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COMPENSATING VICTIMS OF POLICE VIOLENCE

*Valena E. Beety**

ABSTRACT

Victims of police violence suffer physical trauma and their families suffer mental trauma “born from the violation of a certain social trust.” Their losses are also financial, including medical expenses and mental health treatment, as well as lost income. While scholars and citizens have advocated for accountability and justice, this is the first essay to advocate for the simple act of victims’ compensation for victims of police violence.

To be considered for compensation, victims must first prove that they cooperated with law enforcement and were “innocent” of wrongdoing. Yet, victims of police violence are inordinately and openly blamed for their own injuries in police reports. In incidents of police violence, officers may be incentivized to evade accountability by reporting that the victim was contributorily at fault. If neither police nor prosecutors identify the people harmed as victims, then these injured people will not qualify for Victim Compensation Funds to pay for mental health treatment or medical care.

This Essay explains Victim Compensation Funds, which are available in every state and U.S. territory, and why police violence victims rarely qualify for compensation. The Essay calls upon state legislators and district attorneys to make these victims eligible for consideration of funds, namely by eliminating the requirement of cooperation with law enforcement for victims of police violence and re-examining the “innocence” requirement.

* Professor of Law, Arizona State University Sandra Day O’Connor College of Law; Deputy Director, Academy for Justice. Thank you to Njeri Rutledge, Frank Rudy Cooper, Avlana Eisenberg, Ingrid Eagly, Daniel Harawa, and the 2020 ABA-AALS Criminal Justice Workshop, organized by Ion Meyn and India Thusi.

INTRODUCTION

In the summer of 2020, a police officer in Kenosha, Wisconsin, shot Jacob Blake seven times, paralyzing the 29-year-old Black man from the waist down.¹ The white police officers were responding to a 911 call for a domestic disturbance. When Mr. Blake walked to his car to leave, Officer Rusten Sheskey shot him at close range.² Mr. Blake was not alone in the car; in the backseat were his three sons, ages three, five, and eight years old.³ In January 2021, the Kenosha County District Attorney announced he would not charge the police officers with any crime.⁴ Instead, the District Attorney found the police use of force justified because the officers reasonably felt threatened. Mr. Blake, shot while entering his car, had a knife on the floor that police said he might have used.⁵

Mr. Blake, along with his three young sons, are victims. Being recognized as a victim can mean a “release from shame,” the ability to share in the pain of others in similar situations, sympathy, and a crime or a cause to rally against.⁶ Being recognized as a victim can also provide tangible rights and services from the state. However, in the crime victim compensation realm, victims must first prove their status as victims, regardless of the severity of the harm they have suffered.⁷ Victims of police violence are frequently unable to prove they are victims and that they thus qualify for state compensation funds.

Instead, victims of police violence are inordinately and openly blamed for their own injuries in police reports. Blame-shifting and determining that the victim is contributorily at fault shield police officers from accountability. If neither police nor prosecutors identify the people harmed as victims, then injured people often will not qualify for Victim Compensation Funds to receive mental health treatment or medical care.

¹ Amir Veda & Raja Razek, *Two Kenosha Police Officers, on Administrative Leave Since the Jacob Blake Shooting, Are Back on Duty*, CNN (Jan. 27, 2021, 10:04 PM), <https://www.cnn.com/2021/01/27/us/jacob-blake-kenosha-officers-full-duty/index.html>.

² *Id.*

³ BET Staff, *Jacob Blake's Three Sons 'Devastated' After Police Shooting*, BET (Aug. 25, 2020), <https://www.bet.com/news/national/2020/08/25/jacob-blake-benjamin-crump-sons.html#1>.

⁴ Amir Veda & Brad Parks, *Officer Who Shot Jacob Blake Will Not Face Charges, District Attorney Says*, CNN (Jan. 6, 2021, 7:52 AM), <https://www.cnn.com/2021/01/05/us/jacob-blake-police-shooting-kenosha-emergency/index.html>.

⁵ Ray Sanchez, *Investigative Report Offers Up-Close Look at Jacob Blake Shooting in Wisconsin*, CNN (Jan. 11, 2021, 7:25 AM), <https://www.cnn.com/2021/01/11/us/jacob-blake-kenosha-shooting-events/index.html>.

⁶ See Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1413–15 (1993).

⁷ *Victim Compensation*, U.S. DEP'T. OF JUST., OFF. FOR VICTIMS OF CRIME, <https://ovc.ojp.gov/topics/victim-compensation> (last visited Apr. 9, 2021).

Mr. Jacob Blake is now paralyzed from the waist down because of the bullets in his body. He likely has medical bills from the six weeks he spent in a Milwaukee hospital, his treatment in a spinal injury rehabilitation center, and his ongoing recovery and new wheelchair.⁸ His three sons were only feet away when they saw their father shot seven times by police. While the three boys were physically unharmed, they should have the opportunity to receive therapy for the mental trauma of witnessing the shooting of their father. Finally, Mr. Blake is unable to work while in the hospital and in recovery. These are all expenses meant to be covered by Victim Compensation Funds: medical costs, mental health treatment, and lost wages.⁹

Victims of police violence suffer physical trauma and their families suffer mental trauma “born from the violation of a certain social trust.”¹⁰ The economically quantitative losses include medical expenses and lost income.¹¹ While scholars and citizens have advocated for accountability and justice, this is the first essay to advocate for the simple act of victims’ compensation for victims of police violence.

This Essay unfolds in three Parts, beginning by acknowledging police violence in the United States and the disparate impact of such violence on communities of color. The Essay next identifies who qualifies as a victim for Victim Compensation Funds and why police violence victims rarely receive compensation. The Essay concludes by highlighting ways that state legislators and district attorneys can make victims of police violence eligible for consideration of funds.

Compensation is particularly necessary due to the expanded doctrine of qualified immunity. Qualified immunity can undermine any litigation that seeks monetary damages against police for violating civil rights under 42 U.S.C. § 1983.¹² Institutional bias frequently subverts success on either criminal charges against law enforcement or civil rights damages for victims.¹³ Neither the criminal justice system nor state actors sufficiently remedy the harms of

⁸ DeMicia Inman, *Jacob Blake to Spend Holidays in Illinois Amid Painful Recovery*, GRIO (Dec. 24, 2020), <https://thegrio.com/2020/12/24/jacob-blake-holiday-rehab-update-family-illinois/>.

⁹ Vida B. Johnson, *When the Government Holds the Purse Strings but Not the Purse: Brady, Giglio, and Crime Victim Compensation Funds*, 38 N.Y.U. REV. L. & SOC. CHANGE 491, 493–95 (2014).

¹⁰ Felicia A. Reid, *A Matter of Due Regard: Police Misconduct, the New York State Courts, and the Emptiness of Theoretical Justice*, 80 ALB. L. REV. 1103, 1105 (2017).

¹¹ *Id.*

¹² See Kit Kinports, *The Supreme Court’s Quiet Expansion of Qualified Immunity*, 100 MINN. L. REV. HEADNOTES 62 (2016).

¹³ See Reid, *supra* note 10, at 1105.

police violence.¹⁴ However, compensating these victims through state Victim Compensation Funds may establish some sense of reprieve after police violence. This Essay focuses on how this limited relief can work toward making the victim and their¹⁵ family whole.

I. POLICE VIOLENCE AGAINST PEOPLE OF COLOR

In 2017, the U.S. Department of Justice completed an investigation into the use of excessive and lethal force by the Chicago Police Department (CPD).¹⁶ This investigation “found that CPD officers use unnecessary and unreasonable force in violation of the Constitution with frequency, and that unconstitutional force has been historically tolerated by CPD.”¹⁷ The CPD is not an anomaly. Only thirty-five officers have been convicted of *any* crime resulting from on-duty deadly shootings of civilians between 2005 and 2019.¹⁸ Notably, approximately 1,000 civilians die each year from police use of deadly force.¹⁹ In 2016, Black civilians accounted for 23% of victims killed by police, despite composing only 13% of the national population.²⁰

Nonlethal police use of force and violence is far more pervasive than incidents of deadly force. In 2012, U.S. police killed 1,063 civilians and injured

¹⁴ CHARLES R. EPP, MAKING RIGHTS REAL: ACTIVISTS, BUREAUCRATS, AND THE CREATION OF THE LEGALISTIC STATE 33 (2009); *see also* Nirej Sekhon, *Blue on Black: An Empirical Assessment of Police Shootings*, 54 AM. CRIM. L. REV. 189, 189 (2017) (“Absent a state of emergency, police officers are the only public officials authorized to kill extrajudicially.”).

¹⁵ Please note that I use the singular “they” when referring to someone whose gender is unknown or irrelevant. CHI. MANUAL OF STYLE ¶ 5.48 (17th ed. 2017), <https://www.chicagomanualofstyle.org/qanda/data/faq/topics/Pronouns/faq0031.html>; *Statement on Gender and Pronouns*, NAT’L COUNCIL OF TCHRS. OF ENG. (Oct. 25, 2018), <http://www2.ncte.org/statement/genderfairuseoflang/>.

¹⁶ *Investigation of the Chicago Police Department*, U.S. DEP’T OF JUST. 15 (2017), <http://www.justice.gov/opa/file/925846/download> (“The pattern or practice of unreasonable force [which includes fatal shootings], coupled with the recurrence of unaddressed racially discriminatory conduct by officers further erodes community trust and police effectiveness.”).

¹⁷ *Id.* at 24.

¹⁸ Philip M. Stinson, Sr. & Chloe A. Wentzlof, *On-Duty Shootings: Police Officers Charged with Murder or Manslaughter, 2005-2019*, BOWLING GREEN STATE UNIV. POLICE INTEGRITY RSCH. GRP., <https://www.bgsu.edu/content/dam/BGSU/health-and-human-services/document/Criminal-Justice-Program/policeintegritylostresearch/-9-On-Duty-Shootings-Police-Officers-Charged-with-Murder-or-Manslaughter.pdf> (finding “15 by guilty plea, 20 by jury trial, and none convicted by a bench trial”).

¹⁹ *Washington Post Database of Police Shootings*, WASH. POST (Mar. 28, 2021), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>; Hannah Walker, *Unspoken Immunity and Reimagined Justice: The Potential for Implementing Restorative Justice and Community Justice Models in Police-Related Shootings*, 37 PACE L. REV. 789, 790–92 (2017).

²⁰ *See Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings-2017/> (last visited Apr. 9, 2021).

51,678 who were documented as treated in hospitals.²¹ Estimated lifetime medical costs for those injuries by police in 2012 totaled \$231 million.²² The Centers for Disease Control and Prevention documented 76,440 nonfatal injuries due to law enforcement in 2016, based on hospital admissions.²³

As one example, the 2015 Investigation of the Ferguson Police Department by the U.S. Department of Justice documented repeated, unacknowledged misconduct by law enforcement, including unlawful arrests and excessive use of non-deadly force.²⁴ At that time, two-thirds of the residents of Ferguson, Missouri, were Black. The police force consisted of fifty-four officers, fifty of whom were white.²⁵ Nationally, the majority of police officers are white, and police forces are generally far more white than the communities they surveil.²⁶

Police use violent force more frequently in low-income communities of color, where civilians are over-policed for low-level crimes, yet receive far less police response for serious crimes.²⁷ Low-income communities of color generally do not receive police help when they most need it—even while they are concomitantly constantly surveilled, abused, and arrested for petty crimes by

²¹ Ted R. Miller, Bruce A. Lawrence, Nancy N. Carlson, Delia Hendrie, Sean Randall, Ian R.H. Rockett & Rebecca S. Spicer, *Perils of Police Action: A Cautionary Tale from US Data Sets*, 23 INJURY PREVENTION 27, 28 (2017).

²² *Id.* at 29.

²³ AM. PUB. HEALTH ASS'N, POLICY STATEMENT 201811: ADDRESSING LAW ENFORCEMENT VIOLENCE AS A PUBLIC HEALTH ISSUE (2018), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/29/law-enforcement-violence>.

²⁴ U.S. DEP'T OF JUST. C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 81–86 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [hereinafter DOJ FERGUSON REPORT].

²⁵ *Id.* at 88.

²⁶ See BUREAU OF JUST. STATS., EXECUTIVE SUMMARY: LOCAL POLICE DEPARTMENTS, 2013: PERSONNEL, POLICIES, AND PRACTICES (2015), https://www.bjs.gov/content/pub/pdf/lpd13ppp_sum.pdf (finding that in 2013, 27% of police officers were members of minority groups, whereas 73% were white); see also Dan Keating & Kevin Uhrmacher, *In Urban Areas, Police are Consistently Much Whiter than the People they Serve*, WASH. POST (Jun. 4, 2020), <https://www.washingtonpost.com/nation/2020/06/04/urban-areas-police-are-consistently-much-whiter-than-people-they-serve/?arc404=true>; *Police Department Race and Ethnicity Demographic Data*, GOVERNING: THE FUTURE OF STATES AND LOCALITIES, <https://www.governing.com/gov-data/safety-justice/police-department-officer-demographics-minority-representation.html> (last visited Apr. 9, 2021).

²⁷ See Amanda Howerton, *Police Response to Crime: Differences in the Application of Law by Race*, 4 J. ETHNICITY IN CRIM. JUST. 51, 51 (2006) (finding that “police exert more effort when victims are White,” in terms of response time to crime scenes, and “more follow-up effort after the crime has occurred”).

police.²⁸ Disabled people of color are particularly vulnerable to police violence.²⁹

In court, police violence is legally justifiable if it is reasonable “from the perspective of a reasonable officer on the scene.”³⁰ Police do not need to argue that the victim actually posed a threat or even probably caused a threat.³¹ Police only need to contend that they felt threatened.³² The subjective standard through the “officer’s eyes” means that courts will not find police accountable if police do not find themselves accountable.

But that does not mean victims of police violence should not receive compensation for their suffering.

II. VICTIM COMPENSATION FUNDS

Because of the victims’ rights movement in the 1990s, every state now venerates the rights of victims, either by constitutional amendment or statute.³³ Although these Victims’ Bills of Rights have been extremely contentious,³⁴ Victim Compensation Funds have received less attention and have been less controversial. Indeed, crime victim compensation programs exist in every state, the District of Columbia, and U.S. territories.³⁵

Victim Compensation Funds aim to aid victims and their families in recovering from both the trauma and expense of violent crime. All victims of violent crime are eligible for state compensation programs, regardless of federal,

²⁸ See Reid, *supra* note 10, at 1104; see also David Kennedy, *Black Communities: Overpoliced for Petty Crimes, Ignored for Major Ones*, L.A. TIMES (Apr. 10, 2015, 6:36 PM), www.latimes.com/opinion/bookclub/la-reading-los-angeles-kennedy-ghettoside-20150404-story.html; Runa Rajagopal, *Building Justice: How Segregation Enables Over-Policing of Communities of Color*, CITY LIMITS (Sept. 26, 2016), www.citylimits.org/2016/09/26/how-segregated-housing-enables-over-policing-of-low-income-communities-of-color/.

²⁹ DAVID M. PERRY & LAWRENCE CARTER-LONG, THE RUDERMAN WHITE PAPER ON MEDIA COVERAGE OF LAW ENFORCEMENT USE OF FORCE AND DISABILITY 1 (Mar. 2016), https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf. In general, between one-third to one-half of all individuals killed by police are individuals with a disability. *Id.*

³⁰ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

³¹ *Id.*

³² Many victims of police violence are unarmed. See *Police Violence Map*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (last visited Apr. 9, 2021).

³³ Paul G. Cassell, Nathaniel J. Mitchell & Bradley J. Edwards, *Crime Victims’ Rights During Criminal Investigations? Applying the Crime Victims’ Rights Act Before Criminal Charges Are Filed*, 104 J. CRIM. L. & CRIMINOLOGY 59, 98 (2014).

³⁴ See Lara Bazelon & Bruce A. Green, *Victims’ Rights from a Restorative Perspective*, 17 OHIO ST. J. CRIM. L. 293 (2020).

³⁵ Njeri Mathis Rutledge, *Looking a Gift Horse in the Mouth—The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims*, 19 DUKE J. GENDER L. & POL’Y 223, 230 (2011).

state, tribal, or military criminal jurisdiction.³⁶ In contrast to civil lawsuits against police, Victim Compensation Funds are financed by offender fines and fees, and by the federal Victims of Crime Act, rather than taxpayers.³⁷ State programs and boards manage and disburse the proceeds from the fees and fines.³⁸ Nationally, Victim Compensation Funds disburse nearly \$500 million to victims and witnesses in the United States each year.³⁹

A. *Victims of Police Violence*

Each state has particular requirements that qualify victims for compensation, and many of those requirements are similar. Victims generally must report the crime quickly, cooperate with law enforcement, file a timely application, be “innocent” of wrongdoing, and have an expense or loss not covered by insurance.⁴⁰ Victim Compensation Funds generally do not require that the perpetrator be caught or convicted.⁴¹ Many states pay compensation to the dependents and families of violent crime victims.⁴²

The requirements of cooperating with law enforcement and being “innocent” of wrongdoing, however, frequently bar victims of police violence from consideration.

B. *Contributory Misconduct and “Innocence” of Victims*

Most state programs consider whether the victim was participating in illegal conduct or activity and whether the activity is connected with the crime of violence committed against them.⁴³ This inquiry into whether the victim deserved the violence imposed on them can lead to individual and arbitrary, or discriminatory, decision-making by reviewers.⁴⁴ For example, the requirement to cooperate with law enforcement, as well as the requirement of being an

³⁶ See JOHN ELLIOT LEIGHTON, § 2:15. *State Victim Compensation Plans and Funds*, in 1 LITIGATING PREMISES SECURITY CASES (2020).

³⁷ See 34 U.S.C.A. § 20101; see also State Links, National Association of Crime Victims Compensation Boards, <http://nacvcb.org/index.asp?bid=8> (last visited June 29, 2014).

³⁸ Amanda Peters, *Reconsidering Federal and State Obstacles to Human Trafficking Victim Status and Entitlements*, 2016 UTAH L. REV. 535, 559–60 (2016); see, e.g., FLA. STAT. ANN. § 960.09 (West 1996); IDAHO CODE ANN. § 72-1012 (West 2021); R.I. GEN. LAWS ANN. § 12-25-18 (West 2020).

³⁹ Johnson, *supra* note 9, at 494.

⁴⁰ See LEIGHTON, *supra* note 36.

⁴¹ *Id.*

⁴² See KRISTINA E. MUSIC BIRO ET AL., AM. JURIS. 2D CRIMINAL LAW, § 1208. COMPENSATION PROGRAMS; PURPOSE (2021).

⁴³ See Rutledge, *supra* note 35, at 240–42.

⁴⁴ *Id.* at 242.

“innocent” victim, have prevented domestic violence victims from accessing compensation funds.⁴⁵ “Contributory misconduct” is the most frequent reason for denial of claims.⁴⁶

Some states are so extreme that they deny compensation funds to any victim who has previously been convicted of *any* type of crime, including nonviolent drug possession.⁴⁷ The victim’s criminal history can be completely unrelated to the victimizing harm, yet still disqualify the victim from receiving funds.⁴⁸ As one example, victims in Ohio must have no criminal record for the prior *ten years* to be eligible for compensation, *and* must not have been under the influence of drugs or alcohol when the crime was committed.⁴⁹ As noted by Professor Njeri Rutledge, “[t]he notion of labeling a victim as innocent or deserving improperly shifts the focus away from the perpetrator’s criminal conduct and resulting hardship and onto the victim’s past indiscretions.”⁵⁰

C. *Current Mandate: Cooperation with Police in Order to Receive Victim Compensation Funds*

When “deserving” is tied directly to cooperation and providing assistance to the police, victims of police violence are excluded. These victims are judged as not deserving, despite the inherently antagonistic dynamic when the police are the perpetrators. Police officers rarely identify victims of police violence as victims. Instead, officers are incentivized to blame the victim for violent police behavior. If the victim lodges a complaint with the police department about the officer’s violent behavior, then any “cooperation” with the police could lead to dismissal of the complaint rather than substantiation for further inquiry. One Ferguson resident tried to walk this difficult line after he was kicked in the head by a police officer who also stepped on his back while he was handcuffed facedown.⁵¹ The resident filed a complaint and “stated that he supported the police and knew they had a tough job but was reporting the incident because it appeared the officer was under a lot of stress and needed counseling.”⁵² No

⁴⁵ *Id.* at 240–43.

⁴⁶ *Id.* at 241 n.150 (“A research report funded by the DOJ concluded that 28 percent of denials across the states were due to contributory misconduct.”).

⁴⁷ *Id.* at 241; *see also* Lauren N. Hancock, *Another Collateral Consequence: Kicking the Victim When She’s Down*, 77 WASH. & LEE L. REV. 1319 (2020).

⁴⁸ *See* Hancock, *supra* note 47.

⁴⁹ OHIO REV. CODE ANN. § 2743.60 (West 2015); Marilyn Tobocman & Diane Citrino, *Human Trafficking in Our Backyard: What Can Lawyers Do?*, 61 FED. LAW. 16, 17 (2014).

⁵⁰ Rutledge, *supra* note 35, at 242.

⁵¹ DOJ FERGUSON REPORT, *supra* note 25, at 83.

⁵² *Id.*

internal investigation ever took place, nor was a use-of-force report even completed.⁵³

Most police officers who injure civilians are never criminally charged and are rarely chastised internally.⁵⁴ Thus, no criminal investigation exists in which the victim can “cooperate” with the police. Furthermore, if the aim of a police investigation is to exonerate the police, cooperation by the victim’s family is fruitless. Therefore, the determination of whether the police violence victim qualifies for Victim Compensation Funds should be untethered from any requirement of cooperation with police in these use-of-force cases.

III. STATE LEGISLATORS AND DISTRICT ATTORNEYS CAN MAKE VICTIMS OF POLICE VIOLENCE ELIGIBLE FOR VICTIM COMPENSATION FUNDS CONSIDERATION

The police officer who shot and killed Michael Brown in Ferguson was not legally accountable for his death.⁵⁵ Police perception of harm or dangerousness is sufficient to absolve a police officer of accountability for harming a civilian.⁵⁶ However, Michael Brown was not a criminal.⁵⁷ The police officer’s personal perception was insufficient to convict the decedent of any crime and was not the appropriate standard for determining whether the decedent is or is not a victim. Thus, police reports that label victims as contributory to the police violence should not bar victims from applying for or receiving Victim Compensation Funds.

A. Solution: Legislation to Include Victims of Police Violence in Victim Compensation Funds

In 2020, the California State Legislature considered amending the state’s victim compensation statute to make funds accessible to victims of police violence.⁵⁸ Although the bill died in the State Senate, the members of the State

⁵³ *Id.* at 84.

⁵⁴ Stinson & Wentzlof, *supra* note 18.

⁵⁵ Jon Swaine, Paul Lewis & Dan Roberts, *Grand Jury Decline to Charge Darren Wilson for Killing Michael Brown*, GUARDIAN (Nov. 25, 2014, 4:23 AM), <https://www.theguardian.com/us-news/2014/nov/24/ferguson-police-darren-wilson-michael-brown-no-charges>.

⁵⁶ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁵⁷ Swaine et al., *supra* note 55.

⁵⁸ Rachel Sandler, *California Bill Would Make Victims of Police Violence Eligible for Compensation*, FORBES (Aug. 7, 2020, 5:21 PM), <https://www.forbes.com/sites/rachelsandler/2020/08/07/california-bill-would-make-victims-of-police-violence-eligible-for-compensation/#58d98b43706e>.

Assembly who drafted the bill should reintroduce it, creating a nationwide model for change.

Assembly Bill 767 aimed to compensate victims for use of force by a peace officer that causes injury or death to the victim and is beyond what is reasonable under the totality of circumstances.⁵⁹ The bill explicitly listed excessive use of force by police as a crime eligible for compensation, regardless of whether the officer had been formally arrested or charged.⁶⁰ Indeed, the bill revised the definition of “crime” to include any public offense whether or not a suspect is arrested or charged.⁶¹ As a result, a victim would be eligible for compensation regardless of whether police arrested the assailant or prosecutors chose to charge the assailant.⁶²

Under Assembly Bill 767, applicants who failed to cooperate with the police investigation could still be eligible to receive compensation for a claim of injury or death resulting from the use of force by a peace officer.⁶³ Lastly, the proposed bill would have allowed the compensation board to consider broad forms of evidence to establish the crime, instead of requiring a mandatory police report.⁶⁴ For example, victims could file medical records or provide witness testimony to verify they are victims.⁶⁵ The nonprofit Californians for Safety and Justice supported the bill, recognizing that Black and Latinx Californians are more likely to experience violent crime and that expanding the definition of crime to include police violence can create access to physical and mental health care.⁶⁶

Other states have previously modified their crime victim statutes and definitions of “victim.” As a comparison, to remedy the exclusion of human trafficking victims from compensation, twenty-one states and the District of Columbia explicitly include human trafficking as a compensable crime.⁶⁷ Additionally, California no longer requires trafficking victims to provide the

⁵⁹ Assem. B. 767, 2020 Leg., Reg. Sess. (Cal. 2020). https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB767.

⁶⁰ Sandler, *supra* note 58.

⁶¹ Assem. B. 767, 2020 Leg., Reg. Sess. (Cal. 2020). https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB767.

⁶² Sandler, *supra* note 58.

⁶³ Assem. B. 767, 2020 Leg., Reg. Sess. (Cal. 2020). https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB767.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Scottie Andrew, *Victim of Police Violence and Their Families Could Receive Restitution in California Under a New Bill*, CNN (Aug. 7, 2020, 11:35 AM), <https://www.cnn.com/2020/08/07/us/california-police-violence-crime-compensation-trnd/index.html>.

⁶⁷ See Peters, *supra* note 38, at 563.

previously required police report identifying them as victims.⁶⁸ Florida, Georgia, and North Carolina statutes exempt trafficking victims from their “innocence” standard.⁶⁹ These solutions can be applied to victims of police violence as well.

Finally, the populations being over-surveilled and subjected to police violence should see the fines and fees of their convicted community members supporting community members victimized by police violence. Many over-policed communities experience higher rates of conviction and incarceration. These communities thus disproportionately finance Victim Compensation Funds, while simultaneously experiencing a lack of safety and security. The civilians most likely to pay the fines and fees that finance Victim Compensation Funds are also most likely to suffer police violence—without compensation. That anomaly subverts the intended structure of fines and fees wherein “governments have an obligation to protect the rights, property and physical welfare of its citizens” as well as compensate victims whose rights have not been protected.⁷⁰

B. Solution: Prosecutorial Power to Designate Victims for Victim Compensation Funds

In some states, prosecutors have the authority to designate victims and thereby make them eligible for consideration for compensation. For example, under the Illinois crime victim statute, “‘crime victim’ or ‘victim’ means: (1) any natural person determined *by the prosecutor or the court* to have suffered direct physical or psychological harm[.]”⁷¹ In California, San Francisco District Attorney Chesa Boudin has announced a new initiative funding compensation for victims and witnesses of police violence through the District Attorney’s Office’s Victims’ Services Division.⁷² This is a city initiative and does not affect the state Victim Compensation Program.⁷³ The Chief of the District Attorney’s

⁶⁸ *Id.* at 565.

⁶⁹ *Id.*

⁷⁰ Charlene L. Smith, *Victim Compensation: Hard Questions and Suggested Remedies*, 17 RUTGERS L.J. 51, 69 n.53 (1985) (citing VIOLENT CRIMES COMPENSATION BOARD, 1982/1983 STATE OF NEW JERSEY ANNUAL REPORT, which introduces the New Jersey Criminal Injuries Compensation Act).

⁷¹ Rights of Crime Victims and Witnesses Act, 38 ILL. COMP. STAT. 725 ILCS 120/3 (2020) (emphasis added).

⁷² Press Release, San Francisco Office of the District Attorney, District Attorney Boudin Announces Expansion of Services, Including Victim Compensation, to Victims and Witnesses of Police Violence (June 9, 2020), <https://sfdistrictattorney.org/article/district-attorney-boudin-announces-expansion-services-including-victim-compensation-victims> [hereinafter Press Release].

⁷³ Bay City News, *New Policy Means Victims of Police Violence Can Get Compensation*, S.F. EXAMINER (June 9, 2020, 5:20 PM), <https://www.sfexaminer.com/news/new-policy-means-victims-of-police-violence-can->

Victims' Services Division stated, "[p]roviding financial assistance to help victims in rebuilding their lives is an important step in acknowledging the wrong and beginning the healing."⁷⁴

Victims are often referred to compensation fund programs by victim advocates in prosecutors' offices.⁷⁵ Compensation applications are usually available in police stations and prosecutors' offices.⁷⁶ Thus, prosecutors can be part of the problem or part of the solution for compensating victims of police violence.

It should be noted that Victim Compensation Fund awards are capped in almost all states, with a national average maximum award of \$26,000.⁷⁷ State legislatures can choose which types of costs are covered and what the qualifications are for victims to be eligible. Another important step is for legislatures to eliminate state bans on compensating victims who have criminal records, which are unrelated to the victimizing experience.⁷⁸

CONCLUSION

Although Victim Compensation Funds and requirements vary across the states, changes such as those proposed in California could be implemented nationally to ensure that victims of police violence are eligible for compensation. Furthermore, where prosecutors have the jurisdictional and authoritative capacity to determine who is a victim for purposes of compensation, district attorneys can follow the lead of San Francisco District Attorney Chesa Boudin. This Essay proposes that victims of police violence ought to be eligible for Victims Compensation Funds as a start to supporting these particular victims who have been harmed by the state and do not have the same remedy as victims of other perpetrators.

get-compensation/ ("The expanded compensation is to be administered by the District Attorney's Office's Victims Services Division, through a partnership with the University of California at San Francisco's Trauma Recovery Center.").

⁷⁴ Press Release, *supra* note 72 ("This policy will ensure that people impacted by police violence will be able to qualify for resources like medical and mental health coverage and funeral and burial expenses.").

⁷⁵ Johnson, *supra* note 9, at 494–95.

⁷⁶ *Id.* at 495.

⁷⁷ DOUGLAS N. EVANS, COMPENSATING VICTIMS OF CRIME 5 (2014), https://www.njln.org/uploads/digital-library/jf_johnjay3.pdf.

⁷⁸ See Hancock, *supra* note 47.