PERFORMANCE AUDIT

VICTIMS' COMPENSATION and VICTIM-WITNESS PROGRAMS in MARICOPA, PIMA, COCONINO, and COCHISE COUNTIES

Report to the Arizona Legislature
By the Auditor General
December 1994
Report 94-11

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December 29, 1994

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Governor

Mr. Rex M. Holgerson
Executive Director
Arizona Criminal Justice Commission

The Honorable Richard M. Romley
Maricopa County Attorney

The Honorable Stephen D. Neely
Pima County Attorney

The Honorable Alan Polley
Cochise County Attorney

The Honorable Terrance Hance
Coconino County Attorney

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Victims' Compensation Programs and Victim-Witness Programs in Maricopa, Pima, Coconino, and Cochise Counties. This performance audit was conducted in response to Laws 1994, Chapter 127.

This statute instructs the Auditor General to determine each county's rate of compliance with the Victims' Rights Implementation Act, and to ascertain the costs associated with this compliance. We found that although Arizona has made great strides in providing victims' rights, changes are needed to ensure agencies fully comply with victims' rights mandates. For example, in 16 to 48 percent of the case files we reviewed, we could find no evidence that prosecutors in the four counties we audited had conferred with victims regarding plea agreements. Further, there is no meaningful recourse for victims who do not receive their rights.

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We found the agencies responsible for providing victims' rights have not separately identified the costs associated with complying with victims' rights mandates. Although some agencies have recently developed projections on what they believe total costs to be, we could not rely on these projections. However, the four programs we studied received funding from the Victims' Rights Implementation Revolving Fund which offset from 27 to 100 percent of their projected compliance costs.

The statute also directs the Auditor General to determine each county's timeliness and compliance with victim compensation rules. We found that compliance rates among the four victims' compensation programs range from 73 to 94 percent. However, compliance rates should increase in the future due to the recent revisions of the compensation rules which have clarified two program definitions that were the sources of much of the noncompliance. In addition, although county programs do not always meet established time standards, most claims for compensation are handled within three to four months of receipt.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on January 3, 1995.

Sincerely,

Douglas R. Norton

Douglas R. Norton
Auditor General

DRN:lmn

Enclosure

SUMMARY

In response to Laws 1994, Chapter 127, the Office of the Auditor General has conducted a performance audit of the Victims' Compensation Programs and the Victim-Witness Programs in Maricopa, Pima, Coconino, and Cochise Counties. This statute instructs the Auditor General to determine each county's timeliness and compliance with victim compensation rules. Further, the Auditor General is directed to determine each county's rate of compliance with the Victims' Rights Implementation Act, and to ascertain the costs associated with this compliance.

In 1990, voters approved Proposition 104, an Arizona Constitutional Amendment known as the Victims' Bill of Rights, with the intent of protecting the victim's right to justice and due process, while ensuring that the victim is treated with dignity and respect by the criminal justice system. Statutory changes have also been made in an attempt to provide crime victims with specific rights, and with assistance and compensation for their losses. The purpose of our audit was to determine whether crime victims were being afforded their rights. Our audit results indicate that Arizona's crime victims are receiving better treatment from the criminal justice system than they received prior to the amendments, yet mandated rights are not consistently provided.

Changes Needed to Ensure Agencies Fully Comply with Victims' Rights Mandates (See pages 9 through 17)

Arizona's Constitution mandates that various criminal justice agencies afford victims certain rights, yet it lacks an effective appeals process for victims to pursue should agencies fail to comply. Our audit work suggests that most criminal justice agencies do not fully comply with victims' rights laws. For example, our review of the various county attorney's offices showed that victims were not consistently notified of hearings during which conditions of a defendant's release were discussed; conferred with by prosecutors regarding plea bargains; or provided an opportunity to request post-conviction notification. In addition, both victims and victims' advocacy groups expressed concern with various aspects of the system, ranging from failure of law enforcement officials to inform victims of their rights to the release of a defendant without the victim's knowledge.

Victims who are not afforded their rights lack meaningful recourse. Under current laws, dissatisfied victims must file a lawsuit to assert neglected rights. Further, to recover damages, victims must prove an "intentional, knowing, or grossly negligent violation" of the victims' rights laws. Establishing a centralized function to handle complaints would provide dissatisfied victims with the ability to seek action without the need to

file a lawsuit. For example, Minnesota and South Carolina established a special ombudsman program to ensure compliance with crime victim statutes, and to provide victims with a centralized, comprehensive source of information and referral.

State Funds Offset Varying Portions of Compliance Costs (See pages 19 through 22)

In addition to reviewing compliance with the Victims' Rights Implementation Act, we were also directed to ascertain the costs associated with this compliance. Following passage of the Act, the Legislature established the Victims' Rights Implementation Revolving Fund (VRIRF) to compensate organizations for the expenses incurred to meet the victims' rights mandates. Currently, this Fund provides $1.5 million to agencies for implementation of the Act. While most agencies do not track the costs of implementation, these monies offset between 27 percent to 100 percent of the costs projected by the agencies. Our review also found that many agencies are offering victims services above and beyond those mandated by the Act, primarily at their own expense.

Crime Victim Compensation Programs Experience Different Rates of Rule Compliance and Processing Timeliness (See pages 23 through 29)

Victims' compensation programs vary in compliance with rules governing disbursement of funds to crime victims. In 1987, the Legislature established the Victim's Compensation Fund within the Arizona Criminal Justice Commission (ACJC) to compensate crime victims for expenses they incur as a result of their victimization. Although the ACJC administers the Fund, individual compensation award decisions are made at the county level by victim compensation boards. These boards are to use rules promulgated by ACJC to guide their award decisions.

Our reviews of the victims' compensation programs in Maricopa, Pima, Coconino, and Cochise Counties revealed varying rates of compliance with ACJC rules. We found that program compliance rates varied from as high as 94 percent to as low as 73 percent. While a portion of the rule violations were caused by the excessive restrictiveness of the rule defining "valid claimant," over half the errors were due to boards awarding monies to claimants who either contributed to their victimization or were not cooperating with law enforcement officials. To ensure monies are targeted to intended recipients, ACJC needs to provide training, guidance, and oversight to county programs.

Audit work was also conducted to determine the timeliness of the victims' compensation programs in processing compensation claims. Although county programs do not always meet the time standard established by ACJC, most claims are handled within three to four months of receipt. Based on comparisons with other states, the timeliness of Arizona's county programs appears reasonable. Further, in financial hardship cases, we found the county programs effectively utilize the option provided under the ACJC rules to make emergency awards.

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INTRODUCTION AND BACKGROUND

In response to Laws 1994, Chapter 127, the Office of the Auditor General has conducted a performance audit of the Victims' Compensation Programs and the Victim-Witness Programs in Maricopa, Pima, Coconino, and Cochise Counties. This statute instructs the Auditor General to determine each county's timeliness and compliance with victim compensation rules. Further, the Auditor General is directed to determine each county's rate of compliance with the Victims' Rights Implementation Act, and to ascertain the costs associated with this compliance.

History and Purpose of Victims' Rights Constitutional Amendments and Legislation

In 1990 Arizona voters approved Proposition 104, a constitutional amendment known as the Victims' Bill of Rights. The intent of this amendment is to protect the victim's right to justice and due process, while ensuring that the victim is treated with dignity and respect by the criminal justice system. In 1992 the Arizona Legislature passed the Victims' Rights Implementation Act. This legislation identifies the roles and responsibilities of the various state and local government agencies charged with implementing the Victims' Bill of Rights.

Three Programs Attempt to Meet the Needs of Victims

Through legislation, three distinct programs have been developed in Arizona to address the needs of crime victims. First, when an individual is a victim of crime, the Arizona Constitution guarantees him or her specific rights within the criminal justice system. Second, victims may receive wide-ranging assistance from various community and government organizations. Third, victims can apply for monetary awards to compensate for their financial losses caused by the crime.

- **Victims' Rights** — As outlined in article II, §2.1 of the Arizona State Constitution, the Victims' Bill of Rights guarantees crime victims the following: the right to be treated with respect and dignity by the criminal justice system; the right to be informed when the accused is released or has escaped from jail; the right to refuse an interview, deposition, or other discovery request by the defendant; the right to be notified of court events; the right to confer with the prosecutor; and the right to be in the courtroom whenever the accused is present.

Many criminal justice organizations are involved in the execution of these rights. When a police agency comes into contact with a crime victim, it has the duty to inform that person of their rights as a victim. Once the accused is in custody, it is the responsibility of various criminal justice agencies to notify the victim if the perpetrator escapes or is released from jail. If charges are filed against the accused, the county attorney or the Attorney General's Office have the responsibility to perform the following major duties:

- Notify victims of the charges filed against the defendant and provide victims the opportunity to confer with the prosecutor should the prosecutor decline to file charges;
- Notify victims of all court dates including the outcome of prosecution;
- Confer with victims about plea agreements;
- Provide victims with a copy of the pre-sentence report;
- Provide victims with a form to request post-conviction rights; and
- Provide notification and an explanation of post-conviction relief proceedings.

Finally, every agency and person involved in the criminal justice system has the duty to treat the victim with fairness, respect, and dignity.

Funding for victims' rights services originates with the Criminal Justice Enhancement Fund. This Fund's revenues are generated by a 46 percent assessment on every fine, penalty, and forfeiture imposed by the courts for criminal offenses, civil traffic violations, motor vehicle violations, and game and fish statute violations. Of the total Criminal Justice Enhancement Fund, 7.85 percent is allocated to victims' rights services via the Victims' Rights Implementation Revolving Fund. This Fund's fiscal resources are used to compensate organizations for the expenses incurred to meet victims' rights mandates. The Attorney General's Office also draws monies from this Fund to cover operational expenses relating to victims' rights. Table 1 (see page 3), describes victims' rights funding in more detail.

Table 1

Victims' Rights Implementation Revolving Fund
Sources and Distribution of Monies
Fiscal Years 1992-93, 1993-94, and 1994-95
(Unaudited)

	Actual 1992-93	Actual 1993-94	Budgeted 1994-95
Sources:			
Allocation from Criminal Justice Enhancement Fund	$1,030,426	$1,388,946	$1,502,500
Balance carried forward from prior year	16,660	8,696	
Total available to provide services	$1,047,086	$1,397,642	$1,502,500
Distribution:			
Disbursed to public and private organizations for victims' rights services	$ 966,403	$1,307,566	$1,408,400
Disbursed to Attorney General's Office for allocated operational expenses	71,987	90,076	94,100
Total distributed	$1,038,390	$1,397,642	$1,502,500

Source: Compiled by State of Arizona, Office of the Attorney General from Arizona Financial Information System Reports for fiscal years ended June 30, 1993 and 1994, and the State of Arizona Appropriations Report for fiscal year 1994-95.

- **Victims' Assistance** — Starting in the mid-1970's, some Arizona county governments began to provide victims' assistance services to their residents. Currently, there are a number of different victims' assistance agencies in each Arizona county, all attempting to help crime victims recover from trauma. Guidance at the scene of the crime, temporary shelter, counseling, and advocacy in the court system are all examples of the assistance offered to crime victims by these agencies. Many different entities are involved in victims' assistance, including various police agencies, county attorney's offices, and nonprofit organizations.

  The federal Victim of Crime Act (VOCA) Crime Victim Assistance Fund provides the majority of public funding for organizations that assist crime victims. The

distribution of Arizona's VOCA funding is administered by the Arizona Department of Public Safety. To enhance this revenue source, the Legislature created the Victim Assistance Fund in 1986. The Victim Assistance Fund, administered by the Arizona Criminal Justice Commission, receives revenue from a fee charged to all persons currently serving probation or parole. Table 2 describes Victim Assistance Funding in more detail.

Table 2

Victims' Assistance Programs
Sources and Distribution of Monies
Fiscal Years 1992-93, 1993-94, and 1994-95
(Unaudited)

	Actual 1992-93	Actual 1993-94	Budgeted 1994-95
Sources:			
Federal Victim of Crime Act (VOCA) Crime Victim Assistance grant	$ 947,000	$1,041,000	$1,003,000
Victim Assistance Fund:			
Revenues from fees	389,000	435,300	430,000
Balance carried forward from prior year	411,000	250,000	178,300
	800,000	685,300	608,300
Total available to fund local victims' assistance programs	$1,747,000	$1,726,300	$1,611,300
Distributions to local victims' assistance programs from:			
Federal VOCA Crime Victim Assistance grant	$ 947,000	$1,039,268	$1,003,000
Victim Assistance Fund	550,000	507,000	450,000
Total distributed to local victims' assistance programs	$1,497,000	$1,546,268	$1,453,000

Source: Nonappropriated revenue and expenditure data compiled by the Arizona Department of Public Safety, Federal Grants Administrator, and the Arizona Criminal Justice Commission, Victim Services Coordinator.

- **Victims' Compensation** – In 1986 the Arizona Legislature established the Victims' Compensation Fund. This Fund compensates crime victims for expenses they incur as a result of victimization. A crime victim is defined as a person who suffers physical injury, extreme mental distress, or death as a result of criminally injurious conduct. The crime victim, or the dependent of a victim who died as a result of criminal activity, may receive compensation for medical bills, counseling services, living expenses, and/or funeral services. The responsibility of determining, implementing, and overseeing rules governing the disbursement of these fiscal resources lies with the Arizona Criminal Justice Commission.

  The awarding of compensation to crime victims takes place at the county level. Through agreements with the Arizona Criminal Justice Commission, a majority of Arizona counties have chosen to house their victims' compensation operational units within their county attorney's office. Each operational unit is responsible for investigating the victim's claim for compensation. The final decision to pay a claim is made by the county's Crime Victim Compensation Board. The operational unit chooses the board members, contingent upon the approval of the Arizona Criminal Justice Commission.

  Funding for victims' compensation programs originates from two sources: the Criminal Justice Enhancement Fund, and the federal Victims of Crime Act (VOCA) Crime Victim Compensation Grant Funds. By statute, 4.7 percent of the Criminal Justice Enhancement Fund is directed to the Victim Compensation Fund. The Arizona Criminal Justice Commission is responsible for applying to the federal government on an annual basis to obtain the State's federal compensation VOCA funding. Each county's Crime Victim Compensation Board receives funding based on that county's population, with funding not to fall below a minimum level. Table 3 (see page 6) describes victims' compensation funding in more detail.

Table 3

Victims' Compensation Fund
Sources and Distribution of Monies
Fiscal Years 1992-93, 1993-94, and 1994-95
(Unaudited)

	Actual 1992-93	Actual 1993-94	Budgeted 1994-95
Sources:			
Allocation from Criminal Justice Enhancement Fund	$ 853,600	$ 927,900	$ 884,000
Federal Victim of Crime Act (VOCA) Crime Victim Compensation grant	193,000	199,000	266,000
Balance carried forward from prior year	283,000	434,600	462,500
Total available for victim compensation	$1,329,600	$1,561,500	$1,572,500
Distributed to counties for victim compensation	$ 895,000	$1,099,000	$1,166,000

Source: Nonappropriated revenue and expenditure data compiled by the Arizona Criminal Justice Commission, Victim Services Coordinator.

Audit Scope

This performance audit focuses attention on those organizations mandated to provide the bulk of victims' rights and victims' compensation services. As such, audit work concentrated on the activities of police agencies, the county attorney's offices, the Attorney General's Office, and the Arizona Criminal Justice Commission. Further, consistent with Laws 1994, Chapter 127, this report does not specifically address the various victims' assistance programs.

With the passage of the Victims' Bill of Rights, Arizona crime victims have received improved treatment from criminal justice agencies. However, our audit work suggests that the criminal justice system is not as responsive to crime victims as mandated by the Constitution. This report presents findings in three areas:

- The need to ensure that agencies fully comply with victims' rights laws.
- The extent to which the State's financial contribution to organizations providing victim services offsets the total cost related to supplying these services.
- The need for sufficient state oversight, training, and guidance for the victims' compensation programs.

This audit also includes two sections of Other Pertinent Information. The first section discusses the differences between centralized and decentralized victim compensation programs. The second section outlines the disparity between victim compensation funding levels in Arizona and other states. In addition, we identified areas for further study, including fund distribution and assessment of service needs.

This audit was conducted in accordance with government auditing standards.

Acknowledgements

The Auditor General and staff express appreciation to the many people and organizations who provided assistance throughout the audit process, including the Attorney General's Office; the Arizona Criminal Justice Commission; and the County Attorney's Offices of Maricopa, Pima, Cochise, and Coconino Counties.

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FINDING I

CHANGES NEEDED TO ENSURE AGENCIES FULLY COMPLY WITH VICTIMS' RIGHTS MANDATES

Although Arizona has made great strides in providing victims' rights, significant work remains. Most criminal justice agencies do not fully comply with victims' rights laws. Additionally, many victims are dissatisfied, yet little recourse is available to them when agencies fail to comply. The State should consider establishing a program to provide meaningful statewide oversight and to investigate and resolve the complaints of dissatisfied victims.

While victimization cannot be viewed as a positive experience, Arizona has taken significant steps to lessen the victim's tragedy through its victims' rights laws and services. To evaluate criminal justice agencies' performance in fulfilling the requirements of those laws, we conducted in-depth interviews, and thorough reviews of policies, procedures, and brochures of many of the agencies mandated to provide victims' rights. Additionally, an extensive file review was performed at the four county attorney's offices. Finally, we sought reactions from the recipients of these services — the victim, and/or their representatives (i.e., victim advocacy leaders) through interviews and the use of focus groups[1].

Agencies Must Increase Efforts to Comply

Criminal justice agencies need to do more to ensure that they meet their mandated responsibilities. We reviewed agencies involved at all stages of the process and found that while most agencies have policies in place to protect victims' rights, there is often a lack of evidence supporting compliance[2]. To achieve full compliance with the victims'

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(1) Representatives from Mothers Against Drunk Drivers (MADD), Parents of Murdered Children (POMC), and domestic violence and sexual abuse centers were among those who participated in our focus groups.

(2) In instances where evidence was lacking, we regarded the case as one of noncompliance with the Victims' Bill of Rights. In doing so we used the same standard for the victim that would be used to protect the rights of a person accused of a crime. Criminal justice agencies are careful to document that a person accused of a crime has received his or her rights. Similar documentation should exist for the provision of victims' rights.

rights mandates, criminal justice agencies will need to increase their commitment to providing these rights.

Initial rights and responsibilities — A victim's first contact with the criminal justice system usually occurs when the crime is reported. Law enforcement officials responding to the crime are bound by Arizona's laws to provide the victim with information about their rights as a crime victim, as well as information about crisis intervention and emergency services available. Additional responsibilities of law enforcement agencies include informing the victim of the date and time of the initial appearance[1] in instances where an arrest has been made, or informing the victim that they will be notified as soon as possible after an arrest is made. Every law enforcement agency we reviewed handles these requirements by giving a brochure to the victim. These brochures list the victims' rights, identify emergency services available, and contain spaces for the police officer to fill in the required information, such as the date and time of the suspect's initial court appearance.

In cases where an arrest is made, another primary point of contact for the victim is the custodial agency, typically the county sheriff. The sheriff is required, upon the victim's request[2], to provide the victim a copy of the suspect's "terms and conditions of release." If the suspect is released on bond, or if the suspect escapes, the Sheriff is required to notify the victim. These responsibilities are included in departmental policies and procedures and are fulfilled through telephone or written contact with the victim. However, if the suspect is released on his or her own recognizance or to a third party, there is no requirement that the victim be notified.

Most law enforcement and custodial agencies we reviewed stated that they believe they are in compliance. However, comments made by focus group participants and victims suggest that agencies are not thoroughly complying, or perhaps that new procedures may be required to help agencies fully comply. For example, we found that:

- Many victims stated they never received any information from the police regarding their rights. These statements were reiterated by victim advocacy leaders during our focus groups.

- Victims are often so traumatized by their experience that providing a brochure may not be an adequate means of informing them of their rights.

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(1) The initial appearance is a court hearing which must be held within 24 hours of the suspect's arrest. At this hearing a judge determines whether the person may be released on personal recognizance or by bond. The victim has a right to be heard at the initial appearance either through an oral or written statement.

(2) Many victims' rights must be formally requested. This is usually done by having the victim complete and sign a form stating that they would like to invoke their rights.

- While the Constitution mandates that victims be treated with respect, many law enforcement officials were described as being insensitive to victims' needs.

Although it appears that some law enforcement agencies may not be ensuring that crime victims are afforded their rights, we do not know the extent of noncompliance. Only one of the police departments we contacted, Flagstaff Police Department, monitors the extent to which victims are informed of their rights.

Pre-trial and trial rights and responsibilities – After a suspect is identified or arrested, the prosecutor (city or county attorney) decides whether or not to charge that person with committing the crime. At this stage in the process, the prosecutor is responsible for providing a myriad of rights. The responsibilities of the prosecutor's office include, but are not limited to, notifying victims of their rights, notifying the victim of the charge or charges against the defendant, providing a clear understanding of the procedural steps in prosecution, conferring with the victim when a plea is offered, and providing victims with timely notification of all court proceedings. Once again, many of these rights must be formally requested.

Because the prosecutors are responsible for compliance with some critical rights, we extended our review at this stage to include an intensive file review[1]. We concentrated our case review efforts on the County Attorney's Office since they handle the most serious crimes, such as murder, child molestation, sexual assault, and aggravated assault. Further, victims of these crimes are more likely to choose to exercise their rights.

Although we evaluated several victims' rights responsibilities, we identified three critical victims' rights that one would reasonably expect the county attorneys to provide and document. Two of these rights involve notification of the defendant's release from custody and are therefore safety issues to victims. The third involves the victim's input on plea agreements and is perhaps the most significant opportunity for involvement with the prosecutor guaranteed to the victim.[2] Table 4 (see page 12) shows the different rates of noncompliance identified in each county for each of these three rights.

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(1) We randomly selected and reviewed a sample of attorneys' case files in each of the four counties. Additionally, we reviewed victim advocate files, when available, as these files also provide information that can support compliance.

(2) In a plea agreement, the defendant is generally allowed to "plea" to an offense that is less serious than the crime allegedly committed or "plea" to fewer charges. Plea agreements, while ensuring convictions, usually result in a sentence which is less harsh than what would have been imposed if the defendant was convicted as originally charged.

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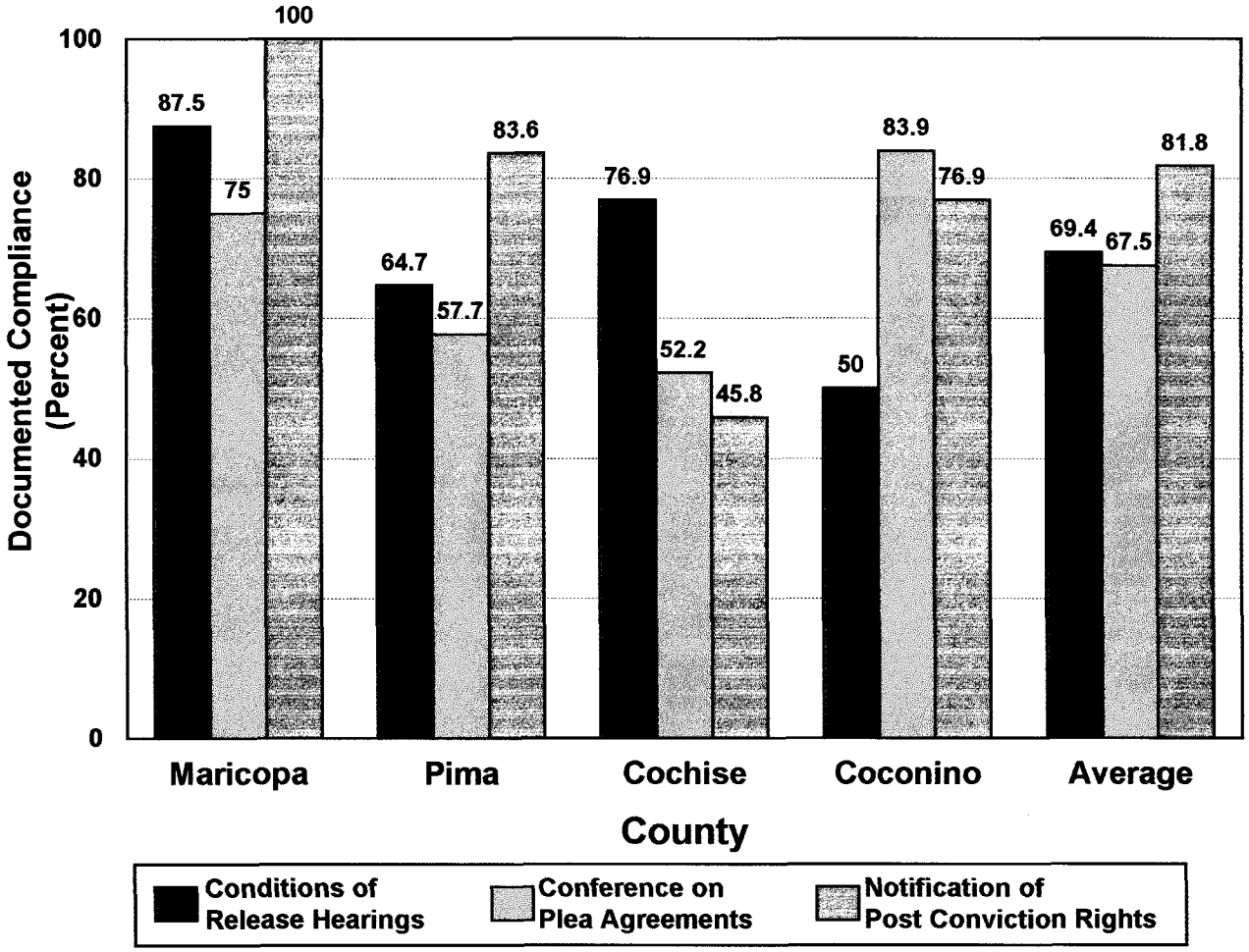
Table 4

Percentage of Victims Afforded Rights



Source: Auditor General analysis of data obtained from a review of cases at the four County Attorney's offices, August through September 1994.

The examples below describe these rights and list the lowest and highest incidence of compliance we found:

- **A.R.S. §13-4422. Post-arrest release decisions** — These hearings are held for the purpose of asking the court to reduce or eliminate bond, or in some way change the defendant's conditions of release. A victim has the right to be heard at these proceedings, and to communicate his or her feelings regarding a change in the defendant's conditions of release. We found that in 12 to 50 percent of the case files reviewed, there was no evidence that the victim had been notified of the hearing.

- **A.R.S. §13-4419. Victim conference with prosecuting attorney** — When plea bargains (agreements) are offered, victims have a right to present their views regarding the plea to the prosecuting attorney. The importance of this right becomes even more significant when considering that the vast majority of cases do not go to trial but instead are settled through the use of plea agreements (in the counties we reviewed, an average of only 20 percent of the cases went to trial). Although the victim is not allowed to direct the prosecution of the case, information provided by the victim may impact the decision to offer a plea, the conditions included in the plea agreement, and the sentence imposed. Further, these conferences allow the victim a chance to understand the rationale behind the prosecution's plea bargain decisions. Between 16 and 48 percent of the case files reviewed failed to demonstrate that the victim was provided an opportunity to confer with the prosecuting attorney.

- **A.R.S. §13-4411. Notice of post-conviction review and appellate proceedings** — The prosecutor's office must provide the victim with a post-conviction form once the sentence is imposed. This form allows the victim to be notified of all post-conviction proceedings, such as appeals, parole hearings, or release decisions. Post-conviction notification is a critical right because it allows the victim to request notification from not only the county attorney's office but also from the Attorney General (on appeals), and the custodial department (e.g., the sheriff, the Department of Corrections, or the Probation Office) that would provide the victim with notification of the defendant's release from jail, prison, or probation. The noncompliance rate on post-conviction rights ranged from 0 to 54 percent of the case files examined.

Post-conviction rights and responsibilities — The next set of victims' rights commence once the convicted defendant is sentenced. The agencies responsible for victims' rights mandates at this stage are the Arizona Department of Corrections or the county sheriff, the court (through county probation offices), and the Executive Board of Clemency. If the victim chooses to exercise his or her rights during this phase, these agencies are required to inform the victim of the terms and conditions of release, any modifications to those conditions, the earliest possible release date, and dates of any hearings in

which post-conviction release is being considered. Interviews and information gathered from agencies responsible for these rights indicate that policies and procedures are in place. However, the extent to which these rights are provided was not determined as it was not included in the statute authorizing this review.

Increased commitment to victims' rights is needed — Although victims were afforded their mandated rights in the majority of cases we reviewed in detail, compliance varied both by the right in question as well as by the criminal justice agency charged with providing the right. Depending on the right, up to half of the cases were in noncompliance. Criminal justice agencies need to both increase their commitment to the consistent provision of victims' rights and ensure these rights are afforded. Most agencies we reviewed have adopted official policies to protect victims' rights. However, merely having a policy in place does not ensure compliance. In many agencies, compliance with the policies is often left to individual members of the organization, with no monitoring or follow-up. If, as we found in interviews, some agency employees regard the victims' rights mandates as inconvenient or burdensome, there is no assurance that they will always follow the policies. In fact, we found that in some instances persons have reported that victims had received their rights when other evidence showed that this was not the case. Most agencies have not invested any effort to determine how well they are complying with either the letter or the spirit of the law governing victims' rights requirements.

One agency which does monitor compliance is the Flagstaff Police Department. Flagstaff Police Department requires that all officers document when victims have been informed of their rights. Additionally, the Department conducts regular audits to ensure officers are complying with the law. During our review we received many positive comments from victims and victims' advocacy groups about the Department's procedures.

Victims Dissatisfied With Delivery of Rights

Arizona needs to do more to ensure victims are not dissatisfied by agencies' failure to fulfill their rights. Our review found discernible dissatisfaction with criminal justice agencies' delivery of victims' rights. The causes of dissatisfaction and the percentage of dissatisfied victims, however, are hard to establish. Further, it is not clear that complete compliance will result in absolute satisfaction. Nevertheless, victims and victims' advocacy groups reached consensus on several changes they feel would improve victims' rights and services in Arizona.

Victim dissatisfaction — Through victim interviews and advocacy focus groups we discovered that many victims are dissatisfied. We found victims and victim advocates had complaints with all phases of the criminal justice process. For example, some were upset with treatment they received from law enforcement officials, because these officials failed to inform them of their rights. Likewise, other victims or advocates complained that the prosecutor did not confer with them about their cases, or that they

were not informed prior to the defendant's release from jail. Finally, some victims could not identify any one area of dissatisfaction – they were upset with the whole process, because they felt the perpetrators had more rights than they did. The following responses illustrate the types of dissatisfaction we found:

- *"I was shocked when I received the sentencing card. It said that if we wanted to be there we could. I didn't know that any other court events had even taken place. I didn't know that there was a person who was arrested and charges were filed."*
- *"I tried to contact him (the prosecuting attorney), and he never once called me back. I was the one who was always calling. He had already made decisions about the case without my input."*
- A focus group participant stated that a client (a victim) telephoned that day indicating that the victim's assailant had been released and the victim had only happened to find out about it from a friend. Other participants stated this frequently happens to their clients.

Changes needed to improve victims' rights – Most victims and advocacy leaders we spoke with were dissatisfied with some aspect of victims' rights and/or the criminal justice system. They identified important changes needed to improve victims' rights in Arizona. For example, most victims and all advocacy leaders thought victim advocates played a vital role by helping victims understand their rights and assisting victims through the criminal justice process. The following additional recommendations were suggested from our focus groups:

- Improve initial contact with the victim by ensuring that victims are informed of their rights and know whom to contact should they have any questions;
- Provide more education about victims' rights to the general public and criminal justice system;
- Establish accountability for agencies responsible for victims' rights to ensure these rights are provided.

Centralized Program Would Afford Victims a Reasonable Appeal Process

While the State has made important achievements in the victims' rights arena, more needs to be done to ensure victims' rights mandates are upheld. Victims' rights laws currently do not provide any meaningful recourse for victims who have been denied

their rights. An ideal program would allow dissatisfied victims the opportunity to seek recourse without filing a lawsuit.

Law lacks meaningful recourse — Victims' brochures and information do not explain what victims should do if they are dissatisfied with treatment they receive from the criminal justice system, or feel that their rights have been denied. While victims with tenacity might learn they do have legal standing, they may be discouraged when they read the law. A.R.S. §13-4437 (A & B) state:

> A. The victim has standing to seek an order or to bring a special action mandating that the victim be afforded any right or to challenge an order denying any right guaranteed to victims under the victims' bill of rights, article II, §2.1, Constitution of Arizona, any implementing legislation or court rules. In asserting any right, the victim has the right to be represented by personal counsel **at the victim's expense.**
>
> B. A victim has the right to recover damages from a governmental entity responsible for the intentional, knowing or grossly negligent violation of the victim's rights under the victims' bill of rights, article II, §2.1, Constitution of Arizona, any implementing legislation or court rules...

Therefore, while victims do have recourse, it is limited and impractical. Victims must first file a lawsuit to assert neglected rights. To obtain damages, they must prove an "intentional, knowing or grossly negligent violation." Such violations are difficult to establish. Therefore, other measures should be considered to provide victims with recourse.

Recourse program — Arizona should seek an effective way to resolve noncompliance and respond to victims' dissatisfaction. While many states are gradually increasing their commitment to victims' rights through constitutional amendments[1], very few states have adopted programs to address victim recourse. The National Victim Center was aware of only three states that had established specific entities to receive victims' complaints. Colorado, for example, is implementing a compliance enforcement program. This program, known as the Governor's Victims' Compensation and Assistance Coordinating Committee, has the power to investigate and resolve complaints or turn them over to the state's attorney general's office if necessary. Recently, South Carolina added an ombudsman program, while the State of Minnesota has had an ombudsman program since 1985.

An ombudsman is an official appointed to investigate and resolve citizens' complaints against local or state governmental agencies. Both Minnesota and South Carolina established special ombudsman programs to ensure compliance with crime victim

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[1] There are currently 20 states that have constitutional amendments. Six of these 20 ratified their constitutions this year.

statutes. These programs perform other functions as well. For example, Minnesota's ombudsman program provides a centralized, comprehensive source of information and referral for victims. The program has these other notable features:

- A 24 hour toll-free number, listed in victim brochures, staffed by trained volunteers;
- Investigative authority for all criminal justice entities except judges;
- Ability to develop findings and recommendations, and identify trends or patterns; and
- An outreach program to victims in rural areas through press releases, radio interviews, literature distribution, and participation in training.

Minnesota's program costs approximately $300,000 annually. South Carolina's ombudsman enabling legislation was passed in June 1994, and received $125,000 in funding for the first year.

Program would provide recourse — If Arizona institutes a centralized program, dissatisfied victims would be provided with a more reasonable option than filing a lawsuit. Victims with complaints would have somewhere to report complaints for investigation. Program staff could also perform functions such as providing victims with information about their rights, and opening up the lines of communication between agencies and counties about techniques used to meet their mutual obligations. However, funding for such a program should be carefully considered. Local officials expressed concern that if already limited monies from the Victims' Rights Implementation Revolving Fund are used to support a centralized program, services to victims could be negatively impacted.

RECOMMENDATIONS

1. Criminal justice agencies required to provide victims' rights should ensure that the significance of these rights is clearly understood. Further, they should consider developing procedures to document, review, and monitor compliance with the mandates.

2. The Legislature should consider establishing a program to provide meaningful statewide oversight for victims' rights mandates, and to investigate and resolve the complaints of dissatisfied victims.

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FINDING II

STATE FUNDS OFFSET VARYING PORTIONS OF COMPLIANCE COSTS

In addition to reviewing compliance with the Victims' Rights Implementation Act, we were also directed to ascertain the costs associated with this compliance. Currently the State provides $1.5 million to agencies for implementation of the Act. There is no reliable cost information available for victims' rights implementation, and in fact, only recently have service providers been asked to report their projected costs. Our review found the Victims' Rights Implementation Revolving Fund covers varying portions of service providers' identified costs. In addition, many agencies are offering victims services above and beyond the victims' constitutional rights, primarily at the agencies' expense.

Following passage of the Act, the Legislature established the Victims' Rights Implementation Revolving Fund (VRIRF) to compensate organizations for the expenses incurred to meet the victims' rights mandates. This $1.5 million nonappropriated fund, derived from a portion of the Criminal Justice Enhancement Fund, is administered by the Attorney General's office. To receive funding, organizations must submit applications detailing the costs associated with compliance. The Attorney General's Office screens the applications and makes award decisions.

State Offsets a Varying Portion of Victims' Rights Costs

Most agencies do not separately track implementation costs. Further, the Attorney General's Office has not, until fiscal year 1994-95, specifically asked applicants to project costs for providing victims' rights services. Instead, the Attorney General's Office awards funding to organizations through a formula and competition-based system. This results in some organizations receiving a much higher percentage of their projected costs than others. However, due to the lack of data on costs, the extent to which the VRIRF offsets victim services costs cannot be clearly identified.

Offset of victims' rights costs differ — As noted above, most agencies responsible for providing victims' rights do not track implementation costs as a separate budget item. However, based on the four counties' VRIRF applications, the awards received varied from between 27 percent (Maricopa County) to 100 percent (Cochise County) of projected victims' rights costs. It should be noted that these projected costs are submitted by the agencies and are not verified by an outside source for accuracy and consistency in interpretation. Our review found significant differences in what applicants reported as victims' rights costs. In fact, on a statewide basis, our review

found that some agencies make projections and submit requests that appear to overstate their actual costs. Still other agencies with eligible costs never request VRIRF funding. As described below, agencies submitting funding applications generally request funds to cover the salaries and supplies needed for victim notification.

Law enforcement — Victims' first contact with the criminal justice system is typically with a law enforcement agency. Police departments are able to fulfill the majority of their mandated services by giving informative brochures to victims. However, the printing of brochures is not the only cost that is eligible for funding. For example, VRIRF money has been awarded to police departments to pay for a portion of officers' salaries, telephones, and postage.

A law enforcement agency with a detention facility has the additional expense of notifying victims of a defendant's conditions of release. This can be a substantial expense, particularly in urban counties such as Maricopa that house a large number of defendants. In fiscal year 1994-95, the Maricopa County Sheriff's Office was awarded $111,301, or 52 percent, of their projected costs of complying with the victims' rights mandates.

Prosecutors — The bulk of victims' rights implementation services and related expenses occur in prosecutors' offices. These agencies must track a case and the corresponding victim throughout the prosecution process and offer the numerous victims' services previously mentioned. Most costs are administrative in nature and involve notifying victims of various developments, events, and options available to the victim as the case unfolds. Some prosecutorial agencies claim that the mandated services have dramatically increased their attorney salary expenses because of the requirement that attorneys confer with victims regarding pleas and decisions to decline prosecution. However, other prosecutors described the impact on their work as "negligible" and "a codified version of what we were already doing." The Attorney General's Office will not provide implementation funds for attorneys' salaries.

It is clear that notification requirements represent a significant expense for prosecutorial agencies. For example, during fiscal year 1993-94, Pima County's victim notification unit, whose sole function is to provide mandated notification to crime victims, reported $114,124 in VRIRF-eligible expenses. For the same period, the County received $60,628 from VRIRF, or 53 percent of the unit's reported notification costs.

Other agencies — Agencies such as courts and their probation departments, and the Department of Corrections, reported relatively small mandated expenses in their applications for VRIRF money. Courts generally need only to notify prosecutorial agencies of upcoming events, and the probation and corrections agencies need only notify victims who have requested notification for hearings affecting the conditions of a prisoner/probationer's release. For example, the Department of Corrections projected, and was granted, $38,200 to cover their expenses in fiscal year 1994-95.

Costs of Other Services to Victims

In addition to providing victims' rights services, many city and county governments provide additional services to victims. While state-administered funds exist to assist entities in providing such services, the bulk of these services is paid for by local governments.

The State administers two victim-related funds to support entities that provide victims' assistance services. These funds are used by these entities to help victims deal with their trauma and/or to participate in the criminal justice system. The funds and their administering agencies are:

- **Victims of Crime Act (VOCA)** – provides revenue to public and nonprofit organizations that offer victims assistance, through such services as counseling, domestic violence shelters, and victim advocacy. This is a federal grant to Arizona of approximately $1 million, which passes through the Department of Public Safety (DPS) to service providers.

- **Arizona Victim Assistance Fund** – provides revenue to public and nonprofit organizations that offer victims' assistance services. The Arizona Criminal Justice Commission (ACJC) administers this nonappropriated fund of approximately $500,000.

While over $1.5 million was available to agencies to provide victims' assistance services, we found that city and county governments pay most of the costs related to these services. According to a November 1993 Arizona Department of Public Safety survey of government and nonprofit agencies receiving monies from state-administered funds, 79 percent responded that less than half of their victim services funding is derived from the State's funding sources, as illustrated in the following two examples.

- The City of Glendale provides a variety of victims' services, including notification and crisis intervention. The City received $67,843 in state-directed funding for fiscal year 1994-95, yet its victim assistance unit has a budget of nearly $250,000 per year. This would indicate that the City contributes 73 percent of the unit's funding.

- For fiscal year 1994-95, Maricopa County projects spending $2 million for victims' rights and assistance, but received only $282,050 in state-allocated funding. Therefore, the County contributed 86 percent of its program's funding to provide victims' assistance and rights.

RECOMMENDATION

The Attorney General's Office should encourage entities awarded Victims' Rights Implementation Revolving Funds to separately track their implementation expenditures.

FINDING III

CRIME VICTIM COMPENSATION PROGRAMS EXPERIENCE DIFFERENT RATES OF RULE COMPLIANCE AND PROCESSING TIMELINESS

Victim compensation programs differ in their compliance with Arizona Criminal Justice Commission (ACJC) rules governing the disbursement of Victim Compensation Funds. In instances where crime victim compensation boards did not comply with ACJC rules, the boards chose to award monies to claimants who did not meet specific conditions outlined in the current rules. To ensure monies are targeted to intended recipients, ACJC needs to provide training, guidance, and oversight to county programs. In addition to assessing compliance with ACJC rules, we also reviewed county program timeliness in processing claims. Although county programs do not always meet time standards established by ACJC, most claims are handled within three to four months of receipt.

The victim compensation program allows victims of criminally injurious conduct and, in case of death, their dependents, to be compensated for medical, mental health, funeral, and living expenses. Rules promulgated by ACJC list several specific conditions that compensation recipients must meet to receive an award. For example:

- The victim must have suffered physical injury, extreme mental distress, or death as a direct result of his or her victimization.
- The victim or claimant cannot be on probation or parole or serving a sentence of imprisonment at the time of the criminally injurious conduct.
- The crime suffered by the victim must be reported to law enforcement authorities within 72 hours of its discovery.
- An application for compensation must be submitted within one year of the discovery date of the crime.
- Awards to a claimant must be denied or reduced if the victim, through either negligence or unlawful conduct, contributed to his or her injury or death.

Compensation Program Rule Compliance Rates Varied Among Counties

Compliance rates with ACJC compensation rules varied among the county programs we reviewed. While a portion of the rule violations were caused by the excessive restrictiveness of the rule defining "valid claimant," over half the errors were due to boards awarding monies to claimants who either contributed to their victimization or were not cooperating with law enforcement officials. By awarding to ineligible recipients, the boards reduce the monies available for other victims. During our review of claims, we also identified some cases which, although they did not violate ACJC rules, were not adequately investigated or handled by program staff. Due to recent rule revisions, some of the ineligible claimants we identified in our file review would now be considered eligible for compensation.

Rule compliance rates — We reviewed case files to determine the extent to which victim compensation programs were complying with the award criteria established by ACJC.[1] We found that compliance rates among the programs varied from as high as 94 percent to as low as 73 percent. All compliance errors identified resulted in awards to victims, despite the fact that the rules were not met. Table 5 below depicts each program's compliance rate.

Table 5

Crime Victim Compensation Program
Rule Compliance Rates

County	Compliance Rate
Maricopa	94%
Cochise	87%
Pima	81%
Coconino	73%

Source: Auditor General Analysis of Random Sample of fiscal year 1993-94 Compensation Cases.

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(1) At least 30 compensation case files were randomly selected from each of the four counties. Fifty cases were selected from Maricopa County due to the large number of cases processed by that county as compared to the other three counties. Each case was evaluated for rule compliance using the Arizona Crime Victim Compensation Program rules promulgated by the Arizona Criminal Justice Commission.

Contributory conduct — Thirty-seven percent of all noncompliant cases violated the rule regarding contributory conduct. According to the victim compensation rules, awards to a claimant or victim shall be denied or reduced to the extent that a "degree of responsibility for the cause of the injury or death was attributable to the victim" either through his/her own negligence or unlawful conduct. Through our file review, we identified cases in each county in which the victim was involved in some form of contributory conduct and still received a full award. The following case examples illustrate contributory conduct rule violations:

- According to the case file, this victim was involved in an illegal drug transaction at the time he was murdered. The victim's family was awarded $896, the full amount they requested for funeral expense compensation.

- In the second example, the victim instigated a fight by pulling a knife on the defendant and threatening him after a verbal altercation in a bar. The victim was awarded the full amount of his request — over $1,800 for medical expenses and lost wages.

Failure to cooperate — In addition to contributory conduct, we found that 21 percent of noncompliant cases involved awards to victims refusing to cooperate with law enforcement officials. The victim compensation rules explicitly state that an uncooperative victim or claimant cannot be compensated for any expenses. Specifically, the rules state that awards shall be reduced or denied if a claimant "has not fully cooperated with appropriate law enforcement agencies." The cases from our review included in this category of rule violations consist of either domestic violence or sexual assault crimes. Victims of these two types of crime are often hesitant to cooperate with law enforcement authorities due to beliefs that they may suffer emotional or physical harm from the assailant. According to ACJC officials, a victim may receive compensation despite failure to cooperate. However, in order to be eligible for compensation, the program must document that cooperation with law enforcement officials would be detrimental to the victim's health and safety. We found no such documentation in the cases that were noncompliant with the failure to cooperate rule.

Ineligible claimants — Another frequent violation, identified in 21 percent of all noncompliant cases, occurred in determining a victim's eligibility to receive compensation. The ACJC compensation rules in effect at the time of our review stated that a valid claimant, authorized to receive awards, is "a victim of criminally injurious conduct" or "a dependent of a victim who died as a direct result of the criminally injurious conduct." This definition of victim excluded parents of a crime victim from receiving compensation for such things as counseling services. As a result, compensation boards often chose to bypass this rule as it was felt to be overly restrictive.

Living expenses as a result of work loss — Although this category was not included in the calculation of each county's compliance rate, the rule governing living expenses was consistently violated by each of the four county programs. ACJC compensation

rules allow programs to award victims for "living expenses as a result of work loss attributable to physical injury, extreme mental distress or death resulting from criminally injurious conduct." Until recently, compensation programs were required to document not only the victim's loss of wages but also his/her living expenses. Because program coordinators claimed this latter requirement placed an unreasonable burden on the victim, ACJC revised the rule to require documentation for only the victim's loss of wages. Based on these factors, we excluded violations of the living expenses rule from the reported compliance rates.

Poorly investigated cases — In addition to instances of rule noncompliance, we identified cases that, although they did not clearly show rule violations, were either poorly investigated or inappropriately handled by program staff. In these cases, the program staff acted with only limited evidence or did not gather sufficient documentation to support their recommendation to award or deny the claim. This problem occurred in over 20 percent of the case files we reviewed. Case examples highlighting this problem area are discussed below.

- A witness saw an "object" being thrown out of a moving car's window. The "object" turned out to be the victim, who later died from his injuries. The compensation program based their investigation solely on this information found in a very brief preliminary police report. Program staff did not attempt to establish the basis for the crime or if any contributory conduct was involved. The victim's mother was awarded $1,500 for funeral expenses.

- The victim in this case was the clerk on duty at a convenience store during an armed robbery. As a result of the robbery, the victim missed time from work and was eventually terminated. The county compensation program awarded the victim $890 in living expenses as a result of work loss. However, since the robbery was a work-related incident, workers' compensation would have been a more appropriate source for compensating the victim. In fact, ACJC rules specifically mention workers' compensation insurance as an alternative source of benefits that the county programs should consider when making awards. Despite this, the county program staff did not investigate the availability of workers' compensation monies to defray the use of victim compensation funds.

Compensation rule revisions — On October 28, 1994, after completion of our audit work, the recent revisions to the compensation rules became effective. The two primary areas of our review affected by the revisions involve the determination of eligible claimants and documentation requirements to receive living expenses. According to compensation rules in effect at the time of our review, the definition of a valid claimant was limited to the victim or a dependent of the victim. Based upon a determination that this definition was too restrictive, the rules were revised to expand the definition to include persons living in the household of a victim, as well as witnesses of heinous crimes. If these rules had been in effect during our review, many of the ineligible claimants we identified would have been considered eligible for compensation. In

addition, under the revised living expenses rule, compensation programs are now only required to document loss of wages rather than loss of actual living expenses.

ACJC Needs to Strengthen Its Leadership Role

Noncompliance with ACJC rules should be addressed in two ways. First, ACJC should strengthen its role as coordinator of the State's decentralized system by periodically reviewing compliance and providing increased training as needed. Second, ACJC should adopt provisions that would allow it to take action against programs that disregard the compensation rules and inappropriately award victim compensation monies.

ACJC needs to strengthen its leadership role — Stronger leadership, which includes training, oversight, and guidance from ACJC could help overcome rule noncompliance by the county programs. Since 1988, when Arizona began compensating crime victims, ACJC has been the statewide coordinating agency. However, it was not until January 1994 that ACJC conducted any compliance audits of county programs. At that time, ACJC audited only 3 of Arizona's 15 counties, identifying noncompliance with various program rules. As part of our audit work, we talked to officials in Colorado, the only other state in the nation with a decentralized compensation program, and discovered that they conduct audits for each of their 22 districts every other year to ensure compliance with Colorado compensation standards.

In addition to monitoring compliance with the victim compensation program rules, ACJC should also provide the counties with training and guidance about these rules. All four program coordinators expressed a strong need for compensation rule training for their staff and boards, but to date, none has been provided. ACJC officials expressed reluctance to reimburse program staff for travel expenses associated with statewide training sessions. However, ACJC officials plan to visit each county to provide training regarding recent changes to the compensation rules. From our discussion with the coordinating agency for Colorado's program, we learned that they sponsor statewide training conferences on an annual basis.

Program coordinators also expressed a desire for guidance from ACJC. Questions arise in the day-to-day process of determining a victim's program eligibility. Three of the four program coordinators told us they have difficulty getting clear guidance and answers to their questions from ACJC. Specifically, these three program coordinators related stories of requesting guidance from ACJC regarding the living expenses rule. Although ACJC officials feel they are providing adequate guidance and feedback, the program coordinators explained that ACJC's answers to their questions are typically very unclear and noncommittal, and in some cases, they receive no response at all. Across-the-board noncompliance with the living expenses rule is one example of the poor direction the programs have received from ACJC.

Sanctions should be considered for programs disregarding rules — As part of a stronger overall leadership role, ACJC should also be empowered to take action against programs that disregard compensation rules and award money to ineligible victims. Cases from our review reveal that the compensation programs, at times, disregard the rules and made inappropriate awards. However, ACJC has no specific authority to take administrative action against programs that award money inappropriately. Colorado recently adopted sanctions to address noncompliance by local programs. These sanctions can progress from a formal written reprimand to funding limitations.

Timeliness of Claims Processing Appears Reasonable

Although county programs do not always meet time standards established by ACJC, most claims are handled within three to four months of receipt. Based on comparisons to other states, the timeliness of Arizona's county programs appears reasonable. Factors impacting the timeliness of claims processing include the volume of applications received and administrative style.

Most claims processed within reasonable time frame — According to ACJC compensation rules, a decision on a claim must be rendered within 60 days of receipt of the claim application except where good cause exists. As illustrated in Table 6, both urban counties were unable to meet this standard in 50 to 70 percent of their cases. However, the urban counties processed over 90 percent of their claims within 120 days. The rural counties were able to process over 70 percent of their cases within 60 days and 100 percent within 90 days.

Table 6

Victim Compensation Program
Timeliness of Compensation Claim Processing

No. of Days From Receipt to Initial Disposition	Cochise County	Coconino County	Maricopa County	Pima County
Less than 30 Days	21	16	7	1
30 to 60 Days	6	6	18	8
60 to 90 Days	5	8	11	12
90 to 120 Days	0	0	9	7
More Than 120 Days	0	0	5	3
Total No. of Cases	32	30	50	31

Source: Auditor General Analysis of Random Sample of fiscal year 1993-94 compensation cases.

Although the urban counties are not meeting the 60-day rule for the majority of cases, their processing times appear reasonable. Other states we contacted indicated that claims took up to two years to process. Furthermore, in those instances where victims are in a crisis situation and need immediate financial assistance, we found the county programs effectively utilize the option provided under the ACJC rules to make emergency awards.

Differences in processing times affected by case load and program administration – The differing case loads and administrative styles of program coordinators affect claim processing times in each county. The two rural counties have a much smaller volume of cases than the two urban counties – the rural counties process about 50 cases each per year, whereas Pima and Maricopa Counties process over 250 and 500 cases per year, respectively. Because of the significantly smaller case loads, program staff in the rural counties are able to begin investigating a claim shortly after it is received and in some cases present it at a board meeting within a few days.

Although the differences are not large, each county program coordinator has a different administrative style that may affect the timeliness of claims processing. For example, in Maricopa County, each of the program's three staff members typically plays some role in the processing of cases, which may add extra days to their processing time. In addition, during the past fiscal year, Maricopa County experienced some turnover that may have affected claims processing timeliness. Pima County's timeliness is affected by other factors. The county's program coordinator prefers to gather all of the bills pertaining to a case and submit them as a package to the board. The other three counties typically try to present individual bills to the board as they come in, and present additional bills at future board meetings.

RECOMMENDATIONS

In order to ensure compensation rule compliance

1. ACJC should strengthen its leadership role by providing higher levels of oversight, training, and guidance to the county programs.

2. Changes should be made to the victim compensation program rules to include specific actions that ACJC can take in order to enforce rule compliance and hold the county programs accountable for noncompliance.

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OTHER PERTINENT INFORMATION

As part of our audit work, we looked at both centralized and decentralized compensation systems, focusing on the advantages and disadvantages that each structure offers. We also collected comparative information on victim compensation funding nationwide.

Forty-Eight States Have Centralized Compensation Programs

Forty-eight of the nation's 50 states operate centralized victims' compensation programs with various structures. Colorado and Arizona are the only two states operating decentralized programs. Both systems offer advantages and disadvantages to the states running them and the victims they serve.

Centralized programs have varying structures — Although 48 states operate centralized victims' compensation programs, they are not all structured alike. Most states' programs are housed within agencies that administer justice programs (9) or the Attorney General's Office (8). Another very common structure is for states to make the victims' compensation program a separate agency (10). Other structures, not quite as common, include placing victims' compensation programs under Workers' Compensation (5); Departments of Public Safety (4); and court systems (4). Some states house their programs within other agencies, such as the Department of Finance or the State Board of Examiners (8).

Not only does the structure of states' centralized programs vary, claims investigations and decision-making methods vary also. In most states, investigation of a claim is conducted by program staff and decisions are made by a specially appointed board or the court system. However, some states allow program staff to make decisions on clear-cut cases. Additionally, a few states utilize law enforcement officials or victim/witness advocates from around the state to carry out a limited investigation before sending the victim's claim to program staff for further processing.

Advantages and disadvantages of centralized and decentralized systems — Although neither method appears to be superior, both systems offer advantages and disadvantages to the states that operate them. According to proponents of centralized systems, their greatest advantage is the potential for lower administrative costs due to economies of scale. However, this may not be true for Arizona. For fiscal year 1993-94, the combined administrative costs for all county programs in Arizona were approximately $142,000 of the $900,000 of state money available to crime victims. According to an analysis by ACJC staff, the costs of moving the State to a centralized program would be approximately $163,000 for the first fiscal year and $148,000 for subsequent fiscal years, or approximately the same costs as the current decentralized system. A centralized system does not necessarily mean lower costs for Arizona because of the distribution

of compensation claims statewide. Over 70 percent of all compensation claims are processed in the 2 urban counties, with the remaining 30 percent spread out among the 13 rural counties. Many of the rural county programs currently have very low administrative costs due to the low number of cases they process.

Centralized systems may offer other advantages. A centralized program promotes uniform victim compensation policies and procedures throughout a state, unlike decentralized systems, which may lack uniform decision-making among county programs. In addition, investigators in a centralized system may be able to make more objective eligibility determinations based solely on the information given on the claim application and supporting documentation. In a decentralized system, close victim contact may make eligibility decisions more subjective. Finally, a centralized system allows for task specialization, whereas a decentralized system leads to duplication of tasks because each county program must provide the same services.

Despite some strong advantages, centralized systems also have disadvantages. First and foremost would be a potential backlog in claims processing. Our research identified many states with backlogs of several months to several years. In Arizona, the county programs are typically able to process an application within 60 to 120 days. Another disadvantage of centralized systems stems from victims' perceptions that the system is cold, impersonal, and insensitive to their needs, a perception that may cause victims to be less likely to apply for compensation. Arizona's decentralized structure is able to overcome these problems with its locally based programs providing personalized service that is sensitive to community needs. This aspect of decentralized systems may actually encourage more victims to apply for compensation.

Arizona Funding Levels Rank Low in Nationwide Comparison

Arizona has fewer compensation dollars and lower maximum awards than other states, though eligibility requirements are similar. In a nationwide comparison, Arizona's victim compensation funding level ranks in the bottom 30 percent. Arizona's per-victim maximum award is also low compared to other states, and varies among counties within the State. However, Arizona's victim compensation eligibility requirements are similar to most other programs.

Arizona ranks low in compensation funding — Arizona's victim compensation funding levels rank in the bottom 30 percent of programs nationwide. During federal fiscal year 1992-93, revenue for Arizona's Victim Compensation Fund reached $1,066,253. This funding level ranked Arizona 38 out of the 49 states that operated victim compensation programs that year. Further, when funding is considered in conjunction with the frequency of reported violent crime, Arizona drops to 44 of the 49 states, allocating only $41.48 per victim (see Table 7, page 34).

Despite our comparatively low level of funding for victim compensation, Arizona's source of funding for these services is similar to most other states. Specifically, as of 1993, Arizona was 1 of 28 states that relied completely on offender assessments to fund the State's contribution to victim compensation programs. At the same time, 7 states derived funding from general revenue funds only, while 14 other states allocated a combination of the two sources.

Maximum awards in Arizona are comparatively low, and vary between counties — The per-victim maximum award in Arizona is low in comparison to other programs nationwide. Arizona and 16 other states have set the maximum total award per crime at $10,000. Only Georgia, Maine, New Hampshire, and Tennessee have maximum awards of less than $10,000. This leaves 30 states with a maximum award limit greater than $10,000. Nationwide, the median maximum award is $20,000.

Of the 15 Arizona counties, 6 have lowered their maximum total payment levels and/or their limits on expenditure categories. Maricopa, Navajo, and Apache Counties decreased their total maximum payment to $5,000, Cochise to $2,500, and Yavapai to $2,000. Furthermore, Navajo and Mohave Counties have both limited their payments for funeral expenses to $1,000. Also, Yavapai County has instituted a limit of $1,500 on each expenditure category, such as medical or funeral expenses. Victim compensation program coordinators explained that these limits are imposed to help offset funding difficulties. They stated that their programs do not receive enough fiscal resources to fully pay every victim's claim.

Eligibility requirements are similar to other states — Qualification to receive victim compensation in Arizona requires reporting the crime incident to police authorities within 72 hours. Twenty-three other states impose identical requirements. Eight states demand disclosure of the crime in less than 72 hours, while 18 states allow the victim more time. Like Arizona, a majority of states require that the compensation application be received by the operational unit within one year of the date of the crime. Five states demand receipt of the application in less than one year, while eight other states allow more than one year. Vermont's eligibility rules are the most liberal, providing the victim no time limit to report the crime or to file the claim. Arizona, and a majority of other states, allow these rules to be waived if good cause is shown.

Table 7

Comparison of Compensation Funds Available for Each Victim of Violent Crimes

	State	Total Number Violent Crime Victim-1992	Total Compensation Revenues Fiscal Year 1992-93	Total Compensation Available for Each Victim of Violent Crime(a)
1	Vermont	624	$788,852	$1,264.19
2	Utah	5,267	$5,738,633	$1,089.54
3	Delaware	4,280	$2,775,516	$648.49
4	West Virginia	3,833	$2,183,826	$569.74
5	Montana	1,400	$742,365	$530.26
6	Washington	27,454	$12,062,999	$439.39
7	Colorado	20,086	$8,791,572	$437.70
8	Iowa	7,816	$3,264,442	$417.66
9	Wyoming	1,489	$586,049	$393.59
10	Rhode Island	3,965	$1,549,166	$390.71
11	North Dakota	530	$204,202	$385.29
12	Hawaii	2,998	$1,047,858	$349.52
13	Tennessee	37,487	$13,065,584	$348.54
14	Idaho	3,003	$1,041,689	$346.88
15	Ohio	57,935	$16,571,352	$286.03
16	Alabama	36,052	$9,246,222	$256.47
17	Nevada	9,247	$2,283,158	$246.91
18	Oregon	15,189	$3,706,832	$244.05
19	California	345,624	$81,570,941	$236.01
20	Wisconsin	13,806	$3,240,900	$234.75
21	South Carolina	34,029	$7,595,705	$223.21
22	Texas	142,369	$30,219,210	$212.26
23	Connecticut	16,252	$3,308,156	$203.55
24	Kansas	12,888	$2,488,487	$193.09
25	Arkansas	13,831	$2,333,994	$168.75
26	South Dakota	1,383	$225,873	$163.32
27	New Jersey	48,745	$7,457,167	$152.98
28	Minnesota	15,144	$2,156,220	$142.38
29	Missouri	38,448	$5,459,180	$141.99
30	Pennsylvania	51,276	$6,234,989	$121.60
31	New York	203,311	$24,459,569	$120.31
32	New Hampshire	1,397	$167,589	$119.96
33	Alaska	3,877	$421,221	$108.65
34	Virginia	23,907	$2,566,088	$107.34
35	Florida	162,827	$17,092,373	$104.97
36	Oklahoma	20,005	$1,946,628	$97.31
37	New Mexico	14,781	$1,407,583	$95.23
38	Massachusetts	46,727	$3,467,815	$74.21
39	Kentucky	20,107	$1,490,205	$74.11
40	Illinois	113,664	$7,661,115	$67.40
41	Indiana	28,791	$1,769,884	$61.47
42	Nebraska	5,598	$330,039	$58.96
43	Louisiana	42,209	$2,255,506	$53.44
44	**Arizona**	**25,706**	**$1,066,253**	**$41.48**
45	North Carolina	46,600	$1,923,594	$41.28
46	Michigan	72,672	$2,611,885	$35.94
47	Georgia	49,496	$1,650,207	$33.34
48	Mississippi	10,763	$280,657	$26.08
49	Maryland	49,085	$1,203,960	$24.53
50	Maine	1,616	(b)	(b)

(a) Total Compensation Available For Each Victim is derived by dividing Total Compensation Revenues, fiscal year 1993 by Total Number Violent Crime Victims, 1992

(b) In 1993 Maine did not operate a Victim Compensation Program

Source: Uniform Crime Reporting (UCR) Statistics, 1992 U.S. Department of Justice, Nationwide Analysis: Victims of Crime Act, 1994

AREA FOR FURTHER AUDIT WORK

During the course of our audit, we identified an area for further audit work that we did not pursue due to time limitations.

Does the lack of statewide coordination inhibit the effectiveness of victim services?

Based upon a preliminary examination, we found Arizona's system of funding services to victims of crime is fragmented. Currently, three different state agencies administer five interrelated funds. Further, it appears there is little planning and evaluation to recognize and fill potential gaps in services. Further audit work is needed to determine whether the funding process could be consolidated into one agency, and whether planning can be done more systematically.

OFFICE OF THE MARICOPA COUNTY ATTORNEY

RICHARD M. ROMLEY
COUNTY ATTORNEY

December 28, 1994

Mr. Douglas R. Norton
Auditor General
Office of the Auditor General
2910 N. 44th Street, Suite 410
Phoenix, AZ 85018

Dear Mr. Norton,

Enclosed is the response from the Maricopa County Attorney's Office to the Auditor General's Performance Audit on victims rights mandates and victim compensation.

I want to express my appreciation for the manner in which your staff conducted the research. The research was done with a minimum of interruption and inconvenience to my office. It is my hope that the results of this audit will be shared with the legislature as they contemplate expanding victims rights to the juvenile justice system. I am a strong supporter of this effort, however, the associated implementation costs must be taken into consideration when adopting such a mandate.

Sincerely,

Richard M. Romley

RMR/CM

Enclosure

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Maricopa County Attorney's Office
Victims' Rights and Victim Compensation
Audit Response

Introduction

The Auditor General's Office was charged by the legislature with auditing the performance of four County Attorney's Offices in how victim compensation services and victims' rights statutory mandates are provided. The Maricopa County Attorney's Office was included in this audit.

The Maricopa County Attorney's Office has long supported the rights of victims during the criminal justice process. While the office takes great pride in the services provided to the citizens of this community, an objective review is welcomed as it will enable the office to identify areas that can be improved.

The Maricopa County Attorney's Office wishes to express our appreciation to the staff of the Auditor General's Office for the efforts that they took to minimize inconvenience to this office during the audit investigation.

Victims' Rights

It is the opinion of this office that the Maricopa County Attorney's Office has done an outstanding job of implementing the Victims' Rights Implementation Act in a short period of time with limited resources. The magnitude of the victims' rights responsibilities on prosecutor's offices made the audit very difficult.

In Maricopa County, compliance with the Victims' Rights Implementation Act required a re-working of several inter-dependant parts of one of the largest criminal justice systems in the country. More than 25,000 felony cases involving an equal number of victims are processed through the courts every year. To successfully provide victims with their rights required a dramatic shift in the way the county conducted business.

In the six (6) months prior to the effective date of the legislation, this office developed interagency cooperative agreements and written policies and procedures, designed computer programs and notification letters, designed forms for internal use and for the use of victims, and provided training for hundreds of employees - in the County Attorney's Office, Sheriff's Office, the Courts, the Probation Department, to name but a few.

The Auditor General's report focused on three (3) of the sixteen (16) statutory

responsibilities of prosecutors offices. The audit found that documentation of specific action could not be found in a small number of cases.

During the audit of the Maricopa County Attorney's Office, the Auditor General's staff reviewed computer files, prosecutor files, and Victim Witness Division files. In many of these cases, the Victim Witness Division files had already been destroyed.[1] The review process found that the prosecutor had not documented conferring with the victim(s) in 25% of the files. It is the belief of the Maricopa County Attorney's Office that the lack of documentation in the available file does not necessitate non-compliance. It is the policy of this office that prosecutors confer with victims or have the Victim Witness Advocate facilitate this conference. Therefore, it is quite probable that documentation regarding a plea conference existed in the Victim Witness Division case file. Nonetheless, the office will focus on the need to confer with the victim and the need to document the conference in the attorney case file.

The Auditor General's report recommends that a centralized program be developed to handle complaints or problems from victims. This office disagrees with this recommendation for the following reasons:

1) The Maricopa County Attorney's Office receives very positive responses from a vast number of victims each year. In the very few incidences in which victims or their family members voiced a compliant, the office took appropriate remedial action. Developing a state agency to monitor local elected officials is not needed.

2) The Victims' Rights Implementation Revolving Fund fails to adequately provide funding for this office's statutory responsibilities. During fiscal year 1994/95, the Maricopa County Attorney's Office received $183,139 in funding from the Victims' Rights Implementation Revolving Fund. Victims' rights tasks dramatically impact the workload of prosecutors, Victim Witness Advocates, and clerical staff. In addition, it has increased administrative expenses such as computer support, training and supervision. The total costs to this office for this fiscal year will be approximately $1,400,000. Therefore, the Victims' Rights Implementation Revolving Fund offsets approximately 13% of actual costs for this office. Until local agencies with statutory responsibilities are fully funded for the costs of this state mandate, no funds should be diverted to a state agency to monitor compliance.

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[1] While the Victim Witness Division files contain the case notes of the advocates, these files are considered duplicate files to the prosecutors files. Due to the volume of cases and the shortage of storage space, the majority of Victim Witness Division case files are destroyed after the prosecution has been completed.

Victim Compensation

The Maricopa County Attorney's Office has centralized the victim compensation program in the Victim Compensation Bureau. This office assumed the victim compensation function from a private non-profit corporation on July 1, 1993. Therefore, at the start of the audit, this office had been providing victim compensation services for approximately twelve (12) months.

The Victim Compensation Bureau receives approximately 500 applications from victims each year. Four (4) staff persons investigate each application based upon the Victim Compensation Rules promulgated by the Arizona Criminal Justice Commission. This investigation includes determining if the application meets eligibility requirements, if the victim or claimant is eligible to receive compensation, and if expenses are compensable under the rules.

Following the investigation, each claim is presented to a monthly meeting of the volunteer Victim Compensation Board. The Board makes determinations of whether or not a victim or claimant receives compensation and, if so, at what amount. Maricopa County has not received funding commensurate with this county's population or percentage of violent crime. Therefore, the Victim Compensation Board has been forced to reduce the maximum award to accommodate the number of victims in this county.

Compensation claims cannot be awarded without an adequate investigation. There are occasions when a case cannot be investigated within the sixty (60) day time limit set by the rules. Examples of delays include those caused by law enforcement agencies who refuse to release a police report until the police investigation is complete, victims or claimants not submitting bills in a timely manner, and service providers not responding to requests for information. In any of these circumstances, good cause would exist to exceed the sixty (60) day requirement.

As a result of the audit, the Victim Compensation Bureau has implemented procedures to assist in tracking each case. This will ensure that staff are monitoring the timeliness and thoroughness of the investigation.

Summary

The audit conducted on the victims' rights and victim compensation programs in Maricopa, Pima, Coconino, and Cochise Counties provided a glimpse at how well prosecutors offices are assisting victims. A focal point of the audit addresses issues relating to funding for victim services. The audit does not address funding formulas.

This office supports the recommendation that funding for victim services be better coordinated. Currently, four (4) state agencies provide funding for various victim services. There is little coordination among the agencies when making annual funding decisions or in the required reports. As a result, victim services funding is haphazard at best. An example of this inequity was reported in the audit: the auditors reported that the Maricopa County Attorney's

Office was funded at 27% of direct "eligible"[2] victims' rights costs while Cochise County was funded at 100% of that agency's victims' rights costs. The same issue is played out in funding for victim compensation, and other victim services.

It is the recommendation of this office that the legislature consider this audit when debating the implementation of victims' rights in juvenile proceedings. It is expected that the brunt of the planning and funding for the implementation of new legislation will fall at the local level. To provide meaningful victims' rights services requires coordinated planning among several agencies. Prosecutors, law enforcement agencies, the Courts, and others will need adequate time to develop policies and procedures, design computer programs, and provide training. As is well known, Maricopa County's current financial difficulties will hinder the county's ability to absorb additional unfunded mandates. Victims will not be well served unless agencies are provided adequate time and funding to effectively implement additional state mandates.

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[2] The Maricopa County Attorney's Office disagrees with the Victims Rights Implementation Revolving Fund formula. The Attorney General's Office has arbitrarily deemed some costs to be "eligible" expenses under the Victims' Rights Implementation Revolving Fund and other expenses as "ineligible". Included as "ineligible expenses" are costs associated with the prosecutor's office responding to victims' requests or inquiries arising from the receipt of a brochure from a law enforcement agency; costs associated with conferring with victims prior to a release hearing, plea agreement, trial, and sentencing; costs associated with informing victims about their right to refuse a defense interview and acting as the supportive person at the victims' request; and indirect costs such as overhead, administrative support, training, etc.

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STEPHEN D. NEELY
PIMA COUNTY ATTORNEY

December 28, 1994

Douglas R. Norton
Auditor General
State of Arizona
2700 N. Central Ave., Suite 700
Phoenix, AZ 85004

Dear Mr. Norton:

The performance audit report for victims' compensation and victim witness programs in Arizona claims to identify several areas where improvements are needed, yet spells out only a few recommendations for the agencies involved. Oversimplifying the challenges of implementing the Victims' Bill of Rights is a mistake that may short circuit the progress made since the 1991 legislation. Insuring victims' rights is a complex process, primarily due to the traditional emphasis on the rights of the accused. We are constantly retooling our own agency's infrastructure to continually evolve toward more efficient and effective service.

The Pima County Attorney's Office has supported an advocacy program for victims of crime for 20 years. Victims are provided information regarding justice system procedures as well as crisis counseling, social service referrals, court interpreters, transportation and more. The focus of the auditors is on documentation - paperwork purporting to evidencing compliance with statutes and rules. The primary goal of this county's Victim Witness Program is still to provide services to victims. Documentation of service delivery is not even a close second. Our commitment to victims of crime is unparalleled and is not diminished by our preference for substance over form.

The report's recommendation to "develop procedures to document, review, and monitor compliance..." assumes that current documentation is inadequate. If so, the Auditor General's purported measures of statutory compliance presented in Table 4 are, therefore, equally inadequate. In any event, they certainly illustrate the auditors' failure to adequately distinguish between *doing* the act and *documenting* the act.

The concerns identified in the report are not news to the agencies involved. Unfortunately, the context within which difficulties occur is frequently ignored in the report. Contextual expertise beyond that of the auditors is critical to fully understanding the process of providing victims their rights.

Specifically, we wish to elaborate on the following points raised in the report:

CONDITIONS OF RELEASE HEARINGS -- Table 4 on p. 12 of the report indicates 64.7% *documented* compliance in Pima County with ARS §13-4422 concerning post-arrest release decisions.

After the adoption of the predecessor to ARS §13-4422, Rule 39, Arizona Rules of Criminal Procedure, the Pima County Attorney's Office filed scores of petitions to secure victim participation in initial release decisions. All were denied or ignored by the courts. The source of dates and date changes for all criminal proceedings is also the courts. If the courts cannot, or will not, provide sufficient time for the prosecutor to notify victims of the accused's release hearings, full compliance cannot be achieved. The auditors do not comment on this possibility. Nevertheless, we recommend eliminating the prosecutor as middleman and placing the courts in the role of providing victim notification of court proceedings.

VICTIM CONFERENCE ON PLEA AGREEMENTS -- Table 4 on p. 12 indicates 57.7% *documented* compliance with ARS §13-4419, requiring the prosecutor to conduct a victim conference prior to offering a plea. Our policy dictates that attorneys will note on the plea agreement form that a victim conference was held. They do not document the contents or nature of the conversation, nor is such documentation required. Written information of that kind may be discoverable by the defense. This tactical conflict between effective prosecution of a case and the documentation of victim conferences illustrates the complexity of victims' rights implementation. To the extent the auditors relied on our refusal to document the *content* of conversations as evidence of non-compliance, the report is flawed.

CENTRALIZED PROGRAM FOR APPEALS PROCESS -- The report's recommendation to "seek an effective way to resolve noncompliance and respond to victims' dissatisfaction" will not be accomplished by an expensive state agency far removed from local implementation. We recommend closer coordination among the 15 counties with the assistance of the Arizona Criminal Justice Commission to ensure uniform interpretation of statutory compliance - assuming the Auditor General supposes uniformity to be desireable.

STATE OFFSETS VARYING PORTIONS OF MANDATED SERVICES' COSTS -While it is true that notification requirements represent a significant expense for prosecutorial agencies, p. 20 indicates Pima County received 53% of its notification costs from VRIRF funds. Our figures for fiscal 1993/94 indicate otherwise. Monies expended on salaries alone amounted to $169,699 for the five notification clerks, one "counselor of the day", one unit supervisor, and a portion of the receptionist's time. This dollar figure does not include additional expenses for a programmer's time, postage, copying, phones, computer maintenance, and attorneys' time spent in notification activities. Therefore, the VRIRF contribution of $60,628 is at most 36% of the unit's expenses, not 53%.

Additionally, while we admire the auditors' loyalty to their masters in the legislature, we believe it would have been appropriate to disclose the nature and source of the reported $1.5 million the State provides to agencies for implementation of the victims rights act. These funds are actually generated by surcharges on criminal fines at the local level. The State Legislature skims a substantial chunk off the top of these surcharges before "providing" them to us for victim assistance. To our knowledge, the legislature has never appropriated a single dime to support victims of crime. Even the costs of this audit were taken from surcharge funds intended for victim services.

COMPENSATION PROGRAM RULE COMPLIANCE RATE -- Just as the report ignores the complexities of the notification process, it ignores the complexities of victim compensation.

For example, Pima County Attorney's Office Victim Compensation Program staff are knowledgeable and experienced in the field of victimology. They are working with this county's compensation board toward a clearer determination of "contributory conduct", a major issue nationwide for providers of victims' services. The topic was discussed extensively in November, 1994, at the National Conference of Crime Victim Compensation Boards. The auditors' report appears to fault programs for reliance on "preliminary police reports." Full investigations relating to contributory conduct may, however, take months, bringing programs into conflict with timeliness requirements. Clearly, conflicting interests are as much a part of the compensation process as the notification process discussed earlier. Given these problems, the report's assessment of compliance rates is oversimplified.

The adequacy of "investigations" and the adequacy of the manner in which cases are "handled by program staff" questioned by the report (at p. 26) are matters of subjective evaluation. Although we asked, the Auditor General's Office did not provide the information necessary to assess the qualifications of the auditors to second-guess

the professionals in the four prosecutors' offices. The report concedes that the objective standards, the ACJC rules, were followed. We question the propriety of the auditors imposing their own standards on this process.

To conclude the discussion of compensation: the report mentions problems with awards granted to victims refusing to cooperate with law enforcement officials. ACJC rules allow claims boards to award victims who fail to cooperate in cases such as domestic violence or sexual assault. The report mentions inadequate documentation as a problem yet again. As we stated before, it is inaccurate to assume non-compliance because of the absence of documentation.

Finally, we feel the report fails to acknowledge the continuing efforts by counties to improve procedures for victim notification and compensation. The Auditor General was directed to take a close look at four prosecutors' offices and to ignore the other agencies involved in victim notification and compensation. This sort of tunnel vision leads to an unbalanced picture of program effectiveness. While it is true that the prosecutor carries most of the statutory responsibility in this process, the ability of the prosecutor to fulfill that responsibility to victims is directly related to these other agencies.

Over the past two decades, audits have been performed on Pima County's Victim Witness program by organizations such as the Institute for Social Analysis in Reston, Virginia, and the Stanford Research Institute, as well as graduate students at the University of Arizona; often at our request. We have assumed a proactive approach to victim service in Pima County and will continue to do so.

We appreciate the Auditor General's input and we will address the report's substantive recommendations. When resources and other factors require that we choose between service and documentation, we will continue to choose service.

Sincerely,

Stephen D. Neely
Pima County Attorney

COCONINO COUNTY ARIZONA

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CHELLI WALLACE

JEAN E. WILCOX

December 29, 1994

Debra K. Davenport
Deputy Auditor General
Office of the Auditor General
2910 North 44th Street, Suite 410
Phoenix AZ 85018

Dear Ms. Davenport:

As we have previously discussed, I have two concerns regarding the Victim Notification audit. First, there was an assumption on the part of the auditors that lack of documentation in files equaled lack of notification. Over the time period being evaluated, there were problems getting timely hearing notice from the courts. Victims were notified, in phone or in person; but these contacts may not have been documented in the case file after the fact. The problems with court notification of hearings have since been resolved. We have also resolved our internal policy of documenting phone calls and personal contacts with victims in the case files.

Second, as Colleen Hendricks of Victim Witness Services has noted to you previously, problems of rule interpretation in the time period audited were primarily due to communication; ie, guidelines and interpretations from the Arizona Criminal Justice Commission were unclear in application.

We appreciated the audit and have used this as an opportunity to review our victim notification policies and procedures. Please contact us if you have any questions.

Sincerely,

Terence C. Hance

Terence C. Hance
Coconino County Attorney

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OFFICE OF THE

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December 28, 1994

Debra K. Davenport
Deputy Auditor General of Arizona
2910 North 44th Street, Suite 410
Phoenix, Arizona 85018

Dear Ms. Davenport:

A final written response to your revised preliminary report draft of the performance audit of the victims' compensation and victim witness programs in Maricopa, Pima, Coconino, and Cochise Counties is enclosed. The final written response was faxed to (602) 553-0051 on December 28, 1994.

Thank you for providing the revised preliminary report by December 21. Your consideration is appreciated.

Sincerely,

Alan K. Polley

ALAN K. POLLEY
County Attorney

Encl.

The following is in response to various items in the audit. The comments are prefaced by the major identification line (underlined) in the audit immediately preceding the information to which the comment is in response.

Finding I, Recourse Program, RECOMMENDATIONS, 2.:

Approximately 6 complaints have been referred to this office by the Attorney General's Office during the past 3 years regarding dissatisfaction with victim services ranging from notification to compensation issues. Not a single one of those complaints was unknown to the local Victim Witness Office. The Office has been able to assist one or two of those victims to a more satisfactory conclusion. The others involved complaints about notification, and were partially justified, and have been rectified. The traumatized victim in one of these instances did not recall being informed about the initial appearance or signing a statement that he had been informed. The pre-sentence hearing information and victims' rights packet were sent to the victim, but did not reach him as the business address he listed was not a mailing address. The situation was rectified, but the victim still felt victimized by the system, and said he would consult his attorney. Another of the cases involved a compensation claim for a deceased victim who was clearly a major participant in his victimization. Further, the claimant was not eligible under the existing definitions of dependent.

The foregoing illustrations are not intended to say that mistakes are not made, nor to intimate that all victims are treated well and receive all of the services to which they are entitled. The numbers, however, are small in the area of legitimate complaints. The cost of the operational recourse program in Minnesota is cited as $300,000, annually, which amounts to slightly over 25% of Arizona's entire victims' rights implementation budget - just to field complaints. There was no indication of the success rate of the Minnesota program. Even if a success rate were cited, it would not be credible without an audit of the type to which this response is formulated.

Spending 25% of the state's total annual outlay of VRIRF seems impractical unless these funds will be acquired from another source and not impact negatively upon victims'-rights-implementation activity.

A major outlay, followed by ongoing updates to raise the commitment of law enforcement, prosecutors, and the judiciary to victims' issues, to fund more service providers in the area of victim assistance could substantially and positively affect the delivery of rights and victim satisfaction with the system. Creation of another agency to field complaints when awareness exists that not enough funds are currently available to carry out the mandate seems counterproductive.

Finding II. State Funds Offset Majority of Compliance Costs Identified in Agency Requests:

According to the audit, VRIRF funds 68% of the costs related to victims rights implementation. The mandate is in place, but the funding is inadequate in prosecutorial offices to which the bulk of notification falls. Decisions are made very quickly at the courtroom level. Unless someone is standing by ready to contact victims by phone, or to step in to make the court aware of the victims' rights and desires, the process may go forward without the victims' consent or knowledge. This is particularly true in major crimes in which the victim has the greatest need to be involved. State funds at the 68% level cannot accomplish basic notification, let alone spur of the moment happenings. More funds are needed at the prosecutorial level to protect and assert the rights of victims.

Finding III. Compensation Program Rule Compliance, Poorly investigated cases:

Violations under the eligibility rules addressed in the section of the report speak to case outlines stated in a very basic way. It is not a requirement for compensation that a conviction occur prior to compensation being awarded. In fact, it is a goal of compensation programs not to victimize a victim further by being a burdensome program. Investigation is done by staff whose role it is to assist victims. The staff are not private investigators attempting to trip up their prey. That being the case, there will be times when the initial picture presented by the victim, some witnesses, and the initial police report will change as the case unfolds in the courtroom. These will be times when compensation may be paid in error. The percentage should be very small, but it will exist. There is an inherent question of how extensive an investigation needs to be.

One of the "cases" cited mentions Workman's Compensation as an appropriate source of assistance. According to Workman's Compensation staff, when a claimant applies, providing medical evidence of quitting because of trauma, Workman's Compensation turns over the case to the employer's insurance company which,

then, develops the case and determines eligibility - a time consuming and complicated process. (The claimant in this case would not have been eligible for Workman's Compensation.) A process needs to be developed for reimbursement from Workman's Compensation when a claimant is eligible for assistance from that program.

ACJC Needs to Strengthen its Leadership Role:

The audit states that ACJC did no compliance audits until January of 1994. ACJC audited our program for compliance on February 10 and 11, 1993.

Training and guidance from ACJC do need to be strengthened. A statewide conference for Board members and staff would pose financial hardship for our program as the training is not apt to be held in our rural area. The plan for ACJC to visit each of the 15 counties to provide training on the new rules will be a hardship for them, and will take considerable time and money. We would, however, welcome such a training.

We have not had a single instance of "no response" from ACJC. Our program was able with ACJC guidance to develop an instrument for use in living expense claims which put us in compliance in this area.

When suggesting that ACJC should give clear-cut answers in the area of program eligibility, rule application, etc., care needs to be taken not to usurp the decision-making responsibility of the duly-appointed Compensation Board. ACJC has been sensitive to this topic while exhibiting a willingness to discuss rules and ways in which claimants may or may not be eligible, and to provide guidance in a general way. Stronger leadership could be used as a mandate to usurp local Board authority, and needs close scrutiny.

Sanctions should be considered for programs disregarding rules -:

ACJC needs to be empowered to take action in situations where clear disregard for the rules and inappropriate awards occur, provided there is evidence to document the actions.

OTHER PERTINENT INFORMATION, Advantages and disadvantages of centralized and decentralized systems -:

"...objective eligibility determinations based solely on the information given on the claim application and supporting documentation" presumes that police reports are always adequately written and provide sufficient information to document a claim. It is our experience that police reports may not explain a victim's situation, and, at times, do not even mention a victim. The reporting officer is contacted on nearly every claim we process.

Many victims will not receive needed assistance if some local investigation is not accomplished. Documentation of income is not easily acquired for temporary, domestic, or transient workers. Victims may not have the know-how, ability, or means to acquire sufficient documentation. Would a centralized system accept that burden or would the victim be further victimized by the system?

An advantage of centralization mentioned is that "uniform decision-making" would occur. "Uniform decision-making" could only occur if the same person, in the same state of mind, etc., made all compensation decisions state-wide. There are bound to be discrepancies or differences among staffers making decisions, even under the best of circumstances.

An advantage of decentralized systems not addressed is that claimants for compensation routinely become aware of, and avail themselves of, other victim services. A rape victim, for example, in pursuit of compensation finds that someone will appear in court with her, help her to make an impact statement, or find a volunteer or conscientious business to repair a broken window. Victim Advocates do much more than process compensation claims. Their commitment to the victim promotes the provision of other services and resources. That type of contact would be lost in a centralized system. The victims would, one more time, be on their own to wend their way through a complicated process, at a time when they are least able to cope with that process.

A further advantage of decentralization in our program is that, on a case-by-case basis, mental health, dental, and medical costs are negotiated downward by 5 to 50%. This amounts to a considerable savings which is used to extend compensation to other victims.

ARIZONA CRIMINAL JUSTICE COMMISSION (ACJC) RESPONSE TO AUDITOR GENERAL REPORT DRAFT OF THE VICTIMS' COMPENSATION AND VICTIM WITNESS PROGRAMS IN MARICOPA, PIMA, COCONINO, AND COCHISE COUNTIES.

Victims' Compensation Programs

FINDING III (Page 23)

COMPENSATION PROGRAM RULE COMPLIANCE (Page 24)

Response:

The original rules developed by ACJC in 1988 contained a number of definitions and limitations which were the subject of considerable interpretation, legitimate disagreement, and varying opinions by the individuals responsible for operating the program throughout the State. This was recognized by ACJC several years ago and the lengthy process for amending the rules began. The new rules for the Victims' Compensation Program are now in effect and they do address the areas identified in the audit where alleged "rule violations" occurred. This includes a new definition for a "valid claimant".

The new program rules were the result of almost 3 years of developmental and process work including input from all concerned parties and a number of public hearings. It appears that most of the alleged "rule violations" cited in the audit report are not "rule violations" under the new program rules.

The use of percentages in the audit report to relate occurrence of alleged "rule violations" and "rule compliance rates" is not very specific. It appears that approximately 140 cases were selected for review and 21 cases contained some form of alleged "rule violations" or "compliance errors" in the opinion of the auditors. There is no indication in the report if these cases are recent cases or 7 year old cases when the program was just beginning.

The audit can and does provide a valuable service to the ACJC. A meeting has been scheduled with the auditors to receive a more in-depth briefing on the auditors' findings/opinions regarding the program and to obtain as much detail as possible in order to evaluate and improve the program.

ACJC NEEDS TO STRENGTHEN ITS LEADERSHIP ROLE (Page 27)

Response:

The ACJC has strengthened its leadership role in this program by establishing new program rules that more effectively and efficiently address the areas of legitimate disagreement and provide for specific parameters on many subjects. In the last two years, the ACJC and its staff have also provided local program coordinators and boards with specific guidance on program rules, definitions, and policy. On occasion, this guidance has not been what the local program coordinators wanted to hear and some resistance occurred. The Commission has established new program rules and new policy guidance for the local programs to operate within.

The need for training for the local program coordinators and the local compensation boards is a recognized need. Plans have been developed to conduct such training during FY 94/95 especially with the onset of the new program rules.

Monitoring compliance with the rules is also a recognized need. The ACJC staff is conducting such on-site monitoring from both program performance and fiscal perspectives at the present time. Budget limitations and restrictions have hindered this activity during the last two fiscal years.

The ACJC does utilize sanctions, such as funding limitations and restrictions, when it is established that this is appropriate. The Commission, and its Victims Committee, review pertinent information on each local program each year when allocations of funds are made.

FORTY-EIGHT STATES HAVE CENTRALIZED COMPENSATION PROGRAMS (Page 31)

Response:

The audit report presents a succinct and balanced analysis of the advantages and disadvantages of centralized and decentralized victims' compensation programs. The ACJC believes that working to standardize and upgrade the existing decentralized system is far preferable to the disruption and re-invention that would have to occur if the program were centralized.

Case backlog is a problem in both systems and seems to be a larger and faster growing problem in many states with centralized program structures. The timely award to a legitimate claimant must be a very high priority for any system. There is no evidence that a centralized system is more efficient or effective in accomplishing this. The personalized service in a local community setting under a decentralized program would appear to be a key factor in a program that services

crime victims. We are told that a number of states with centralized programs are now looking at some form of decentralization to increase their service performance and to decrease case backlogs.

ARIZONA FUNDING LEVELS RANK LOW IN NATIONWIDE COMPARISON (Page 32)

Response:

The audit report provides a definite service in reporting the comparative funding with other states. Most of the variations in per-victim maximum awards in Arizona could be evened out across the State if sufficient monies were provided to the program.

DOES THE LACK OF STATEWIDE COORDINATION INHIBIT THE EFFECTIVENESS OF VICTIMS SERVICES?

Response:

The audit report poses a very relevant question that should be addressed. The Commission is currently one of three state agencies involved and administers three of the five related funds. The Commission agrees that four of the five funds are interrelated and should be administered by one agency. The Commission has requested the Governor to redesignate the Commission as administrator of the federal VOCA victims assistance funds which would make the Commission administrator of the four interrelated funds and eliminate the fragmentation reported. The Victims Rights Implementation Fund (VRIF) is a distinctly different function and program from the other four. The administration of the VRIF monies could be handled by the Commission but the larger Victims Rights Notification Program is specifically and appropriately an operating program of the Attorney General and the operating elements of the criminal justice system throughout the State.