REPORT OF THE
JOINT LEGISLATIVE
AUDIT AND REVIEW COMMISSION

Review of the Division of Crime Victims' Compensation

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 17

COMMONWEALTH OF VIRGINIA
RICHMOND
1989

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Preface

The Crime Victims' Compensation (CVC) program was established by the General Assembly in 1976 to provide financial assistance to innocent victims of crime. The program provides relief to victims of violent crimes, or their surviving dependents, for disability or financial hardship suffered as a result of their victimization. Benefits are provided only if the victim is not covered by another collateral resource such as disability or medical insurance. The Division of Crime Victims' Compensation within the Department of Workers' Compensation is responsible for administering the program.

Several concerns have been raised regarding the CVC program. These concerns include the adequacy of program funding, the length of time and procedures followed to process claims, and the appeal process. Some of these concerns were expressed in House Joint Resolution 184 (1988), which directed JLARC to study the transfer of the division to the Department of Criminal Justice Services (DCJS) and methods to improve crime victims' claim processing.

The majority of recommendations in this report focus on improving the administration of the CVC Act, particularly the processing of crime victims' claims. At this time, relocation of the division to DCJS is not recommended. Instead, efforts should focus on improving the processes to establish, investigate, and approve or deny claims. In addition, appeal procedures should be clarified and modified. The Industrial Commission should ensure that the division develops and uses adequate written policies and procedures. Other recommendations address program funding and the organization, management, and staffing of the division.

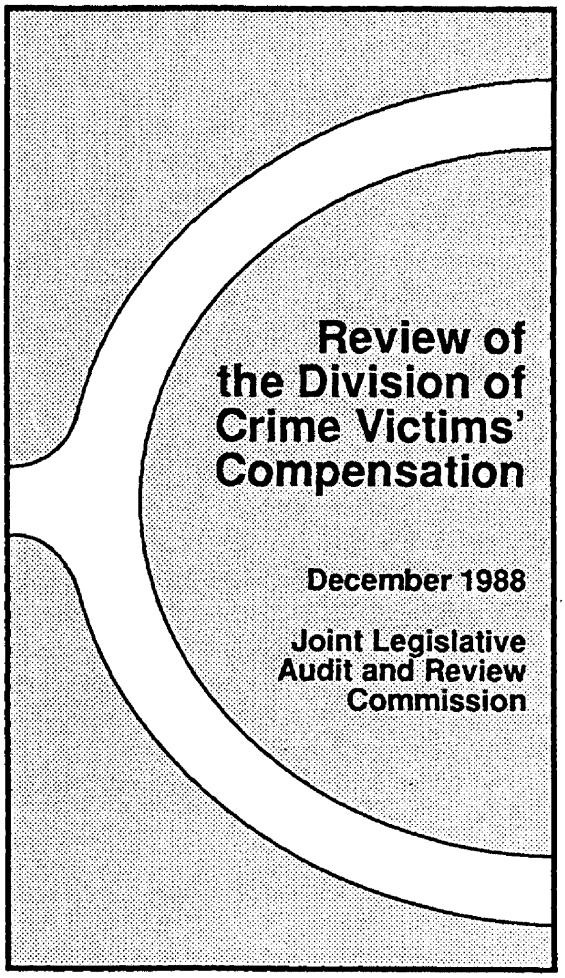
I am pleased to note that the Industrial Commissioners are in substantial agreement with our findings. In his comments following the JLARC staff briefing on October 12, 1988, Chairman William E. O'Neill indicated that the Industrial Commission has already begun implementing our study recommendations.

On behalf of the JLARC staff, I would like to thank the staff of the Department of Workers' Compensation for their cooperation and assistance during the course of this study

Philip A. Leone
Director

December 7, 1988

JLARC Report Summary



The Crime Victims' Compensation (CVC) program was established by the General Assembly in 1976 to provide financial assistance to innocent victims of crime. Section 19.2-368.1 of the *Code of Virginia* states the General Assembly's intent that aid, care, and support be provided as a matter of "moral responsibility" to these victims. The CVC program therefore provides relief to victims of violent crimes, or their surviving dependents, for disability or financial hardship suffered as a result of their victimization.

The Division of Crime Victims' Compensation within the Department of Workers' Compensation is responsible for administering the CVC program. The CVC Division makes awards to eligible crime victims who experience: (1) lost earnings as a result of their injuries, (2) funeral or burial expenses, (3) medical expenses, or (4) other crime-related expenses. The program provides benefits only if the victim is not covered by another collateral resource such as disability or medical insurance.

The division has experienced a number of accomplishments since its creation. In recent years, the program has served an increasing number of crime victims. The division awarded benefits to 506 claimants in FY 1988 as compared to 192 claimants in FY 1986. The division has also increased the proportion of claim decisions made each fiscal year Careful attention has been paid to establishing a rigorous investigation process to make sure all claims are valid prior to paying benefits. The CVC Division has been conscientious and frugal in its expenditures of public funds.

Several concerns have been raised regarding the CVC program, however These concerns include the adequacy of program funding, the length of time and procedures followed to process claims, and the appeal process. Some of these concerns were expressed in House Joint Resolution 184 (1988), which directed JLARC to study the transfer of the division to the Department of Criminal Justice Services (DCJS) and methods to improve crime victims' claim processing.

The majority of recommendations in this report focus on improving the administration of the CVC program, particularly the processing of crime victims' claims. At

this time, relocation of the division to DCJS is not recommended. Instead, efforts should be focused on improving the processes to establish, investigate, and approve or deny claims. In addition, appeal procedures should be clarified and modified. The Industrial Commission should ensure that the division develops and uses adequate written policies and procedures. Other recommendations address program funding and the organization, management, and staffing of the division.

This report summary briefly references study findings and recommendations. Full statements of specific recommendations and supporting details are contained in the text of this report.

Offender Fees Are No Longer Sufficient to Support the CVC Program

When the CVC program was created, the General Assembly intended for the program to be funded solely from fees collected from criminal offenders. However, offender fees covered only 58 percent of the program's total expenditures of approximately $1 4 million in FY 1988. The CVC program has been dependent on federal funds and will continue to be so in the future. In addition, general fund support was required during FY 1988.

During the last three fiscal years, award payments to crime victims have exceeded revenues and depleted the program's cash reserves. The CVC program has been operating at a deficit since FY 1986. A $300,000 appropriation from the general fund reduced the FY 1988 operating deficit to $39,069.

To address the need for additional revenues, offender fees were increased in 1988, but it is too early to tell how much additional revenue will be generated. If the CVC program receives federal funding at least equal to what it received last fiscal year, and offender fee revenues continue in a pattern similar to the first four months after the fee increase, the program will break even in FY 1989. However, it is possible that the CVC program may experience funding shortfalls in the future.

Administrative Costs Are Not Fully Recovered

The total cost of administering the CVC program in FY 1988 was approximately $218,000. Of this amount, approximately $57,000 was absorbed by the Department of Workers' Compensation and not charged to the CVC program. The amount of CVC administrative costs subsidized by the Department is not significant in terms of total workers' compensation expenditures and would not materially affect charges to insurance companies and employers. However, this practice could potentially result in a significant amount of money if the CVC program continues to grow In addition, this practice is contrary to the concept of fund integrity because the workers' compensation and CVC programs each have their own special funds. The total cost of operating the CVC program should be charged to the program.

The following recommendation is made:

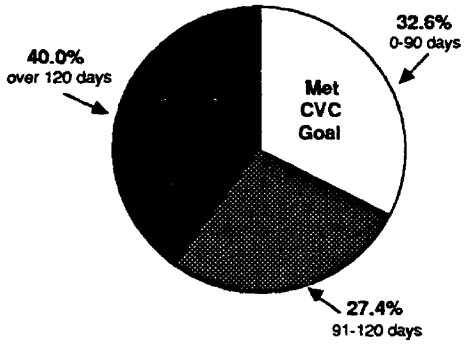
- the DWC should ensure that staff time devoted to CVC activities is accounted for and charged to the CVC program. This could be accomplished by keeping time allocation records on a regular basis or the periodic use of test periods to estimate costs.

CVC Claims Are Not Processed In A Timely Manner

Analysis of crime victim claims established in FY 1987 revealed that significant delays exist between the receipt of the application and the final determination of the claim. The processing goal for regular requests for benefits is 90 days. Less than one-third of the claims established in FY

1987 met this goal (Figure). On average, division staff required 133 days to process each claim.

Processing Time for FY 1987 Regular Benefit Decisions



Note: This sample was based on a stratified sample of 129 claims. Results were weighted to reflect the occurrence of each claim type in the entire population. The weighted sample size is 570.4.

Source: JLARC staff analysis of FY 1987 sampled claims.

Significant delays also exist in processing requests for emergency awards. Statute allows emergency awards to be made if it appears that the claim will probably be awarded and undue financial hardship will result if immediate payment is not made. The division's processing goal for claimants requesting emergency awards is 30 days. However, the division required an average of 62 days to process these claims.

In FY 1987, 35 percent of the requests for emergency benefits were not given any type of investigative priority Instead, they were treated as regular claim requests. The CVC Division, in effect, denied requests for an emergency award without notifying claimants.

While portions of these delays cannot be directly controlled by the CVC Division, the division staff can increase timely processing by improving its claims processing procedures. In addition, the development of formal processing standards would ensure consistent and timely processing of claims.

The following recommendations are made:

- initial requests for claim-related information should be made within five days from receipt of claim applications. Further, form letters used to make requests should be revised to itemize needed information and explain why it is needed.

- division staff should request only those documents essential to the claim investigation process for each type of benefit provided by the program. Further, documentation from law enforcement agencies, employers, and a disability statement from treating physicians should be requested immediately for all emergency requests.

- file review procedures should be modified. A file checklist should be developed, an automated file call-up system should be implemented, and review intervals should be modified.

- the CVC Division should make some claim decisions as soon as information from Commonwealth's Attorney offices and law enforcement agencies is received. Ineligible claims could be denied immediately Further, staff should make decisions on emergency requests as soon as required items have been collected and notify claimants promptly when their requests for emergency awards are denied.

- claims should be awarded or denied within one week following receipt of investigative documentation for the claim.

Claims Should Be Processed More Efficiently

In addition to expediting the claim process, the CVC program should address several problems with the administration of claims. First, the application form has been revised several times but continues to need minor modifications. Second, acknowledgement letters are not always sent to claimants upon receipt of their applications. Third, CVC staff are investigating claims and making decisions without the assistance of comprehensive written policies and procedures. This creates the risk of inconsistent treatment of similar claims. Fourth, the division appears to incorrectly interpret statutes concerning benefits to claimants victimized by family members. And finally, claimants are not promptly notified of award decisions, especially when revenue shortfalls prevent immediate payment of awards.

Another consideration affecting CVC program administration is the recent Jennings decision of the Virginia Court of Appeals. As specified in statute, the maximum award under the CVC program is $15,000. Prior to the Jennings decision, claimants whose expenses exceeded their collateral resources, regardless of the amount of collateral resources, were compensated up to $15,000. Under the Jennings decision, claimants with collateral resources exceeding $15,000 may not receive CVC benefits at all, even if the collateral resources do not cover all expenses.

The following recommendations are made:

- the CVC director should simplify the application form for CVC benefits and update it as needed to reflect changes in Statute.

- all CVC applicants should be sent acknowledgement letters listing any information needed to complete the application and informing claimants that they have 90 days to provide the information otherwise the claim will be closed.

- the CVC Division director should develop written policies and guidelines covering eligibility requirements, program benefits, and file documentation to aid staff in the establishment of claims.

- CVC Division staff should ensure that eligibility determinations regarding family members are made according to statute.

- the CVC Division should immediately notify claimants of claim decisions. Claimants should be informed of the reasons for any reduction in the award amount. If funding is insufficient to pay awards on a timely basis, claimants should be informed of the delay and of the date CVC staff expect payment to be made.

- the General Assembly may wish to consider amending §19.2-268.11 1 of the *Code of Virginia* to allow the Industrial Commission to use the methodology it employed prior to the Jennings decision to calculate crime victims' award amounts.

Appeal Procedures Should be Revised

The director of the CVC program is responsible for deciding if a claim should be approved and deciding the specific dollar amount to be awarded. In instances when a claimant disagrees with the director's decision, the *Code of Virginia* makes provisions for the three Industrial Commissioners to review the decision. In some cases, when a claimant appeals a decision, the case is reopened by the director

Further, if claimants disagree with the director's second decision they must appeal the decision. This procedure does not provide for an independent review of the decision, is misleading to claimants, and may be contrary to statute.

CVC appeals could be more efficiently administered if deputy commissioners were given responsibility for hearing and deciding appeals. Claimants could appeal deputy commissioner decisions to the three Commissioners.

The Industrial Commission must receive a claimant's request for review within 20 days of the date of the director's decision. Unlike other CVC statutes, the Industrial Commission may not extend this time period. Several claimants have been denied appeals because they missed the 20-day deadline by a few days.

Although there are numerous complex procedures claimants must follow to appeal the director's decision, very few of these procedures are communicated to claimants. This results in claimants being unaware of many important rights. Moreover, the division director's denial letters are too brief to enable claimants to determine what aspects of the decisions to appeal. In addition, policies and procedures have not been written for the appeals process. This sometimes results in confusion among staff.

The following recommendations are made:

- the Industrial Commission should remove the CVC director from the CVC appeal process. The General Assembly may wish to amend §19.2-368.7 of the *Code of Virginia* to state that a CVC claimant's appeal of the director's decision shall be heard and decided first by a deputy commissioner with the right of further appeal to the three Commissioners.

- the General Assembly may wish to amend §19.2-368.7 of the *Code of Virginia* to allow the Industrial Commission to extend the 20-day time period for requesting an appeal when the claimant shows good cause for an extension.

- written policies and procedures guiding the appeals process should be drafted by the Industrial Commission to ensure consistency in the treatment of claims. In addition, a pamphlet should be prepared and distributed to claimants to explain the appeals process and claimants' rights under the process.

- when claims are denied, the division director should inform claimants of the specific reasons for the denial, the sources of the director's information, and the applicable sections of the *Code of Virginia*.

Relocation Will Not Resolve Problems With The CVC Program

Problems associated with the CVC program appear to result from factors other than its location within DWC. The Industrial Commission (1) shares a similar mission with the CVC program, (2) provides a judicial structure to resolve disputed decisions, (3) allows for an independent investigative process, and (4) is similar to the location of CVC programs in other states. Consequently, the CVC program should remain in the Industrial Commission rather than being transferred to the Department of Criminal Justice Services or any other State entity

In addition to the numerous recommendations already presented in this summary, implementation of increased management oversight of the CVC program would alleviate some of the program's problems by providing enhanced commu-

nication, better implementation of Commission opinions, and direction on program policies and procedures. Further, inadequate staffing does not seem to be a source of the CVC program's problems, although one position should be reclassified to reflect actual duties performed. The number of staff should not be increased unless need is adequately substantiated with a workload and productivity analysis.

The following recommendations are made:

- the CVC Division should not be relocated at this time.

- the Industrial Commission should delegate management oversight responsibility for the CVC Division to the chief deputy commissioner to ensure that program operations are adequately monitored.

- the Industrial Commission should reclassify the position of office services supervisor within the CVC Division.

- the CVC Division should establish a system to monitor staff workload and assess the productivity of current staff members. The DWC should not create new positions in the division until the division can adequately and thoroughly document the need for additional positions.

- the DWC should submit a progress report to the Virginia Crime Commission by May 1, 1989 on the implementation of recommendations in this report. A final report should be submitted by November 1, 1989.

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I. Introduction

The 1985-1987 Appropriations Acts directed JLARC to plan and initiate a comprehensive performance audit and review of the operations of the independent agencies of State government (Appendix A). These agencies include the State Corporation Commission and the Department of Workers' Compensation (Industrial Commission).

Specific language in the Appropriations Act directed JLARC to review:

- the appropriations and programs of these agencies to assess compliance with legislative intent,
- issues relating to management, organization, staffing, programs, and fees, and
- other matters relevant to agency appropriations "as the Commission may deem necessary."

The first phase of this review, a management and organization study of the State Corporation Commission, was completed in December 1986.

In addition to study language in the Appropriations Act, JLARC was specifically directed by House Joint Resolution 184 (1988) to study the transfer of the Division of Crime Victims' Compensation (a division of the Department of Workers' Compensation) to the Department of Criminal Justice Services and methods to improve crime victims' claim processing (Appendix B).

This report is the first of two in a series on the Department of Workers' Compensation (DWC). It reviews the operations of the Division of Crime Victims' Compensation. Issues addressed are related to program funding, the processing of crime victims' claims including appeals, staffing and management, and the Division's placement within the Department of Workers' Compensation.

CRIME VICTIMS' COMPENSATION

Compensation to victims of violent crime is an attempt by government to help alleviate the financial hardship often suffered by victims of violent crime. Generally, crime victims' compensation in the United States has been limited to the reimbursement of medical expenses and lost wages resulting from the crime.

Compensation to crime victims emerged from the victim advocacy movement which began in the 1960s. California established the first program of this type in 1965. In the 1970s, 22 states created compensation programs for crime victims.

During this time, victim and witness assistance programs were also established to enable the judicial system to be more responsive to the needs of crime victims and witnesses. These programs often assist crime victims in filing compensation claims.

Today, in most states, victims of violent crimes can seek redress for economic losses through civil remedy, third-party litigation, private insurance, public assistance, offender restitution, and/or a victim compensation program. By 1988, 44 states and the District of Columbia had established compensation programs to assist crime victims. These programs primarily provide benefits for lost earnings, unreimbursed medical costs, loss of support or support services, and funeral or burial expenses.

Virginia's Crime Victims' Compensation Program

The 1976 General Assembly passed the Crime Victims' Compensation Act (§19.2-368.1 et seq., *Code of Virginia*) to provide relief to victims of violent crimes or their surviving dependents for disability and financial hardship resulting from crime. For the most part, this Act was modeled after Maryland statute. The Crime Victims' Compensation (CVC) Act provides benefits to crime victims who experience: (1) lost earnings as a result of their injuries, (2) funeral or burial expenses, (3) medical expenses, or (4) other crime-related expenses. The program provides benefits only if the victim is not covered by another collateral resource such as disability or medical insurance.

The General Assembly considered creating a legislative commission to administer the CVC Act. However, the crime victims' compensation program was finally placed within the Department of Workers' Compensation for two reasons: (1) the claims, hearings, and compensation aspects of the program seemed to parallel those of workers' compensation, and (2) it was less costly to place the program within an existing agency

The CVC program is administered by a division within the DWC. A division director and three full-time staff are responsible for the daily operations of the program. The staff in the DWC (particularly staff in the CVC Division) have three major responsibilities regarding the crime victims' compensation program. First, the Industrial Commission has statutory responsibility for the dissemination of program information to the public and continually ensuring public awareness of the benefits available. Second, CVC Division staff are responsible for processing claims and for determining awards. Third, the Industrial Commission is responsible for hearing appeals of crime victims on award decisions and conducting at least annual reconsiderations of every award upon which periodic payments are being made.

The division has experienced a number of accomplishments since its creation, which are outlined in Exhibit 1. In FY 1987, division staff opened or

Exhibit 1

Major Accomplishments of the CVC Division

- An increasing number of crime victims have been served. The program served twice the number of victims in the 1986-1988 biennium as it did in the 1984-1986 biennium.

- The division director has significantly increased the number of claim decisions he makes on claims established each fiscal year from 56 percent in 1986 to 78 percent in FY 1988.

- A thorough and rigorous investigation process has been established to ensure all claims are valid prior to paying benefits.

- The division has been conscientious and frugal in its expenditures of public funds.

- No instances of fraud on the part of division employees or DWC fiscal office staff have been reported.

- A brochure has been developed to inform crime victims about the program.

- A toll-free telephone number for crime victims has been established.

- The division ensures that claimants are notified of their right to appeal the claim decision.

- An automated system has been implemented which contains historic claims data and form letters for the CVC program.

- Staffing in the division has remained unchanged, while the number of claims has increased dramatically

Source: JLARC staff analysis of the operations of the CVC Division.

"established" 843 new claims. This represented a 70 percent increase over the number established the previous year. In FY 1988, the number of claims increased to 889 claims, a modest six percent over FY 1987 Table 1 shows the number of claims processed by the CVC Division in FY 1987 and FY 1988.

Table 1

CVC Claims Processed FY 1987 and FY 1988

	FY 1987	FY 1988
Claims Open		
Claims established	843	889
Claims carried over from previous years	221	303
Claims reopened during year	25	56
TOTAL CLAIMS PROCESSED	1,089	1,248
Claim Decisions		
Claims denied*	307	459
Reopened claims denied	2	5
Total decisions to deny claims	309	464
Claims awarded**	496	489
Reopended claims awarded	21	51
Total decisions to award claims	517	540
TOTAL DECISIONS	826	1004

*Figure does not include decisions to deny emergency benefits. The CVC program currently does not track this information on the database.

**Figure includes decisions to award regular and emergency claims.

Note: Statistics in this table reflect the CVC claim database as of September 9, 1988. The CVC Division director has indicated that modifications have been made for the FY 1988 data since that time.

Source: JLARC analysis of CVC Division claims database, FY 1987 and FY 1988.

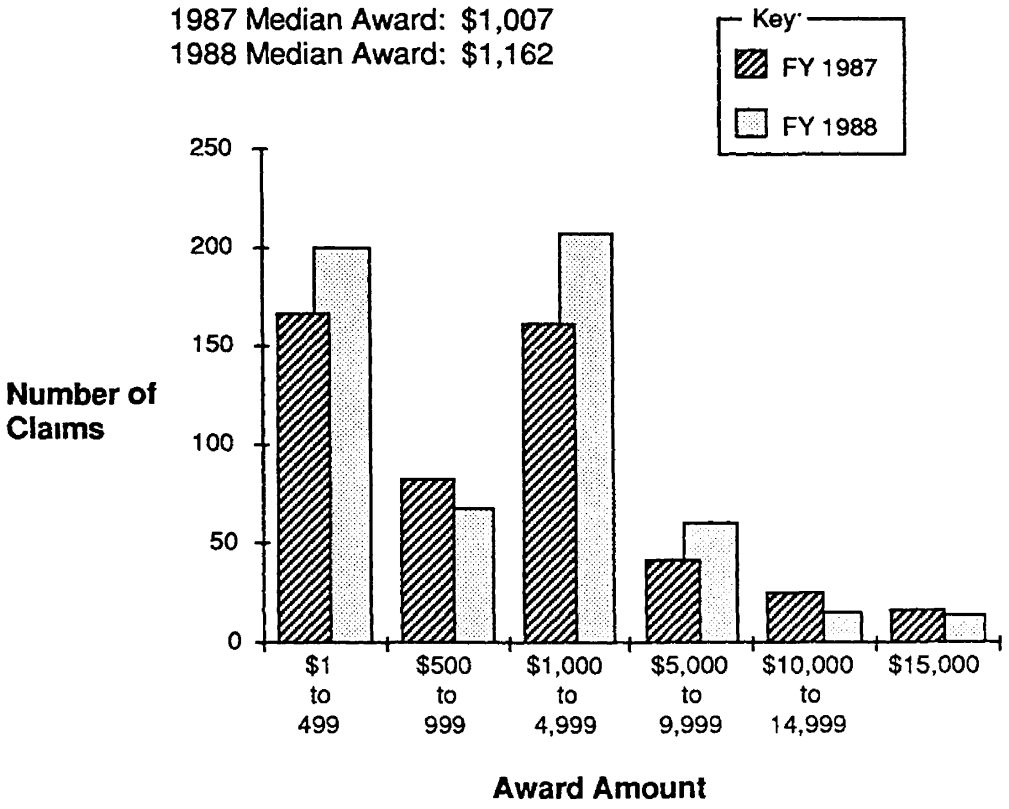
A typical claimant may receive an award for lost wages and/or medical expenses. For example:

> *A 26-year old male was asleep in his home when a person broke into his house and shot him in the leg. The victim requested from CVC an award for two weeks of lost wages due to the injury and medical expenses. The CVC Division director made an award of $300 for 11 days of lost wages and $916 for hospitalization due to crime-related injuries.*

Awards of about $1.5 million were paid on 505 claims during FY 1987, and awards of about $1.4 million were paid on 572 claims in FY 1988. The median award for FY 1988 increased over the previous fiscal year. Figure 1 illustrates the award amounts for FY 1987 and FY 1988.

Figure 1

Number of CVC Claims Awarded FY 1987 and FY 1988



Source: CVC division data on program awards, FY 1987 and FY 1988.

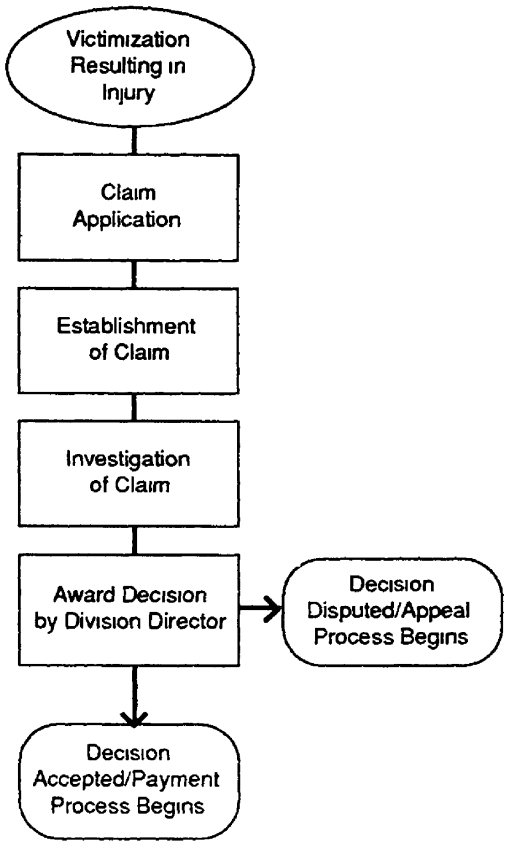
The CVC Process

The CVC process begins for a victim when he or she learns about the program's existence. An injured crime victim or relative of the victim may learn of the CVC program through contact with victim and witness assistance programs, law enforcement agencies, Commonwealth's Attorney offices, medical providers, or by contacting the CVC Division directly The crime victim or claimant may then fill out an application for program benefits.

The receipt of the claim application is the first step in the CVC process (Figure 2). Once this application is received by the program, the claim is "established" and investigated by division staff. After the claim is investigated, the division director makes a decision to award or deny program benefits. If the claim is awarded, benefit payments are made to the claimant or to the service provider to whom money is owed. If the claim is denied or the claimant does not agree with the award, the claimant may dispute the decision through an appeal process.

Figure 2

Overview of Crime Victims' Compensation Process



Source: JLARC staff representation of the CVC process.

Division staff process two types of claims: (1) claims requesting an emergency award and (2) all other requests, or "regular" claims. Emergency awards may be made if it appears that the claim will probably be awarded and undue financial hardship will result if immediate payment is not made (*Code of Virginia*, §19.2-368.9).

The CVC Division has established informal processing goals for each type of claim to encourage timely processing. The goal for emergency claims is 30 days, and the goal for regular claims is 90 days. To meet these goals, division staff must establish the claim, complete the investigation, and make the award decision within the specified number of days from receipt of the application. According to DWC staff, the program routinely meets these processing goals.

Program Funding

Virginia's CVC program is primarily funded by penalty assessments levied on offenders as additional court costs. These assessments are collected by the State's circuit and district courts and remitted to the Department of Accounts for deposit in the criminal injuries compensation fund. The crime victims' compensation program also receives some revenue from the federal government, legislative appropriations, and offender restitution payments. A total of $900,165 was collected through penalty assessments during FY 1988, and $649,000 was collected through the additional sources.

Two types of expenses are paid from the criminal injuries compensation fund: (1) administrative expenses and (2) awards. The program's administrative expenses are paid by the DWC through transfers from the criminal injuries compensation fund. Administrative expenses totaled $139,106 in FY 1987 and $161,035 in FY 1988. As previously stated, award payments totaled about $1.5 million in FY 1987 and $1.4 million in FY 1988.

Several problems regarding the funding of the program have surfaced over the last two fiscal years. Inadequate funding has forced the CVC Division to delay payment of benefits to crime victims. While the program was originally intended to be self-supported by offender penalty assessments, it is not. The program has required the infusion of State general funds as well as federal funds to remain solvent. This situation is complicated by the fact that continued federal funding is uncertain.

JLARC REVIEW

Since the creation of the Division of Crime Victims' Compensation in 1976, concerns have been raised regarding the adequacy of program funding, the promotion of the program, the application process, eligibility determinations, the length of time it takes to receive benefits, and the appeal process. These concerns have led to suggestions that the program is inappropriately placed in the DWC and would

function better if placed within the Department of Criminal Justice Services (DCJS). This JLARC review was structured to address these concerns as well as additional aspects of the CVC program.

Study Issues

Language in the Appropriations Act and HJR 184 expressed the legislature's interest in the organization, management, and operations of the DWC, particularly the CVC Division. This interest along with additional concerns about the CVC program resulted in the development of a broad review to evaluate the following areas:

- program funding and financial management,
- dissemination of program information,
- communication, cooperation, and coordination of program activities with others involved in implementing the program,
- the CVC claim process,
- the CVC claim appeal process, and
- management, staffing, and location of the CVC Division.

Study Activities

A number of activities were undertaken during this study to collect and analyze CVC program data. These research activities included: (1) a financial analysis, (2) a review of a sample of crime victims' claims established in FY 1987, (3) a review of all claims appealed in FY 1987, and (4) structured interviews.

Revenue and expenditure data for the CVC program were collected from the DWC's fiscal office for the financial analysis. Revenues and expenditures from FY 1981 to FY 1989 were assessed to determine: (1) the adequacy of program funding, (2) fund integrity, and (3) adequacy of fund reporting and monitoring.

JLARC staff selected a stratified random sample of CVC claims that were established in FY 1987 This sample included regular claims, claims for those requesting emergency awards, and claims for victims of sexual assault, spouse abuse, or child abuse. Each claim type was weighted by the proportion that it represented in the entire claim population. The sample was then used to evaluate the effectiveness, efficiency, and timeliness of the CVC claim process. In addition, the entire population of claims that received emergency awards in FY 1987 was reviewed, along with all claims in which claimants requested a review of the director's decision.

Structured interviews were conducted with CVC Division staff, the Industrial Commissioners, the DWC chief deputy commissioner, and two DWC deputy

commissioners. These interviews yielded information on all aspects of CVC operations and the Division's management, staffing, and location. In addition, interviews were conducted with the Director of the Department of Criminal Justice Services, DCJS staff, victim and witness referral sources, Department of Planning and Budget staff, Attorney General's Office staff, and legislative committee staff.

Report Organization

This chapter presented an overview of the crime victims' compensation program. Chapter II addresses the funding of the CVC program. Chapters III through VI review the four distinct steps in the program's operations: establishing a claim, investigating a claim, approving or denying a claim, and appealing a claim. The major focus in these chapters is on CVC processes and procedures for compensating crime victims. This focus is important because: (1) legislative concern regarding the claim process has been extensive, (2) numerous problems were discovered which affect the provision of timely compensation to injured crime victims, and (3) it is hoped that the findings and recommendations contained in these chapters can serve as a detailed working guide to DWC staff in strengthening the CVC program. Finally, Chapter VII covers program placement, and the overall management and staffing of the program.

II. Funding the Crime Victims' Compensation Program

The Crime Victims' Compensation (CVC) program is funded primarily from penalties assessed against persons convicted of crimes, federal grants provided under the Victims of Crime Act (VOCA), and general funds. When the CVC program was created, it was intended to be funded solely from fees collected from criminal offenders. Currently, the program faces funding problems.

Although the General Assembly intended for the program to be self-supporting, the program is dependent on federal revenues. In addition, general funds were necessary to finance the program in FY 1988. Even with these additional revenues, the program ended FY 1988 in a deficit position. Still more funding may be required in the future if benefit payments to victims are to be made in a timely and equitable manner.

An additional problem affects the funding of the program. Currently, charges to the program for administrative costs are inaccurate and do not reflect the actual cost of the Department of Workers' Compensation (DWC) to administer the program. The DWC absorbed approximately $57,000 in CVC administrative costs last year, resulting in a breakdown in fund integrity and an incomplete recovery of the program's costs.

To accurately reflect the financial condition of the criminal injuries compensation (CIC) fund, JLARC staff analyzed CVC operations using the accrual basis of accounting. Under this method of accounting, revenues are accounted for in the year earned even though the revenues may have been deposited in the CIC fund in a later year. Expenses are accounted for in the year incurred even though the program may have paid them in a later year.

This chapter provides a description of: (1) the financial condition of the CIC fund for the last eight years, (2) the current status of the CIC fund, (3) the recovery of the program's administrative costs, and (4) other possible sources of CVC funding.

PROGRAM FINANCIAL OPERATIONS

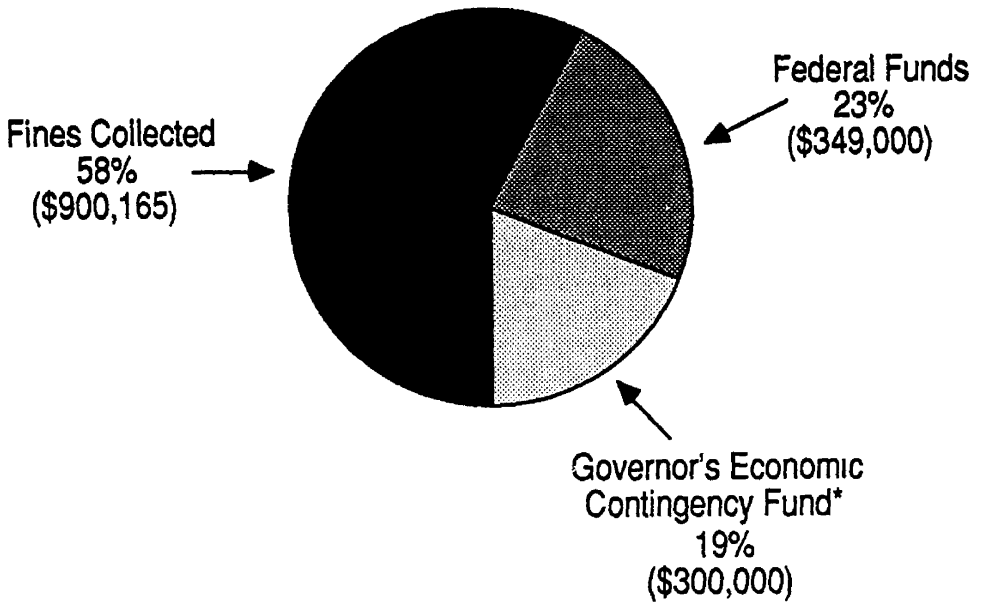
The CVC program is funded through penalties assessed misdemeanants, felons, and offenders convicted of driving under the influence of alcohol or drugs (DUI); federal grants; and State general funds. Figure 3 shows the sources and percentages of revenue for the CIC fund in FY 1988. In the early years of the CVC program, offender fees provided revenue greatly exceeding the CVC program's needs.

In the last three years, however, award payments have greatly exceeded revenues generated by offender fees. The program has been operating at a deficit since FY 1986 even though it has been receiving federal funds and general funds.

The rapid growth in award expenditures has forced the CVC program to become dependent on revenues provided by the federal government. Without the availability of federal funds and surplus revenues from previous years, the CVC program would have experienced annual operating deficits of $258,845 in FY 1986, $865,204 in FY 1987, and $388,069 in FY 1988. Continued federal funding is uncertain at present. If federal funds are not available in future years, the program will have even greater problems serving crime victims.

Figure 3

Sources of Revenue for the Crime Victims' Compensation Program FY 1988



Note: Percentages are based on revenues earned in fiscal year 1988, even though the funds may have been received in the following fiscal year

* General funds appropriated by General Assembly

Source: JLARC staff analysis of DWC financial documents.

The Financial Condition of the Program Has Changed

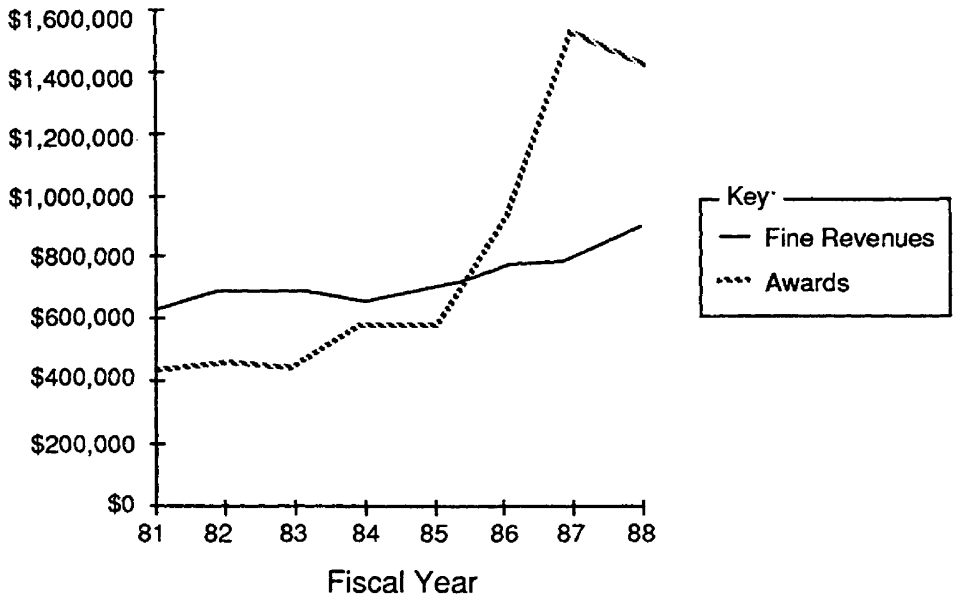
Over the past eight years, fine revenue has changed from providing more than 149 percent of the funds necessary to pay awards to providing only 63 percent of the necessary revenues. While fine revenues have increased by approximately 40 percent from FY 1981 to FY 1988, awards have increased over 230 percent during the same period (Figure 4). Part of the increase in awards was covered by the addition of federal funds. When awards became so great as to exhaust federal funds, general funds were used to pay awards (Table 2).

Early Fund Balances Quickly Decreased. A substantial cash balance of $1,553,008 had developed in the CIC fund by the end of FY 1982. The program was collecting two dollars of fine revenues for every one dollar of award payments. Awards could be paid without difficulty

The General Assembly withdrew $500,000 from the fund in FY 1983 and again in FY 1984 because fund balances had become so large. However, this loss did

Figure 4

Comparison of CVC Fine Revenues and Awards



Note: Fiscal years 1986 through 1988 reflect revenues and expenses accounted for under the accrual method of accounting. These revenues are shown in the years they were earned or incurred, which may differ from the year in which they were actually received or paid.

Source: JLARC staff analysis of DWC financial data for the CVC program, FY 1981-FY 1988.

Table 2

CVC Revenues and Expenditures
FY 1981 - FY 1988

	FY 1981	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986	FY 1987	FY 1988
REVENUE								
Fines	$ 643,734	$ 694,522	$ 693,169	$ 658,278	$ 703,170	$ 773,365	$ 800,610	$ 900,165
Federal Grants	—	—	—	—	—	186,000	280,000	349,000
Economic Contingency Fund	—	—	—	—	—	—	—	300,000
General Fund	150,000	—	—	—	—	—	—	—
Total	$ 793,734	$ 694,522	$ 693,169	$ 658,278	$ 703,170	$ 959,365	$1,080,610	$1,549,165
EXPENDITURES								
Administration	64,469	66,127	77,109	75,602	96,247	110,636	139,106	161,035
Awards	431,356	458,998	434,920	571,967	577,511	921,574	1,526,708	1,427,199
Total	$ 495,825	$ 525,125	$ 512,029	$ 647,569	$ 673,758	$1,032,210	$1,665,814	$1,588,234
Surplus (Deficit)	$ 297,909	$ 169,397	$ 181,140	$ 10,709	$ 29,412	($ 72,845)	($ 585,204)	($ 39,069)

Note: Fiscal years 1986 through 1988 reflect revenues and expenses accounted for under the accrual method of accounting These revenues and expenses are shown in the years they were earned or incurred, which may differ from the year in which they were actually received or paid

Source JLARC staff analysis of DWC financial reports, FY 1981-FY 1988, and interviews with DWC staff

not affect the fund's ability to pay claims. The fund continued to have a cash balance equaling at least one year of program expenditures.

Awards and administrative expense levels began approaching revenue levels in FY 1984 and FY 1985. The program was operating slightly above the break-even point. The CIC fund continued to have a cash balance, but it was significantly less than earlier years.

CVC Program Experienced Operating Deficits Beginning in FY 1986. Beginning in FY 1986, award expenditures had expanded to the point where fine revenues were no longer able to support the program. Total expenditures exceeded fine revenues by $258,845. This was the first year the CVC program received funds from the federal government under VOCA. Even with the addition of federal funds, the CVC program experienced an operating deficit.

The CVC program spent in excess of two dollars for every one dollar of fine revenues collected in FY 1987 Monthly expenditures exceeded monthly fine revenues by $72,100 and produced an annual operating deficit of $585,204. The Industrial Commission's comptroller began regularly delaying award payments because insufficient funds existed to pay the awards.

In FY 1988, the General Assembly authorized $300,000 in general funds to be transferred from the Governor's Economic Contingency Fund to the DWC to pay awards. Because the CVC program received $349,000 in federal monies and $300,000 of general funds, the program experienced only a small operating deficit of $39,069.

Operating Deficits Resulted From Dramatically Increasing Awards

The CVC program experienced operating deficits in FY 1986 because award expenditures began increasing rapidly while fine revenues increased moderately Before FY 1986, the annual rate of increase in both fine revenues and award expenditures was moderate.

Beginning in FY 1986, award expenditures increased at a much greater rate than fine revenues. Fine revenues increased by 10 percent to $773,365, while award expenditures increased by 60 percent to $921,574. A second substantial increase in award expenditures occurred in FY 1987 Award expenditures increased by approximately 66 percent to $1,526,708, while fine revenues increased modestly to $800,610. The increase in award expenditures appears to have leveled off in FY 1988. Award expenditures decreased by approximately seven percent to $1,427,199.

Two factors appear to have contributed to the significant increases in award expenditures beginning in FY 1986. First, award expenditures have increased in proportion to the increase in the number of victim and witness assistance programs (Figure 5). Second, the 1985 session of the General Assembly enacted legislation

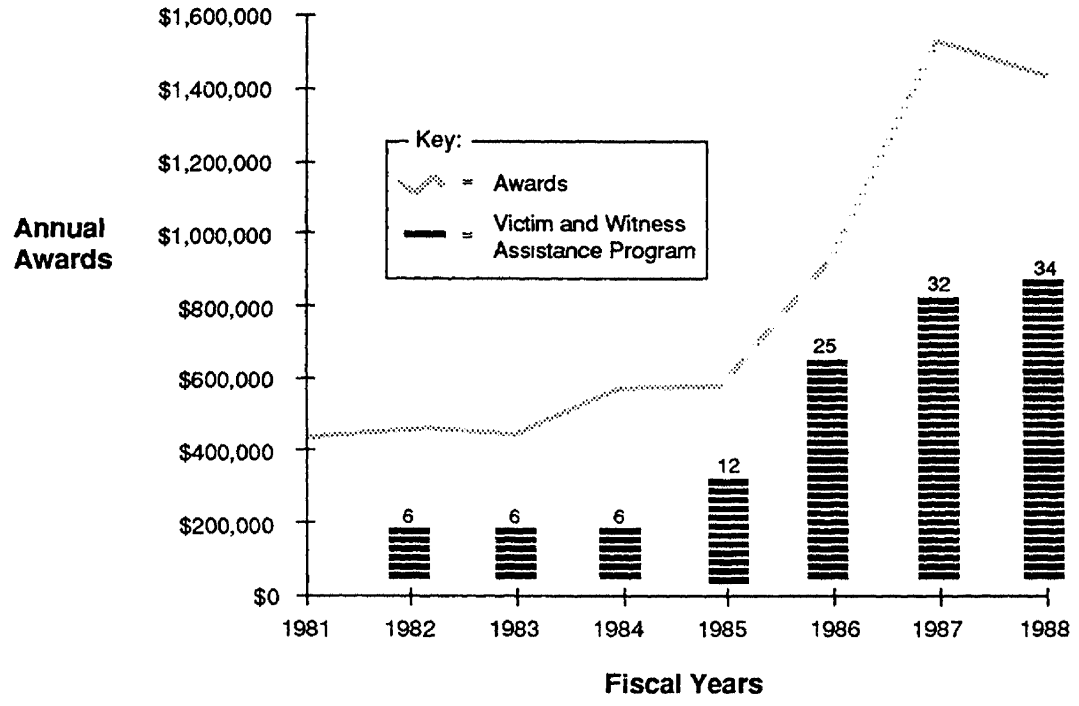
requiring law enforcement officers to notify potential claimants of the program. Victim and witness assistance programs (often located in Commonwealth's Attorney offices), Commonwealth's Attorneys, and local law enforcement personnel have consistently been primary sources of referrals for the program.

Fund Reserve Requirement Is Reasonable

The Industrial Commission has established a policy of suspending regular award payments when the CIC fund balance reaches $50,000. This policy was established in FY 1987 when it appeared to the Industrial Commission that balances in the CIC fund would be insufficient to pay all claims in a timely manner. The monies held in reserve are used to pay CVC administrative expenses and emergency awards.

Figure 5

Comparison of Awards to CVC Claimants and the Total Number of Victim and Witness Assistance Programs



Note: Fiscal years 1986 through 1988 reflect financial data accounted for under the accrual method of accounting. Award expenses are shown in the year they were incurred, which may differ from the year in which they were actually paid.

Source: JLARC staff analysis of DWC financial reports, FY 1981-FY 1988, and interviews with DCJS staff.

The $50,000 reserve is sufficient to pay for approximately 3 months of CVC program administrative expenses and emergency awards. This amount appears to be reasonable.

Continued Federal Funding Is Uncertain

The federal Victims' Of Crime Act (VOCA) was enacted in 1984. The Act provides federal funding by assessing fees against persons convicted of federal crimes. At the end of the federal fiscal year, the funds are disbursed to states with crime victims' compensation programs meeting the federal requirements. A state receives federal funds equaling a percentage of its claims from the previous federal fiscal year. In FY 1988, the CVC program received $349,000 in federal funds, equaling approximately 35 percent of awards paid during the 1987 federal fiscal year.

The VOCA program is scheduled to expire in FY 1989 unless renewed by Congress. Several bills have been introduced to renew the program and make it a permanent program. While the likelihood of passage of these bills is good according to CVC Division staff, it is not certain. If the federal statute is not renewed, Virginia's CVC program will receive federal funds only through FY 1989.

The CVC program will likely incur significant operating deficits without federal funding, although the precise amount of the deficit cannot be determined at this time. Since the CIC fund no longer has significant cash balances generated from revenues collected in prior years, the CVC program would be forced to significantly delay or reduce payments to claimants until sufficient revenues are collected.

Timing of Receipt of Federal Funds Causes Cash Flow Problem

Federal funds come in once a year, typically at the end of the fiscal year, while awards are paid on a monthly basis. When the program has to rely on federal funding to pay awards, the program faces a cash flow problem. In FY 1988, the director learned that the program would be receiving $349,000 in federal funds. Delays in transferring these funds, however, forced the program to borrow $300,000 from the general fund to pay awards. The CVC program did not receive the federal monies until the end of FY 1988.

CURRENT STATUS OF THE CRIMINAL INJURIES COMPENSATION FUND

When the CVC program was created, it was intended to be funded solely from fees collected from criminal offenders. However, in FY 1988, offender fees were sufficient to pay for about 57 percent of the program's total costs. Offender fees were

increased in 1988, but it is too early to tell how much additional revenue will be generated. It appears that the increase will fall short of the amount projected by the Virginia Crime Commission in its report "Victim and Witnesses of Crime" (House Document 10, 1988). It may be sufficient, however, to replace most of the general fund monies appropriated through the Governor's Economic Contingency Fund in FY 1988.

Too Early to Determine Effect of Increased Offender Fees

The 1988 General Assembly increased offender fees from $15 to $20 for Class 1 and 2 misdemeanants and from $15 to $30 for felons. This change went into effect on April 11, 1988. In addition, DUI offenders were added to those persons required to pay the additional fee (Exhibit 2).

Before offender fees were increased in FY 1988, the Virginia Crime Commission's report projected that the proposed increase in fine revenue would be $1,105,753 in addition to the amount collected under the fee schedule existing at that time. Using this projected increase and revenues collected 12 months prior to the fee change, one could assume that $1,926,424 in total revenues would be available in FY

Exhibit 2

CVC Fees Charged to Persons Convicted of Crimes

Year Fee Went Into Effect	Fee Amount	Types of Offenders Charged
1976	$10.00	Assessed against persons convicted of any felony or a Class 1 or Class 2 misdemeanor except persons convicted of driving under the influence, drunkenness, or disorderly conduct.
1980	$15.00	Assessed against persons convicted of any felony or a Class 1 or Class 2 misdemeanor except persons convicted of driving under the influence, drunkenness, or disorderly conduct.
1988	$30.00	Assessed against persons convicted of a felony.
	$20.00	Assessed against persons convicted of a Class 1 or Class 2 misdemeanor except persons convicted of public drunkenness or disorderly conduct. Persons convicted of driving under the influence were added to the group of persons required to pay the $20 fee.

Source: *Code of Virginia* §19.2-368.18.

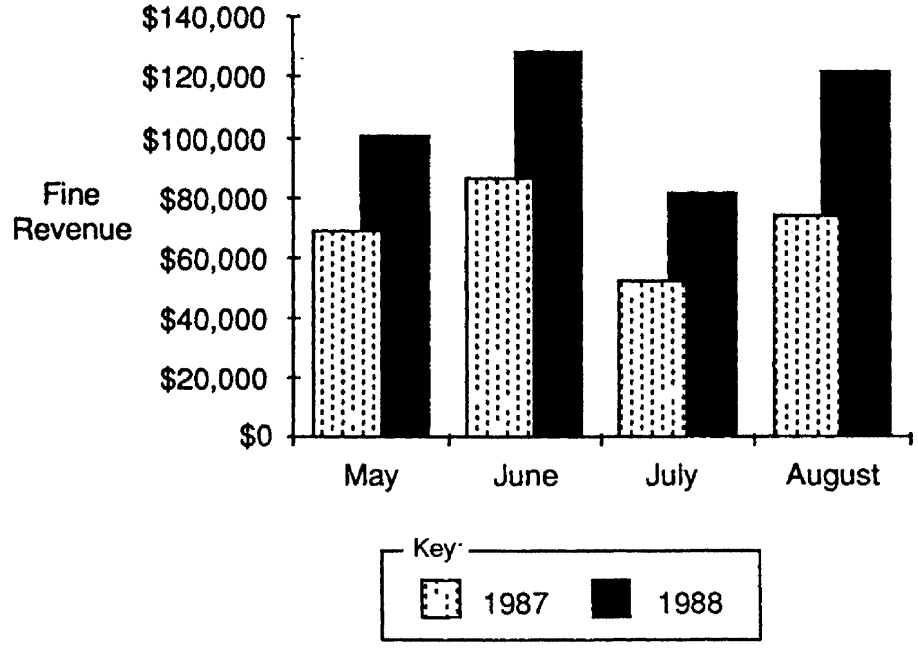
1989. It appears, however, that the increase in revenues currently expected will fall far short of this projection, unless revenue collection increases substantially in the remaining months of FY 1989.

Projecting revenue from fines or explaining changes in fine revenue can be difficult because the amount collected depends on many factors. For example, the money collected for the CIC fund depends on the number of criminal convictions, the ability of felons and misdemeanants to pay fines, and the collection efforts of circuit and general district court clerks' offices.

Figure 6 compares the revenues earned in the first four months following the recent statutory change in offender fees with the same months one year earlier. Assuming the first four full months following the statutory amendment are indicative of monthly revenues for FY 1989, the statutory change may result in additional revenues of approximately $451,000. When this amount is added to total revenues collected during FY 1988, it is possible that total fine revenues collected in FY 1989 would be approximately $1,351,165.

Figure 6

Effects of Statutory Fee Increase: Comparison of May-August Fine Revenues for 1987 and 1988



Source: JLARC staff review of DWC financial data for the CVC Program, FY 1987-FY 1989.

This increase may be a conservative estimate. Not all of the circuit and district courts may be aware of or have had time to fully implement collection of the additional fines for misdemeanants, felons, and persons convicted of DUI offenses. Therefore, projections for the first four months following the statutory change may understate the amounts to be collected in later months.

Fund May Break Even In FY 1989

If the CVC program had not received $300,000 of general fund monies in FY 1988, it would have experienced a $339,069 operating deficit. As will be discussed later in this chapter, the CVC program received a subsidy of approximately $57,000 through the workers' compensation program. When this subsidy is accounted for, this operating deficit equals almost $396,521. If the financial condition of the CVC program in FY 1989 is the same as it was in FY 1988 excluding the general fund monies, the actual increase in fine revenues may be sufficient to replace the general fund monies (Table 3).

The report of the Virginia Crime Commission included in its projection that claims from victims of DUI offenders would result in additional awards of $200,000. If awards increase by this amount, the expected net increase in fine revenues for FY 1989 will be only $251,000 ($451,000 revenue increase minus $200,000 in awards). This would eliminate the expected surplus of $54,479 and instead result in an operating deficit of $145,521. According to CVC program staff, however, very few claims have been filed by victims of DUI offenders in the first four months following the statutory change. If this continues for the remainder of FY 1989,

Table 3

Effect of Change in Offender Fees on Program Deficit

Expected increase in revenues, FY 1989	$451,000
CVC program deficit, FY 1988	($ 39,069)
Subsidy to CVC program, FY 1988	($ 57,452)
General Fund monies, FY 1988	($300,000)
Adjusted operating deficit	($396,521)
Expected surplus	$ 54,479

Source: JLARC staff analysis of DWC financial records in FY 1989.

the $200,000 projected increase in claims will be overstated and the fund could break even.

RECOVERING PROGRAM COSTS

The Industrial Commission is not charging the CIC fund for the total costs of administering the CVC program. Approximately 26 percent of the total administrative costs of the program for FY 1988 were paid from revenues collected to operate the workers' compensation program. The CIC fund is charged a fee for each evidentiary hearing and Commission review, which partially recovers administrative costs of DWC employees involved with CVC appeals. However, the total amount charged does not fully recover DWC administrative costs for the CVC program.

Program Costs Are Not Fully Recovered

Revenues in the CIC fund are used to pay the costs and expenses incurred to implement the CVC program. However, personnel costs of DWC staff who perform duties supporting the program are currently paid with revenues from the DWC's administrative fund. This financial management practice prevents accurate reporting of the total administrative costs of the CVC program and does not provide for strict fund integrity

Fund integrity is a generally accepted concept related to special funds. Under fund integrity, monies collected for a specific purpose or from a specific source are in turn expended only for that purpose or group. The monies are not to subsidize other purposes or activities. For example, fund integrity requires that monies collected for the purpose of operating the workers' compensation program be spent solely for that purpose. The amount of CVC administrative costs subsidized by the DWC administrative fund is not significant in terms of total workers' compensation expenditures and would not materially affect charges to insurance companies and employers. However, the practice violates the concept of fund integrity and could potentially become significant if the CVC program continues to grow

Although the total cost of operating the CVC program in FY 1988 was $218,491, approximately $57,000 of this cost was not paid with revenues from the CIC fund (Table 4). Approximately 53 DWC staff, primarily responsible for operating the workers' compensation program, regularly provide some support services for the CVC program (Table 5). The estimated cost of the amount of time these staff spend on the CVC program equals $68,202, or approximately 31 percent of the CVC program's total administrative expenses for FY 1988. In calculating the amount of CVC administrative expenses not currently charged to the CIC fund, the total is reduced by $10,750 which will be recovered in FY 1989 for appealed cases. This results in unrecovered funds of about $57,000.

Table 4

Unrecovered CVC Administrative Expenses FY 1988

CVC Administrative Expenses	
CVC personnel costs for DWC employees in FY 1988	$ 68,202
Personal services	102,317
Contractual services	31,851
Supplies & materials	2,098
Continuous charges	861
Equipment	13,162
Total administrative expenses:	$218,491
Less amount charged to CIC fund for FY 1988 expenses	(150,289)
Less cost to be charged for 1988 appealed cases @$250 each	(10,750)
Total unrecovered CVC expenses:	$ 57,452

Source: JLARC staff analysis of CVC's administrative costs.

The amount of personnel costs not recovered was estimated because DWC employees do not maintain time allocation records. Annual salaries were prorated according to estimated percentages of time in a typical year reported by individual DWC staff involved in CVC Division activities. The Industrial Commission could accurately calculate the amount of personnel costs to be recovered if staff were required to fill out weekly time sheets.

The failure to recover all program-related personnel expenses was most pronounced in the DWC's fiscal office. In a typical year, staff in this division collectively perform duties for the CVC program which amount to almost one full-time equivalency position.

Current Fees Charged for Appealed Cases Do Not Fully Recover Costs

Each time an appealed CVC case results in an evidentiary hearing or a Commission review, the DWC charges the CIC fund $250. This charge was first made in 1980 and increased from $50 to $250 in 1982. It is intended to recover from the CIC fund the costs associated with having the Commissioners and deputy commissioners consider CVC appeals. However, the current charge does not represent the true cost of their time.

Table 5

Salary and Fringe Benefit Costs of DWC Staff Who Provide Services to the CVC Division FY 1988

Salary Costs*	
Commissioners	$11,295
Chief Deputy Commissioner & Richmond Deputy Commissioners	3,742
Richmond Bailiffs	3,641
Alexandria Regional Office	3,343
Lebanon Regional Office	452
Norfolk Regional Office	4,937
Roanoke Regional Office	3,186
Fiscal Staff	17,797
Mail Room Staff	2,772
Personnel	442
Clerk's Office Staff	1,324
Data Processing Specialist	586
Law Clerk	185
Total Salary Cost	$53,702
Fringe Benefits Cost**	$14,500
TOTAL	$68,202

*Salary costs based on reported percentages of time spent on CVC Division-related duties in a typical year.

**Fringe benefits costs calculated using DWC's rate of 27 percent of salary expense.

Source: JLARC staff analysis of DWC personnel costs.

In FY 1988, the CIC fund was charged a total of $16,000 for CVC hearings and reviews conducted in FY 1987 (64 hearing and reviews @ $250). The amount charged for hearings and reviews in FY 1988 was $10,750. However, this amount will be charged during FY 1989 because of fund shortages. The actual costs associated with having Commissioners and deputy commissioners consider CVC appeals was probably much higher than these amounts, because additional DWC staff were also involved in these appeals. Regional office staff, bailiffs, and the Clerk's office are all involved in appeal-related activities. If one assumes that all DWC staff with appeal-related responsibilities spent only one-half of the time they devoted to the CVC program in FY 1988 on appeals, the time they devoted to the CVC program in FY 1988

on appeals, the amount would still have exceeded the FY 1988 charge of $10,750 by almost 80 percent.

Recommendation (1). The DWC should ensure that staff time spent on CVC activities are accounted for and charged to the CIC fund on a routine basis. This could be done by having DWC staff keep time allocation sheets on a regular basis or by examining time records for a test period and estimating the cost to the CVC program. If a test period is used to estimate DWC staff time, the estimate should be recalculated periodically to ensure its accuracy

ALTERNATE SOURCES FOR FUNDING THE CVC PROGRAM

It may become necessary for the General Assembly to consider additional funding sources in the event federal funding for the CVC program is eliminated or awards continue to increase. Several options are available for consideration.

Forty-four states and the District of Columbia have crime victims' compensation programs. Table 6 illustrates funding sources for these programs. Most of these states (73 percent) fund their programs at least in part with offender penalty assessments. Approximately 38 percent of the states fund their programs, at least in part, with general fund monies. Six states fund their programs with both offender fees and general funds.

There are a number of ways the State could increase funding for the CVC program. First, offender fees could be increased. Some states charge offenders fees based on a scale. For example, in California a person convicted of driving under the influence of alcohol or intoxicants may be assessed by the court system a fee ranging from $10 to $10,000. Other states add a surcharge to fines imposed on offenders. For example, Delaware charges 15 percent of the fine amount.

Second, the types of offenders against whom fees are assessed could be expanded. Several states assess fees against all persons receiving criminal convictions, including those convicted of traffic offenses. For example, New York assesses misdemeanants and felons and adds $25 to every traffic offense.

Finally, other revenue sources could be tapped even though they do not provide a direct link between offenders and victims. For example, general funds could be used. Some court-based compensation programs charge a small filing fee. Some states use bail forfeitures as an additional funding source. Other states have authority to use profits from offenders' publications on their criminal activities to fund their compensation programs.

Table 6

State Funding Sources for Crime Victims' Compensation Programs

State	Source of Funding			
	General Funds	Penalty Assessments	Bail Revenues	Other*
Alabama		●		
Alaska	●			●
Arizona		●		
Arkansas		●		
California		●		
Colorado		●		
Connecticut		●		
Delaware		●		
District of Columbia	●	●		
Florida		●	●	
Hawaii	●			
Idaho		●		●
Illinois	●			
Indiana		●		●
Iowa		●		
Kansas		●		
Kentucky	●	●		
Louisiana		●		
Maryland	●			
Massachusetts	●			
Michigan	●			
Minnesota	●	●		
Missouri		●		
Montana		●	●	
Nebraska				●
Nevada			●	●
New Jersey	●	●		
New Mexico	●			
New York	●			
North Carolina	●	●		
North Dakota	●			
Ohio		●		
Oklahoma		●		
Oregon	●	●		●
Pennsylvania		●		
Rhode Island		●		
South Carolina		●		
Tennessee		●	●	●
Texas		●		
Utah		●		
Virginia		●		
Washington		●		
West Virginia		●		
Wisconsin	●			
Wyoming	●	●		

* Other funding sources include receipts from offenders' profits on publications related to their crimes; receipts from persons who are incarcerated, on probation, or on work release; and other miscellaneous sources.

Source: Victim Rights and Services: A Legislative Directory 1987, National Organization for Victim Assistance, 1988.

III. The CVC Claim Process: Timeliness, Public Awareness, and Establishing a Claim

The Crime Victims' Compensation (CVC) process begins for crime victims once they learn about the existence of the program, fill out an application, and send it to the CVC Division. CVC Division staff receive the claim application, determine the eligibility of the claimant, and set up or "establish" the claim file. Once the claim is established, CVC staff conduct an investigation to determine the validity of the claim. The CVC Division director decides to award or deny the claim after the investigation is completed.

Several concerns have been expressed about the CVC claim process. Crime victims who make claim applications (claimants) and victim and witness assistance program staff who assist crime victims have complained about lengthy delays in processing claims and receiving program benefits. Additional concerns have been expressed regarding the adequacy of: (1) program information, (2) the claim application, and (3) eligibility guidelines.

TIMELINESS OF EMERGENCY AND REGULAR CLAIMS

An analysis of crime victim claims established in FY 1987 revealed that significant delays exist from the receipt of the application until the final determination of the claim. While portions of these delays cannot be directly controlled by the CVC Division, the Division staff can increase timely processing by making some administrative improvements. The CVC Division has informal processing goals for claims. These goals guide the processing of emergency and regular claims and appear to be reasonable. The processing goal for emergency claims and regular claims is 30 days and 90 days, respectively While the division contends that it meets these goals, an analysis of all emergency awards made in FY 1987 and a sample of regular claims revealed that average processing times exceed these goals.

Emergency Awards Do Not Meet Statutory Intent

As mentioned earlier, §19.2-368.9 of the *Code of Virginia* permits emergency awards in cases where a regular award will probably be made and "undue hardship will result to the claimant if immediate payment is not made." An emergency award may be made for up to $2,000. CVC Division policy allows an emergency award to be made only for earnings lost due to crime-related injuries. This distinction is made because the division director believes medical service providers will wait to receive reimbursement for services provided to claimants.

The CVC Division has an informal goal of 30 days to process emergency requests. However, the division does not appear to track its processing times for these requests.

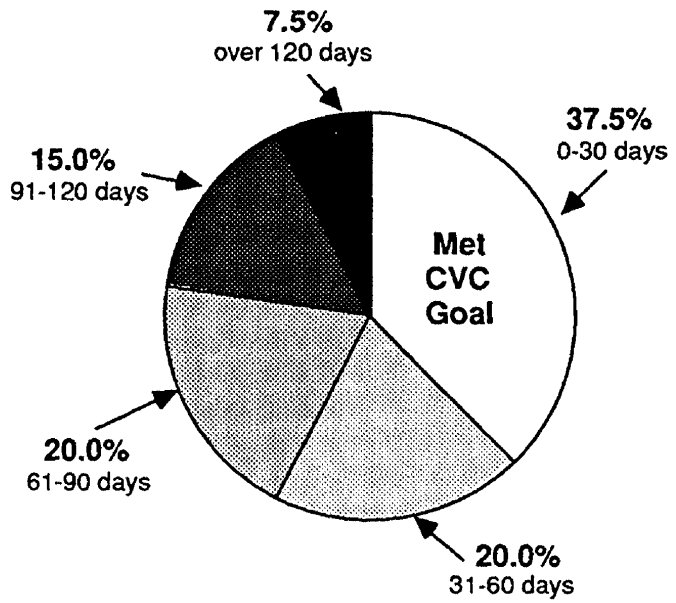
An analysis of processing times for all emergency claims established in FY 1987 that received emergency awards revealed that only 37.5 percent of these awards were processed within 30 days (Figure 7). The processing times for 62.5 percent of all emergency awards did not achieve the goal. The average processing time for FY 1987 emergency awards was 62 days.

A separate review of a sample of FY 1987 requests for emergency benefits revealed that in over one-third of the cases, no decision was made to award emergency benefits. Processing of these 64 requests took an average of 143 days.

These lengthy delays in processing emergency requests and awards for emergency benefits impede the immediate payment of benefits to offset undue hardship to claimants. Consequently, the process for awarding emergency requests does not fulfill statutory intent.

Figure 7

Processing Times for FY 1987 Emergency Awards



NOTE: This analysis was based on the entire population of FY 1987 established claims which received emergency awards. Forty emergency awards were made.

Source: JLARC staff analysis of claims awarded emergency benefits in FY 1987

Processing of Regular Claims Does Not Meet CVC Goal

The CVC Division has an informal goal of 90 days to process claims requesting regular benefit decisions. While claimants can expect that decisions on regular benefit requests will take longer than emergency requests, processing of claims for these benefits averaged 133 days. Less than one-third of these claims were processed within the 90-day goal. Further, more than one-third of these took more than four months to process (Figure 8).

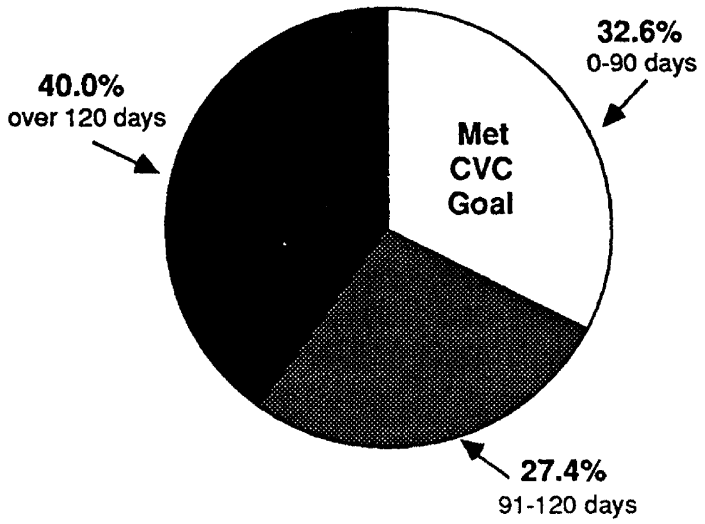
The remaining portions of this chapter contain a number of findings and recommendations to improve the initial portions of the CVC process. Subsequent chapters address the CVC claim investigation, decision-making, and appeal processes.

PUBLIC AWARENESS

A crime victim's claim can only be established and investigated if the victim is aware of the CVC program's existence and makes an application for benefits. The Industrial Commission is statutorily responsible for promoting the program. In

Figure 8

Processing Times for FY 1987
Regular Benefit Decisions



NOTE: This sample was based on a stratified sample of 129 claims. Results were weighted to reflect the occurrence of each claim type in the entire population. The weighted sample size is 570.4.

Source: JLARC staff analysis of FY 1987 sampled claims.

addition, several local entities assist with this function. Some of these local entities, such as victim and witness assistance programs, also refer crime victims to the CVC program, help them understand the program's benefits, and aid them in filling out the program's application forms.

CVC Division staff and staff in the DWC indicated in interviews that they have significantly reduced efforts to promote the CVC program in the past several years. Promotional activities currently entail updating program brochures and applications, and distributing them on request to victim and witness assistance programs, Commonwealth's Attorney offices, law enforcement agencies, and others. The CVC program may need to refocus its efforts in this area, however. Lack of attention towards these efforts may give the program a poor public image and result in poor communication with local victim referral agencies.

A solid foundation for the program depends on adequate communication of the program and the appropriate tools to establish a claim. Communication about the program is not currently adequate. The application form used by the program lacks valuable information to assist a victim in applying for program benefits. Further, language on the form is unduly complex.

Public Awareness Efforts Could be Improved

Section 19.2-368.17 of the *Code of Virginia* charges the Industrial Commission with responsibility to "establish and conduct a public information program to assure extensive and continuing publicity and public awareness of the provisions" of the CVC program. This section was also amended in 1986, requiring law enforcement agencies to make reasonable efforts to inform victims of their rights to file claims.

Currently, efforts to ensure extensive and continuing public information are minimal. Communication of program information is not well developed. This may result in the perception that the CVC Division is not responsive to crime victims across the State.

Public Information Activities Should Be Refocused. The Industrial Commission does not conduct an active, extensive, or continuing public information program for the CVC program. However, program brochures are available and distributed upon request. The division also has a toll-free number available to claimants wishing to obtain information on application steps, program benefits, and any other aspect of the claim process.

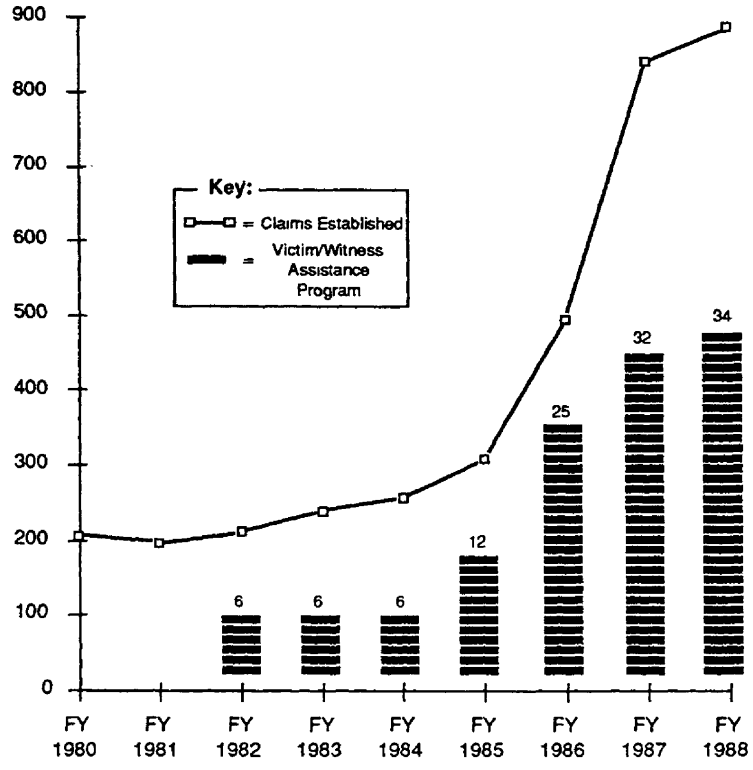
Decreased public awareness efforts on the part of the division may also result in the perception that it is not responsive to crime victims' needs for program information. This perception has, in some instances, been reinforced when the Division has been slow to initiate activities designed to increase public awareness. For example:

While a toll-free phone number is available for use by the public, the division did not list this number under an entry for the Crime Victims' Compensation program until FY 1986. Prior to that time, the number was listed under the Industrial Commission. Pressure from the Crime Commission resulted in this change.

Although the number of claims set up by the program has been rising over the last few years, it appears that this increase can be linked to factors unrelated to public relations activities by the director. First, in January 1986, the division discontinued telephone screening of victims to determine who should receive application forms. CVC staff now send applications to all victims who inquire about the program. Secondly, an increase in the number of CVC claims coincides with the establishment of local victim and witness assistance programs (Figure 9), as well as the enactment of legislation in 1985 to require police officers to inform victims about the CVC program.

Figure 9

Comparison of Rise in CVC Established Claims and the Total Number of Victim and Witness Assistance Programs



NOTE. The rise in claims may also be attributed to 1985 statutory changes requiring police officers to inform victims about the CVC program.

Source: DWC Annual Reports FY 1980-FY 1986; CVC and DCJS staff.

A limited role in public awareness activities may be appropriate given the current increase in claims established and awarded, and the existence of victim and witness assistance programs in many localities. However, this decreased role is only appropriate if victim and witness assistance programs have adequate knowledge of the CVC program and promote awareness of it. Further, victim and witness assistance programs with full-time staff exist in only 34 localities in the State (Figure 10). Victims in localities without these programs are not as likely to find out about the CVC program and take advantage of it. The CVC Division's public information efforts should be targeted to these areas of the State.

Communication of Program Information to Victim and Witness Assistance Programs Could Be Improved. The existence of victim and witness assistance programs provides the CVC Division with an inexpensive means of disseminating information to the public. However, CVC Division staff do not build on this advantage by fully utilizing these programs to increase public awareness.

Victim and witness assistance programs provide services and assistance to victims and witnesses of crimes through local government agencies. Often these programs are located in Commonwealth's Attorney offices or local law enforcement agencies. These programs help victims and witnesses maneuver through the criminal justice system by providing information on the investigation and adjudication of criminal cases in which they are involved. They also provide specific information and direction to victims applying for crime victims' compensation.

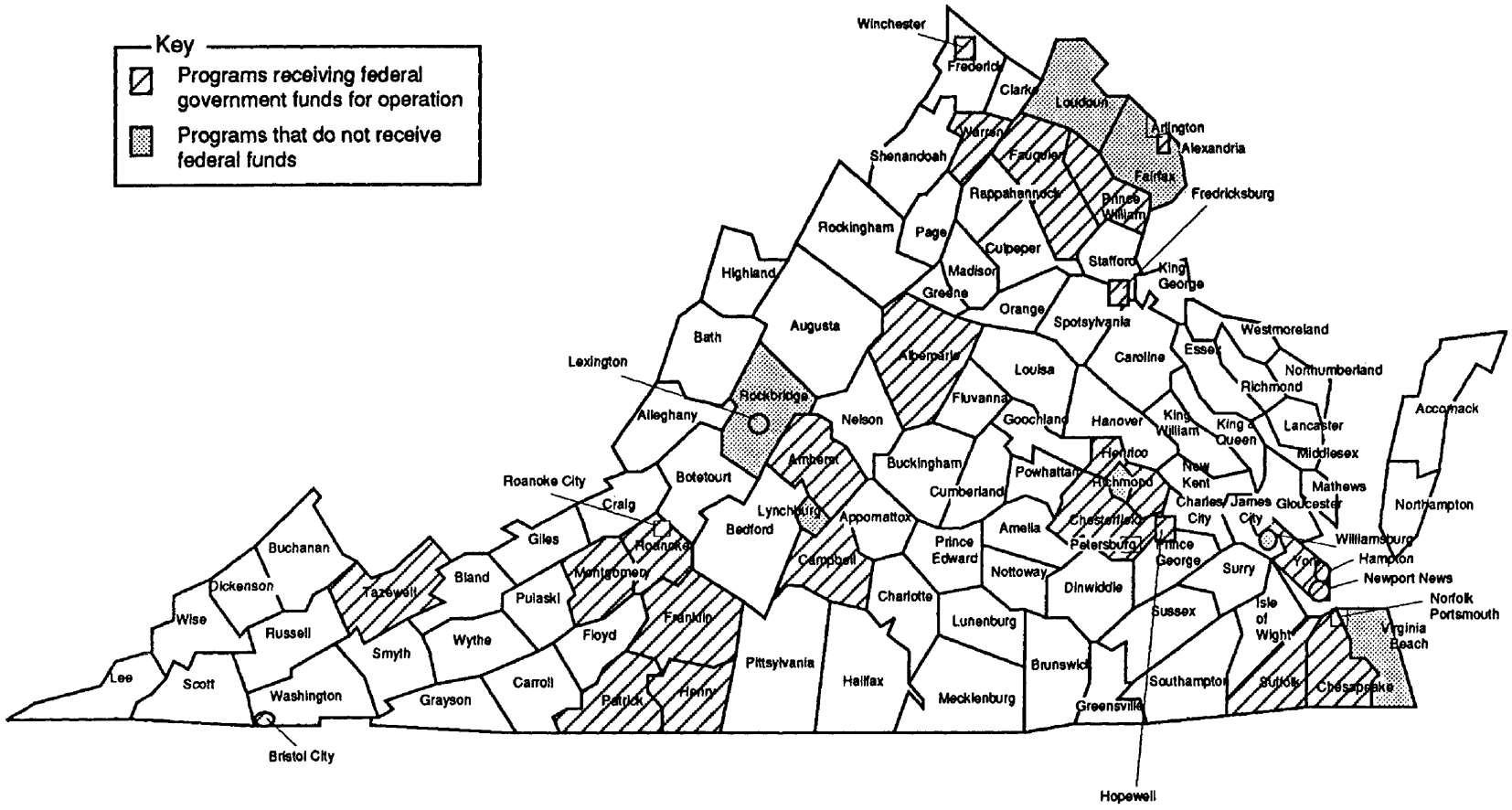
Victim and witness assistance programs have resulted in wider dissemination of information about the CVC program. According to CVC program data, the majority of victim referrals to the program originate from these local victim and witness assistance programs, as well as Commonwealth's Attorney offices and law enforcement agencies. These programs are able to identify and directly contact victims, and they provide victims with brochures describing services available to them, including crime victims' compensation. They also provide information through public speaking. The programs often supply applications for compensation to victims and assist them in filling out the forms, notarizing the forms, and compiling the needed documentation the CVC Division requires to support their claims.

However, interviews with victim and witness assistance program coordinators in July 1988 revealed that coordinators lack in-depth information on victim eligibility, available benefits, information needed to investigate a claim, and other program policies and procedures. Consequently, coordinators cannot always provide adequate guidance to victims, and claimants must contact CVC Division staff frequently for this information.

The Division appears reluctant to communicate specific program information to victim and witness program coordinators. In September 1987, the Crime Commission asked the division director to draw up program guidelines, policies, and procedures to assist local victim and witness assistance programs in making refer-

Figure 10

Virginia Localities with Victim and Witness Assistance Programs



Note: All but two localities have programs with full-time staff Fauquier County and Williamsburg have part time programs

Source: Balancing the Scales of Justice: Directory of Victim-Witness Assistance Programs in Virginia, Department of Criminal Justice Services, March 1988

rals. As of September 1988, the director still had not developed these guidelines. Although the division director solicited comments and suggestions on the guidelines from the victim and witness assistance program coordinators, the division director did not supply them with any draft copies on which to comment. Coordinators finally met on their own initiative to draw up questions they have on CVC policies and procedures. They provided these to the division director in August 1988.

The Department of Criminal Justice Services (DCJS) is responsible for providing support, guidance, oversight, and funding to victim and witness assistance programs. DCJS also functions as Virginia's central coordinative body on the administration of criminal justice. However, the CVC Division has no formal policies and procedures to work with DCJS in disseminating program information to these local agencies or resolving coordination and communication problems.

Recommendation (2). The Industrial Commission should ensure that it is complying with statute by providing public information on the CVC program. Public information activities should focus on areas of the State which do not have victim and witness assistance programs. In addition, the Industrial Commission should require the Division director to document public awareness efforts and activities so that it may ensure compliance with statute.

The CVC program should further enhance its public awareness efforts by working with the DCJS to improve communication and coordination with local victim and witness assistance programs. DWC agency management should ensure that a formal process exists to work through DCJS to ensure better communication and cooperation with these local programs. In addition, the CVC program director should develop and distribute program guidelines, policies, and procedures to DCJS and victim and witness assistance program coordinators.

Claim Application Form Needs Revision

The CVC Division director has been sensitive to the need to develop a thorough application form to help facilitate claims investigations. The application form has been revised several times over the last few years. The current CVC application form is five pages and was last revised in late FY 1988. However, the form does not provide some information to claimants necessary to expedite claim processing. In addition, some language in the application form is still complex.

The Form Does Not Provide Some Necessary Information. The first page of the application form provides information on the statutory and program criteria which must be met to qualify for program benefits. It also provides examples of benefits the program does not cover. Finally, it provides brief instructions to the person filling out the form.

Several problems are evident on the form. Statutory guidelines regarding conditions for which claims cannot be awarded are not current. The form does not inform claimants that collateral resources, such as life insurance, may be used to reduce their benefit award. In addition, the form does not direct the claimant to specify the names of policy beneficiaries along with the life insurance data collected. Life insurance coverage is subtracted from the award total because it is a collateral resource. However, CVC staff cannot accurately use this information unless it is clear who benefits from the policy

The instructions on the form do not include information or directions on how to file a request for an emergency award. If a claimant is applying for emergency benefits, he or she must check a small box at the end of the employment information on page three of the form. However, it does not provide information to claimants explaining that they must have lost wages to qualify for an emergency award or that the maximum wage reimbursement is $200 per week.

Finally, the form contains no area for claimants to specify the type of benefits they are requesting. Instead, comprehensive information is collected in all cases on employment, medical expenses, funeral expenses, and other expenses. If the form contained an area to specify which benefits were being requested, Division staff would be better able to focus their investigative efforts.

Language Could Be Simplified. The last page of the application form contains four notarized statements. A claimant's signature on this page indicates that the claimant: (1) understands the contents of the claim, (2) provides accurate information, (3) consents to have payments made directly by CVC to the service providers, and (4) agrees to provide the Commonwealth with any damages collected through future third-party settlements and authorizes the State to sue in the name of the claimant (subrogation).

While these four statements may be necessary to ensure that the best interests of the Commonwealth are met, the language is unduly complex and contains legal jargon. For example, one statement begins with language stating, "I covenant that no release has been or will be given in settlement for or compromise with any third person who may be liable for damages to me...." This complexity makes it difficult for the claimant to understand the terms.

Recommendation (3). The CVC director should review the application form for CVC benefits and update it as needed to ensure statutory changes are reflected in it. Instructions should be included on what information is required to obtain certain program benefits, and an area of the form should obtain information on the type of benefits the claimant is requesting. In addition, language should be simplified.

THE FIRST STEP — ESTABLISHING A CLAIM

Application forms are available from CVC Division staff, local victim and witness assistance programs, Commonwealth's Attorney offices, and law enforcement agencies. An application form generally must be submitted within 180 calendar days after the occurrence of the crime or the death of the victim. The Industrial Commission may extend this filing period to two years if good cause for the extension can be shown.

When an application has been submitted, CVC clerical staff review the application form for completeness. If the application is incomplete, the claimant is notified in writing of the information needed to process the claim. In some cases, the application is returned to the claimant with a letter stating what is needed for completion.

If the application is complete, a case file is set up and a case number is assigned based on the fiscal year in which the crime occurred. At this point the file becomes an "established" claim. According to CVC policy, a letter is then sent to the claimant acknowledging receipt of the application. CVC staff then assess eligibility based on information contained in the application form. In most instances, this is a cursory step to determine if the claim complies with the most obvious statutory eligibility criteria, such as whether or not the application was filed within 180 calendar days of the date of the crime.

Several problems affect the current process used to establish a claim. Applications are not acknowledged promptly upon receipt, and some claimants do not receive an acknowledgement at all. Written policies and guidelines regarding eligibility and allowable benefits are lacking or deficient. Division guidelines are not clear regarding how contributory conduct by the victim should be assessed. In addition, division staff are out of compliance with statutory language guiding eligibility determinations for family members.

Victim Applications Are Often Not Acknowledged

Most claim applications are received by the Division through the mail. The division director stated that acknowledgement letters are sent to all claimants. However, review of FY 1987 established claims revealed that almost 59 percent lacked letters acknowledging receipt of the application. This deficiency violates the program's procedure manual, which directs staff to send acknowledgements to all claimants once the file is set up.

An acknowledgement letter is important for several reasons. First, it demonstrates common courtesy towards the claimant. Second, it informs the claimant that the claim is being investigated. Third, it provides CVC staff the opportunity to immediately request any additional information needed.

The acknowledgement letter could serve one other important purpose. In the event that the claimant does not supply the program with adequate information to make a claim decision, statute allows the program to deny benefits and close the claim file provided the claimant received 90 days prior notification of the information needed (§19.2-368.5:1 *Code of Virginia*). CVC staff could use the acknowledgment letter to request the needed information from claimants and inform them of the statutory provision to close claims in the event the information is not received. The acknowledgement letter could then provide division staff with the formal documentation needed to close the claim if the claimant fails to provide adequate support for the claim within 90 days after notification. This notification to claimants would expedite the claim process by alerting claimants to the need for a prompt response.

Recommendation (4). The CVC Division should ensure that acknowledgement letters are sent to all program applicants. If information from the application is incomplete, the acknowledgement letter could include an itemization of the information needed. In addition, the letter should notify the claimant that needed information must be received within 90 days from the date of the acknowledgement letter or the claim will be closed.

Written Policies and Guidelines are Needed to Guide Eligibility Determinations

Program benefits are available if a crime victim's claim meets specific statutory requirements. Statutory eligibility requirements for the CVC program are contained within three different sections of the *Code of Virginia*. This provides a foundation for determining eligibility

The CVC Division has few written policies or guidelines on eligibility determinations and allowable benefits to ensure: (1) claims are treated consistently, (2) decisions are appropriate, and (3) new staff, if hired, have adequate guidance in determining claimants' eligibility or allowable benefits. This deficiency may have led to the incorrect interpretation of statutory language regarding family eligibility determinations. In addition, the Division does not provide adequate documentation of some eligibility determinations in claim files.

Statutory Eligibility Requirements. Section 19.2-368.10 of the *Code of Virginia* prohibits the Industrial Commission from making awards unless the following conditions have been satisfied:

- a crime has actually been committed in Virginia,
- the crime directly resulted in personal physical injury to or death of the victim, and
- police records show that the crime was promptly reported to the appropriate authorities within 120 hours of the crime occurrence. (The Commission can extend this crime reporting period in cases where delayed reporting is deemed justified.)

Victim injuries or deaths resulting from almost all crimes as defined by the *Code of Virginia* (and under common law) are compensable under the Act. As of April 11, 1988, injuries or deaths resulting from persons driving under the influence of alcohol, narcotics, or other intoxicants or drugs (DUI offenses) are compensable.

A second section of the CVC Act defines a victim as "a person who suffers personal physical injury or death as a direct result of a crime." A third section of the CVC Act identifies the following persons as eligible for awards under the crime victims' compensation program:

- a victim of a crime,
- a surviving spouse, parent, or child, including posthumous children, of a victim who dies as a direct result of a crime,
- persons, except law enforcement officers engaged in the performance of duties, who are injured or killed while trying to prevent a crime, including an attempted crime, or trying to apprehend an offender,
- a surviving spouse, parent, or child, including posthumous children, of a person who dies as a direct result of trying to prevent a crime, including an attempted crime, or trying to apprehend an offender, or
- any other person legally dependent for his principal support upon: (1) a crime victim or (2) any person who dies as a direct result of such crime.

The Act states that those who are criminally responsible for the crime which resulted in the claim are not eligible to receive program benefits.

Eligibility Guidelines Should Be Developed. The CVC Division has few written eligibility guidelines other than the *Code of Virginia* and a few Industrial Commission opinions to assist staff in determining claimants' eligibility for program benefits. This deficiency was noted by the Crime Commission, who specifically requested the program director to develop written guidelines. Lack of written guidelines can result in inappropriate decisions and inconsistent treatment of claims.

The CVC program now has numerous claim records from which a comprehensive set of guidelines to assist staff with eligibility determinations could be distilled. Currently, determinations depend on word-of-mouth, tenure of employees, and their ability to recall previous claims and decisions. Written guidelines would assist in ensuring that staff receive needed guidance, similar claims are treated consistently, and decisions are appropriate.

Guidelines Should be Drafted to Clearly Define Allowable Benefits. CVC program benefits are available if the claimant has no other collateral source which will cover the expense. Exhibit 3 provides an overview of the four types of benefits awarded to eligible crime victims. These benefits are: (1) total or partial loss of earnings, (2) funeral or burial benefits, (3) medical expenses, and (4) other expenses resulting from the crime. The CVC Division has no written guidelines specifying what types of "other crime-related unreimbursed expenses" are covered and under what circumstances they are compensable.

An examination of a sample of claims established in FY 1987 revealed that reimbursement for "other expenses" was provided in some cases for the following:

- prescriptions paid for by the victim,
- eye glasses,
- ambulance services,
- mileage to and from hospitals, physicians' offices, or mental health counselors' offices, and
- moving expenses for rape victims.

In one letter to a claimant CVC staff defined compensable moving expenses as: the truck rental for moving, reasonable labor for moving, utility reconnections for moving (but not deposits), and loss of the security deposit if a lease is broken. Division staff also stated that support services, such as child care services or housekeeping services, may be reimbursed. However, it is not clear under what circumstances these may be reimbursed.

Documentation Should be Required for Assessing Victim Contribution. As mentioned earlier, the CVC Act excludes offenders, accessories, or accomplices to the crime from eligibility This exclusion necessitates an evaluation of whether or not the victim contributed in any way to the commission of the crime. In fact, CVC program guidelines instruct staff to evaluate the "innocence" of the victim. However, file documentation on how evidence was used to determine victim contribution and how contribution was assessed by CVC staff is not always present.

Statute allows for a claim to be rejected entirely or benefits to be reduced if the claim investigation reveals that the victim's conduct contributed to the infliction of his or her injuries. The CVC program has guidelines to determine the degree of victim contribution and the resulting percentage reduction in benefits (Exhibit 4). According to these guidelines, "contribution is determined by the action portrayed by the victim at the time of or immediately preceding the crime."

According to data provided by the CVC Division director, over one-quarter of the claims established in FY 1987 were denied because the program director

Exhibit 3

Benefits Available Under the CVC Program

Type of Compensation	Rate or Amount	Limitations*
Lost Wages:		
Total loss of earnings	66 2/3% of the victim's average weekly wage**	Compensation cannot exceed $200 per week.
Partial loss of earnings	66 2/3% of the difference between the victim's average weekly wage before the injury and weekly wages earned after injury	Total compensation plus the victim's actual earnings cannot exceed $200 per week.
Death benefits	66 2/3% of the victim's average weekly wage	• Compensation cannot exceed $200 per week. • Dependents of victims are entitled to compensation in accordance with the Workers' Compensation Act, §65.1-65 and §65.1-66.
Funeral or Burial:	Actual unreimbursed costs	$1,500
Medical Expenses:	Actual unreimbursed costs	
Pregnancy resulting from forcible rape	Actual unreimbursed costs	
Counseling	Actual unreimbursed costs	Compensation cannot exceed $60 per hour.
Other Related Expenses:	Actual unreimbursed costs	Expenses must be for ordinary and necessary services in lieu of those the victim would have performed for himself and his family, or for those incurred as a direct result of the victim's injury or death.

*The total amount of benefits awarded cannot exceed $15,000.
A claim must have a minimum value of $100 to receive benefits.

**The victim's average weekly wage is defined by the Workers' Compensation Act in the *Code of Virginia* §65.1-6.

Source: *Code of Virginia* §19.2-368.11.1.

determined that the claimant contributed to the infliction of his or her injuries. Because a large number of claims may contain elements of victim contribution, adequate documentation is essential to avoid unnecessary appeals and to treat claimants fairly

Recommendation (5). The CVC Division director should develop written policies and guidelines to aid staff in the establishment of claims. These policies and guidelines should specifically address eligibility requirements, the definition of allowed program benefits, and required file documentation for cases involving victim contribution.

Exhibit 4

CVC Criteria Used to Determine Victim Contribution

Percentage Reduction	Contribution Factor
No Reduction	If the victim did not contribute to the commission of the crime in any fashion or was provoked by the defendant in a manner threatening bodily harm to the victim, and the victim acted in self-defense.
25 percent reduction	If the victim was provoked by the defendant in a manner in which bodily harm to the victim appeared unlikely and the victim used poor judgment because of intoxication or other drug involvement.
50 percent reduction	If it appears that the defendant was provoked by the victim in a manner in which bodily harm appeared unlikely
75 percent reduction	If it appears that the defendant was provoked by the victim in a manner in which bodily harm to the defendant appeared intentional.
100 percent reduction	If it appears that the defendant was provoked by the victim in a manner in which bodily harm to the defendant was unquestionable.

Source: CVC program guidelines, 1988.

Eligibility Decisions Regarding Family Members Do Not Comply With Statute

Section 19.2-368.2 of the *Code of Virginia* states that family members of the person criminally-responsible for the crime are generally ineligible for program benefits. Family is defined as: (1) any person related to such person within the third degree of consanguinity or affinity [i.e., related by either ancestry or marriage], (2) any person residing in the same household with such person, or (3) a spouse. However, family members are eligible in cases of spousal rape (in which the victim prosecutes the spousal offender), bona fide marital separation (in which the victim prosecutes the offender), incest, mental derangement, or cases in which the terms of the award can be structured in such a way as to prevent the criminally-responsible person from benefiting from the award.

CVC Division staff interpret this section to mean that claims involving family members should always be denied if the criminally-responsible family member could benefit in any way from the award. While this appears to be a practical approach to these claims, it violates the statutory language for awarding benefits to family members.

Recommendation (6). CVC Division staff should ensure that eligibility determinations regarding family members are made in strict compliance with statutory provisions.

IV. Investigating Claims

Investigating crime victim compensation (CVC) claims involves two primary activities: (1) requesting needed supporting documentation and (2) reviewing claim files whenever documentation is received and at periodic intervals to determine whether files are complete and ready for a claim decision. CVC Division staff conduct thorough claim investigations to ensure State funds are spent on eligible, valid claims. However, delays affect both activities undertaken in the claim investigation process. The division's formal investigation policies are limited, and the procedures currently used to execute investigative functions are cumbersome. Few processing standards exist and Division staff do not consistently adhere to them. In addition, the current utilization of existing staff adds to investigation delays.

Requests for Supporting Documentation Present Problems

After a claim has been established, CVC Division staff must send out form letters to request any documentation needed to support the claimed expenses and the occurrence of the crime. Claims cannot be properly assessed until supporting documentation is requested and received. The types of documentation requested are determined by the nature of the claim and the reimbursements being requested by the claimant.

If the requested supporting documentation is not received by CVC, a subsequent request is usually made. According to the division director, if second requests go unanswered, staff will either make another request or render a claim decision based on the documentation which has been collected. However, if medical documentation is not received after a second CVC request, the responsibility to secure and submit the needed information is transferred to the claimant.

Problems associated with these information requests stem from: (1) failure to tailor the types of requests made to the nature of the claims, (2) use of form letters which do not clearly delineate the types of information needed, and (3) delays in both requesting and receiving the needed documentation.

Information Requests Do Not Always Relate to the Nature of the Claim. Requests for information are sent out by the CVC Division to ensure that crime victims' compensation claims are for crime-related expenses not reimbursed by any other source. The division's procedure manual states that information from Commonwealth's Attorney offices and law enforcement agencies should be requested for every claim, while other requests should be specific to the type of claim (emergency or regular) or the type of reimbursement requested by the claimant (Exhibit 5). This policy was not always followed for the FY 1987 established claims that were reviewed.

Exhibit 5

Information Requests Made by the CVC Staff

Information Source	Type of Information Request	Type of Claim Decision
Commonwealth's Attorney	Eligibility	Regular
Law enforcement agency	Eligibility	Emergency, Regular
Employer	Wage loss	Emergency, Regular
Hospital	Medical expenses	Regular
Physician	Wage loss (disability period)	Emergency
Physician	Medical expenses	Regular
Physician	Counseling prescription	Regular
Local social service agency	Collateral resources	Regular
District Social Security office	Collateral resources	Regular
Insurance company	Collateral resources	Regular
Veteran's Administration	Collateral resources	Regular
Virginia Employment Commission	Wage loss	Regular
Funeral home	Death benefits	Regular
Claimant	Wage loss (disability period)	Emergency
Claimant	Miscellaneous	Regular

Source: JLARC staff analysis and CVC Division Procedure Manual (1988).

Analysis of these sampled claims also showed that claim decisions were further delayed when division staff requested and waited to receive information not related to the nature of the claims. CVC Division policy states that clerical staff are to send information requests to employers, hospitals, physicians, social services, social security, insurance agencies, the Veteran's Administration, the Virginia Employment Commission, and funeral homes only when applicable. JLARC staff found that clerical staff do not always use the nature of the claim to determine what information to request. As previously mentioned, the current application form does not provide any means for the claimant to identify which benefits are being requested. Consequently, division staff appear to send out information requests to any sources identified on the application regardless of applicability

The current application form requests that claimants submit any supporting documentation they might have at the time of application for benefits. Division staff do not appear to use this supplemental information to determine which information requests do not need to be made. This results in the collection of duplicate supporting documentation. In addition, it adds unnecessary paperwork to the workload of government agencies and others.

Review of a sample of claims established in FY 1987 revealed that additional information such as offense reports, copies of medical bills and prescriptions, funeral bills, and insurance statements were submitted by 66 percent of the claimants (39 out of 59). In 17 of the 39 cases (44 percent), division staff still made another request for this information. This practice yielded unnecessary duplicate information in 14 of the 17 cases. Decisions in these cases were delayed pending receipt of this duplicate documentation.

Analysis of a sample of claims established in FY 1987 also revealed that division staff do not always request needed information. This results in unnecessary delays and could potentially result in inaccurate claim decisions. Division staff stated that: (1) wage reimbursements cannot be decided in emergency request cases without documentation of the claimant's disability period (most often supplied in disability statements completed by treating physicians), and (2) a copy of a medical doctor's prescription for mental health counseling is needed to make counseling reimbursements. However, file documentation of a CVC request for a disability statement was not found in 33 percent of all emergency claims established and awarded in FY 1987 (13 out of 40).

A separate analysis of a sample of emergency requests in FY 1987 with no emergency awards showed that file documentation of a CVC request for a disability statement was not provided in 21 percent of the cases (5 out of 24), although the claims had been processed. In addition, the medical prescriptions required to make decisions on mental health counseling reimbursements were not always requested for the claims reviewed in which these reimbursements were made.

Recommendation (7). The CVC Division director should identify specifically which documented items are absolutely essential to conduct claim investigations for each type of benefit provided by the program. The procedure manual should be revised to formally delineate which documentation should be requested for each type of program benefit. The manual also should be revised to officially require division staff to send out requests for these essential items in all applicable cases and to ensure that staff, using the nature of the benefits requested in each case, do not send out information requests for unnecessary items.

The division staff should be trained by the director to evaluate the types of additional information submitted by claimants. If the documentation submitted can be used in place of documentation from an outside source, staff should use this information to eliminate some of the initial information requests made.

Letters of Request Need Revision. CVC Division staff have developed an extensive set of standard form letters to make initial requests for supporting documentation. These letters are useful for specifying what additional information is needed to process a claim. However, analysis of claims established in FY 1987 showed that follow-up requests were required approximately 46 percent of the time because the information either was not received or only part of the information was received.

The format and language of initial request letters may be responsible for many of the subsequent information requests which are needed. For example, an initial request to a physician asks for the submission of a completed physician certification for patient medical records, an itemized statement of the victim's charges, and any payments received since the date of the crime. The format of this request could be modified to highlight each item being requested.

References to the *Code of Virginia* contained in these letters can be confusing because no explanation is provided on how the *Code* relates to the information being requested. Often physicians submit patient records and no itemized bills or vice versa. In addition, these letters do not stress the importance of completing questions on the certification form related to the victim's disability period. Consequently, many physicians do not complete the disability portion of the form or submit signed blank forms. This may also occur because physicians interpret "disability" differently than CVC staff for the purposes of making a claim decision. The follow-up requests needed in these cases result in additional delays in making claim decisions.

Form letters used to make follow-up requests also do not enable the recipients to quickly determine what information is being requested. This results in responses which omit needed information or in the submission of documentation which has previously been submitted to the CVC Division. For example,

The letter used to make a subsequent request to a physician states, "... we have not received a response to our letter of (date), a copy of which is enclosed.... I have enclosed another Physician Certification form to be completed and returned with the patient's history and an itemized statement as detailed in our previous letter."

In many cases, the division may have already received two of these three types of information from physicians. However, follow-up requests are not modified to reflect the information which is still needed. Physicians frequently submit everything requested in these follow-up letters, resulting in unnecessary duplication of documentation. This duplication can be costly for claimants because some hospitals and physicians charge claimants fees ranging from $1 to $50 for filling out CVC's reports and for making copies of patient records. These charges are not reimbursed by the CVC Division.

Form letters to claimants directing them to obtain needed information from hospitals, physicians, or other sources that have failed to provide it to the CVC Division also need revision. The letters currently used for this purpose do not state that if the requested information is not submitted within 90 days (failure to perfect the claim), the division will close the claim. In addition, these letters are unclear, resulting in confusion over what information the claimant needs to provide to the CVC Division.

Recommendation (8). The CVC Division director should revise the form letters used to make both initial and subsequent requests for information. In cases where an acknowledgement letter is used to request information from claimants, the division's subsequent information requests should remind claimants of the 90-day deadline for submitting the information. In cases where follow-up letters are sent to claimants to request information previously requested from other sources, a 90-day deadline for submitting the required information should be clearly stated.

All request letters should delineate in a checklist fashion exactly what information is needed. For example, the letters to physicians should contain a list of all the possible items that a physician might be asked to provide, such as medical records, itemized medical statements, the physician certification form, and the disability period. Then, using this listing, division staff could check off the items which are actually needed from a specific physician.

Requests for documentation should contain brief explanations of the items being requested, including an explanation of why the information is needed. In addition, relevant citations from the *Code of Virginia* should be explained in the text of the letters.

Delays Found in Requesting and Receiving Information. Some delays associated with claim investigations cannot be controlled by CVC Division staff. For

example, staff cannot directly control the length of time it takes for outside sources to submit information once it has been requested. Delays, however, are influenced by (1) the number of information requests made, (2) the timeliness of the initial requests for information, (3) the use of the division's subpoena power to obtain needed information, and (4) the length of time division staff allow to elapse before making a subsequent request. These aspects of claim investigations can be controlled and monitored by Division staff to ensure more timely processing of claims.

The CVC Division has a formal policy designed to directly control the delays in making initial information requests. According to this policy, initial requests for supporting documentation should be sent out within five calendar days after receipt of the application. This goal appears reasonable. However, the initial requests made for a sample of claims established in FY 1987 were not always made within the prescribed time period. All types of initial requests are not made for each claim and in some cases the related data was not available for analysis. Among the claims sampled, initial information requests to Commonwealth's Attorneys, employers, and hospitals were sent out in nine calendar days, on average. Longer average delays were found for sampled information requests to law enforcement agencies (10 days), physicians (14 days), insurance companies (31 days), local social service agencies (38 days), and the district social security office (63 days). Among the emergency request cases sampled, an average delay of 37 days was found for sending disability statements to claimants or physicians.

Analysis of these sampled claims also showed that average delays in the receipt of most types of information for these claims were not excessive (Table 7). However, there are wide ranges in the amount of time it takes to receive documentation in specific cases. CVC Division staff currently take no steps to control these wide ranges in response times.

As previously mentioned, information requests are frequently made for information which is not necessary to make a claim determination. While the division director does have subpoena power delegated to him by the Industrial Commissioners, he stated that he has never exercised it. Letters of request for documentation do not stipulate a cut-off date for returning the requested information, and follow-up requests are not made within any standard time period.

Analysis of claims established in FY 1987, as previously stated, indicated that almost one-half of the claims (46 percent) needed subsequent requests for information. The required follow-up requests were not made within 60 days after the initial requests for 71 percent of these claims. The length of time which elapses between the initial and subsequent requests in these cases directly impacts the overall investigation time. The CVC Division currently has no processing standards which specify when subsequent information requests should be made. Therefore, many claims may not be processed in a timely manner.

The CVC Division director also should undertake other activities to control the variability in the delay between requesting and receiving supporting documenta-

Table 7

Response Times After Initial Requests for Supporting Documentation

Source	Number of Requests Examined*	Average (in days)	Range (in days)
Commonwealth's Attorneys	81	19	2 - 159
District Social Security Offices	5	19	4 - 72
Law enforcement agencies	126	24	3 - 240
Physicians	68	44	4 - 205
Claimants or physicians (disability statements)	35	47	4 - 195
Employers	73	48	2 - 294
Hospitals	74	48	2 - 300
Local social service agencies	11	67	6 - 349
Insurance companies	14	71	6 - 235

*Note: Not all requests are made for every case in the sample. A total of 129 cases were examined. Averages were rounded to the nearest day.

Source: JLARC staff analysis of a sample of FY 1987 established claims.

tion. Requests for information should include an explicit statement about the program's authority to subpoena needed records and provide a specific cut-off date of no more than 30 calendar days for returning the requested documentation.

If the requested information is not received by the Division by this date, the director should ensure an immediate follow-up request is made. The follow-up letter could include a statement explaining how the recipient will benefit if the requested information is submitted promptly For example, a physician might be told that promptly submitting the requested information will permit the CVC Division to

make a claim decision quickly and provide timely reimbursement to the physician. As a final course of action, the division director could exercise his subpoena powers if he encounters difficulty or resistance in collecting requested information.

Recommendation (9). The CVC Division director should take steps to ensure that all initial requests for information are made within five days from receipt of claim applications. Staff compliance with division policy should be monitored by the director as part of his regular review of claim files.

The division director should also provide specific details in information requests to obtain documents by certain dates. Specific reference to the director's power to subpoena documents should be made if difficulties in obtaining information occur.

Procedures for Reviewing Files Cause Investigation Delays

As supporting documentation is received, CVC Division staff place this information in the appropriate claim file and review the file contents. In addition, each file must be periodically reviewed by CVC Division staff to evaluate file completeness. The current procedures used by division staff to review claim files are cumbersome and result in investigative delays. There is currently no quick method for determining what information has been requested or received for a specific claim.

Inconsistent adherence to the division's 30-day review policy and current file call-up procedures result in excessive delays between receipt of an application and the rendering of a claim decision. Existing procedures, designed to provide priority processing for emergency requests, are not always followed. In addition, some Division staff currently perform some file review duties which are clerical in nature and could be better performed by the division's two clerical positions.

File Review Procedures Need Revision. CVC Division staff currently review claim files whenever supporting documentation is received and at predetermined intervals to determine file completeness. However, the division lacks an efficient process to determine which information requests have been received. Consequently, claim decisions are sometimes made before all requested information has been received, or the decisions are delayed while division staff wait for duplicate information to be received.

When supporting documentation is received by the CVC Division, staff who examine claims sift through the initial request letters and place a check mark on the one which corresponds with the documentation being inserted in the file folder. No formal notations or summaries are made to record what information has been received or what information needs to be requested for a second (or subsequent) time. To determine which follow-up letters should be sent, staff sift through the initial request letters to see which ones have not been marked with a check. If any requested documentation has not been received, staff then mail standard follow-up requests.

If division staff could tell at a glance what information had been requested and still not received, valuable time could be devoted to other processing duties. The development and use of a file checklist would assist in the identification of file contents and also reduce the number of information requests which go unanswered. This checklist should be attached to the inside of each claim file and used to document where requests for information have been sent, when the requests were sent, and when the requested information was received.

Recommendation (10). The CVC Division director should develop a file checklist for use in reviewing claim files. Use of this checklist should be made mandatory

Irregular File Call-up Causes Delays in Investigation. The CVC Division does not have a formal call-up system for tracking file review dates. The division has a goal to review every file at 30-day intervals. However, the current manual system used to set review dates for claim files is outdated and does not ensure that this goal is met. Consequently, delays in follow-up requests for information are excessive and claim decisions are unnecessarily postponed. Furthermore, when reviews are not conducted on schedule, the claimant could be penalized by having the claim closed for a failure to perfect it within the 90-day time period.

CVC Division staff who investigate claims use a manual file call-up system to review claims in which they note review dates on their calendars. If the 30-day call-up date is already full, staff schedule a particular claim for review on the next available working day This practice extends the delays between reviews which subsequently delays both follow-up requests for documentation and claim decisions. For example,

> *A claim established on December 5, 1986, had review dates that exceeded 30-day intervals. The delay between receipt of the application and the division's final decision was 259 calendar days.*
>
> *Initial information requests for this claim were sent to the Commonwealth's Attorney, local law enforcement agency, victim's employer, and three hospital service providers on December 15, 1986. The law enforcement agency and the victim's employer responded within 30 days. However, division staff did not send follow-up requests to the Commonwealth's Attorney and the three hospitals until March 17, 1987 (after patient records and physicians' reports but not itemized bills had been received from each). It should be noted that itemized hospital bills for all three hospitals were submitted by the claimant at the time of application.*
>
> *By May 18, 1987, all duplicate itemized hospital bills had been received by the CVC Division. On May 20, 1987, the Commonwealth's Attorney notified Division staff that as a result*

of the criminal proceeding in the case, one offender was paying $5,900 in restitution over a two-year period. Apparently, division staff still needed information on the victim's disability period. However, they did not write to the claimant until July 8, 1987, to request a completed disability statement. This statement was received on August 7, 1987, and an award decision was entered by division staff on August 21st.

Lengthy review intervals directly impact overall claim processing times. They result in delays for requesting follow-up information, impede the timely receipt of needed documentation, and prevent claim decisions from being made within the program's 90-day processing goal. For claims established in FY 1987, analysis showed that CVC Division staff took more than 90 days to reach a claim decision for 67 percent of the claims.

Recommendation (11). The CVC Division should implement an automated file call-up system to use in conjunction with its file checklists. This system could be designed similar to the one currently used for the workers' compensation program and could be implemented on the division's new computer system.

Clerical staff should be trained to handle greater responsibility for reviewing the completeness of claim files so that other division staff can devote their time to final reviews and decision-making. A clerical staff member could call up all claims that are scheduled for review, pull these records from file storage, and review the checklists for each file. If the file is complete, it could then be given to the appropriate staff for an award determination. If the file is still incomplete, the clerical staff member would be responsible for sending out any needed follow-up requests for information and entering a new call-up date into the automated system.

In addition, the CVC Division director should develop a file review procedure with two distinct steps to reduce the length of time between receipt of an application and disposition of a claim. First, clerical staff should review files at two-week intervals to identify supporting documentation which has not been received. Division clerical staff should immediately make any needed subsequent requests. This practice would ensure that claimants have an ample opportunity to provide the information needed to perfect a claim within 90 days. Second, division investigative staff should review files at 30-day intervals to determine file completeness and make award decisions in a timely manner.

Emergency Requests Should Be Given Investigation Priority CVC Division staff stated that they use special informal procedures to investigate emergency requests by making award decisions upon receipt of information from law enforcement agencies, employers, and disability statements from either claimants or physicians. These informal procedures, however, were not always followed for the emergency awards made for claims established in FY 1987 For 29 of 40 emergency award cases, the three required documentation items were received prior to a claim

decision. However, CVC staff did not assign these 29 cases priority processing once the necessary documentation was received. Instead, an average of 22 days passed before the award decisions were made.

As previously mentioned, a sample of FY 1987 emergency requests which did not receive emergency awards were not given priority processing. Average processing time for this sample was 125 days. Review of this sample also showed that in 17 percent of the cases division staff failed to make needed subsequent requests for the disability statements required to verify lost wages. In these cases, when disability statements were not received after making initial requests, CVC Division staff did not make an emergency award for lost wages.

Recommendation (12). Special investigation procedures for investigating emergency requests need to be developed by the CVC Division director and incorporated into the division's procedure manual. Division staff should adhere to these procedures for all emergency requests. Documentation from law enforcement agencies, employers, and a disability statement from treating physicians should be requested immediately for all emergency requests. If this needed documentation is not received within two weeks, follow-up telephone requests should be made. Staff should make decisions on emergency requests as soon as the required items have been collected.

V. Approving or Denying Claims

After the claim has been established and investigated, the claim file is reviewed for a final time by Crime Victims' Compensation (CVC) Division staff. The CVC Division director then decides to either award or deny the claim. If benefits are awarded, the payment is processed through the Department of Workers' Compensation, the Department of Accounts, and the State Department of Treasury If benefits are denied, staff in the CVC Division send the claimant a denial letter. This is the final step in the claim process unless the decision is appealed.

The CVC Division director has significantly increased the number of decisions he makes on claims. In FY 1986, the director made decisions to award or deny benefits on 56 percent of the claims open that year (276 of 497 claims). By FY 1988, the director had made decisions on 78 percent of the claims open that year (970 of 1248 claims). While the number of claim decisions has increased dramatically, more can be done to improve the decision-making process to ensure that claims are processed in a more timely manner and decisions are adequately supported.

Currently, delays exist between the final receipt of investigative information and the decision on the claim. Some claim decisions require better documentation. The method of determining the award amount needs clarification and the division's communication with claimants on award decisions is not adequate.

Delays Exist Between the Final Receipt of Claim Information and the Claim Decision

The claim investigation process concludes with a final review of the claim file. This final file review serves to verify that all documentation has been received and the benefit amounts can be calculated. CVC Division staff may also telephone medical providers to determine that the medical bill in the file is the final or most recent bill for the claimant. The division director then makes a decision to either award or deny benefits. Table 8 illustrates the number of decisions made on claims over the last three fiscal years.

CVC staff send a letter to the claimant with specific information about the award or denial after the claim decision is made. In addition, the victim and witness assistance program coordinator who referred the victim to the program may be notified of the outcome of the claim, although no specific information surrounding the decision is released.

Analysis of a sample of claims established in FY 1987 revealed that delays exist between the receipt of all supporting documentation for claims and the decision

Table 8

Number of CVC Claim Decisions (FY 1986 - FY 1988)

	FY 1986	FY 1987	FY 1988
Claims Needing Decisions			
Claims carried over from previous fiscal year	not available	221	303
Claims established during year	493	843	889
Claims reopened during year	4	25	56
TOTAL CLAIMS TO BE DECIDED	497	1,089	1,248
Claim Decisions Made			
Initial awards	189	456	455
Reopened claims awarded	3	21	51
Initial denials	84	307	459
Reopened claims denied	0	2	5
TOTAL CLAIM DECISIONS	276	786	970

Note: Statistics in this table reflect the CVC claim database as of September 9, 1988. The CVC Division director has indicated that modifications have been made for the FY 1988 data since that time.

Source: JLARC analysis of CVC claims database, FY 1986-FY 1988.

to make an award. These delays were particularly long for claims that requested emergency awards. On average, about 50 days elapsed from the receipt date of the final claim documentation to the date a decision was made on emergency requests. For all other claims, almost 45 days elapsed between the date that final documentation was received and the date a decision was made. Better control and monitoring by the program could improve the timeliness of claim decisions.

Recommendation (13). The CVC Division should expedite its claim decisions. The division should establish a formal policy for the processing time to make an award decision. A decision should be rendered within one week after full documentation has been received on the claim.

Some Claim Decisions Lack Adequate Documentation

The CVC Division conducts a rigorous investigation prior to making a claim decision. The investigations often result in the collection of numerous documents pertaining to a claim. However, in many cases, claim files do not contain adequate documentation to support claim decisions. This makes it appear that the standards for decisions vary among different claims.

A review of all FY 1987 emergency award decisions revealed that these decisions are documented inconsistently in the claim files. CVC Division policies and procedures require only three documents in order to make an emergency award: the police report, the employer's report (which contains wage information), and the disability statement (which documents the existence of a disability and period of time the claimant or victim is unable to work). Division staff reported that this requirement is followed for all claims requesting an emergency award. However, actual practice varies. In approximately 27.5 percent of the emergency awards, documents required by CVC policies were missing from claim files at the time CVC staff made emergency decisions. In other claim files, the claim decisions had been delayed, sometimes for months, until the required documentation was eventually received. In a few of these cases, awards for regular benefits, including lost wages, had been made without the necessary documents.

> *In one case, an emergency award for $500 in lost wages was made before the disability statement was received. A second emergency award for $1,000 was made when the disability statement was received.*
>
> * * *
>
> *An emergency request was made by another claimant for lost wages. Documentation of medical bills, earnings and the police report had been received. No decision was made by program staff, however, until the disability statement was received several months later*

Review of FY 1987 established claims showed that CVC staff also made decisions to award regular benefits to almost 15 percent of the claims prior to receiving all requested documentation. As with emergency awards, lack of adequate documentation of claim decisions for regular benefits makes it appear as though some claims require a different level of proof to render a decision than others.

Recommendation (14). The CVC Division should evaluate its required documentation policies for emergency and regular claims. If the requirements are reasonable and necessary, the staff should begin consistently following these requirements. If the requirements are not reasonable and necessary, they should be revised and followed. Required documentation to make a decision should be consistent among claims requesting similar benefits.

Some Award Decisions Could Be Expedited

Award decisions are currently made only after CVC staff have received supporting documentation from all sources. Many claim decisions could be made after receiving only a limited amount of information. Information from law enforcement agencies and Commonwealth's Attorney offices supply eligibility information to make an initial decision to award or deny benefits. For example, these information sources indicate whether or not the victim has cooperated with law enforcement agencies, contributed to the infliction of injuries, or whether or not sufficient proof of the criminal incident exists. Some clear-cut denial decisions could be made as soon as the Division receives documentation that the statutory eligibility criteria have not been met by the claimant.

JLARC staff found about 44 percent of the denials on FY 1987 established claims resulted from information provided by either the Commonwealth's Attorney offices or law enforcement agencies. Their responses were received within 22.5 days on average. In such cases, it is not necessary for Division staff to delay a claim decision until all other requested supporting documentation has been received.

Recommendation (15). The CVC Division should adopt an approach to making claim decisions in which information from Commonwealth's Attorney offices and law enforcement agencies can be used as soon as it is received to make some claim decisions. If the claim does not conform to statutory eligibility criteria it can be immediately denied.

Method For Calculating Award Amounts Should Be Clarified

Virginia, like most states, reduces the claimant's award by the availability of other collateral sources to pay for crime-related expenses. This is done to ensure that crime victims do not take advantage of recovering twice for the same expense and to ensure that other victims who may need the compensation can benefit from the program. The identification of collateral resources is a frequent reason for the CVC Division to deny a claim.

The CVC Division makes awards for only those expenses not actually reimbursed by other collateral sources, such as car insurance, disability insurance, life insurance, health insurance, Medicaid, Medicare, the State and local hospitalization program, Social Security, or other third party payment sources. In fact, division staff require claimants to apply for benefits from other collateral resources before they will make an award determination. This action ensures that the program is providing benefits to the most financially needy claimants.

During FY 1988, legislative and judicial decisions changed the method for calculating CVC awards. First, the General Assembly eliminated the required $100 deductible on all awards. Prior to April 11, 1988, a deductible of $100 was applied to

all awards made to claimants, unless the claimant was 65 years of age or older. Currently, a crime victim's claim must have a minimum value of $100 in order to receive benefits.

Second, a Court of Appeals decision altered the method used by the CVC program to calculate the award amount. The Court of Appeals decision raises some questions regarding the basis for making the award decision (Jennings v Division of Crime Victims' Compensation Fund). The Court of Appeals decision was based on a strict interpretation of statutory language. The decision stated that the Division director and the Industrial Commission should follow a specific order to make an award. First, eligibility should be determined. Next, they should determine whether the award is allowed. If the award is allowed, the amount should then be determined. Next, the award amount should be apportioned among claimants if necessary, and finally, it should be reduced by the amount of payments received or to be received from collateral sources. Clarification of the current method for determining awards is still needed to provide the director with information on how to treat crime-related expenses in determining the award amount.

As shown in Exhibit 6, the division previously calculated the award amount by using the total expenses incurred by the crime victim and subtracting available collateral resources from this amount. The division will continue to use this method for claims which total less than the maximum award amount. However, for claims which exceed the $15,000 maximum, the $15,000 maximum amount serves as the award amount from which collateral resources are subtracted. This differs from claims of lesser value because the starting point used to calculate the award amount is not the amount of total crime-related expenses.

The Jennings decision will most likely impact victims with large medical bills that are partially covered by collateral sources, such as medical insurance. If the collateral source provides more than $15,000 towards the payment of victim expenses, the victim will not be eligible for any benefits under the CVC program. In effect, claimants with some access to collateral sources are penalized even though their net expenses may be greater than those who have no collateral resources.

Because of the imprecise phrasing in the *Code*, it is not clear how the General Assembly intended awards to be calculated or how the $15,000 maximum award amount is to be applied. Statutory modifications may be necessary if legislative intent is different from the judicial interpretation of the statute.

Recommendation (16). The General Assembly may wish to consider amending §19.2-368.11.1 of the *Code of Virginia* to allow the Industrial Commission to use the methodology it employed prior to the Jennings decision to calculate crime victims' award amounts.

Exhibit 6

Methods for Calculating Crime Victims' Compensation Awards

Method Used Prior to May 1988

		Example:	
1)	Calculate claimant's total expenses arising from the occurrence of the crime.	$20,000 5,000 $25,000	Medical expenses Lost wages Total expenses
2)	Deduct the amount received (or to be received) from collateral resources from the claimant's total expenses. Determine the net loss sustained by the claimant.	$25,000 -16,000 $ 9,000	Expenses Medical insurance Net loss
3)	Make an award for the net loss, not to exceed $15,000.	$ 9,000	Program award

Current Method for Calculating Awards

1)	Calculate the amount of the award, not to exceed $15,000.	$15,000	Maximum award
2)	Deduct the amount received (or to be received) from collateral resources from the total award.	$15,000 -16,000 (1,000)	Award Medical insurance Difference
3)	Make an award if the difference between the award amount and collateral resources is greater than $100.	$ 0	Program award

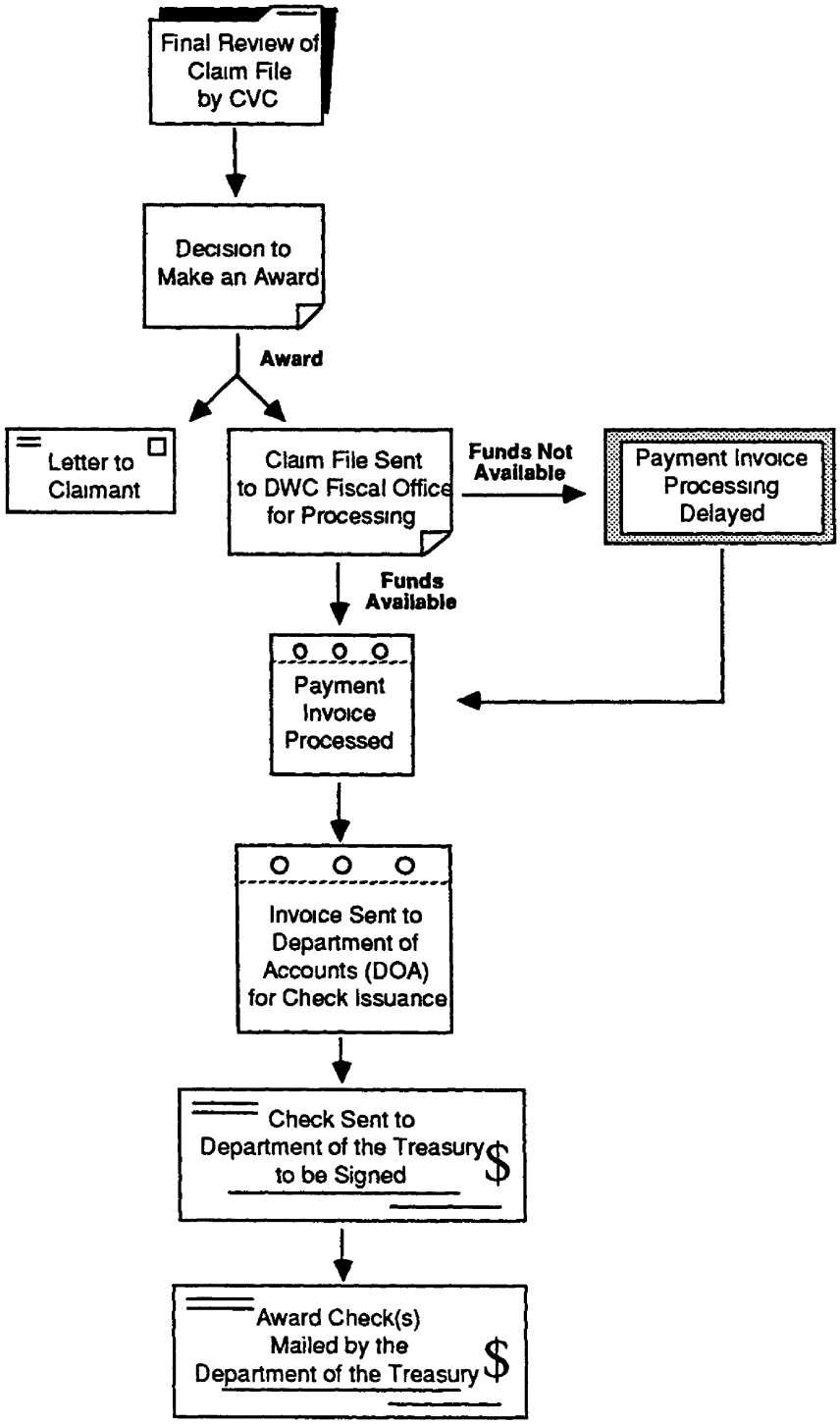
Source: JLARC interviews of the CVC program director and Jennings v. Division of Crime Victims' Compensation Fund, 5 Va. App. 536 (1988).

Prompt Notification of Award Decisions Should Be Made

Figure 11 illustrates the process for making an award. Once the division director decides to make an award, a letter is sent to the claimant. The letter includes information summarizing the claim and an itemized breakdown of the award (including who will be paid and the amount of the payment). Payment may be made directly to the claimant for expenses he or she has paid or it may be made directly to the medical provider or company that provided the service to the claimant.

Figure 11

Process for Making a CVC Award



Source: JLARC staff representation of CVC award process.

The CVC Division then notifies the DWC fiscal staff of the decision to make an award. The file is sent to the DWC Comptroller, and staff in the fiscal office type and prepare an invoice for processing through the State Treasury When funds from the criminal injuries compensation fund are available, these invoices are submitted to the Department of Accounts to process checks for payments. The Department of the Treasury issues the checks for payment to the claimants or service providers.

Two factors may slow down the process for making an award. Both appear to be beyond the control of program staff. First, adequate documentation to make an award determination may not have been received. Second, money from the criminal injuries compensation fund may not be available to pay the claimant after the decision has been reached. However, CVC can improve processing of awards by ensuring that claimants are promptly notified of award decisions.

A review of FY 1987 established claims found many instances in which claimants were not notified promptly of the award decision. The average delay from the time the award decision was made to the notification letter was about 15 days. However, in some cases the delay was as long as three months. It is possible that some of these delays occurred because funds were not available for the prompt payment of benefits. However, the reason for this delay was not documented in the claim files.

While lack of available funding is a problem, CVC Division staff do not consistently inform claimants promptly of their decision or the reason for the delay When payment delays occur, an explanation of the delay in receiving the award should be added to all letters for the respective claims. This would serve to assure claimants that award payments will be made and notify them of when they can expect to receive reimbursement.

In addition, some award letters did not explain why an award was reduced or only some crime-related expenses were paid. Award decision letters to claimants should include information on why the claimant or the service provider is not being reimbursed in full for all itemized expenses.

Recommendation (17). The CVC Division should notify claimants immediately of claim decisions. In cases for which awards are made, the Division should ensure that all letters include information on whether or not the award is being reduced by any amount and the reason for this reduction or partial payment. If money from the criminal injuries compensation fund is not available, the CVC Division should provide an estimate of the date it will become available and when the claimant can expect payment.

VI. Appeal Process

To ensure that eligible victims of crime receive every opportunity for compensation, the General Assembly provides claimants with the right to appeal decisions. According to statute, claimants may ask the three Commissioners to review the decision of the director of the crime victims' compensation (CVC) program. Claimants may appeal the decision of the three Commissioners to the Virginia Court of Appeals and seek further appeal with the Supreme Court of Virginia.

Certain aspects of the procedure followed by the Industrial Commission to review decisions of the division director may be construed as being contrary to statute. The current review procedure does not always provide claimants with an independent review of the CVC Division director's decision. While the Industrial Commission does a good job of informing claimants of their right to have the CVC Division director's decision reviewed, it does not adequately inform claimants of the requirements and procedures they must follow to fully pursue their interests. In addition, the Industrial Commission uses several different procedures to resolve claimant appeals. Very few of these procedures are written down. This sometimes results in confusion among staff.

REVIEW PROCEDURES SHOULD BE REVISED

For some claimants, a review consists of the director deciding whether to affirm or modify his earlier decision. This is, in essence, a reopening of the claimant's case rather than a review Therefore, this procedure may be construed as contrary to statute.

Claimants seeking reviews of the division director's decision must act quickly Statute requires CVC claimants to file their requests for review within 20 days of the CVC Division director's decision. This requirement, at times, may unnecessarily deny compensation to eligible claimants.

Current Review Procedures May be Contrary to Statute

When the CVC Division director informs claimants of his decision, he also informs them they may request a review of his decision. Statute requires the three commissioners to review the director's decision. For some claimants, however, the review consists of having the director re-assess his earlier decision. This procedure is actually a reopening of the case and may be interpreted as contrary to statute.

Current Review Procedure. When a claimant's application for benefits is denied, the division director sends the claimant a denial letter and informs the claimant that, "In the event that you are dissatisfied with this decision, you may file an appeal for review." Once the claimant requests a review, the division director decides whether the claimant is objecting to the director's determination of the facts or his application of the law to the case. If the division director thinks the case involves a factual dispute, he asks the Clerk of the Commission to schedule it for an evidentiary hearing before a deputy commissioner (Figure 12).

An evidentiary hearing provides the claimant with the opportunity to present evidence showing that the claim should be awarded. The claimant may present evidence through his or her own testimony or through the testimony of others. It also provides the Assistant Attorney General representing the criminal injuries compensation fund with the opportunity to question the claimant and present testimony of witnesses showing why the claim should not be awarded. A deputy commissioner conducts the hearing. In FY 1987, the director decided evidentiary hearings were necessary for 11 of the 46 cases appealed (Table 9).

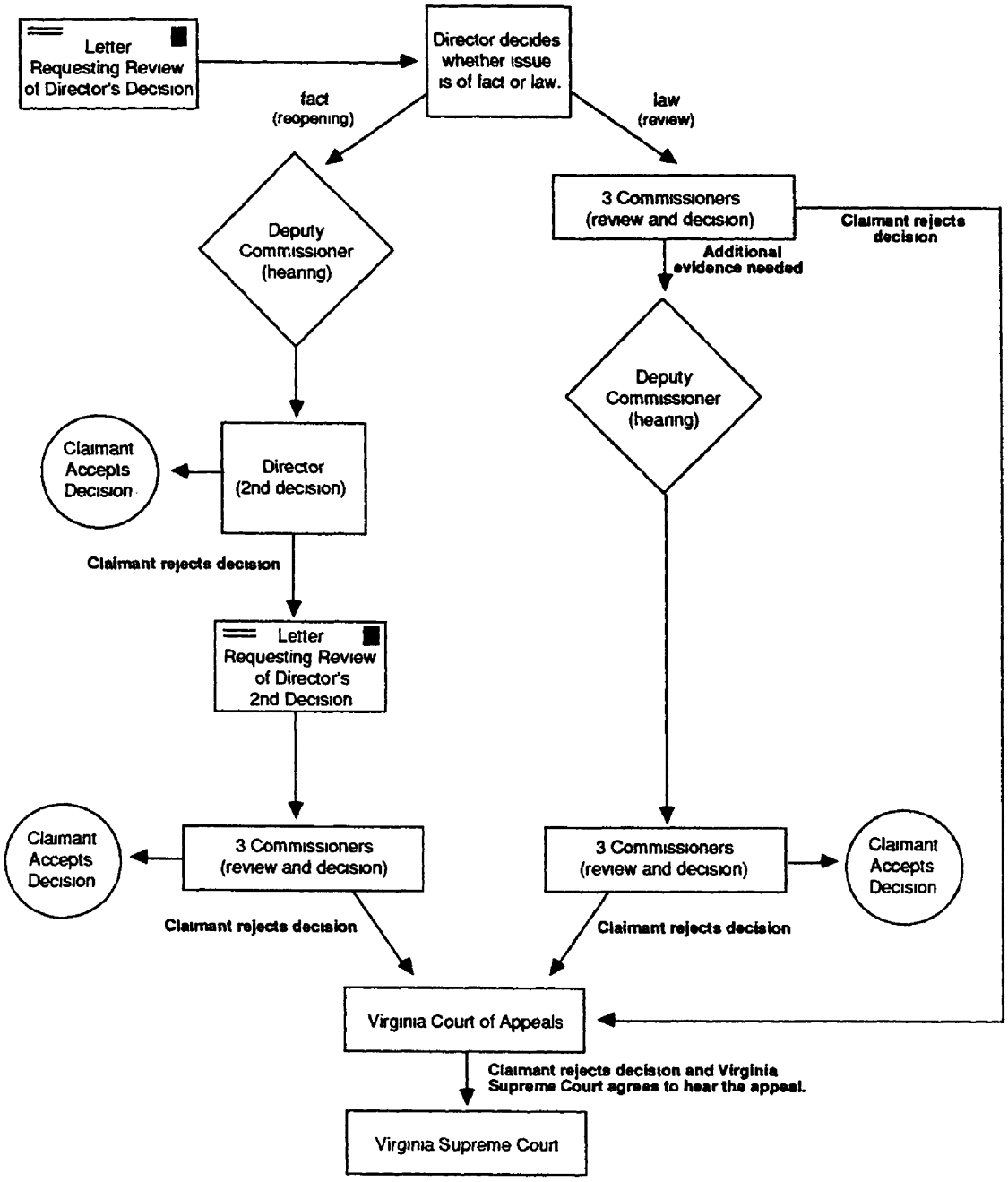
Following the evidentiary hearing, the director reviews the transcript and sends a second decision letter to the claimant. This letter informs the claimant whether the director has decided to change his earlier decision. A review of FY 1987 appeals revealed that the division director changed his decision in three of the 11 cases he initially referred to an evidentiary hearing. If the claim is denied, the claimant is again informed of the right to have the director's second decision reviewed.

If the director believes the case centers on his interpretation of law, he asks the Clerk of the Commission to schedule a review before the three Commissioners. During a review, the Commissioners examine the documents in the case file to reach a decision. They also allow claimants to orally argue their case before the Commissioners when claimants make this request. In some instances, the Commissioners order an evidentiary hearing to be conducted because the documents which have been collected are insufficient for them to reach a decision. In FY 1987, 35 cases were referred directly to the Commissioners. The Commissioners scheduled evidentiary hearings for eight of these cases. After the evidentiary hearing requested by the Commissioners is completed, the case is returned to the three Commissioners for their decision.

Review Procedure May Appear Contrary to Statute. Section 19.2-368.6 of the *Code of Virginia* provides that the person to whom the claim is assigned by the Chairman of the Commission shall decide whether to award or deny compensation. Responsibility for making initial claim decisions has been delegated to the CVC Division director. If the claimant disagrees with the director's decision, then, according to §19.2-368.7 of the *Code of Virginia*, "The claimant may ... apply in writing to the Commission for consideration of the decision by the full Commission as provided by §65.1-97." Section 65.1-97 of the *Code of Virginia* provides that once a request for a review is made, the case shall be reviewed by the three Commissioners.

Figure 12

CVC Review Process



Source: JLARC staff interviews with DWC staff.

Table 9

Cases Reviewed in Fiscal Year 1987

Total number of reviews	46
Cases referred initially to the commissioners • 8 of the 35 cases were referred by the Commissioners to an evidentiary hearing	35
Cases referred initially to an evidentiary hearing • 5 cases, affirmed by director • 3 cases, reversed by director • 1 case, opinion by a deputy commissioner • 2 cases, claimant failed to appear at hearing	11

Note: This table does not reflect the number of reviews occurring after the director has reassessed his first decision and made a second decision on the case.

Source: JLARC staff analysis of cases appealed in FY 1987

The procedures established by these statutes require the three Commissioners to review the director's decision and decide whether to affirm, modify, or reverse the decision. The procedures followed by the Industrial Commission allowing the director to initially decide whether the case will be reviewed by the commissioners may· (1) appear inconsistent with statute and, (2) add additional time to the review process. This practice should be discontinued. In addition, the procedure is misleading to claimants who could reasonably expect that a review of the director's decision would involve a review by someone other than the director.

Director's Reopening of the Case Is Not A True Review. Section 19.2-368.8 of the *Code of Virginia* authorizes the Industrial Commission to reopen or reinvestigate any claim at the claimant's request or at its own discretion anytime prior to two years following the date of the crime. The procedures for reinvestigations and for reviews are addressed separately by the *Code of Virginia*. A reinvestigation of a case is not a review If a claimant requests a reinvestigation, the Industrial Commission may deny the request. It may not deny a request for a review

When the division director studies the hearing transcript and informs the claimant for a second time whether he will award or deny the claim, the Industrial Commission has, in essence, reopened or reinvestigated the director's decision. The claimant, however, is left with the understanding that his or her request for a review has been satisfied when in fact it would not actually begin until the claimant asks for

a review of the division director's second decision. If the Industrial Commission wishes to continue routinely reopening appealed cases, it should inform claimants that their cases have been reopened.

When claimants request a review of the director's decision, the Industrial Commission sometimes chooses to reopen cases instead. There appear to be two reasons for this. First, having the director examine the transcript from an evidentiary hearing and re-assess his earlier decision may prevent unnecessary consideration of a case by the three Commissioners. Second, claimants may not understand the technical significance of the term "review", so when they request reviews they may be actually requesting an opportunity to present additional evidence.

The objective of resolving disputed cases at the lowest possible level of the organization is reasonable, sensible, and may result in cost savings to the CVC program. The objective of providing the claimant with an opportunity to present additional evidence can be accomplished regardless of whether the case is reopened or treated as a review When the director sends cases directly to the three commissioners for a review, they frequently request evidentiary hearings to allow claimants to present evidence to resolve factual disputes. When the director reopens a case after the claimant has requested a review, however, the procedure requires additional time, misleads claimants, and may be contrary to statute.

Statute Governing CVC Reviews Should Be Amended. CVC claimants could be ensured an independent and efficient review of their claims if a deputy commissioner performed the initial review The deputy commissioner would be responsible for: (1) hearing evidence concerning the case, (2) assessing the credibility of the witnesses, (3) reviewing all documents in the record, (4) deciding whether to enter an award, and (5) writing an opinion describing the evidence presented and the rationale for the decision. If the claimant were dissatisfied with the deputy commissioner's decision, the case could then be transferred to the three Commissioners.

This modification of the review procedure would result in several benefits to the claimant and the Industrial Commission. First, the deputy commissioner's initial review would provide the claimant with an independent assessment of the Division director's decision. Second, it would eliminate the necessity for a written transcript unless the claimant chose to appeal the case further to the Commissioners. Third, the opinion written by the deputy commissioner would assist the Commissioners in understanding the issues central to the appeal.

If the three Commissioners believed that having nine deputy commissioners interpret statutes governing crime victims' cases might result in conflicting interpretations of law, only one or two deputy commissioners could be assigned to conduct CVC reviews. These deputy commissioners could travel throughout the State to conduct the reivews. This would not be unduly burdensome or expensive given the limited number claimants requesting reviews.

Recommendation (18). The Industrial Commission should amend its procedures to remove the CVC Division director from the review process and ensure compliance with §19.2-368.7 and §65.1-97 of the *Code of Virginia*, which require applications for review of the director's decision to be heard by the three Commissioners. Because it is desirable to simplify the review process, the Industrial Commission should assign deputy commissioners to hear and decide CVC reviews. To enable the Industrial Commission to make this change, the General Assembly may wish to amend §19.2-368.7 of the *Code of Virginia*. The amendment should state that a CVC claimant's request for review of the director's decision shall be heard and decided first by a deputy commissioner with the right of further appeal to the three Commissioners.

Twenty-Day Limitation Appears Too Restrictive

If a claimant fails to notify the Industrial Commission in writing within 20 days of the date shown on the director's decision letter, the request for a review will be denied in accordance with §19.2-368.7 of the *Code of Virginia*. Of 59 FY 1987 cases sampled by JLARC staff, seven claimants sent letters to the Industrial Commission requesting that the division director's decision be reviewed. Of these seven claimants, three were denied the right of review because their requests were not received by the Industrial Commission within 20 days following the date shown on the division director's decision letter. These three requests were late by one, two, and five days respectively The 20-day limitation also applies when employers or employees request reviews of deputy commissioner decisions involving workers' compensation benefits.

Rigid appeal notification requirements in civil courts typically exist to expedite court proceedings, but more importantly to allow the opposing party to know when the case has been resolved. Claimants under the CVC Division, however, do not have a true "opposing party" because the proceedings are not adversarial in nature. This rationale for rigid appeal notification requirements does not apply to CVC cases.

The objective of the CVC Division is to compensate persons meeting the eligibility requirements. The Industrial Commission already has the authority to extend several deadlines. For example, if a claimant can show good cause for doing so, the Industrial Commission can extend the time to file a claim and can waive the requirement that claimants report the crime to the proper authorities within 120 hours of the crime. However, if the claimant's letter requesting a review of the director's decision, for whatever reason, fails to reach the Industrial Commission within 20 days, the claimant will be denied benefits despite the merits of his or her claim. The program's objective to compensate eligible persons would be enhanced by allowing the Industrial Commission to extend the 20-day limitation.

Recommendation (19). The General Assembly may wish to amend §19.2-368.7 of the *Code of Virginia* to allow the Industrial Commission to extend the

20-day time period for requesting a review when the claimant shows good cause for an extension.

EXPLAINING REVIEW PROCEDURES

The Industrial Commission does a good job of informing claimants of their right to have the Division director's decision reviewed. Since few claimants are represented by attorneys, many claimants would be unaware of this right if they were not informed of it by the Commission. However, very few of the procedures for review are communicated to claimants. This results in claimants being unaware of numerous important rights. In addition, when the Division director denies a claim, he provides claimants with only a brief explanation of the reasons for the denial. This results in claimants being unaware of what evidence they will need to establish during the review to rebut the Division director's decision.

More Complete Explanation and Communication of Review Procedures Are Needed

Although the Industrial Commission informs claimants of their right to have the director's decision reviewed, claimants are not provided with useful information concerning the process. Once claimants request a review, they must contact CVC Division staff to learn how to proceed.

The CVC program is designed to compensate persons meeting the program's eligibility requirements. Claimants should not expect to aggressively protect their own interests as they might in an adversarial setting. The CVC program is not like the workers' compensation program in which the Industrial Commission is resolving disputes between competing parties. Claimants may be unaware that they should fully investigate Industrial Commission procedures to protect their claims. Consequently, it is even more important that the Industrial Commission fully inform claimants on how to appeal decisions with which they disagree.

Process Should Be Communicated To Claimants Requesting Reviews. Claimants must go through many steps before the outcome of their review is known. Each step takes varying amounts of time. The Industrial Commission does not routinely communicate the nature of each of these steps and what the claimant will be expected to do at each step in the process. For example, when claimants are notified they must appear at an evidentiary hearing, they are not told what will take place or what evidence they are responsible for presenting on their behalf.

The Industrial Commission should inform claimants of each step in the review process, the amount of time required, and what the claimant will be responsible for doing at each step. This will enable claimants to prepare in advance to pres-

ent evidence supporting their claim and will reduce claimants' uncertainty about the review process.

Right to Send Requests For Review By Certified Mail Should Be Communicated. The Industrial Commission informs claimants that the Commission must receive their written request for review within 20 days of the date of the director's decision letter. Claimants are not informed, however, that if they send their requests by certified mail, the date the letter was mailed is considered to be the date received by the Industrial Commission even though the letter actually may be received several days later.

For example, if a claimant sends a request for a reivew on the twentieth day of the director's decision letter by regular mail and the letter is received on the twenty-first day, the Industrial Commission will consider the request as untimely However, if the same claimant had sent the letter by certified mail, the request for review would have been considered timely even though it may be received some time after the 20 days following the date of the director's decision letter. The Industrial Commission should inform claimants of its practice regarding certified letters.

Right to Have a Case Reopened Should Be Communicated. Industrial Commission staff stated that some claimants who request reviews actually are seeking an opportunity to present additional evidence and obtain a reinvestigation of certain evidence. To accomplish this, the Industrial Commission could reopen the claimant's case and receive more evidence. If claimants were informed of their right to ask the Industrial Commission to reopen their cases, fewer claimants might request reviews. This would help eliminate any unnecessary reviews by the three Commissioners.

Right to Oral Argument Should Be Communicated. The Industrial Commission has enacted the "Rules of the Industrial Commission." These rules govern most workers' compensation proceedings before the Industrial Commission. According to Rule 2(B), a claimant must request the opportunity to present oral argument to the three Commissioners at the time of his or her written request for a review If the claimant fails to do so, the claimant loses this right.

The "Rules of the Industrial Commission" are not published in the *Code* of Virginia nor are they otherwise readily available. It is unlikely that a claimant would be aware of the Commission's rules unless the claimant was represented by an attorney regularly practicing before the Commission.

Claimants are not notified of the right to present oral argument to the three Commissioners until after the time for making the request has passed. After the Industrial Commission has determined that the claimant made a timely request for a review, a copy of Rule 2 is sent to the claimant. The Clerk of the Industrial Commission said that a copy of the rule is sent to claimants who do not request to present oral argument as a way to inform them they should not expect to present oral

argument. Claimants do not benefit from this notification that they have lost their right to present oral argument. Claimants should be informed of the right to request oral argument prior to the loss of that right.

Right To Subpoena Witnesses Should Be Communicated. When an evidentiary hearing is scheduled, the claimant is given an opportunity to present evidence showing why an award should be made. Often this evidence includes the testimony of other persons. Witnesses may be compelled to attend the hearings by being served with subpoenas issued by the Industrial Commission. Witnesses appearing at the hearings are typically subpoenaed at the request of the CVC Division director. According to the Commission Clerk, rarely do claimants subpoena witnesses to appear. This may be because claimants are not made aware of their right to subpoena witnesses.

According to the CVC Division director, if he is aware of a witness who may offer testimony favoring the claimant, the witness is subpoenaed. There is no way to determine, however, whether the director has subpoenaed all the witnesses favoring the claimant, because the claimant is typically unaware of the right to subpoena witnesses.

Recommendation (20). The Industrial Commission should prepare a pamphlet explaining: (1) the steps a claimant must follow to pursue a review, (2) an estimate of the time necessary to reach each step, (3) the items the claimant will be expected to prove to support his or her claim, and (4) relevant sections of the *Code of Virginia*. The pamphlet should also explain the claimant's right to send a request for appeal by certified mail, the right to have a case reopened, the right to present oral argument, and the right to subpoena witnesses. In addition, the pamphlet should explain the extent to which the "Rules of the Industrial Commission" affect CVC appeal proceedings and that copies of the rules are available from DWC.

Denial Letters Lack Needed Detail

Once the director denies a claim, he sends the claimant a letter indicating the denial and giving a brief explanation of the reason for the denial. For example, a denial letter might read, "After investigating your case, we find that your conduct leading up to the infliction of your injuries was contributory in nature." A one to two sentence explanation of the basis of denial does not adequately inform the claimant of the rationale supporting denial of a claim.

Claimants receiving these denial letters may infer that insufficient effort was devoted to investigating the claim. In addition, claimants are not provided with sufficient evidence upon which they can base their decision to appeal. This may result in appeals of the director's decisions by claimants who otherwise would not have done so if they had known the depth of the director's investigations and the strength of the evidence supporting the decisions.

The Industrial Commission can more effectively review the director's decision when the facts and issues in dispute have been clearly identified. If the director begins identifying the specific evidence upon which his opinion is based as well as listing the reason for the denial, then the Commissioners would be able to focus their review on that evidence. More specific denial letters would also enable claimants to draw the Commissioners' attention to evidence rebutting the director's evidence.

Recommendation (21). The director of the CVC Division should provide more specific information in his denial letter to the claimant. The letter should specify: (1) his decision to deny the claim, (2) the statutory basis for the decision, (3) the facts or actions on the part of the claimant showing the claim should be denied, and (4) the sources of the director's information. The director should cite the full text of the specific section of the *Code of Virginia* upon which the denial was based.

WRITTEN POLICIES AND PROCEDURES SHOULD BE DEVELOPED

Written policies and procedures governing the CVC appeal process are necessary to guide ongoing operations and assist with management and staff decision-making. Although the procedure to review the Division director's decision is complicated, only a few of the steps are written. The agency still depends on word-of-mouth and long tenure of employees for communication of relevant policies and procedures.

The Industrial Commission can improve its appeals process by drafting written policies and procedures. Written policies and procedures are necessary to: (1) ensure uniform treatment of CVC claimants, (2) ensure compliance with statute, and (3) provide a framework to train personnel.

The absence of written procedures has sometimes led to confusion among Industrial Commission staff. In one case, for example, after a claimant requested a review of the director's decision, the director transferred the case to a deputy commissioner for a hearing. The deputy commissioner returned the file and wrote that §19.2-368.7 of the *Code of Virginia* requires a review of the Division director's decision to be made directly by the three Commissioners rather than by a deputy commissioner. The chief deputy commissioner then directed the deputy commissioner to conduct an evidentiary hearing at the request of the Commissioners to allow the claimant an opportunity to present evidence supporting the claim. This confusion could have been avoided had there been written policies and procedures regarding the CVC review process.

The Industrial Commission has changed its procedure to review crime victims' compensation cases several times. Initially, deputy commissioners conducted the evidentiary hearing, decided the case, and wrote an opinion. Because the

Industrial Commission has nine deputy commissioners, the Commissioners felt that having all deputy commissioners review crime victim cases might result in several different and possibly conflicting interpretations of the crime victims' compensation statutes. To prevent this problem, the Commission began requiring the CVC Division director to review cases following evidentiary hearings and decide whether he should reverse his earlier decision. The Commission recently began requiring deputy commissioners to decide what facts actually occurred based on the evidence presented at the evidentiary hearing.

The Industrial Commission could enhance the efficiency of its procedures for CVC reviews by developing written policies and procedures covering every aspect of the review process. The policies and procedures should also set reasonable ranges for processing times for employees involved in the review process.

Recommendation (22). The Industrial Commission should develop written policies and procedures defining the process for reviewing crime victim compensation claims. The document should: (1) articulate the review process to be followed, (2) address the responsibilities of each Industrial Commission employee involved in the process, and (3) establish recommended processing times and goals for employees handling reviews.

VII. Placement, Management, and Staffing of the Division of Crime Victims' Compensation

House Joint Resolution 184 specifically directs JLARC to study the transfer of the Division of Crime Victims' Compensation (CVC) to the Department of Criminal Justice Services (DCJS). To address this issue, CVC program operations were analyzed and the placement, management, and staffing of the division were examined. While numerous problems affect program operations, the current placement of the program within the Department of Workers' Compensation (DWC) has not been the major cause of these problems. As reported in previous chapters, inadequate funding, inefficient procedures, and the lack of written policies, procedures, and guidelines appear to be responsible for most of the program's shortcomings. Nevertheless, the DWC still appears to be the best location for the CVC Division.

The organization of the division is structurally sound, and current staff levels appear to be appropriate for the administration of the program. However, oversight by top management needs to be strengthened to ensure that the program is functioning as intended by the General Assembly Greater efforts need to be made to integrate the CVC program into the Department's management and administrative processes and activities.

The Division Should Not Be Transferred to Another Agency

Typically, reorganization of State government functions is undertaken to: (1) promote more effective management, (2) reduce expenses and improve economy, and/or (3) increase operating efficiencies. These general considerations were used to assess the transfer of the CVC Division to DCJS or other State agencies. In addition, the following specific assessment criteria were considered:

- the similarity of the program's mission to other agencies in State government,
- the need for access to a judicial structure to handle appeals,
- the need for an independent investigative and decision-making process for the program, and
- other states' organizational structures for similar programs.

Finally, a concluding question was addressed: are the problems that have been observed with the CVC program directly attributable to its location within the DWC, or do other factors account for these problems?

At first glance, the functions of the division appear to share common attributes with several State government agencies and structures that deal with

crime, criminal offenders, and the administration of justice. In addition to the DWC, these include the Attorney General's Office (AGO), the Department of Corrections (DOC), the Virginia court system, and the Department of Criminal Justice Services. Close assessment of these entities, however, as well as the relative advantages and disadvantages of locating the CVC program within each, indicates that the CVC program should remain with the DWC (Figure 13).

The DWC appears to be the only agency which meets all the criteria necessary to promote the CVC Division's effectiveness and efficiency First, its mission and activities are similar to that of the CVC program. The claim processes, procedures, award calculations, and client interactions are similar for workers' compensation and crime victims' compensation claimants. This similarity enables

Figure 13

Comparison of Possible Locations for the CVC Program

	Similarity of Mission	Access to Judicial Structure	Independent Investigative and Decision-making Functions	Similarity to Other States' Structures
Attorney General's Office				✓
Department of Corrections			✓	✓
Virginia Court System	✓	✓		✓
Department of Criminal Justice Services				✓
Department of Workers' Compensation	✓	✓	✓	✓

Source: JLARC analysis of state agency functions and assessment criteria for locating the CVC program.

DWC management to provide the CVC program with knowledgeable guidance and experience in handling claims.

The DWC also provides a judicial structure for appealed claims. This judicial structure offers the program specialized expertise because the number of staff handling CVC appeals is limited to deputy commissioners and the Industrial Commissioners. In addition, the DWC's status as an independent agency and its focus on fair and impartial claim determinations provide the CVC program with an independent process to investigate and decide claims. Finally, operational economies can be achieved from its continued location within DWC. Currently, the DCJS estimates that it would cost $44,000 in initial start-up costs to transfer the CVC program. This cost would be an addition to the annual administrative costs for running the program.

Similarity of Missions. Similarity in mission is essential to successfully locate the CVC program. The parent agency should be familiar with the types of processes, procedures, client interactions, considerations, and outcomes associated with the CVC program. This ensures that agency managers have the potential to provide knowledgeable guidance when needed and can approach problem solving with a realistic, experience-based perspective.

Exhibit 7 compares the mission and activities of the five possible locations for the CVC program. The DWC rates the highest in this comparison. Both the CVC program and the DWC share a common primary mission to determine the amount of compensation to award citizens meeting specified eligibility criteria. To fulfill its responsibilities in this area, the DWC receives claim applications, sets up claim files, assesses eligibility, makes decisions on awards, calculates award amounts, and hears contested (or appealed) cases.

The CVC program's mission also appears somewhat compatible with that of the Virginia court system. However, the court system proceedings do not involve administrative procedures to receive applications, set up claim files, investigate claims, or calculate compensation amounts. An administrative structure would have to be developed for the CVC program.

The CVC Division's mission is not as similar to the three remaining structures examined. The Attorney General's Office provides legal services to the Commonwealth, including representation of the criminal injuries compensation fund during CVC appeals. Consequently, placement of the program within the AGO would create a conflict, because the AGO would have to represent one of its own programs. Furthermore, the AGO has limited hands-on experience with compensation assessments and calculations, a major function of the CVC program.

The Department of Corrections' mission is to protect the Commonwealth from crime by controlling, housing, and rehabilitating criminal offenders. DOC may not provide an optimal match for the CVC program because the Department's activities are geared towards offenders rather than victims.

Exhibit 7

Missions and Activities of Agencies Which Could Potentially House the CVC Division

Agency	Mission	Major Activities
Division of Crime Victims' Compensation	To provide compensation to crime victims.	-Administer policies set forth in the Crime Victims' Compensation Act. -Investigate and hear compensation claims. -Determine amounts of compensation to be awarded.
Attorney General's Office	To provide legal services to the Commonwealth and her citizens, represent the interest of the public as consumers, and defend the integrity of criminal convictions.	-Provide legal advice and representation for State officers and officials. -Enforce State and federal antitrust laws. -Provide legal information to law enforcement officials. -Enforce consumer protection laws. -Collect debts owed the Commonwealth. -Investigate Medicaid fraud.
Department of Corrections	To protect the people of the Commonwealth from crime by assisting communities in preventing juvenile delinquency, controlling persons sentenced by the courts, and offering programs to help offenders lead crime free lives after release.	-Operate adult institutions to ensure adult offenders are removed from society and securely housed. -Provide adult offender services through the community diversion incentive program, parole and probation services, work release, and oversight of local and regional jails. -Provide block grant funding for the operation and construction of facilities for community youth programs. -Provide probation and after care services to youthful offenders. -Operate youth institutions.
Court System	To provide for the judicial system of the Commonwealth and exercise jurisdiction over matters delineated by specific statutory provisions.	-Issue warrants and subpoenas. -Exercise jurisdiction over specific statutory provisions, including indictments for felonies and misdemeanants in the circuit courts, and adjudication of civil and criminal cases in the district courts.
Department of Criminal Justice Services	To strengthen and improve the criminal justice system within the Commonwealth of Virginia through planning, coordination, program development, evaluation, and technical assistance.	-Provide planning, coordination, evaluation, program development, and technical assistance to local, State, and private criminal justice and related agencies. -Promulgate and administer regulations governing the training of criminal justice personnel statewide. -Promulgate and administer regulations governing the security and privacy of criminal history record information. -Coordinate criminal justice information systems. -Provide financial support to local and State criminal justice agencies.
Department of Workers' Compensation (Industrial Commission)	To provide compensation to industrial accident victims.	-Administer policies set forth in the Workers' Compensation Act. -Hear and investigate compensation claims. -Determine amounts of compensation to be awarded.

Source: Executive Budget 1988-90, Commonwealth of Virginia.

The DCJS provides planning, coordinative, developmental, and evaluative services to State agencies involved in the criminal justice system. DCJS activities also include providing technical assistance to local criminal justice agencies, training criminal justice personnel, and administering criminal justice information systems. Finally, DCJS distributes State and federal grant monies to local and State criminal justice agencies. The mission of DCJS is not totally compatible with that of the CVC program because DCJS does not administer any benefit-type programs. Instead, DCJS functions primarily as a coordinative agency that supplies information and technical assistance to State and local agencies concerned with criminal justice activities.

Access to a Judicial Structure. Two of the five possible locations for the program provide ready access to a judicial structure to handle appealed claims — the DWC and the court system. The court system could exercise jurisdiction over crime victim compensation cases through circuit or district court judges. However, the potential for significant variation in appeal determinations would exist because relatively few appeals are made each year (46 appeals were initiated in FY 1987) and the 200 or so circuit and district court judges would have little opportunity to develop specific expertise in the area of crime victims' compensation. In addition, delays affecting the processing of CVC claims could increase due to backlogs in court cases.

Within the DWC, appealed cases are funneled through deputy commissioners and the Industrial Commissioners. Limiting the number of staff handling these appeals enhances the potential for consistent consideration of cases. If the CVC Division were placed in the Attorney General's Office, DOC, or DCJS, a judicial structure would not be readily available.

Independent Investigation and Decision-Making Functions. CVC investigations and claim decisions require an impartial atmosphere that is free from confounding factors or influences that could potentially bias claim determinations. Even the appearance of a bias must be avoided. This is important to ensure that both the Commonwealth and claimants are treated fairly and in accordance with legislative intent, and that time-consuming and expensive appeals are kept to a minimum.

Two agencies appear to provide an independent atmosphere for investigative and decision-making functions. The DWC, by virtue of its agencywide focus on impartial, fair claim determinations, provides the CVC program with this type of atmosphere. In addition, the DWC is an independent agency of Virginia government which is not closely aligned with other agencies or Secretariats.

The Department of Corrections has a unit that could potentially provide these functions as well. The internal affairs unit conducts investigations of violations of a criminal or non-criminal nature involving DOC employees and inmates under the department's care. However, its current activities are obviously not geared towards dealing with victims, and its focus is on events and individuals inside DOC and its institutions.

The Attorney General's Office could investigate CVC claims. However, the independence of this activity could appear to be compromised because the Attorney General's Office represents the criminal injuries compensation fund for the Commonwealth.

The primary functions of the the court system do not involve investigative activities. These functions would have to be established in order for the CVC program to operate as intended. In states in which the court system administers crime victims' compensation, the Attorney General's office is usually charged with investigative responsibilities.

The DCJS currently does not have a unit which could perform investigative functions. Even if DCJS had such a unit, the independent nature of the claims investigation, review, and decision-making could appear to be compromised because of the victim advocacy role of DCJS in administering funds to local victim and witness assistance programs.

Other States' Structures Are Most Similar to Virginia's. Currently, 44 states and the District of Columbia have some type of victim compensation program. Other states generally have placed their crime victim compensation program in one of four structures: (1) a workers' compensation department or industrial board or commission, (2) independent boards or commissions, (3) departments of public safety, or (4) agencies responsible for the administration of justice (Figure 14). More states locate their crime victims' compensation program within their workers' compensation department or industrial commission rather than in other organizational structures. Many states have also ensured that the structural placement allows for an independent investigation, assessment, and decision-making for these types of claims. Virginia's placement of the CVC Division appears to parallel that of other states.

Relationship of Program Location to Program Shortcomings. Concerns about the CVC program have been raised by victims, victim and witness assistance program coordinators, legislators, and others. These concerns have focused on the adequacy of program funding, promotion of the program, lengthy delays affecting claims processing and the timely receipt of benefits, the cumbersome application process, eligibility determinations, and the confusing appeals process.

The problems observed in this review, however, do not appear to stem from the location. As discussed in previous chapters, most of these problems have developed because: (1) claim volume has significantly increased while funding has only increased modestly, and (2) the CVC Division lacks adequate written policies, procedures, and guidelines to guide its primary activites.

Transfer of the program alone without attention to these areas would not result in solutions or improvements. In addition, a start-up cost would be incurred if the program were moved. Further, valuable time would be expended on an effort which would not significantly improve the provision of compensation benefits to

Figure 14

State Crime Victims' Compensation Programs

State	State Agency Affiliation						
	Workers' Comp. or Industrial Safety Board	Courts/ Judiciary	Dept. of Public Safety	Dept. of Justice or Criminal Justice Administration	Dept. of Social Services or Welfare	Dept. of Management or Budget	Other State Board or Commission
Alabama							X
Alaska			X				
Arizona							X [1]
Arkansas							X [1]
California							X [2]
Colorado		X					
Connecticut						X	
Delaware		X [1]					
District of Columbia	X		X				
Florida	X						
Hawaii					X		
Idaho	X						
Illinois		X [3]					
Indiana	X						
Iowa			X				
Kansas				X [1]			
Kentucky			X				
Louisiana							X
Maryland			X [1]				
Massachusetts		X [3]					
Michigan						X	
Minnesota			X [1]				
Missouri	X		X				
Montana	X						
Nebraska				X			
Nevada							X
New Jersey			X [1]				
New Mexico							X [1]
New York							X [1]
North Carolina			X				
North Dakota	X						
Ohio		X					
Oklahoma				X [2]			
Oregon	X						
Pennsylvania							X
Rhode Island		X					
South Carolina	X						
Tennessee		X [4]					
Texas	X [4]						
Utah						X [1]	
Virginia	X [1]						
Washington	X						
West Virginia		X [3]					
Wisconsin				X			
Wyoming							X [1]

[1] Functionally independent; in some states the Attorney General's Office may provide staff assistance.
[2] Some investigative component provided by victim/witness assistance programs.
[3] Multiple affiliations Courts; Attorney General's Office provides investigation.
[4] Multiple affiliations Courts and administrative agency; Attorney General's Office provides investigation.

Source: Compensating Victims' of Crime: An Analysis of American Programs, U.S. Dept. of Justice, National Institute of Justice, July 1983 and JLARC interviews with selected states' officials.

eligible crime victims. Attention to procedural deficiencies, as well as increased oversight of the program by DWC management, appears to be the best solution.

Recommendation (23). The CVC Division should not be relocated at this time. To correct shortcomings with the program, the DWC should correct procedural deficiencies noted in this report. The department should submit a progress report to the Virginia Crime Commission by May 1, 1989 on the implementation of recommendations contained in this report. A final report should be submitted to the Crime Commission by November 1, 1989.

Management Oversight of the Division Could Be More Effective

The Industrial Commission has statutory responsibility for all aspects of the CVC program. Much of this authority has been delegated to the CVC Division director to oversee administration of the program. However, ultimate responsibility still rests with the Industrial Commissioners for ensuring compliance with legislative intent as well as efficient, effective, and timely operations. High-level management within the DWC need to devote the time necessary to ensure that the division has sound administrative operations to carry out its mandated functions.

The Industrial Commission has provided general oversight of the program during the past decade by delegating this task to one Commissioner. This administrative responsibility rotates among Commissioners. However, Commission workload and a rotating chairmanship of the Industrial Commission have prevented the program from receiving needed oversight from top management. In the past, management studies of the DWC have been critical of the extent to which the Commissioners are involved in administrative activities because an increased workers' compensation caseload has placed additional demand on the Commission for judicial decisions.

Inadequate oversight by top agency management results in several problems. First, communication of program information and problems is delayed and sometimes altogether lacking. Second, program monitoring to ensure Commission opinions concerning the CVC program are implemented by the CVC Division in subsequent claim decisions is overlooked. Third, clear and consistent direction on program policies and procedures is not rendered. And finally, shortcomings in program management are not identified and corrected in a timely manner.

The DWC currently has an administrative structure which could provide needed management oversight to the CVC Division. The Industrial Commission already delegates some administrative oversight responsibility to a chief deputy commissioner, requiring this position to oversee administrative directives of the Industrial Commission. The chief deputy commissioner already provides direction to the CVC Division on personnel matters, approves leave requests, approves requests for conference attendance, and provides legal advice upon request of the division director.

This function could easily be expanded to provide direction on policies and procedures, implementation of Commission opinions and statutory changes, and monitoring of program performance and operations. The chief deputy commissioner could inform the Industrial Commissioners of problems, concerns, or accomplishments as part of his regular, ongoing communications with them.

Recommendation (24). The Industrial Commission should delegate management oversight responsibility for the CVC Division to the chief deputy commissioner to ensure that program operations are adequately monitored. Responsibility should include: (1) providing the Division director with guidance on the development of program policies and procedures, the implementation of Commission opinions and statutory changes, (2) monitoring division operations to ensure that program performance is adequate and that Industrial Commission opinions are implemented correctly, and (3) communicating program operations to the Industrial Commission.

Need for Additional Staff Is Questionable

The division has a director, one office services supervisor who conducts claim investigations, and two clerical staff. The director of the division has requested two more staff positions. These positions, if created, would be classified as claim examiners. It is not clear that these positions are needed at the present time. Recent computer enhancements by the director have achieved some economies in the processing of crime victims' claims. In addition, the staff in the division indicated that the current workload does not keep the clerical staff busy on a full-time basis.

One Position Should Be Reclassified to a Claim Examiner The office services supervisor currently spends a majority of her time conducting claim investigations. Only about 10 percent of her time is spent supervising the clerical staff. The Industrial Commission should reclassify this position as a claim examiner because the supervisor's current job responsibilities do not match the classification specifications. This would allow her to spend her time solely on claim investigations, thereby reducing some of the division director's workload.

In addition, the office services supervisor's clerical functions could be shifted to one of the clerical staff. This would increase the workload for the clerical staff, ensuring that the workload is more evenly distributed and staff are used efficiently These responsibilities along with the expanded functions recommended in this report for these positions will ensure that clerical staff have adequate workloads.

Recommendation (25). The Industrial Commission should reclassify the position of office services supervisor within the CVC Division. The position should be reclassified to reflect the current job responsibilities for examining CVC claims. The position's responsibilities for clerical functions should be delegated to other clerical staff within the division.

Division Should Monitor Staff Workload Before Establishing Additional Positions. The division should track and document workload for each of its current staff members prior to establishing new positions. Monitoring clear-cut measures of programmatic results (outputs) and the resources required to produce those results (inputs) will enable program management to determine when new positions are needed, document why new positions are needed, and track staff productivity yearly as an additional management tool.

The CVC program has several outputs, such as the number of telephone inquiries handled by the staff, the number of claims established by the clerical staff, the number of file reviews conducted, and the number of claim decisions made. Each of these outputs take a specific amount of staff time (inputs) to produce. Workload could be assessed by identifying measurable program outputs and determining how much input it takes to produce each output.

For example, clerical staff reported that it takes one-half an hour, on average, to establish a claim file. If setting up claim files is the only job duty assigned to a clerical staff member and that employee works 40-hour weeks, then that employee should be able to set up 80 claim files each week. If the employee, on the other hand, spends only 50 percent of available work time setting up claim files, then that employee should be able to set up 40 claim files each week. Current clerical staff estimated that they spend 80 percent of their time setting up claim files. Consequently, the two current clerical positions should be able to manage the set-up responsibilities of over 6,000 claims each year.

Recommendation (26). The CVC Division should establish a system to monitor staff workload and assess the productivity of current staff members. The DWC should not create new positions in the division until the division can adequately and thoroughly document the need for additional positions.

Appendixes

Appendix A

APPROPRIATIONS ACT
CHAPTER 723 - APPROVED APRIL 8, 1987

Item § 1-4. JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION (110)

13. "As directed in Item 11, Chapter 619, Acts of Assembly (1985), and pursuant to the powers and duties specified in §30-58.1, *Code of Virginia*, the Joint Legislative Audit and Review Commission shall plan and initiate a comprehensive performance audit and review of the operations of the Independent Agencies funded in §§1-122 and 1-123 of this Act to ascertain that sums appropriated have been, or are being, expended for the purposes for which such appropriations have been made, and to evaluate the effectiveness of the programs in accomplishing legislative intent. Such audit and review shall consider matters relating to the management, organization, staffing, programs and fees charged by the Independent Agencies and such other matters relevant to these appropriations as the Commission may deem necessary The Commission shall report on its progress to the 1986 session of the General Assembly and to each succeeding session until its work is completed. In carrying out this review, the Auditor of Public Accounts and the Independent Agencies shall cooperate as requested and shall make available all records and information necessary to the completion of the work of the Commission and its staff."

Appendix B

HOUSE JOINT RESOLUTION NO. 184

WHEREAS, the Department of Criminal Justice Services currently administers 32 locally operated victim/witness programs; and

WHEREAS, in addition to financial and technical assistance, the Department also provides training for these local programs; and

WHEREAS, under the present system of compensation for victims of crimes, many recipients complain of extended delays in receiving compensation; and

WHEREAS, in its recent study, *Victims and Witnesses of Crime* (HD 10, 1988), the Virginia State Crime Commission reported that "both victims and victim assistance personnel find application and appeal procedures cumbersome and confusing"; and

WHEREAS, the Department of Criminal Justice Services may be a more appropriate agency for dealing with the disbursement of funds to individual recipients due to its history of advocacy in this area; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission is requested to study the transfer of the Division of Crime Victims Compensation to the Department of Criminal Justice Services and methods to expedite and improve the process by which claims are reviewed; and, be it

RESOLVED FURTHER, That the Virginia State Crime Commission is requested to study the treatment of crime victims and witnesses in the criminal justice system.

The reports and recommendations, if any, of the Commissions shall be submitted no later than December 1, 1988.

The costs of this study by the Virginia State Crime Commission are estimated to be $9,360 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly

Appendix C

TECHNICAL APPENDIX SUMMARY

JLARC policy and sound research practice require a technical explanation of research methodology. The full technical appendix for this report is available for inspection at JLARC, Suite 1100, General Assembly Building, Capitol Square, Richmond, Virginia 23219.

The technical appendix includes a detailed explanation of the special methods and research employed in conducting the study The following is a brief overview of the major research techniques used during the course of this study

1. Financial Analysis. Revenue and expenditure data for the CVC program were collected from the DWC's fiscal office for the financial analysis. Revenues and expenditures from FY 1981 to FY 1989 were assessed to determine: (1) the adequacy of program funding, (2) fund integrity, and (3) adequacy of fund reporting and monitoring.

2. Review of a Sample of CVC Claims Established in FY 1987. A stratified random sample of 129 CVC claims established in FY 1987 were selected for review This sample included regular claims, claims for those requesting emergency awards, and claims for victims of sexual assault, spouse abuse, or child abuse. In addition, the entire population of claims that received emergency awards in FY 1987 were reviewed. Each claim type was weighted by the proportion that it represented in the population of 843 claims established during FY 1987 The sample was then used to: (1) evaluate the timeliness of the claim process, (2) examine compliance with statutory and procedural requirements, and (3) identify problems or modifications needed in each step of the claim process. A more detailed explanation of this sample selection and the analyses conducted using this sample data can be found in Appendix D.

3. Review of Claims Appealed in FY 1987 All 36 FY 1987 cases in which claimants requested a review of the CVC director's decision were examined. The data collected from these file reviews were used to evaluate the timeliness of the review process and to assess the adequacy of the procedures used in the current process.

4. Structured Interviews. Qualitative data on all aspects of CVC operations and the Division's management, staffing, and location were collected through face-to-face interviews. In addition, data on the dissemination of program-related information and the need for guidance and coordination of efforts for victim referral were collected through telephone interviews with seven
victim referral sources from different geographical locations in the State. Structured interviews were also conducted with:

- eleven staff members of the Department of Workers' Compensation, and
- eight staff in other State agencies who have contact with or knowledge of the Crime Victims' Compensation program.

5. Document Reviews. Numerous documents were reviewed to collect data on statutory and procedural requirements, program placement, and all aspects of CVC operations and management. The Code of Virginia was examined to identify the statutory requirements for program procedures in the areas of dissemination of information, the claim process, and the appeal process. Legislative documents were reviewed to evaluate the placement of the program. Program policies and procedures were reviewed to identify requirements for program operation. Forms utilized in the claim process were reviewed for clarity, simplicity, and completeness. Opinions rendered by the Commissioners in CVC appealed cases were also reviewed to assess the appeal process.

6. Review of CVC Statistics. Claim statistics for FY 1986 to FY 1989 were obtained from a database maintained by the CVC Division. These statistics were analyzed to provide descriptive breakdowns on the types and number of claims, the nature of claim decisions, and th
e award amounts for each fiscal year.

7 Review of Other States' Programs. Literature on victim compensation programs in other states was collected from the National Organization for Victims' Assistance, the United Stated Department of Justice, and the National Criminal Justice Research Service. This literature was reviewed to evaluate alternative sources of program funding, program placement, organization, and management.

8. Comparative Assessment of Program Placement. A convergence approach was used to assess the transfer of the CVC program to the Department of Criminal Justices Services. Data collected from the financial analysis, the claim review, structured interviews, document reviews, and the review of other states' programs were evaluated together to qualitatively decide if program transfer was needed, and if so, the feasibility of placement within DCJS.

Appendix D

SELECTION AND ANALYSIS OF A SAMPLE OF CVC CLAIM FILES

A review of a sample of CVC claim files from FY 1987 was undertaken to assess the timeliness of the overall claim process and to examine specific steps in the process for potential problems or delays. A stratified random sampling technique was used to select a sample of 129 cases from the 843 claims established during FY 1987 Claims established in FY 1988 were not used for this analysis because some of these cases had not been completely processed at the time of the file review, preventing generalization of sample results to the claim population.

Sample Selection

The sample was stratified by type of claim so that overall processing times could be computed and compared for the different types of claims and so that compliance with statutory and procedural requirements could be analyzed. Claim files were selected in three stages to yield data on four distinct types of claims. The sample and population sizes for each type of claim reviewed by JLARC staff are shown in Table 1.

Using data supplied by the DWC to identify the nature of the 843 claims established during FY 1987, JLARC staff initially identified 29 requests for emergency benefits and 30 regular claims to be examined. This initial review indicated that emergency request processing times could only be calculated for those requests which resulted in an emergency award.

Consequently, the second step in the claim file review was to review the entire population of emergency awards for requests established in FY 1987 (40 claims). Five of these emergency award cases previously had been reviewed in step one.

After interviewing victim and witness coordinators, the team decided that it was important to review a sample of sexual assault claims from FY 1987 as well (step three). During FY 1987, 137 claims where the type of crime was sexual assault, child physical abuse, child sexual abuse, or spousal abuse were established. A sample of these cases was selected in order to review CVC procedures for processing these claims and adherence to required procedures. In order to assess differences between awarded and denied sexual assault and abuse cases, JLARC staff decided to randomly-select 20 awarded and 20 denied sexual assault and abuse cases. In earlier phases of the file review, JLARC staff had already sampled three awarded sexual

Table 1

Sample and Population Sizes for Types of CVC Claim Files

Type of Claim	Sample	Population
Emergency awards	40	40
Emergency requests	24	107
Sexual assault and abuse claims	39	137
Regular claims	26	559
TOTAL	129	843

Note: Sexual assault and abuse claims are regular claims, but were separately stratified for selection to make a more precise analysis of procedures followed for these claims.

Source: JLARC staff analysis of CVC claims established in FY 1987

assault cases as part of the review of regular claims. These cases were transferred to the sexual assault and abuse sample. One of the randomly-selected sexual assault cases was actually an emergency award and was also part of the emergency award population reviewed in earlier phases. Therefore, the number of non-emergency award sexual assault claims in the sample was 39. (No discernible differences in processing times were found between awarded and denied sexual assault claims.)

Data Collection

JLARC staff designed four separate data collection instruments to collect information on the four types of CVC claims reviewed. All instruments collected data needed to analyze overall processing time and compliance with general statutory and procedural requirements, such as reporting the crime within 120 hours and sending the claimant an acknowledgement letter.

Data on requests for supporting documentation were collected in all sampled claims but varied according to the type of claim assessed. For example, in reviewing sexual assault claims JLARC staff collected data only on requests for information from the Commonwealth's Attorney, law enforcement, and either the claimant or physician (for a counseling prescription).

Analysis Methodology

Using PARADOX and LOTUS 1-2-3 software packages, JLARC staff conducted 19 separate analyses. The results of 12 of these analyses were weighted according to how frequently each type of case examined appeared in the population of FY 1987 established claims. These weighted results were used to generalize sample findings to the population.

In all other cases, analysis results were used only to describe delays or problems found in the sample of claims examined. Analyses using this data were weighted to reflect population proportions of the types of cases actually included in the sample. Table 2 shows the weights used for all weighted-average calculations. As stated previously, the first sample grouping was used in all analyses where sample results were generalized to the claim population for FY 1987 The last three groupings were only used in cases where the analysis focused on the sample and findings were not generalized to the population.

Confidence Intervals

Whenever a sample is drawn and used to make inferences about the whole population, some random error due to sampling can be anticipated. A way to take that sampling error into account when making inferences from sample results to the population is to calculate confidence intervals.

JLARC staff calculated a confidence interval for each analysis in the draft report where an inference was made from the sample to the claim population. These confidence intervals were used to estimate the minimum and maximum values for the population of FY 1987 established claims for each variable analyzed. The sampling error and confidence intervals for each analysis are listed in Table 3. The results of analyses using the emergency awards population (cited on pages 37, 77, and 82 of the draft report) represent exact values actually found in the population.

Table 2

Weights Used in Weighted Average Calculations

	Assigned Weights*	Sample Size	Occurrence in Population
Weighted Average Grouping Used Throughout Draft			
(1) All four subsets used:			
Emergency awards	5%	40	40
Emergency requests	13%	24	107
Sexual assault and abuse claims	16%	39	137
Regular claims	66%	26	559
Weighted Average Groupings Used Only on Exposure Draft Pages 70 and 71			
(2) Emergency and regular used:			
Emergency requests	17%	29	147**
Regular claims	83%	30	696***
(3) Only emergency claims used:			
Emergency awards	27%	40	40
Emergency requests	73%	24	107
Weighted Average Groupings Used Only on Exposure Draft Pages 70 and 71			
(4) Combinations of three subsets used:			
(A) Regular claims	66%	26	559
Sexual assault and abuse claims	16%	39	137
Emergency requests	17%	29	147***
(B) Regular claims	83%	30	696**
Emergency awards	5%	40	40
Emergency requests	13%	24	107

*Weights may not total 100 percent due to rounding.
**Includes emergency awards.
***Includes sexual assault and abuse claims.

Source: JLARC staff analysis of claims data collected from FY 1987 claim file review

Table 3

Confidence Intervals for CVC Claim File Review Analyses

Exposure Draft Report Page Reference	Statement	Sampling Error	Confidence Interval*	Number of Claims Sampled
38	Processing of claims for regular benefits averaged 133 days.	± 21.76 days	112 to 155 days	129
39	Less than one-third of claims for regular benefits were processed within the 90-day goal.	± 8.10%	24.5 to 40.7%	30
51	Review revealed that almost 59 percent of FY 1987 established claims lacked acknowledgment letters.	± 8.50%	50.2 to 67.2%	129
66	Follow-up requests are required approximately 46 percent of the time.	± 8.50%	37.5 to 54.5%	129
71	Required follow-up requests were not made within 60 days after initial requests for 71 percent of the claims.	± 12.85%	57.8 to 83.5%	48
76	Analysis showed that CVC Division staff took more than 90 days to reach a claim decision for 67 percent of the claims.	± 8.10%	59.3 to 75.5%	99
83	CVC staff made decisions to award regular benefits to almost 15 percent of the claims prior to receiving all requested documentation.	± 6.20%	8.5 to 20.9%	129
84	44 percent of the denials for FY 1987 established claims resulted from information provided by either the Commonwealth's Attorney or law enforcement agencies.	± 14.80%	29.2 to 58.8%	43
99	The average delay from the time the award decision was made to the notification letter was about 15 days.	± 6.60%	8.43 to 21.63 days.	129

*Note: In 95 out of 100 sample draws, the population value will be within the estimated confidence interval.

Source: JLARC staff analysis of CVC claim files from FY 1987

Appendix E

AGENCY RESPONSE

As part of an extensive data validation process, each State agency involved in a JLARC assessment effort is given the opportunity to comment on an exposure draft of the report. This appendix contains the response by the Department of Workers' Compensation (Industrial Commission).

Appropriate technical corrections resulting from the written comments have been made in this version of the report. Page references in the agency response relate to an earlier exposure draft and may not correspond to page numbers in this version of the report.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF WORKER'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. BOX 1794
RICHMOND, VIRGINIA 23214

October 7, 1988

Mr. Philip A. Leone, Director
Commonwealth of Virginia
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Capitol Square
Richmond, Virginia 23219

Dear Mr. Leone:

On behalf of the Commission, I wish to thank you and your staff for the substantial effort which has been undertaken by you and the able JLARC staff in preparing the Exposure Draft upon audit of the Industrial Commission's Division of Crime Victims Compensation.

Without detailing here the various thoughts we have in response to your 26 recommendations, I have appended separate exhibits to this letter.

The responses include a statement prepared by Mr. Armstrong, Director of Crime Victims Compensation, concerning the current status of various recommendations which we accept, those which will be put into practice and those which require study (Exhibit A).

Exhibit B is a two-part statement by the majority of the Commission and one dissenting Commissioner concerning the first recommendation.

Exhibit C is a statement concerning the recommendations relating to the CVC Appeal process.

Finally, I wish to tell you that your efforts have demonstrated to us that audit is not only cathartic but

beneficial. We look forward to having the benefit of your best efforts as the balance of the audit proceeds.

Sincerely,

William E. O'Neill
Chairman

WEO:let

Enclosures

COMMONWEALTH of VIRGINIA

INDUSTRIAL COMMISSION OF VIRGINIA

WILLIAM E. O'NEILL, CHAIRMAN
ROBERT P. JOYNER, COMMISSIONER
CHARLES G. JAMES, COMMISSIONER
LAWRENCE D. TARR, CHIEF DEPUTY COMMISSIONER

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MEMORANDUM

TO: William E O'Neill, Chairman

FROM. Robert W. Armstrong, Director
Crime Victims' Compensation

DATE October 7, 1988

RE Status of JLARC Recommendations

Based upon the JLARC study the following is the status of these recommendations

****

I. Recommendations which are in place and are part of current Crime Victims' activity

a) #4 a , b, #7, #8 a, c, d, #9 a, b, c, #12, #13 a, c #14, #15, #17 a, b

II. Recommendations which are being acopted and will be implemented

a) #2, #3, #5, #6, #20, #21, #22, #23, #26

III Recommendations to be studied for future implementation

a) #1, #4c, #8b, #9D, #10, #11, #17c, #18, #19, #24, # 25

EXHIBIT "A"

Recommendation #1: Should time records be maintained?

The Commission has been charged by statute with maintaining a staff to support the requirements of the Virginia WC Act. The WC Administrative Fund supports the WC staff of 116. This staff is not a rigid entity. It is flexible and it can accommodate those limited needs of CVC which extend beyond the capabilities of the permanent, four-person CVC staff. We believe the General Assembly has mandated that we accommodate CVC. We also believe that this accommodation does not encroach upon our responsibility to protect the workers' compensation fund.

When someone in the CVC Division takes annual leave, the WC leave clerk enters the data on a computer; when there is need for a CVC computer adjustment or instruction, the WC programmer makes a brief visit; when the CVC program falls short of funds, the WC comptroller creates a computer projection and advises the CVC Director and the Commission as to how much can be paid before deficit occurs. These tasks are performed by WC staff people who are paid full-time by the Administrative Fund of the WC program. But, if there is a CVC Division need beyond the capability of the existing WC staff, the CVC Fund will, of course, be billed for cost of service.

The issue here is not one which affects the integrity of a WC Fund. It is one which demands that reason and practicality be balanced against formal accounting procedures.

The majority of the Commission is of the belief that limited assistance to CVC through WC services in place is an appropriate

and reasonable manner in which to accommodate a small, sparsely staffed program. Because all full-time employees retained for the Workers' Compensation program are and will be rendering full-time service to Worker's Compensation, we do not believe that there is either encroachment on any Workers' Compensation money or that there is need for a costly tabulation of each function performed by WC for CVC.

The suggestion (page 27) that the WC Administrative Fund subsidizes CVC can only be validated by application of a theory which discounts the fact that the Workers' Compensation salaried employees are doing and would be doing their work full-time if there were no CVC program at the Commission. We do not see any efficiency in converting some of our offices to a pay-for-piece-work system; a system which would require talley sheets and personnel to enter data and convert it to time for dollars. We contend that the CVC work is too small a part of total WC work to justify a piece-work talley in the WC operation and that the practice should not be applied here.

Alternative:

Our alternative suggestion is that we have our Comptroller's Office and Human Resources Officer make an annual cost determination based upon quarterly studies to insure that <u>any additional cost</u> to the WC Administrative fund is specified and <u>charged</u> to the CVC Fund. We believe this would be cost-effective and would protect the WC Administrative Fund.

Why Recommendation #1 is not cost-effective:

With respect to the estimates of present costs of CVC services to the Commission, we believe that the $68,202. figure (page 30) is quite excessive when considered in terms of the logic set forth above. It appears from our review that, in addition to the flat fees charged for hearing cases ($250. each), we find that one quarter of the services of a part-time clerk who processes CVC payment vouchers could also be charged to the CVC program. We believe that no more than $1,600. would be an appropriate for charge against CVC money at present.

Concerning the thought expressed at the bottom of page 27 and page 28 that "fees" (administrative tax assessment) of the Commission are passed on to the employers in the form of higher insurance premiums, we mention that if we accepted, and we do not, the "subsidy" figure of $57,452. (page 29) there would be an administrative tax increase which would amount to .00008125. as a percentage of our total WC Administrative Tax.

An example of the effect of the $57,452. figure on Virginia's largest employer, the Commonwealth, is as follows:

WC Administration tax on payroll ($2,296,087,036) =	$171,411.55	
	x .00008125	
Total Charge	$ 13.92	

COMMONWEALTH of VIRGINIA

DEPARTMENT OF WORKER'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P O. BOX 1794
RICHMOND, VIRGINIA 23214

DATE: October 7, 1988

FROM: Commissioner Joyner

TO: JLARC

RE: Exposure Draft, 9/30/88

I do not join in the response by the majority of the Commission for the following reasons.

The JLARC Report correctly points out [pp. 27-31] that the Department of Worker's Compensation (DWC) charges the Division of Crime Victims Compensation (CVC), $250.00 for each case which is appealed to the Full Commission, regardless of the procedure followed by the Commission after such appeal is noted. This charge was based on an estimate by the three Commissioners of their time, as well as the time of Deputy Commissioners required in an "average" CVC case. This estimate was not arrived at after any time study, but was based solely on a consensus arrived at by the three Commissioners based on their own experience. No charge is made by the DWC for the time spent by it's other employees on CVC cases; notwithstanding the fact that substantial staff time is spent by other Industrial Commission personnel on these claims as pointed out in the majority response [p. 1, par. 2]. JLARC recommendation number one [p. 31], is that all Commission personnel keep time allocation records showing the amount of time they devote to the CVC Program. I agree with this recommendation and therefore, dissent from the majority response.

The majority response to recommendation number one essentially is that the Industrial Commission staff is in place and on the Commission payroll anyway and therefore, there is no reason to charge their time to the CVC Program for work done in connection with it.

The majority makes the point that only if additional Commission personnel had to be hired to perform CVC work, would such a charge be justified. However, if this were the case, those additional personnel would be hired directly by the CVC and paid through that program. Therefore, we are concerned only with Industrial Commission charges to the CVC Program for that portion of the time that our personnel devoted to the CVC Program.

The majority states in it's response [p. 1] that "the issue here is not one which affects the integrity of a Worker's Compensation Fund". In fact, we have no basis to make this statement. Our charges to the CVC Fund, as noted above, are limited to our estimate of the time devoted by Commissioners and Deputy Commissioners to CVC cases which go to appeal and no charges made for the time devoted by other Commission employee to the CVC Program, as noted before. Clearly we are not charging our full cost to the CVC Program. The JLARC estimate of the undercharge by DWC, which in effect is a subsidy of the CVC Program, is at least based upon their estimates of the time devoted by Industrial Commission personnel to the CVC Program after interviews with numerous personnel directly involved. The JLARC conclusion that the Commission undercharged the CVC Program by some fifty-seven thousand dollars ($57,000.00) is based on more reliable estimates than those used by the DWC. The JLARC conclusion that the Industrial Commission Administrative Fund has therefore been compromised, is well supported by the evidence.

The majority also argues that the keeping of time records cannot be justified economically. It recommends in the alternative that the Commission's Controller and Human Resource Officer make quarterly checks with Commission personnel to determine any additional cost to the Worker's Compensation Administrative Fund as a result of their services to the CVC. I believe that this procedure would prove unsatisfactory for the same reasons that our current estimates are unsatisfactory. In the final analysis, no accurate cost figure can be arrived at without first keeping accurate records of the time spent by various DWC personnel on CVC claims. The question, to my mind, is not whether these records should be kept, but how long they should be kept. I believe the better procedure is to keep them on an annual basis and make the appropriate charges back to the CVC Fund. This procedure would guarantee the integrity of both funds, which is the ultimate goal. Finally, I do not disagree with the majority statement that Industrial Commission personnel are available and should assist the CVC Program. That program was placed within the Department of

Worker's Compensation for that purpose, for logical reasons which still apply. However, the Legislature never intended for the CVC Program to be financed in part by the Worker's Compensation Administrative Fund. It is of no moment that the fund may have been only slightly compromised or that the effect on employers is de minimis. We should tolerate no compromise and that problem can be eliminated by the simple keeping of time records.

Recommendation #18: Appeals and use of Deputy Commissioner

We feel that this recommendation requires a good deal more study and conversation before any statutory amendment is framed. We will, of course, be pleased to talk with your staff, with the Crime Commission or any legislative committee which has an interest. Our objective is to give victims full opportunity to have their claims awarded before the appeal process is pursued under §65.1-97 and §19.2-368.7.

EXHIBIT "C"

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