

Testimony of
Steve Derene

April 28, 2009

Testimony of

Steve Derene
Executive Director
National Association of VOCA Assistance Administrators

Before the

Senate Committee on the Judiciary

"The Victims of Crime Act: 25 Years of Protecting and Supporting Victims"

April 28, 2009

Thank you, Mr. Chairman, Ranking Member Specter and members of the Committee. My name is Steve Derene and I am the Executive Director of the National Association of VOCA Assistance Administrators (NAVAA). NAVAA represents the state agencies that receives and administers VOCA victim assistance formula grants in every state and territory and who thus manage the greatest portion of Crime Victims Fund monies every year. Prior to that, I was the VOCA Administrator for the State of Wisconsin and have served at various times as a consultant to the Office for Victims of Crime, including preparation of the first Attorney General's "Report to Congress" on VOCA in 1988 and in 2005, at OVC's request, I prepared a report that examined the condition of the Crime Victims Fund, trends in Fund deposits, and recommendations for addressing future Fund-related issues.

It is fitting to be holding this hearing during National Crime Victims' Rights Week, which is commemorating the 25th anniversary of the enactment of the Victims of Crime Act (VOCA). Thanks to your support, Mr. Chairman, and that of Senators Specter, Kyl and the other Committee members, VOCA is able to provide critical resources that help some 4 million victims of all types of crime every year through more than 4,300 state and local domestic violence shelters, rape crisis centers, child abuse treatment programs, criminal justice based victim advocates, court appointed special advocates, peer support groups, such as Parents of Murdered Children and Mothers Against Drunk Driving.

One of the hallmarks of this landmark legislation has been its widespread bipartisan support. I think it is significant that VOCA's original enactment 25 years ago was spearheaded by the chairs of the Judiciary Committees in both chambers - on the Senate side by Senator Strom Thurmond, and on the House side, by Rep. Peter Rodino. I can't think of two more distinguished people serving in those days who were further apart on the ideological spectrum, but who came together in agreement on the need to recognize our government's basic obligations to crime victims. I

think it's also appropriate to note and acknowledge that of the 57 original cosponsors, eleven are still serving in Congress, including Senator Grassley as well as then-Representatives Mikulski and Boxer. Senator Specter made significant contributions to the legislation as it wound its way through Congress. And, of course, another original Senate cosponsor, then-Senator Joseph Biden has gone on to hold another office. The significance of this broad, bipartisan support of VOCA from its inception until today has been greatly appreciated by everyone in our field and throughout the victim advocacy, criminal justice and allied professions and is, I believe, greatly responsible for its success.

I would also like to take this opportunity to acknowledge the contributions and leadership of those in the Department of Justice, primarily through the Office of Justice Programs and Office for Victims of Crime, who administer this program and who have nurtured what was then a new, emerging field and is today an established, respected profession.

As you know, an essential feature of VOCA was its creation of the Crime Victims Fund as a separate, self-sufficient account dedicated exclusively to provide the financial resources to support crime victim compensation and victim assistance programs. All revenues into the Fund are derived, not from tax dollars, but from fines, special assessments and other penalties paid by Federal criminal offenders. Thus, we would also like to acknowledge the Justice Department's Criminal and Antitrust Divisions and the U.S. Attorney's Offices throughout the nation who, as a byproduct of carrying out their primary mission to ensure that our nation's laws are enforced, generate the revenues that go into the Crime Victims Fund and then back into our communities in the form of vital victim services. Without them, and those in the Financial Litigation Units who are responsible for actually collecting criminal fines (and restitution), there would be no money in the Crime Victims Fund.

Having witnessed the role that VOCA has played over the span of the past 25 years, I can, and will, testify to the importance of the financial resources provided by the Crime Victims Fund. But VOCA has represented more than just another funding stream. VOCA's enactment was a critical catalyst in bringing awareness and support of victim services throughout our nation. In 1984, only 36 or so states had crime victim compensation programs; today every state has one. In 1984, many states provided scant, if any, substantive rights or funding for victim services. Today, there are some 30,000 or more victims' rights laws on the books and a host of state funding mechanisms in addition to VOCA.

VOCA's importance, I believe, is also underscored by the wide range of organizations that have rallied to support VOCA. Primarily in response to the efforts over the past several years to rescind the Crime Victims Fund, more than 40 groups and organizations, mostly victim advocacy and criminal justice organizations, but others as well, such as the National Grange and the U.S. Conference of Catholic Bishops are officially on record supporting VOCA. I believe this is an accurate indication of VOCA's significance.

Indeed, it may be VOCA's success that brings us to the immediate challenge facing VOCA and those providing crime victim services. During its first year, deposits into the Crime Victims Fund totaled \$68 million dollars. In 2007, deposits exceeded \$1 billion and over the course of the Fund's existence, nearly \$10 billion - all from the collections of criminal fines and penalties, rather than taxpayers - has been deposited into the Fund.

Up until 2000, under the statute, VOCA was treated as mandatory spending so that whatever was deposited into the Fund in one year was distributed according to the statutory formula the following year. When Fund deposits began to fluctuate, Congress, in 2000, began delaying "or capping" significant portions of the Fund for the express purpose of ensuring a stable funding source to support future victim services and thereby creating a "rainy day" balance that is carried over from year to year. This balance has been needed and used about one-third of the time since then to make up the difference between annual Fund deposits and the funding level set by Congress. In that sense, the cap has achieved its purpose of providing some overall stability. But we should also be clear that had it not been for the cap, under the authorizing statute the amounts retained in the Fund would--and perhaps should--already have been distributed to the field supporting victim assistance services.

However, as the saying goes, the devil is in the details. The overall VOCA cap is used to fund a variety of programs, including services provided by the U.S. Attorneys' Offices, FBI, the Federal Victim Notification System, grants to states to improve the investigation and prosecution of child abuse cases, discretionary grants for training and technical assistance and services to victims of Federal crimes and formula grants for state crime victim compensation and victim assistance programs.

The problem comes about because according to the statutory formula that allocates each year's VOCA cap, the amount available to support state victim assistance programs depends on how much is left over after all the other VOCA program areas are funded. Thus, unless the cap is set high enough, the amount available for state assistance programs is reduced as the amount going to other authorized program areas increase or is used for other purposes not expressly authorized under the statute, such as DOJ administrative costs. And if the cap is actually lowered, as happened in 2008, the impact of that reduction is felt almost entirely by state assistance programs. In other words, state assistance programs are at the bottom of the VOCA food chain.

So, despite the fact that deposits into the Crime Victims Fund have skyrocketed, support for state assistance programs has declined. From 2006 until 2008, as Fund balances grew by about 53 percent--from about the \$1.3 billion to \$2 billion, grants to state assistance programs were cut by 22 percent (\$87 million).

State VOCA assistance administrators attempt to responsibly manage these reductions as best they can to minimize the impact on victim services. Here are some state-specific consequences of insufficient funding as reported by state VOCA assistance administrators:

? Because of funding cuts in Pennsylvania, 20 percent of programs have waiting lists; 16.5 percent have discontinued programs; 22 percent imposed hiring freezes; 31 percent have decreased or eliminated staff and 13.7 percent implemented layoffs.

? An Arizona sexual assault counseling service reported a five month waiting period.

? Administrators anticipated having to reduce annual victim assistance subgrants by:

? 8 percent in Washington State;

? 26 percent in Kansas;

? 27 percent in Pennsylvania;

? 16 percent in Iowa;

? 11 percent in Oregon; and

? 17 percent in Wisconsin.

? Continued cuts in Minnesota's VOCA assistance grants meant the loss of the equivalent of five programs, eliminating services in five counties.

? Since FY 2005, the number of Iowa victim service programs has decreased from 88 to 74.

? Massachusetts expects an across-the-board cut of 27 percent, reducing the number of funded programs from 90 to 65.

? All states fear the loss of dedicated, experienced, and well-trained victim advocates because of the inability to pay a decent wage. The average annual salary for a victim service professional in South Carolina is \$18,000-\$24,000.

? Oregon cut the number of victim advocate positions funded under its competitive VOCA projects from 18 FTEs to 4 FTEs.

? Wyoming was unable to fund programs, such as Sexual Assault Nurse Examiners, Sexual Assault Response Teams and Child Advocacy Centers, that provide specialized crime victim services.

To put this in some context: From 2006 to 2008, deposits into the Crime Victims Fund totaled \$2.5 billion, while at the same time, state assistance grants were cut by 22 percent--from \$396 million down to \$309 million.

And we have now seen the cumulative impact of these funding cuts: according to the OVC data, the number of crime victims served by VOCA in 2008 declined by more than 336,000 compared to 2007.

It is especially difficult to explain to crime victims who need these often-life saving programs and the advocates who serve them that programs must reduce services, fire staff or close their doors while revenues dedicated solely to support victim services reach historic levels.

Thanks to the leadership you, Mr. Chairman, and Senator Crapo, have shown in advocating for larger VOCA caps, and to the efforts of Senators Mikulski and Shelby on the Appropriations Committee, the 2009 budget took important steps to restore VOCA funding to the 2006 amount. That goal was achieved when again, Mr. Chairman, you, Senators Mikulski and Shelby joined up to secure an additional \$100 million in the Recovery Act for VOCA, of which, \$47.5 million will be used for state assistance programs. We are very grateful that the 2009 budget together with Recovery Act funds will return state assistance grants back to where they were in 2006, adjusted for inflation.

But, as you have heard and will continue to hear, we need to do more. As a rough indicator of how much more, I surveyed state VOCA administrators to ask them how much more VOCA funds their states need. As a conservative measure, I asked them to tell me the difference between the amount of VOCA funding they had available and the amount of funding requests they received. (This is a minimal amount because many states, in order to support as many programs as possible, instruct programs how much they may request.) On a national basis, the gap between funding requests and funds available is approximately \$106 million. But that amount wouldn't even begin to meet all the needs of all victims of all types of crimes.

We are aware of the request made to appropriators that the 2010 VOCA cap be set to a minimum of \$705 million. That level of funding would maintain the expected 2009 state assistance grants

(2009 appropriations plus the one-time Recovery Act) and provide only one-quarter (\$26 million) of the estimated amount needed to fulfill funding requests.

In light of projected Crime Victim Fund deposits, we believe this is a very modest funding request and one which can be safely expanded upon in the coming years. We know, for instance, that so far in 2009 the Department of Justice has publicly announced agreements in major criminal cases that will bring in an additional \$2.1 billion (because extremely large criminal fines are often paid in installments, these deposits into the Fund are likely to be paid in installments spread out over the next five to six years). In other words, there will be more than enough offender-generated revenues going into the Fund over the next several years to permit Congress to ensure a constant increase in the annual VOCA cap without jeopardizing the Crime Victim Fund's solvency or long-term sustainability.

There are two final points I would like to make. First, next to obtaining a funding level necessary to meet crime victims' needs, I think the most important factors, from a state administrator's point of view, are the sustainability and predictability of funding. The fluctuations in annual funding levels have meant that many states try to minimize program reductions by reserving a portion of their funds for use in years when grants decline. VOCA has always had a primary focus on sustaining existing services to crime victims, so that support for new or expanded services becomes even more challenging during period of declining funding. By being able to forecast funding amounts for several upcoming years, state administrators will be better able to plan for the most effective use of these funds to meet the increasing need of crime victims, to identify and reach out to previously underserved victim populations and provide local programs with the needed assurance that they will be able to continue providing these essential services.

Second, as VOCA grants for state crime victim compensation and assistance programs have increased, so has the designated administrative agencies' responsibilities to ensure that these funds are used appropriately, that subgrants are monitored and in compliance with federal and state requirements. During its first ten years, VOCA did not permit states to use its grant for any state administrative costs for grant management or related administrative costs. In 1994, the statute was amended to permit states to retain up to five percent of its formula grants for administrative purposes. In the meantime, OVC also allowed state assistance agencies to retain an additional one percent for training purposes. Unfortunately, as an unintended consequence of the 2006 DOJ Reauthorization Act, the amount available to state assistance agencies for combined administrative and training purposes was actually reduced by one percent--from a previous total of six percent for both administration and training purposes to now only five percent for both. As we look forward to finally restoring and hopefully increasing VOCA assistance grants, we should be mindful of the concomitant increase in the need for additional state administrative and training resources. Most other criminal justice and victim assistance formula grant programs permit administrative agencies to use up to ten percent for administrative purposes and I would strongly recommend that the VOCA statute for formula grants be amended likewise.

Again, I thank the Committee for its deep interest in and long commitment to advancing rights and services for crime victims.