic violence offense as a factor in the separation, the victim needs to find the installation Transitional Compensation point of contact (usually a Judge Advocate General victim witness liaison officer, or a victim advocate) and convince him or her to make a recommendation to the garrison commander (a lieutenant colonel or above) for an "exceptional eligibility" exception.\textsuperscript{38} If the garrison commander is convinced that a domestic violence offense did occur and was a reason for

\textsuperscript{34} One of my responsibilities as an Installation Victim Advocate and Sexual Assault Response Coordinator was to train all soldiers annually on domestic violence and sexual assault prevention, as well as conduct commander trainings. At one such training, a First Sergeant General, after hearing about the dynamics of a domestic abuse relationship and the myriad of issues he needed to be aware of, good-naturedly commented that while he entered the Army to protect, serve and train others for combat, "Now the Army expects me to be Dr. Phil too!"


\textsuperscript{36} \textit{Id.}

\textsuperscript{37} See \textit{id.}

\textsuperscript{38} See \textit{Guidelines for the Submission of the Transitional Compensation Application Package for Abused Dependents that May Qualify for Exceptional Eligibility}, \textit{ARMY ONE SOURCE} (Oct. 22, 2010), available at https://www.myarmyonesource.com/cmsresources/Army%20OneSource/Media/PDFs/Family%20Programs%20and%20Services/Family%20Programs/Family%20Advocacy%
the discharge, he or she can choose to sign the Transitional Compensation form and send it to the Family and Moral, Welfare, and Recreation Transitional Compensation program manager at Fort Sam Houston, Texas. If the program manager approves the application, he or she will send the application up to the Secretary of the Army. Due to the amount of discretion the military is given when approving an application for Transitional Compensation benefits in domestic violence offenses, this route is less likely to result in a favorable result for the victim.

If the language does appear in the paperwork, the process to receive Transitional Compensation is relatively simple. Here, Department of Defense form 2698 must be completed and sent to the authorizing agency. In addition to the form, the application must include some form of proof of the offense as well as proof of the relationship between the abused dependent and the service member. Multiple resources exist to help the abused dependents. For example, in the Army, the Family Advocacy Program Manager (FAPM), Installation Victim Advocate, Sexual Assault Response Coordinator (SARC), or a victim witness liaison officer can all fill out the DD 2698 form and compile the necessary paperwork for the victim.

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39 See id.
40 See id.
41 DD Form 2698 is a brief two page application form comprised mostly of administrative details, such as the date of separation and the service member's branch. A copy can be viewed at http://www.dtic.mil/wsh/directives/in-fomgt/forms/eforms/dd2698.pdf.
42 See AR 608-1, supra note 18, app. § G-9(a). For the Army, the appropriate agency is the U.S. Army Community and Family Support Center.
43 See Application Guidelines, supra note 38. Often this takes the form of a military or civilian police report. However, a police report is not required, provided that some legitimate form of proof is available.
44 See AR 608-1, supra note 18, app. § G-9(b)(4) (acceptable forms of proof include marriage certificates or birth certificates, among other forms of identification); 10 U.S.C. § 1059(d) (2006) (explanation of how children are defined as eligible).
45 See, e.g., AR 608-1, supra note 18, app. § G-9.
Once approved by the authorizing agency, the monthly stipends begin.\textsuperscript{46} Payments are based on rates for dependency and indemnity compensation for veterans under 38 U.S.C. \textsuperscript{47}§§ 1311 and 1313.\textsuperscript{47} The current monthly payment is $1,154 per month, plus $286 per month for each child of the service member\textsuperscript{48} under the age of eighteen.\textsuperscript{49} This money is paid from operations and maintenance funds, not from military pay accounts.\textsuperscript{50} Originally, the recipients received the monthly payments for twelve to thirty-six months, depending on how much time the abusive service member would have had left in the military.\textsuperscript{51} The monthly payments continue past the twelve-month period if the service member abuser had an un-served period of obligated service, up to a maximum of thirty-six months.\textsuperscript{52} According to Myarmyonesource.com (a Department of Defense sponsored resource for military family members), as of January 21, 2011, the duration of benefits for all eligible abused dependents, regardless of the service member’s un-served time, is now standardized to the full thirty-six months.\textsuperscript{53} This change reflects a move toward a more victim-centered model of compensation. Regardless of the time the service member would have given to the Army, the victim will get a full three years of payments to help establish an abuse-free civilian life.\textsuperscript{54}

\section*{D. Assessing the Transitional Compensation Benefits}

These benefits are tremendously generous, especially considering that to be eligible the service member abuser is often dis-
charged from the military.\textsuperscript{55} Thus, families who are no longer in the military are paid over $1,000 per month for three years.\textsuperscript{56}

When describing the program, Lieutenant Colonel James Jackson, former chief of Army Community Service,\textsuperscript{57} said despite the service member’s separation from the Army, “these families are still the Army’s responsibility and I think we have to be very careful . . . [to] ensure that we’re not in some way abandoning our obligation to the families.”\textsuperscript{58}

However, some important exceptions to the coverage exist. If the dependent spouse would be eligible for Transitional Compensation, but was an active participant in the abuse of a child dependent, then the dependent spouse is ineligible for any Transitional Compensation, and all payments will go directly to the abused dependent child.\textsuperscript{59} In addition, an otherwise eligible dependent spouse is rendered ineligible if she remarries someone else or returns to the same household as the abuser.\textsuperscript{60} The rationale is that the money is to be used to incentivize the abused dependent to establish a life free of abuse and to not return to the abusive relationship.

\textbf{III. State Victim Compensation Programs}

As with Transitional Compensation, state victim compensation programs evolved out of an attempt to mitigate the nega-

\textsuperscript{55} See 10 U.S.C. § 1059(b); AR 608-1, \textit{supra} note 18, § 4-12(a).

\textsuperscript{56} See 10 U.S.C. § 1059(f); AR 608-1, \textit{supra} note 18, app. § G-3; \textsc{Army OneSource}, Transitional Compensation, \textit{supra} note 35. In some cases, the recipient spouse is not even a U.S. citizen. When acting as the Installation Victim Advocate for a U.S. Army base in Germany, two of my successful Transitional Compensation cases involved German-citizen abused dependents. Neither of these spouses had ever been to the United States and neither intended to live there. Both received the Transitional Compensation benefits for the full three years.

\textsuperscript{57} The Army Community Service is one of the military organizations that oversee the benefits. See AR 608-1, \textit{supra} note 18, app. § G-9.

\textsuperscript{58} \textsc{CFSC Release}, \textit{supra} note 7.

\textsuperscript{59} See 10 U.S.C. § 1059(g)(3) (2006); AR 608-1, \textit{supra} note 18, app. § G-5(c). The Secretary of Defense determines whether the spouse was involved in the conduct constituting abuse.

\textsuperscript{60} See 10 U.S.C. § 1059(g)(1)-(2); AR 608-1, \textit{supra} note 18, app. § G-5(a),(b).
tive secondary effects victims of violent crimes face. These effects include medical, counseling, or funeral costs resulting from the crime. The states' victim compensation programs differ from the military Transitional Compensation Program in various ways. The most significant difference is that state programs are not tailored to victims of domestic violence. Rather, all state programs aim to help a wide variety of victims of violent crime, including victims of drunk-driving accidents, homicides and sexual assaults. This part will explore the general intent of the Victims of Crime Act ("VOCA"), which established the state programs, VOCA's eligibility guidelines, VOCA's funding sources, and three state programs that illustrate the general implementation of VOCA.

A. Legislative Purpose of Victim Compensation Programs

State victim compensation programs evolved out of the efforts of the victims' rights movements of the 1960s to mitigate some of the financial costs of victimization. In 1964, California enacted the first state victim compensation program. Today, all fifty states have victim compensation programs, all of which have received federal funding since 1974. Eventually, the federal funding was codified in VOCA of 1984 which established the Crime Victim's Fund (the "VOCA fund"). VOCA's stated purposes include the following:

addressing the inability of the then-existing state programs to 'adequately protect and assist' crime

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63 See id. § 10602(d)(3).
65 See Goldschied, supra note 61, at 182-83.
66 See id.
67 See id. at 183; Newmark, supra note 64.
victims; a recognition that ‘successful operation of the criminal justice system depends on the welcome participation of witnesses’ and an acknowledgment that the states and the federal government share a joint responsibility for assisting victims of crime.68

Thus, state compensation programs intertwine the state’s desire to compensate the victim for failing to protect her with the state’s desire to ensure the victim assists the criminal prosecution of the offender.69

In utilizing VOCA funds, each state implements its own crime victim compensation program according to the VOCA federal guidelines, as discussed below.70 These state programs have the dual task of addressing a portion of a crime victim’s financial needs while limiting payments for certain conditions, as well as guarding against fraud, waste, and abuse.71 By statute, VOCA directs states to use funds for victim compensation in a manner that both encourages victim cooperation with criminal justice officials and mitigates the financial, physical, and psychological impact the crime has inflicted on the victim.72 Generally, this victim compensation gives the victims of certain statutorily defined violent crimes (such as domestic violence and drunk-driving accidents) reimbursement for the medical, funeral, or counseling costs that are a direct result of the crime.73 In addition, the compensation can cover some of the lost wages or loss of support if directly tied to the crime.74 Property damage and loss are specifically not covered.75

68 See Goldschied, supra note 61, at 186.
69 See id.
70 See Newmark, supra note 64, at 5-6.
71 See id. at xv.
72 See 42 U.S.C. § 10602(b)(2) (2006); see also Newmark, supra note 64, at 2, 5.
75 See id.
B. Federal Eligibility Guidelines

All fifty states receive VOCA funding. To remain eligible for funding, the states must meet federally mandated parameters such as requiring victims of violent crimes to have an injury in order to receive compensation. No definition of “injury” is given federally, but some states have defined the term “injury” as purely physical injuries. Other federal requirements include designating the federal funds given to victims for use on counseling, medical or dental expenses resulting from the crime, funeral costs for homicides, and sometimes loss of wages or support as a result of the crime. Further, the state compensation programs must enact a system which promotes victim cooperation with law enforcement. Finally, state compensation programs may not make adverse compensation determinations based on the victim continuing to reside with the offender, unless it is necessary to keep the offender from being unjustly enriched by the compensation.

76 See Newmark, supra note 64, at 5.
77 See id.
78 See id. at 5 n. 5.
79 See id.
80 See id. at 5 n. 7 (explaining that states retain the power to determine what constitutes ‘cooperation with reasonable requests.’ Common definitions include reporting the crime to a law enforcement agency or another government agency (e.g., protective services or a court), or completing a medical examination for sexual assault. Cooperation with enforcement efforts of police and prosecutors may also be required. See also VOCA and State Victim Compensation Programs: An Unofficial Guide, Nat’l Ass’n of Crime Victim Comp. Bds., available at http://www.nacvcb.org/index.asp?bid=15 (“You must ‘promote victim cooperation with the reasonable requests of law enforcement authorities,’ but this does not mean you need to require a police report in every instance. You’re free to be flexible, taking into account the victim’s health and safety concerns, her age and psychological condition, as well as cultural and linguistic barriers. Requiring that sexual assault victims only submit to a forensic examination is enough; so are reports to child and adult protective services. Essentially, you’re free to interpret what ‘victim cooperation’ means according to your own state law and rules, so long as you do something to promote it.”).
81 See Newmark, supra note 64, at 6.
In addition to the above stipulations, state compensation must be used only as “the payer of last resort” for recompen sing vic-
tims of crime.\textsuperscript{82} If victims are covered by insurance, collect restitution, or have other sources of renumeration, then they must exhaust those sources before collecting victim compensation from the state.\textsuperscript{83} Furthermore, if those other sources of funding do not surface until years after the crime (such as civil damage awards), then the victim can access state compensation directly following the crime but must pay these funds back to the state once the settlement is received.\textsuperscript{84}

\section*{C. The VOCA Fund}

The percentage of victim compensation payments originating from federal dollars has remained constant at sixty percent of each state’s allocated funds for the last seven years.\textsuperscript{85} The VOCA fund is sourced entirely by non-taxpayer revenue, prima-
arily from criminal fines, forfeited bail bonds, penalties, special assessments collected by U.S. Attorney’s Offices, federal U.S. courts, the Federal Bureau of Prisons, and, as of 2002, gifts and donations from private parties.\textsuperscript{86} In recent years, the VOCA fund has had more deposits than ever before. The combined deposits for fiscal years 2007 and 2008 totaled $1.9 billion while, in fiscal year 2009, the deposits amounted to over $1.7 billion.\textsuperscript{87} Despite having amassed large deposits, the VOCA fund is vul-
nerable to fluctuations if some of the sources decrease.\textsuperscript{88} Such fluctuations could mean victims do not receive the funds they need.\textsuperscript{89}

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\textsuperscript{82} See id.
\textsuperscript{83} See id.
\textsuperscript{84} See id.
\textsuperscript{85} \textsc{Nat’l Ass’n of Crime Victim Comp. Bds., Future Funding is Big Concern for Victim Compensation Programs, Crime Victim Comp. Q.} (2010), \textit{available at} \url{http://www.nacvcb.org/NACVCB/files/ccLibraryFiles/FileName/000000000100/newsletter2010-4.pdf} [hereinafter CVCQ].
\textsuperscript{86} See OVC Fact Sheet, \textit{supra} note 74.
\textsuperscript{87} Id.
\textsuperscript{88} See id. See also CVCQ, \textit{supra} note 85.
\textsuperscript{89} See OVC Fact Sheet, \textit{supra} note 74; CVCQ, \textit{supra} note 85.
\end{flushright}
Moreover, VOCA does not just fund state victim compensation programs. In addition to supplementing these state programs, VOCA is used to fund formula grants for state victim assistance programs, Office of Victims of Crimes discretionary grants (such as training and technical assistance to professionals responding to crimes), victim witness coordinators in U.S. Attorney's Offices, Federal Bureau of Investigation victim specialists, the Federal Victim Notification System (notifying victims of the status of the offender), and the Children's Justice Act.90

The fact that the VOCA fund is not reliant on tax-payer dollars undoubtedly helped Congress pass the VOCA bill in 1984.91 However, the current structure of the VOCA fund without utilizing tax-payer dollars restricts the amount of money available to victims.92 In fact, a December 2010 study by the National Association of Crime Victim Compensation Boards found that fifty percent of the responding states feared impending budget shortages; such shortages would place severe constraints on victim compensation and services.93 Some states' compensation programs have already experienced these constraints. For example, in California, $80 million was taken from the state victim compensation fund to shore up the general treasury.94 Fiscal emergency in California has caused the state, with the original victim compensation program, to entertain calls for reducing the maximum benefit per crime from $70,000 to $63,000 and cutting the amount of coverage for expenses such as burial costs and health and medical bills.95 Less dramatically, budgetary cuts often mean downsizing personnel, which can cause problems in a system so dependent on word of mouth to alert victims and help them through the process.96 These shortages come at a

90 See OVC Fact Sheet, supra note 74.
91 See Goldschied, supra note 61, at 175.
92 See id.
93 See CVCQ, supra note 85.
94 See id.
96 See CVCQ, supra note 85.
time when increasing caseloads and mounting medical costs mean that more funding is needed to support victims.97

In addition to VOCA funds, most states use state offender fees and penalties, with some states also using appropriated funds from offenders.98 In all states, however, the majority of compensation paid to victims comes from criminal offenders.99

D. Examples of State Victim Compensation Programs

Other than the general VOCA eligibility requirements, states have a lot of discretion as to how they design their victim compensation programs.100 Some states have chosen to expand coverage to fund things that VOCA does not specify.101 For example, some states fund rehabilitation sessions, transportation needs, and relocation expenses.102 To illustrate the varying ways that states have structured their victim compensation programs, this part will examine the three state programs of Illinois, Massachusetts and Arizona, in detail. As every state program is different, these are not meant to be representative of all the state programs. However, these three states provide varying demographics, geographical regions, and population densities. For each of these states, this part will explore the background of the state program, extent of coverage, the requirements of eligibility, and the current levels and types of compensation for victims of violent crimes.

97 See id.
98 See Newmark, supra note 64, at 8.
99 See id.
100 See id. at 6.
101 See id. at 5 n. 6.
102 See id. at 8.
1. Illinois

The Illinois General Assembly enacted the Crime Victims Compensation Act in 1973. The main purpose of the act is to mitigate the financial burden placed on victims of violent crimes, including, but not limited to, domestic violence. In the words of Illinois’ Attorney General, Lisa Madigan,

[v]iolent crime is a senseless, often random act, and we see far too much of it in today’s society. It is no longer enough to ensure that offenders receive punishment under the law. Victims and their families need support as they attempt to rebuild lives torn apart by the tragedy.

To be eligible for compensation in Illinois, a victim must report the crime to law enforcement within seventy-two hours of the incident. However, Illinois makes an exception for victims of domestic violence, who can fulfill this requirement by obtaining an order of protection after the incident. The application for victim compensation must be submitted to the Illinois Attorney General within two years of the crime, or within one year of the criminal indictment, whichever is later.

Again,
Illinois makes an exception for domestic violence victims, but the victim must at least obtain an order of protection after the incident.\(^{111}\) Finally, the victim must be "innocent,"\(^{112}\) meaning she did not substantially contribute to the crime.\(^{113}\) If the applicant did contribute to the crime, the Illinois Court of Claims can either find her ineligible or can reduce the amount of compensation.\(^{114}\)

If no other sources of reimbursement exist for the victim,\(^{115}\) in addition to the basic items covered through VOCA, Illinois can cover the following expenses if such expenses are directly related to the crime: medical and dental expenses; loss of earnings up to $1,000 per month; relocation costs, including temporary lodging, the first month's rent, the initial security deposit and storage fees; replacement costs, such as broken windows or locks; and a loss of support, up to $1,000 per month.\(^{116}\) The statutory maximum expense Illinois covers per crime is $27,000.\(^{117}\) If the resulting costs of the crime are more than the maximum, the $27,000 will be divided according to the costs incurred among those individuals entitled to compensation.\(^{118}\) Depending on what is being covered, money is sometimes allocated directly to the victim and sometimes directly to the entity requiring payment (such as a hospital).\(^{119}\)

\(^{111}\) Id.; 740 ILL. COMP. STAT. 45/6.1(c).

\(^{112}\) See IL AG Helping Crime Victims, supra note 103 ("The Illinois Crime Victims Compensation Act can provide innocent victims and their families with up to $27,000 in financial assistance for expenses accrued as a result of a victim of crime.") [emphasis added].

\(^{113}\) See 740 ILL. COMP. STAT. 45/6.1(e) (2008).

\(^{114}\) See 740 ILL. COMP. STAT. 45/10.1(d) (2008).

\(^{115}\) See id. 45/10.1(g). The victim is responsible for showing that she has explored and exhausted all possible alternative sources of reimbursement.

\(^{116}\) See 740 ILL. COMP. STAT. 45/2(h).

\(^{117}\) 740 ILL. COMP. STAT. 45/10.1(f).

\(^{118}\) See id. 45/10.1(f).

\(^{119}\) See IL AG FAQ, supra note 105.
According to the 2010 Illinois State Wide Compensation Report, Illinois approved funding for 3,563 victim compensation claims in 2010, 198 of which were classified as “domestic violence related.”\textsuperscript{120} Illinois paid a total of $21,329,441 in compensation in 2010 to victims of crimes.\textsuperscript{121} The majority of which, $16,464,196, went to medical, dental or mental health services.\textsuperscript{122}

2. Massachusetts

Like Illinois’ Crime Victims Compensation Act, Massachusetts’ Victims of Crime Compensation program strives to ameliorate some of the impacts crime has on its victims.\textsuperscript{123} As stated on Attorney General Martha Coakley’s website, many victims require treatment to address the injuries caused by the violent acts of another. The monetary expenses incurred – after losing a loved one, for medical and dental care, psychological assistance, crime scene clean up services, and future security measures – should not serve to further victimize those who are affected by violent crime.\textsuperscript{124}


\textsuperscript{121} Id. The specific amount for victims of domestic violence crimes is not delineated in the OVC statistics.

\textsuperscript{122} Id. The amount of funds going to healthcare services is offered purely as a comparison tool. Because the military’s Transitional Compensation Program includes medical coverage, when comparing the raw figures of state programs versus the military’s program, the amount of money going to victims in state programs should be reduced by the amount specifically for medical costs.


\textsuperscript{124} Id.
To be eligible for compensation in Massachusetts, the applicant must report the crime to law enforcement within five days of the crime.\textsuperscript{125} Unlike Illinois, there is no specific exception for victims of domestic violence; however, there is a general exception for cases “where the division finds such report to have been delayed for good cause . . . .”\textsuperscript{126} Similarly, Massachusetts also requires cooperation with law enforcement and prosecution,\textsuperscript{127} with the general exception previously stated, but nothing specifically tailored for domestic violence victims.\textsuperscript{128} Finally, as in Illinois, if the compensation applicant participated in or provoked the crime, she can be found either ineligible or the court may reduce the rate of compensation for which she is eligible.\textsuperscript{129}

Assuming the victim establishes that no other sources of compensation exist, Massachusetts may cover medical and dental expenses that are a direct result of the crime, replacement costs associated with the crime, and loss of income due to injuries resulting from the crime.\textsuperscript{130} In addition, Massachusetts has a “homemaker” compensation clause, giving recompense to victims who, based on an injury incurred due to the crime, cannot perform their homemaker role due to disability.\textsuperscript{131} Massachusetts also makes some attorney fees eligible for reimbursement at a rate determined by the division.\textsuperscript{132} However, the reimbursement for attorney’s fees cannot be more than fifteen percent of the total recompense for the crime.\textsuperscript{133}

\textsuperscript{126} See id. § 2(b).
\textsuperscript{127} See id. § 2(c). “A claimant shall be eligible for compensation only if such claimant Cooperates with law enforcement authorities in the investigation and prosecution of the crime in which the victim was injured or killed unless the claimant demonstrates that he possesses or possessed a reasonable excuse for failing to cooperate.”
\textsuperscript{129} See Mass Gen. Laws ch. 258C § 2(e).
\textsuperscript{131} See id. § 3(b)(2)(E).
\textsuperscript{132} See id. § 2(g).
\textsuperscript{133} See id. § 2(g).
As in Illinois, Massachusetts has a statutorily imposed limit on the amount of compensation that can be granted for a single crime. In Massachusetts, regardless of the amount incurred or the number of eligible applicants resulting from a single crime, the maximum amount of compensation for that crime is $25,000. If the costs from the crime exceed that amount, the $25,000 is divided among the eligible applicants according to loss. In 2010, Massachusetts paid 1,000 victim compensation claims, 201 of these were categorized as involving domestic violence. The state paid a total of $3,622,616 in claims, $1,748,377 of which covered medical and dental expenses, including mental health treatment.

3. Arizona

Arizona enacted its Crime Victim Compensation Fund in 1986. Unlike Illinois and Massachusetts, Arizona has limited its victim compensation fund only to the items that VOCA stipulates must be covered; for example, medical costs, counseling and some income loss is covered, but not attorney fees or replacement costs, among others. In addition, Arizona is unique in that it is one of two states to use a decentralized structure to administer claims. Victims do not apply to Arizona's Attorney General, but rather to their local operational unit in

134 See id. § 3(a); compare with 740 ILL. COMP. STAT. 45/10.1(f).
135 See MASS. GEN. LAWS ch. 258C, § 3(a).
136 See id. § 3(a).
138 Id. The specific amount for victims of domestic violence crimes is not delineated in the OVC statistics.
140 See id. Compare with 740 ILL. COMP. STAT. 45/10.1 and MASS. GEN. LAWS ch. 258C, § 3.
141 See Crime Victim Compensation Program, supra note 139.
The county where the crime occurred. The county attorney assesses each claim and forwards the viable claims to the Crime Victim Compensation Board. The Board reviews each claim and approves or denies it; an eligible application does not guarantee approval.

Like Illinois and Massachusetts, Arizona stipulates that the crime be reported to law enforcement and places time limits on when an application can be filed. Like Massachusetts, there are general exceptions, but nothing specifically designated for domestic violence victims. Arizona requires reporting the crime to a police agency within seventy-two hours of its commission or discovery unless good cause can be shown for a delay. The applicant must apply for compensation within two years of discovery of the crime unless there is good cause for delay. In addition, Arizona mandates that the victim cooperate with law enforcement, but unlike Illinois and Massachusetts, Arizona does not explicitly state an exception.

Similar to the above states, Arizona also has a maximum compensatory amount per crime. The Board cannot allocate more than $20,000 for any single crime. In 2010, Arizona approved 788 claims for compensation, 125 of which involved domestic violence. In total, Arizona gave $2,184,992 to victims

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142 See id.
143 See id.
144 See id.
145 See id. See also supra text accompanying notes 106, 125.
146 See Crime Victim Compensation Program, supra note 139. See also supra text accompanying note 126.
147 See Crime Victim Compensation Program, supra note 139.
148 See id.
149 See id.
150 See id. See also supra text accompanying notes 117, 135.
151 See Crime Victims Compensation Program, supra note 139; supra text accompanying notes 117, 135.
of crime, almost two-thirds ($1,401,646) of which went to medical and dental care, including mental health treatment.\(^{153}\)

IV. TAKING CARE OF THEIR OWN? – MEASURING THE PROS AND CONS OF BOTH PROGRAMS

As noted above, both the military’s Transitional Compensation Program and the VOCA-funded state victim compensation programs attempt to lessen the financial burden victims face as a result of violent crimes. However, aside from the basic underlying objectives, the programs have some differences. This part compares four divergent aspects of the two programs: the level of connection with the criminal justice system, the eligibility requirements placed on the victim, the payment structure, and whether the victim has to exhaust other sources of funding before seeking this type of compensation. Through these four criteria a pattern emerges. Although both are premised on compensating victims of crime, the military takes a proactive approach to prevent future violence in that relationship, whereas the state’s programs reactively compensate for crimes already committed that the state failed to prevent.

A. The Connection (or Disconnection) with Criminal Law

As seen in the sample state programs and the federal VOCA eligibility requirements, state victim compensation programs are integrally linked with the criminal justice system. Indeed, it is a federal requirement that the states encourage victim cooperation with the law enforcement investigation in order to receive federal funding.\(^{154}\) Conversely, the military’s Transitional Compensation Program is independent of the military’s criminal justice system; victims are eligible for compensation even without reporting the crime to police,\(^{155}\) regardless of whether the ser-

\(^{153}\) Id. The specific amount for victims of domestic violence crimes was not delineated in the OVC statistics.

\(^{154}\) See 42 U.S.C. § 10602(b)(2) (2006); Newmark, supra note 64, at 5 n. 7.

\(^{155}\) Provided they have some alternative, reliable source of proof that the domestic violence occurred. See Application Guidelines, supra note 38.
vice member is being prosecuted (court-martialed) or administratively discharged.156

Linking the victim compensation program too closely with the criminal justice system is risky because, as discussed previously, victims often have many reasons for not cooperating with law enforcement or a criminal prosecution, not the least of which is fear of financial hardship if the abuser loses his job or goes to jail.157 Ironically, if victim compensation programs attempt to make funds too dependent on victim cooperation, the victim may decide not to report the abuse at all and continue to be at risk. By coercing victims into cooperation as a prerequisite to providing the funds that will enable them to leave their abusers, these programs may actually be encouraging them not to report. Furthermore, because the state system of granting funds is discretionary, having a system so closely intermeshed with law enforcement investigation and prosecution raises the troubling question of whether having a case the prosecution feels is winnable is to some degree dispositive of whether the victim gets compensation.

Based on this analysis, it seems that the Transitional Compensation Program’s lack of emphasis on prosecution makes it more inclusive of victims. On the other hand, this may give the military an excuse for not prosecuting domestic violence crimes.158 It is easier to administratively separate the service member abuser as opposed to going through court-martial proceedings.159 In addition, administrative separation is better for the victim, at least initially. She will receive the Transitional Com-

157 See supra notes 8-10 and accompanying text.
158 This conjecture is based on my experience from my work in Transitional Compensation in Germany. In the two years I worked in Germany, not one of my fifty-plus domestic violence cases was prosecuted. All of the service member abusers in my Transitional Compensation cases were administratively discharged, including one who threw his wife against the wall head first, giving her a concussion, the aforementioned case involving multiple incidents of strangulation, and one incident of the abuser holding the victim’s head over an open flame.
159 As noted above, full court-martial proceedings are governed by the same procedural and due process protections as U.S. criminal proceedings,
pensation more quickly because she is eligible once the separation papers have been signed, as opposed to waiting until the completion of a full court-martial.\textsuperscript{160} In addition, the victim does not have to go through the court process, which can be emotionally difficult for victims of domestic violence, especially if the victim has to testify.

However, although administrative separation may be easier and faster for the victim, it may not be the best outcome in the long term. The dynamics of domestic violence are such that even if the victim leaves, the abuser will often pursue her. In fact, victims are often in more danger once they have left the abuser.\textsuperscript{161} One explanatory theory is that the power dynamic shifts when the victim makes the choice to leave.\textsuperscript{162} To combat this loss of power, the abuser intensifies the violence.\textsuperscript{163} If this is in fact the case, victims who receive Transitional Compensation and not only left their abuser, but also contributed to the abuser being fired, may be at even greater risk for further abuse.\textsuperscript{164} Moreover, even if the offender does not pursue the victim, the recidivism rate for domestic violence offenders is high.\textsuperscript{165} Thus,

whereas administrative separations require only minimum paperwork on the part of the abuser's commander. See AR 27-10, supra note 13, § 3-2.\textsuperscript{160} See 10 U.S.C. § 1059(e)(1)(B) (2006).
\textsuperscript{161} See, e.g., \textit{Kelly Starr et al., Wash. State Coal Against Domestic Violence, If I Had One More Day... Findings and Recommendations from the Washington State Domestic Violence Fatality Review}, \textit{Wash. State Coal. Against Domestic Violence} 1, 42-43 (2006), available at http://www.ncdsv.org/images/If%20I%20had%20one%20more%20day_Fatality%20Review_2006.pdf (discussing statistics that show nearly half the homicide victims of domestic abusers had left the abuser before they were killed).
\textsuperscript{164} See Tuerkheimer, \textit{supra} note 9.
it may be better for the victim (and society at large) if he is prosecuted.\textsuperscript{166}

It is not clear whether Transitional Compensation is an incentive \textit{not} to prosecute the crime, but it is clear that it does not provide an incentive for the victim to cooperate with the prosecution. A victim’s refusal to cooperate ultimately may compromise the chances of conviction, or even lead to a decision not to prosecute the crime at all. In such a case, perhaps a middle road (such as Illinois’) that generally requires cooperation with law enforcement and prosecution, but allows for exceptions in extreme circumstances, is the best practice.\textsuperscript{167}

\textbf{B. Forcing the Victim to Leave?}

In state Transitional Compensation programs, the abused dependent must physically separate from the abuser.\textsuperscript{168} If the abused dependent is found to have moved back in with the abuser, the funds will stop and will not be reinstated, regardless of whether she leaves again.\textsuperscript{169} The abused dependent must verify that she is physically separated from the abuser every year in which she receives compensation.\textsuperscript{170} Conversely, physical separation is not a requirement for victim compensation through VOCA funds.\textsuperscript{171} In fact, one of the specific federal mandates that states must comply with in order to receive VOCA funding is that the state does \textit{not} deny compensation to a victim because of her cohabitation with the offender.\textsuperscript{172} Because domestic violence is defined by extensive manipulation and control over all

\textsuperscript{166} This is assuming that the prosecution results in substantial jail time, or at least enough time for the victim to re-establish herself in a place where the abuser will not be able to find her.
\textsuperscript{167} See 740 ILCS 45/6.1(c) (2008).
\textsuperscript{169} See id. § 1059(g)(2).
\textsuperscript{170} See AR 608-1, supra note 18, app. § G-5(e).
\textsuperscript{171} See 42 U.S.C. § 10602 (b)(7) (2006) (unless the state is denying compensation expressly for the purpose of preventing the offender from profiting from the funds).
\textsuperscript{172} See id. See also Newmark, supra note 64, at 6 (“State compensation programs may not, except to prevent unjust enrichment of the offender, deny
aspects of the victim’s life, finances included, it is hard to imagine a situation in which a victim still residing with the abuser could receive compensation for abuse without the abuser being unjustly enriched by the money.\textsuperscript{173} Moreover, if one of the goals truly is to prevent future crime and not just to react to past events, it seems the military’s Transitional Compensation gives a stronger incentive for the victim starting a new, abuse-free life.

However, there are negatives to this aspect of the Transitional Compensation system. On average, domestic violence survivors leave and return to their abuser five times before permanently leaving.\textsuperscript{174} If a victim was coaxed back by the offender in the state compensation program, she could still receive benefits and might leave again; whereas with the military’s system, she is no longer eligible whether she leaves again or not. Moreover, if the victim returns to the abuser knowing that if caught she will lose her benefits, she may stop using the military resources available to help her cope with the trauma of domestic violence. As a result, she may become more isolated than she was before receiving the Transitional Compensation benefits and further entrenched in the dangerous relationship.

When considering if compensation should hinge on whether or not the victim remains with the abuser, a hybrid system appears to be the best approach. Mandating that the victim leave may not be the safest option at the time the victim is in need of the funds. Also, availability of funds while she is with the abuser might allow her to realize that leaving is a feasible option. On the other hand, without separation from the abuser as a criterion there is apparent disregard for the power and control dynamics that define domestic violence relationships. Thus, when it comes to regulating the victim’s future relationships, perhaps the military’s program is too proactive in asking the victim to leave before it is reasonably feasible; whereas the VOCA

\textsuperscript{173} See generally Tuerkheimer, supra note 9.
\textsuperscript{174} See Buel, supra note 8, at 20.
program is too reactive in only compensating for past abuse without concern as to whether it will happen again.

C. Flat Fee or Tailored?

Another difference is that the Transitional Compensation pays a flat monthly rate to all eligible victims, with a defined additional monthly rate for each dependent child. Conversely, VOCA requires that all the state programs scrutinize what the money will be used for and whether that use is authorized. On one hand, the military system is preferable because the victim does not have to wait until she needs the funds for a specific purpose and then justify that purpose. On the other hand, it can be argued that the military's system is blind to the actual needs of victims, paying too much for some and not enough to others.

The impact of this critique is lessened when one views the data from the state programs. Although they theoretically look at need and have the ability to pay more, in practice, victims are rarely paid more in the state system than in the Transitional Compensation Program. For example, comparing Illinois' $27,000 (the highest statutory maximum of the three sample states discussed earlier), with the military's monthly flat rate of $1,154 for an abused spouse, a victim in the military would only need to receive payments for 23 months to collect more than the maximum Illinois amount. Additionally, as noted above, as of January 21, 2011, the 36 month pay period is standardized for all eligible Transitional Compensation recipients. Thus, an abused dependent with no children will receive a total of $41,544 over the course of three years from the military. If she has any children with the abuser, that rate will increase by $286 per child per month. Moreover, this figure does not include medical coverage. As seen above, the majority of compensatory payments made by the three sample states went towards medi-

175 38 U.S.C. § 1311(a)(1), (D).
177 See ARMY OnESOURCE, Transitional Compensation, supra note 35.
cal, dental and mental health bills. In the military system, these costs are covered in addition to the monthly stipend. Accordingly, although on the surface, state programs appear to provide greater flexibility to pay the victim more, in reality, the Transitional Compensation pays its recipients far more than even the highest compensated state victim of the sample states discussed in this article.

The military’s flat fee structure furthers the more proactive approach the military system takes toward the compensation structure. In order to take into account a victim’s needs, the states must wait until after the victim incurs the costs. This is especially problematic in cases of domestic violence because compensation programs are not guaranteed. Thus, if a victim is weighing her options and unsure whether she can leave the abuser, not having the money upfront can be a huge barrier to attaining financial independence, and may ultimately lead to more victims remaining with their abusers.

D. Payer of Last Resort

VOCA mandates that in all the state programs, the victims must document that they have explored and exhausted all other means available to cover their costs. Moreover, victims need to specify what all requested funds will be used for because only certain aspects are covered. Conversely, in Transitional Compensation, the victim only needs to prove eligibility based on the crime committed and the separation of the service member for domestic violence. Once she has shown her eligibility, the money is hers to use as she deems necessary. There is no requirement to show a certain financial need - all eligible abused

178 See Newmark, supra note 64, at 6.
179 See id. at xvii-xviii.
180 See AR 608-1, supra note 18, app. § G-1.
181 See id. app. § G-5(e) (to remain eligible for the duration of the Transitional Compensation benefits, a beneficiary need only certify annually that she has not remarried and is not living with the abuser; she does not need to document how she spends any of the money received through the program).
dependents get the same amount. Moreover, there is no requirement to show other sources of funding were exhausted or even explored. The program wants to encourage victim reporting, and therefore, wants to minimize the financial impact on the victim for the report. By making the victim exhaust other sources, this is placing a tremendous burden on her, and, in effect, penalizing her report.

Similar to the “tailored” assessment of a victim’s needs discussed in Part IV above, the VOCA-funded approach of payer of last resort puts severe restraints on a victim’s ability to take control of her finances. If the victim has to exhaust all other sources, she will not be able to pay her debts in a timely fashion, or even know that she will be able to pay. Such uncertainty only complicates the difficult decision to separate from her abuser, especially if she is financially dependent on him. Conversely, the military’s approach allows victims to take a proactive stance: once the victim knows the abuser is being separated from the military and that she is eligible for Transitional Compensation, she knows that, provided she stays separated from the abuser and does not remarry, she is guaranteed a flat sum per month for thirty-six months to use as she sees fit. When analyzed in this context, it is clear that the flat rate is actually the most flexible because it allows the victim to plan ahead and budget the money to take care of her needs, thus enabling her to take steps toward financial independence.

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183 See AR 608-1, supra note 18, app. § G-1.
185 See NEWMARK, supra note 64, at xviii.
186 See supra notes 8-10.
187 See ARMYONESOURCE, Transitional Compensation, supra note 35.
CONCLUSION

The military's Transitional Compensation Program and the VOCA-funded state compensation programs both strive to mitigate the financial impact crime has on victims. However, their focus differs in a key aspect. In essence, state victim compensation programs are reactive. Coverage for state victim compensation hinges entirely on whether the funds are for a cost or procedure directly resulting from the crime. Moreover, the victims have to justify all compensation requests, meaning they must, in most circumstances, wait until after they have already incurred the costs. Conversely, the military's Transitional Compensation Program is proactive. Eligibility hinges on what is going to happen to the offender. Payment is not for past fees, but rather a flat rate monthly stipend to cover whatever costs the victim incurs in her day-to-day life.

These fundamental differences result from fundamentally different aims. The states are trying to improve the criminal justice response and mitigate individual victims' suffering. In contrast, the military is focused more on reducing the victim's suffering and encouraging her to establish a safe, abuse-free existence. Both aims are crucial to the well-being of both the domestic violence victim's safety and the safety of society at large. By learning from each other and being both proactive by anticipating victim's future needs, and reactive by using the criminal justice system to address past crimes, perhaps both the civilian and military systems can better serve everyone.

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