
BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Chairman, Subcommittee On Courts,
Civil Liberties, And The Administration Of Justice,
Committee On The Judiciary
House Of Representatives

Witness Security Program: Prosecutive Results And Participant Arrest Data

The Witness Security Program was established to protect witnesses who testified in traditional organized crime prosecutions. The program provides witnesses with new identities, relocates them to other communities, and provides them with temporary living allowances. For cases during the period June 1979 to May 1980 involving the testimony of protected witnesses, GAO found that 75 percent of the defendants were found guilty. Of those for whom sentencing information was available, 84 percent were sent to prison with a median sentence of 4.4 years.

Program benefits do not come without costs. GAO found that about 21 percent of the 365 protected witnesses it examined for recidivism who entered the program in fiscal years 1979 and 1980 were arrested within 2 years.

Congress is considering a proposal to establish a program to compensate victims of protected witnesses. This could cost, at most, \$2.3 million annually. However, certain victim entitlement characteristics in the proposal may lower the estimated cost.



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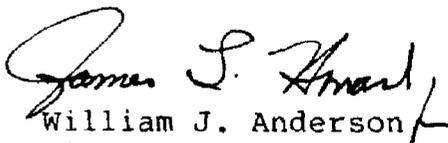
The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties, and the Adminis-
tration of Justice
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

As a result of your September 14, 1982, request and subsequent discussions with your office, we have conducted an evaluation of the Justice Department's Witness Security Program. This report discusses (1) the results of prosecutions using the testimony of protected witnesses, (2) the criminal activities of protected witnesses, and (3) an analysis of proposed legislation to compensate victims of crimes committed by protected witnesses.

We trust the information provided will be useful to your continuing oversight efforts. As agreed with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution until 15 days from the date of this report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,


William J. Anderson
Director



GENERAL ACCOUNTING OFFICE
REPORT TO THE CHAIRMAN,
SUBCOMMITTEE ON COURTS, CIVIL
LIBERTIES, AND THE ADMIN-
ISTRATION OF JUSTICE,
HOUSE JUDICIARY COMMITTEE

WITNESS SECURITY PROGRAM:
PROSECUTIVE RESULTS AND
PARTICIPANT ARREST DATA

D I G E S T

In 1970, the Congress authorized the Attorney General to protect the lives of persons endangered by their testimony against individuals involved in organized criminal activity. In response, the Attorney General established the Witness Security Program. Since its inception, over 4,400 witnesses and 8,000 family members have been admitted to the program, and fiscal year 1983 program costs totaled about \$25 million. Protection is provided by giving witnesses new identities, relocating them to other communities, and providing them with temporary living allowances until self-sufficiency can be attained through employment or other legitimate means.

The Chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Judiciary Committee, requested GAO to review several specific aspects of the Witness Security Program. Specifically, GAO was asked to: (1) determine the results of prosecutions using the testimony of protected witnesses, (2) ascertain the nature and extent of criminal activity by protected witnesses, and (3) estimate an annual cost of a victim compensation program for victims of crimes committed by protected witnesses. GAO did not obtain agency comments on this report; however, the facts were discussed with agency officials and they agreed with the facts presented.

USE AND RESULTS OF
PROTECTED WITNESSES'
TESTIMONY

The Witness Security Program was initially established to help eradicate traditional organized crime. The type of case investigated and prosecuted with the assistance of protected witnesses has changed since the inception of the program in 1970. While over 60 percent of the witnesses entering the program in the early seventies were utilized in traditional organized crime cases, only 27 percent of the witnesses entering the program from June 1979 to May 1980 were used in this fashion. Additionally, protected witness' testimony was used most often in cases involving drugs or narcotics (32 percent) and murder or conspiracy to commit murder (13 percent). (See p. 11.)

In reviewing 220 case summaries involving the testimony of protected witnesses entering the program from June 1979 to May 1980, GAO found that 75 percent of the defendants in these cases were found guilty. Of those for which sentencing information was available, 84 percent were sent to prison and the median sentence imposed was 4.4 years. GAO further identified the prime target defendants or "ringleaders" from the 220 case summaries and determined that 88 percent of these defendants were convicted and received a median prison sentence of 11.2 years. Furthermore, at least one conviction with an incarceration of longer than 1 year was obtained in 87 percent of the 220 case summaries reviewed by GAO. (See pp. 14 to 20.)

CRIMINAL ACTIVITY BY
PROTECTED WITNESSES

GAO evaluated the criminal activity of protected witnesses by analyzing all federal rap sheets for witnesses entering the program during fiscal years 1979 and 1980. A rap sheet is a chronological record of a person's criminal arrests. Of the 761 witnesses

entering the program during this time frame, 555 had federal rap sheets before entering the program. GAO found that, on the average, protected witnesses with prior criminal records had been arrested 7.2 times and had been charged with 10.3 crimes before entering the program. GAO also found that, on the average, protected witnesses (170) who were arrested after entering the program were arrested 1.8 times and charged with 2.6 crimes. (See pp. 21 to 24.)

The following chart summarizes GAO's findings relating to the most serious arrest charges against protected witnesses both before and after entering the program. Because of the confidentiality of the protected witnesses' identities, GAO could not determine how many arrests of protected witnesses eventually led to a conviction.

<u>Type of crime</u>	<u>Preprogram</u> (Percent)	<u>Postprogram</u> (Percent)
Violent	53.5	31.2
Property	26.4	35.3
Drug	13.2	11.8
Other	6.9	21.7

GAO found that 21.4 percent of the 365 witnesses it examined for recidivism were arrested within 2 years of entering the program. While this rate of recidivism is similar to 1978 and 1982 Justice studies (15 and 17 percent respectively), the results are not comparable because different methodologies were employed. (See p. 24.)

COMPENSATION FOR VICTIMS OF
CRIMES BY PROTECTED WITNESSES

A bill, H.R. 4249, which passed the House of Representatives on May 22, 1984, would authorize a \$2 million annual appropriation to fund

a program to compensate victims of violent crimes committed by federally protected witnesses. Because of the relatively small number of compensable victimizations committed by protected witnesses in a year (25 in fiscal year 1982), the overall annual cost would be, at most, \$2.3 million. This "worst case" estimate was made, however, without taking two unquantifiable factors into consideration that would very likely lower the cost of such a program. These factors are:

- the bill requires that victims seek compensation from collateral sources (e.g., insurance and state compensation programs) before applying for compensation under this program; and
- not all victims are eligible for compensation because their injuries, if any, may not require medical attention or result in lost time from work. (See pp. 30 to 35.)

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ABBREVIATIONS

FBI	Federal Bureau of Investigation
GAO	General Accounting Office
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

At the request of the Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Judiciary Committee, we examined several aspects of the Witness Security Program. This report quantifies the results of prosecutions in which protected witnesses have testified, the criminal activities of protected witnesses after entering the program, and contains an estimate of the potential cost of a legislative proposal to compensate victims of protected witnesses. This report on the Witness Security Program follows a previous report performed at the request of Senator Max Baucus. The prior report, Changes Needed In Witness Security Program (GAO/GGD-83-25, March 17, 1983), discussed procedural deficiencies that have enabled some protected witnesses to avoid their legal obligations to third parties, such as creditors.

THE WITNESS SECURITY PROGRAM

Courts have recognized that citizens generally have a duty to testify in court to aid the enforcement of law. However, the fear of reprisal or retaliation can cause potential witnesses to ignore this duty. This led the Congress to conclude that federal law enforcement efforts would be enhanced if the government took steps to assure witnesses that they and their families would not be harmed as a result of their testimony in criminal proceedings. On October 15, 1970, the Congress formally authorized the Attorney General in Title V of the Organized Crime Control Act of 1970 (Public Law 91-452) to protect the lives of witnesses who testify against persons involved in organized criminal activity. As a result, the Attorney General created a program to protect witnesses--the Witness Security Program.

To enter a witness in the program requires action by a number of parties. First, the prosecuting attorney must transmit an admission request to the Office of Enforcement Operations. Located in Justice's Criminal Division, this group is essentially responsible for determining whether a witness is eligible for admission into the program. The admission request delineates the significance of the case and the expected testimony from the prospective witness. After receiving the request (1) the appropriate investigative agency (e.g., Federal Bureau of Investigation (FBI)) is required to submit a report

concerning the threat to the witness' life; (2) the appropriate Criminal Division unit (e.g., Narcotics and Dangerous Drug Section) is asked to review and comment on the specific case; and (3) the Marshals Service is asked to conduct a preliminary interview with the witness and his/her family. Generally, the Office of Enforcement Operations will make its decision on the program eligibility of a witness only after it has received all the above information.

After a witness enters the program, the Marshals Service is responsible for providing long-term protection. It does this by giving witnesses new identities with supporting documentation (e.g., a new birth certificate and new social security number). Further, it relocates them to areas free from the criminal element they testified against and provides them with a temporary living subsistence until they can achieve self-sufficiency. The Marshals Service also provides or arranges for other types of social services on the basis of individual needs, such as employment assistance, resume preparation, emergency medical treatment, and psychological counseling services. All of this is done with the intent that the witness will become successfully established in his/her new community as a law-abiding citizen.

There has been a significant increase in the usage and, thus, the overall cost of the program. At the time the program was begun, management and budget estimates anticipated between 25 and 50 witnesses would be protected each year at a cost of less than \$1 million. However, since its inception in 1970 through fiscal year 1983, over 4,400 witnesses and over 8,000 family members have entered the program. Annual program costs during fiscal year 1983 were about \$25 million. The following chart, provided by the Marshals Service, depicts the yearly size and cost of the program.

<u>Fiscal year</u>	<u>Witnesses admitted</u>	<u>Program costs (note a) (millions)</u>
Beginning of program through 1973	647	b
1974	324	\$ 3.1
1975	371	11.4
1976	466	12.6
1977	469	12.0
1978	441	11.6
1979	427	19.9
1980	334	21.5
1981	287 ^c	24.4
1982	324 ^c	28.4
1983	333 ^c	24.8

^aYearly costs are comprised of Marshals Service salaries and expenses and expenses incurred (e.g., medical or subsistence) for both newly admitted and reactivated witnesses and their family members.

^bProgram costs were not available for this period.

^cAccording to the Office of Enforcement Operations, 79, 121, and 128 of the admitted witnesses in fiscal years 1981, 1982, and 1983 respectively were prisoner witnesses.

CONGRESSIONAL INITIATIVES TO
IMPROVE THE WITNESS SECURITY
PROGRAM

Four bills have been introduced during the 98th Congress-- H.R. 4249, S. 474, S. 1178, and S. 1762--which contain provisions to change the operation of the Witness Security Program. As of June 1984, S. 1762 had passed the Senate and H.R. 4249 had passed the House. House bill 4249 proposes changes to the overall operation of the Marshals Service, while S. 1762 is a comprehensive crime control act revision which affects many areas other than the Witness Security Program.

Among the bills' proposals are:

--an equitable solution to the problems that third parties encounter when attempting to enforce civil judgments against protected witnesses,

- an assessment by the Attorney General of whether the need for a witness' testimony outweighs the risk of danger to the public posed by the witness,
- the establishment of a system to securely disseminate the criminal records of protected witnesses to criminal justice agencies, and
- the mandatory federal supervision of protected witnesses who are on state parole or probation when they enter the program.

The bills' provisions are explained in further detail below.

Enforcing civil judgments against protected witnesses

A previous GAO report, Changes Needed in Witness Security Program (GAO/GGD-83-25, March 17, 1983), discussed program deficiencies that enabled some protected witnesses to avoid their legal obligations to third parties, such as creditors and spouses possessing child custody or visitation orders. The report recommended that third parties be given the right to seek a judicial review of the Attorney General's decision not to disclose information on witnesses to aid the third party's enforcement efforts. Both H.R. 4249 and S. 1762 propose a solution to this problem which is slightly different from the solution we proposed. To address the debt collection problem, the bills call for the judicial appointment of a master or guardian to act, in essence, as a collection agent for the third party. To address the enforcement of child custody or visitation orders, H.R. 4249 establishes a formal arbitration process, but S. 1762 does not address this issue.

Attorney General's risk assessment

Both bills contain a provision that would require the Attorney General, before admitting a witness into the program, to determine whether the need for the witness' testimony outweighs the risk he/she poses to the public. The bills require a consideration of, among other things, the witness' past criminal record and the results of psychological examinations. The Marshals Service administers vocational and psychological tests to witnesses; however, they are not routinely used as a precondition to admittance.

Dissemination of witnesses' criminal histories

Indiscriminate dissemination of a protected witness' criminal history to state and local criminal justice agencies could potentially compromise the witness' new identity and place him/her in danger. As a result, the Justice Department has established a method designed to securely provide a protected witness' criminal record identified through a fingerprint search to a requesting agency. Because of security concerns, however, Justice has not developed a means to routinely transmit a witness' criminal record (earned under his/her old and new identity) through its on-line computer criminal history file.² Consequently, a check of the on-line criminal history file under the new identity of a protected witness could produce a "no-record" response if a witness had been arrested under his/her old identity. Both H.R. 4249 and S. 1762 call for the Attorney General to correct this deficiency.

Federal supervision of witnesses on state parole or probation

Proper supervision of protected witnesses mandated to have parole or probation supervision has been a longstanding problem. In fact, until 1982 federal parolees who entered the program were not routinely supervised. More recently, the Marshals Service has attempted to affect supervision over some protected witnesses on state parole or probation. In this regard, the state to which the witness is to be relocated has to agree to supervise the witness once he/she is relocated.

House bill 4249 proposes a different mechanism to supervise state parolees or probationers, while S. 1762 does not address the issue. Under H.R. 4249, federal probation officers would have the statutory authority to supervise protected witnesses who are on state parole or probation supervision. The legislatively proposed system would allow state witnesses to be supervised under the procedures already in place for federal parolees and probationers.

OBJECTIVES, SCOPE, AND METHODOLOGY

As a result of the Chairman's request and subsequent discussions with his office, it was agreed that this review would address three objectives. These were to

²For a detailed analysis of this problem, see appendix III.

- determine the law enforcement benefits that are derived from the testimony of protected witnesses;
- determine the nature and extent of criminal activity by protected witnesses, including a recidivism rate;
- estimate a cost of a victim compensation program for victims of crimes committed by protected witnesses.

To accomplish our objectives, we

- interviewed officials of the Marshals Service and Office of Enforcement Operations, Criminal Division, about the operation of the Witness Security Program;
- interviewed officials of the U.S. Parole Commission about recidivism studies;
- interviewed FBI officials relating to the dissemination of protected witnesses' criminal histories to state and local law enforcement agencies;
- interviewed officials of the U.S. Parole Commission and the Probation Division of the Administrative Office of the U.S. Courts relating to the supervision of protected witnesses;
- interviewed officials of the New York State Parole Commission regarding supervision of parolees from New York who are protected witnesses;
- interviewed psychologists regarding the Marshals Service's use of psychological tests on protected witnesses;
- reviewed federal rap sheets and psychological test information provided to us by the Marshals Service;
- reviewed summaries of cases involving the testimony of protected witnesses provided to us by the Office of Enforcement Operations;
- reviewed studies relating to victim compensation programs and criminal recidivism; and
- analyzed current congressional efforts to improve the operation of the Witness Security Program.

At the request of the Chairman's office, we did not obtain agency comments. We did, however, discuss the results of our work with Justice officials. These officials agreed with the facts presented. Except for not obtaining comments, our work was conducted in accordance with generally accepted government auditing standards. We performed our audit work from October 1982 to April 1984.

Explanation of sample used
to evaluate use and results
of protected witness testimony

The Office of Enforcement Operations provided us with summaries of prosecutions involving all 308 witnesses admitted to the program between June 1979, and May 1980. This period was chosen by Justice because (1) it provides a sufficient amount of time for the completion of almost all cases, thus enabling a more accurate assessment of results; and (2) it provides a view of the program which is reflective of current conditions because the Office of Enforcement Operations was established in February 1979.

The type of information we requested from the Office of Enforcement Operations included a summary of the nature of the case, a list of all potential defendants and their roles in the case, the outcome of the case in relation to each defendant (including the sentence imposed), the witnesses' relation to the case, a description of the threat to the witness, and any benefits derived outside the witness' specific testimony.

Of the 308 witness case summaries requested, only 220 were used in the analysis of the use and results from protected witnesses participating in prosecutions. Eighty-eight witness case summaries were excluded because:

- Witnesses testified in prosecutions already included in the other 220 case summaries, and their inclusion would have represented a "double counting" (53 case summaries).
- Witnesses refused to enter the program after being authorized for admission or did not testify in a case (22 case summaries).

--There was no information or insufficient information to make a proper analysis (6 case summaries).

--Other miscellaneous reasons existed, such as a witness who entered the program at the behest of a foreign government (7 case summaries).

We identified 1,541 potential defendants from the 220 witness case summaries we examined. Of the 1,541 potential defendants, 76 were never indicted, insufficient information existed for our analysis on 39 defendants, and other reasons existed (e.g., those who were fugitives, were deceased, or whose status was pending) why no disposition could be recorded for 143 defendants. As a result, only 1,283 defendants' dispositions could be determined.

We also evaluated the type of criminal activity committed and the composition of the group allegedly perpetrating the crime for each of the 220 case summaries. In some cases, we found that a prosecution was aimed at more than one type of crime. For example, one prosecution was aimed at a crime group allegedly involved in extortion and fraud. Thus, multiple designations for the same case summary occurred. Accordingly, our analysis of the 220 witness case summaries actually resulted in 276 separate designations spread among 18 different crimes and 8 crimes groups.

Explanation of sample used to quantify the criminal activities of protected witnesses and estimate the cost of a victim compensation program

It was agreed with the Marshals Service that it would request a rap sheet³ from the FBI for all 761 protected witnesses entering the program in fiscal years 1979 and 1980. This time period was chosen for the sample because it would (1) provide a 2 year observation period to measure criminal recidivism for the majority of the witnesses, (2) allow for possible comparison with recidivism studies performed on other populations, and (3) be a relatively current reflection of the criminal activities of protected witnesses.

³A rap sheet is a chronological record of a person's criminal arrests and dispositions.

Criminal activity of witnesses

For the 761 witnesses in our sample, we received 573 rap sheets. We analyzed these rap sheets for both the total and type of crimes witnesses were arrested for before and after they entered the Witness Security Program.

We had to perform a separate analysis to compute a rate of recidivism. To do this, a number of the 573 witnesses with rap sheets had to be excluded from this analysis to make it consistent with traditional recidivism studies. We excluded 208 witnesses because:

- 18 witnesses were arrested only after they entered the program and, by definition, could not be considered recidivists;
- 107 witnesses were incarcerated at the time they entered the Witness Security Program and were not released in time to allow them to have the 2 year standard observation period; and
- 83 witnesses had unavailable or incomplete information for this analysis.

Choice of recidivism criterion

Our recidivism analysis used the criterion of arrest regardless of disposition or sentencing outcome. This criterion was used because over 60 percent of the witnesses' arrests had unknown dispositions, and we were unable to follow up a specific arrest because the rap sheets had been sanitized of any identifying information. The U.S. Parole Commission has conducted studies aimed at computing a recidivism rate for federal prison releasees. In its studies, different recidivism criteria have been used. For instance, in one study similar to our study, an arrest regardless of disposition or sentencing outcome was used as the recidivism indicator. Another study only considered those arrests with an imprisonment of 60 days or more as a valid indicator of recidivism.⁴ Because not all arrests lead to a

⁴Both measures of recidivism also include prison releasees with parole violation difficulties and those releasees who died during the commission of a criminal act.

conviction and subsequent imprisonment, more federal prison releasees would meet the former definition of recidivism than the latter.

The Parole Commission believes that the simple arrest criterion is adequate when establishing macroscopic parole policies and when assessing the predictive power of its salient factor score.⁵ On the basis of the Parole Commission's previous use of this criterion and its findings, we do not believe the choice and use of this criterion in our study creates any methodological difficulties.

Victim compensation analysis

The 573 sample witness rap sheets discussed above were used for this analysis. The exclusions applied above to the recidivism rate analysis do not apply to this analysis. We used the arrest charges of homicide, rape, robbery, kidnapping, assault, and battery as the crimes that could give rise to victim compensation. These crimes are similar to those specifically listed by jurisdictions with victim compensation programs and with the FBI's categories of violent crime. Fiscal year 1982 was chosen as the time period within which to assess the number of violent/potentially compensable crimes. Because our sample witnesses entered the program during fiscal years 1979 and 1980, many witnesses might have been in prison during fiscal year 1981. Thus fiscal year 1981 was rejected as the observation period. Fiscal year 1983 was also rejected because the rap sheets were "pulled" by the FBI beginning in March 1983, thus not allowing for a full year of observation. A more complete description of our methodology used to estimate victim compensation is contained in chapter 4.

⁵An actuarial device used in the parole decisionmaking process to predict future criminality of prison releasees based on the existence or nonexistence of six variables.

CHAPTER 2

PROTECTED WITNESS TESTIMONY:

USE AND RESULTS

The Witness Security Program was initially established as a tool to help eradicate traditional organized crime. The types of cases investigated and prosecuted with the assistance of protected witnesses have changed since the inception of the program in 1970. Over 60 percent of the witnesses entering the program in the early seventies testified in traditional organized crime prosecutions. In contrast, our analysis of witnesses admitted during June 1979 to May 1980 showed that this traditional organized crime relationship had fallen to 27 percent. Other crime groups, such as drug rings, accounted for 43 percent of the 1979 and 1980 prosecutions. Additionally, during this time period, the program was used most often in cases involving drugs or narcotics (32 percent) and murder or conspiracy to commit murder (13 percent).

In reviewing 220 case summaries involving the testimony of protected witnesses, we found that 75 percent (965 of 1,283) of the defendants were found guilty. For the defendants found guilty, 84 percent were sent to prison and the median sentence imposed was 4.4 years. From the 220 case summaries, we further identified 169 "ringleader" defendants and analyzed the dispositions of 150 of these defendants. Eighty-eight percent of the 150 were convicted and received a median prison sentence of 11.2 years. Furthermore, at least one conviction with an incarceration greater than 1 year was obtained in 87 percent of the 220 case summaries reviewed.

USE OF THE WITNESS SECURITY PROGRAM HAS CHANGED OVER YEARS

Only 27 percent of the protected witnesses entering the program from June 1979 to May 1980 were utilized in traditional organized crime prosecutions compared to over 60 percent for witnesses entering the program in the early seventies. Justice's expansion of the program from its original focus is consistent with current congressional efforts to specifically provide that the Attorney General may furnish witness protection in cases other than those involving traditional organized crime.

Congressional hearings concerning the increased influx of "organized crime" into both illegal and legal segments of society led to the passage of the Organized Crime Control Act of 1970 (codified as a note to 18 U.S.C. 3481). The purpose of the act was to seek the eradication of organized crime by strengthening the legal tools used in the evidence gathering process. Title V of the act authorizes the Attorney General to provide security to persons intended to be called as government witnesses in federal or state proceedings instituted against any person alleged to have participated in organized criminal activity. From this authorization, the Attorney General created the Witness Security Program.

Like the statutory language of Title V relating to witness eligibility, Justice's criteria for admission to the Witness Security Program is broad. According to Justice, a witness may be authorized to participate in the program if he/she is to testify as an essential witness in a specific case that is important to the administration of criminal justice and has a link to organized criminal activity and there is a clear indication that the life of the witness or a family member is in immediate jeopardy. This admission criterion gives the Attorney General wide latitude in program usage.

A 1978 Justice report¹ showed that 65 percent of a sample of witnesses entering the program during 1970, 1971, and 1972 had traditional organized crime connections, while only 39 percent of a sample of witnesses entering the program in 1975, 1976, and 1977 had this connection. Furthermore, our analysis showed this traditional organized crime relationship to have fallen to 27 percent for the witnesses entering the program from June 1979 to May 1980.

Justice's expansion of the program from its original focus on organized crime cases is consistent with congressional attempts over the past few years to specifically provide that the Attorney General may furnish protection to witnesses in cases other than those involving traditional organized crime. Several criminal code reform bills introduced from 1977 to 1983 have

¹The report resulted from an internal Justice study conducted by the Witness Security Program Review Committee. The review committee, which was formed in response to both internal and external criticism of the program, looked at many aspects of the program, including program purpose and admission standards and procedures.

provided that witness protection may be furnished in cases where danger to the witness or his/her family was involved. The Senate Report (97-307) on S. 1630 released in December 1981 elaborated on this point:

"There is no reason to deny protection to a witness who is in danger of retaliation simply because the nexus between the offense and organized criminal activity is lacking. For instance, a rape victim fearing retaliation from her assailant may not be willing to testify unless relocation or protection is made available."

The Congress is currently considering two bills--H.R. 4249 and S. 1762 (Criminal Code Reform Act)--which contain provisions that would specifically expand the Attorney General's admittance authority.

TYPES OF PROSECUTIONS USING PROTECTED WITNESSES

As mentioned earlier, a wide variety of crimes and crime groups are prosecuted with the assistance of protected witnesses' testimony. Our analysis showed that protected witnesses' testimony is most often used in cases involving drugs or narcotics (32 percent) and murder or conspiracy to commit murder (13 percent). The type of perpetrator or group most often prosecuted utilizing protected witness testimony are other organized crime groups, e.g., drug rings (43 percent) and traditional organized crime groups (27 percent). The chart on the following page shows the frequency that a crime or crime group was prosecuted utilizing the testimony of a protected witness. As noted on page 8, even though 220 case summaries were analyzed, 276 separate designations were made because some case summaries involved more than one crime or crime group.

TARGETS OF PROSECUTIONS USING THE
TESTIMONY OF PROTECTED WITNESSES

<u>By crime</u>	<u>Number</u>	<u>Percent</u>	<u>By crime group</u>	<u>Number</u>	<u>Percent</u>
Drugs/narcotics	87	31.5	Other organized crime crime group ^b	118	42.8
Murder/conspiracy to commit murder	36	13.1	Traditional organized crime group	74	26.8
Robbery	20	7.2	Single criminal act by person or group	41	14.9
Corruption	17	6.2	Public official	18	6.5
Interstate transportation of stolen goods	16	5.8	Motorcycle gang	10	3.6
Extortion	15	5.4	Union officials	6	2.2
Fraud/swindle	12	4.3	Prison gang	5	1.8
RICO ^a	11	4.0	White collar professional	4	1.4
Arson	11	4.0			
Burglary	10	3.7	Total	276	100.0
Weapons/explosives	8	2.9			
Prostitution	7	2.5			
Tax evasion	6	2.2			
Counterfeiting	5	1.8			
Gambling	4	1.4			
Pornography	3	1.1			
Rape	2	.7			
Other	6	2.2			
Total	276	100.0			

^aRacketeer Influenced and Corrupt Organizations (RICO) (18 U.S.C. 1961-1968) generally prohibits the financing, acquisition, or operation of businesses through illegal activities or the proceeds derived therefrom.

^bThis category is for groups engaged in a pattern of illegal activity as opposed to a single criminal act.

Appendix I contains a two-dimensional presentation of the above information.

RESULTS OF PROSECUTIONS USING THE
TESTIMONY OF PROTECTED WITNESSES

On the basis of our review of 220 case summaries, 75 percent, or 965 of the 1,283 defendants prosecuted employing the

testimony of protected witnesses were eventually found guilty.² While 57 guilty defendants' sentences could not be determined from the information provided us, we found that 84 percent of the remaining 908 guilty defendants received prison sentences, and the median sentence imposed was 4.4 years. These prosecutions resulted in significantly more severe sentences than federal felony prosecutions in general or organized crime strike force prosecutions.³ Furthermore, those defendants identified as prime targets or "ringleader" defendants were found guilty more often and received more severe sentences than defendants in protected witness prosecutions in general. Finally, on a case-by-case basis, the vast majority of protected witness prosecutions resulted in at least one conviction with an incarceration of greater than 1 year.

The dispositions of the 1,283 defendants identified in our review of the 220 case summaries are detailed below.

	<u>Number</u>	<u>Percent</u>
Pleaded guilty or no contest	462	36.0
Convicted after trial	441	34.4
Guilty/unknown ^a	62	4.8
Acquitted	131	10.2
Dismissed or decision by the U.S. Attorney not to proceed with case	<u>187</u>	<u>14.6</u>
Total	<u><u>1,283</u></u>	<u><u>100.0</u></u>

^aThis category includes defendants who were guilty and were sentenced; however, it is unknown whether they plead guilty or were convicted.

²In comparison, 83.7 percent of the defendants in all statistical year 1983 (July 1, 1982 to June 30, 1983) federal felony prosecutions were guilty.

³Strike forces are groups of federal investigators and attorneys and, in many cases, state and local officials located in specific geographic locations focusing on prosecuting organized criminal activities.

We analyzed the 965 defendants who were found guilty to determine what type of sentences were imposed. While 57 guilty defendants' sentences could not be determined from the information provided to us, the sentences of the remaining 908 guilty defendants are detailed in the following chart.

<u>Sentence imposed</u>	<u>Number</u>	<u>Percent</u>
Fine only	4	.4
Probation only	142	15.6
Less than 1 year	66	7.3
1 to less than 2 years	65	7.2
2 to less than 4 years	147	16.2
4 to less than 6 years	151	16.6
6 to less than 8 years	54	6.0
8 to less than 10 years	55	6.1
10 to 15 years	118	13.0
Greater than 15 to 20 years	31	3.4
20 years or more	54	5.9
Life ^a	<u>21</u>	<u>2.3</u>
Total	<u>908</u>	<u>100.0</u>

^aA death sentence was counted as a life sentence.

In addition to the sentences detailed above, 91, or 10 percent, of the 908 sentenced defendants received a term of probation in addition to their imprisonment, while 159, or 17.5 percent, had fines imposed in addition to their sentences of imprisonment and/or probation. The total dollar value of the fines imposed was about \$3.8 million.

Comparison of prosecutive outcomes

We compared the sentencing outcomes of protected witness prosecutions with the sentencing outcomes of (1) federal felony prosecutions terminated in 1983;⁴ and (2) fiscal year 1981 federal organized crime strike force prosecutions as reported by Justice in their comments dated August 13, 1981, to our prior report, Stronger Federal Effort Needed In Fight Against Organized Crime, (GGD-82-2, Dec. 7, 1981). In general, the protected

⁴The Administrative Office of the U.S. Court's 1983 statistical year is from July 1, 1982, to June 30, 1983.

witness prosecutions resulted in significantly more severe sentences than either the federal felony prosecutions or the federal organized crime strike force prosecutions. A breakdown of the sentencing outcomes for the three prosecution groups is listed below.

<u>Sentence imposed</u>	<u>1983 federal felony (note a)</u>	<u>Strike force</u>	<u>Protected witness</u>
	----- (percent) -----		
Probation only ^b	38	26	16
less than 2 years	26	30	14
2 years or greater	<u>36</u>	<u>44</u>	<u>70</u>
Total	<u>100</u>	<u>100</u>	<u>100</u>

^aSentences that were not calculable (e.g., those that were indeterminate) were excluded from this section.

^bDefendants receiving the lesser "fine only" sentence (1 percent of the total) were excluded from the federal felony and protected witness columns of this analysis for ease of comparison.

Caution should be used when contrasting the sentences handed out in prosecutions involving protected witnesses with sentences handed out in other types of prosecutions. For example, one would expect that the composition of the federal felony defendants would be different from the other two groups in terms of having a larger number of first-time offenders. It follows logically that this group would receive less severe sentences. Additionally, it is possible that some protected witness prosecutions are included in the federal felony totals as well as in the strike force prosecutions. Thus, some overlap may have occurred.

Convictions of prime targeted
defendants/ringleaders

On the basis of our analysis of case summaries provided to us, we identified 169 prime target defendants.⁵ Seven of these defendants, referred to as "ringleaders", were eliminated from this analysis because they were not indicted; 12 others were eliminated because their dispositions could not be determined (e.g., fugitive or missing information). The dispositions of the remaining 150 ringleader defendants follow:

	<u>Number of defendants</u>	<u>Percent</u>
Pleaded guilty or no contest	37	24.7
Convicted	89	59.3
Guilty/unknown ^a	6	4.0
Acquitted	10	6.7
Dismissed or prosecution decision not to proceed with case	<u>8</u>	<u>5.3</u>
Total	<u>150</u>	<u>100.0</u>

^aThis category includes defendants who were guilty and sentenced; however, it is unknown whether they plead guilty or were convicted.

We were able to ascertain the sentences imposed on 131 of the 132 guilty ringleader defendants. These sentences follow.

⁵In many instances the Office of Enforcement Operations designated a defendant as being a prime target. In other instances, we made this determination by evaluating the case information.

<u>Sentence imposed</u>	<u>Number of defendants</u>	<u>Percent</u>
Fine only	-	-
Probation only	1	.7
Less than 1 year	7	5.3
1 to less than 2 years	4	3.1
2 to less than 4 years	10	7.6
4 to less than 6 years	22	16.8
6 to less than 8 years	6	4.6
8 to less than 10 years	8	6.1
10 to 15 years	33	25.2
Greater than 15 to 20 years	11	8.4
20 years or more	20	15.3
Life ^a	<u>9</u>	<u>6.9</u>
Total	<u>131</u>	<u>100.0</u>

^aA death sentence was counted as a life sentence.

A couple of comparisons between ringleader defendant prosecutions and protected witness prosecutions in general may be significant. First, the overall guilty rate (convictions and pleas of guilty or no contest) was higher for the ringleader defendants: 88.0 percent to 75.2 percent, respectively. Second, the conviction/acquittal ratio⁶ for ringleader defendants was substantially higher: 8.9 to 3.4. Finally, the severity of sentences imposed on ringleader defendants was substantially higher than those imposed in protected witness prosecutions in general. The median sentence imposed on ringleader defendants was 11.2 years, while the median sentence imposed on all defendants was 4.4 years.

Further analysis of protected witness prosecutions

The information on prosecutions presented above relates to results in the aggregate. Some further analysis may help better demonstrate Justice's prosecutive experiences on a case-by-case basis. To do this, we evaluated the 220 case summaries to determine what percentage of the summaries had (1) at least one defendant convicted, and (2) at least one defendant incarcerated

⁶This ratio measures prosecutive success in cases that went to trial.

for more than 1 year. For this first point, we found that 190 case summaries, or 90 percent, had at least one person convicted; 20 did not have any convictions; and 10 case summaries were pending or had insufficient information for this analysis. For the second point, we found that 181 case summaries, or 87 percent, had at least one person sentenced to greater than 1 year; 27 did not; and 12 case summaries were pending or had insufficient information for this analysis.

As can be seen, the vast majority of the summaries had at least one defendant convicted and sentenced to more than 1 year. Stated another way, very few of the cases utilizing the testimony of protected witnesses were completely unsuccessful. For those cases, a mitigating factor may be found by analyzing these cases in terms of the number of defendants. Specifically, the 20 case summaries without a single conviction had an average of 2.5 defendants compared to an average of 6.4 for the remaining summaries. Furthermore, the 27 case summaries without an incarceration greater than 1 year had an average of 2.8 defendants compared to 6.7 for the remaining summaries.

CHAPTER 3
CRIMINAL ACTIVITY OF
PROTECTED WITNESSES

On the average, protected witnesses with a federal rap sheet, who entered the program during fiscal years 1979 and 1980, had been arrested 7.2 times and had been charged with 10.3 crimes before entering the program. In terms of most serious preprogram arrest, 53.5 percent of the witnesses had been arrested for violent crimes, 26.4 percent for property crimes, and 13.2 percent for drug-related crimes. On the average, a protected witness arrested after entering the program had been arrested 1.8 times and was charged with 2.6 crimes. In terms of most serious postprogram arrest, 31.2 percent of the witnesses had been arrested for violent crimes, 35.3 percent for property crimes, and 11.8 percent for drug-related crimes. Because of the confidentiality of the protected witnesses' identities, we could not determine how many arrests of protected witnesses eventually led to a conviction.

Our sample of protected witnesses had a 2 year recidivism rate of 21.4 percent. More specifically, 78 of the 365 witnesses entering the program (with prior criminal records) were arrested within 2 years after entering the program. While this rate of recidivism is similar to previous Justice studies (15 and 17 percent), the results are not comparable because different methodologies were used.

ARREST EXPERIENCE OF
PROTECTED WITNESSES

Protected witnesses are usually found within the criminal organization they are going to testify against. As such, most protected witnesses have prior criminal records before entering the program. In fact, we found that 555 of 761, or 73 percent, had been arrested and had a federal rap sheet before entering the program. On the average, witnesses who had been arrested before entering the program, had been arrested 7.2 times (median 5) and had been charged with 10.3 crimes before entering the program. Similarly, we found that 170 of the 761 witnesses were arrested after they entered the program. On the average, these witnesses had been arrested 1.8 times (median 1) and had been charged with 2.6 crimes.

Protected witnesses have been arrested and charged with a wide variety of crimes both before and after entering the program. A review of witnesses' rap sheets in terms of their most serious preprogram arrests showed that 53.5 percent had been arrested for violent crimes, 26.4 percent for property crimes, and 13.2 percent for drug-related crimes. The corresponding numbers for postprogram arrests were 31.2 percent for violent crimes, 35.3 percent for property crimes, and 11.8 percent for drug-related crimes.

Frequency of arrest

We found that the 555 witnesses who had been arrested prior to entering the program had been arrested a total of 3,984 times, or an average of 7.2. These witnesses were charged with a total of 5,737 crimes, or an average of 10.3. The following is a frequency breakdown of the 555 witnesses' preprogram arrests.

<u>Number of arrests</u>	<u>Number of witnesses</u>	<u>Percent</u>
1	77	13.9
2	63	11.4
3	62	11.2
4	43	7.7
5	47	8.5
6 to 7	57	10.3
8 to 10	74	13.3
11 to 15	76	13.6
16 to 20	37	6.7
over 20	<u>19</u>	<u>3.4</u>
Total	<u>555</u>	<u>100.0</u>

A total of 170 of the 761 witnesses entering the program during fiscal years 1979 and 1980 were arrested after entering the program. These witnesses were arrested a total of 314 times, or an average of 1.8, and were charged with 446 crimes, or an average of 2.6. A frequency breakdown of the 170 witnesses' postprogram arrests follows.

<u>Number of arrests</u>	<u>Number of witnesses</u>	<u>Percent</u>
1	98	57.6
2	39	22.9
3	16	9.4
4	7	4.2
5 or more	<u>10</u>	<u>5.9</u>
Total	<u>170</u>	<u>100.0</u>

Offense severity

To assess the seriousness of each arrest, we used a schedule of arrest charges used by the U.S. Parole Commission in a study published in 1979. The following chart presents a frequency distribution of the 555 witnesses' most serious preprogram arrests.

<u>Most severe offense</u>	<u>Number of witnesses</u>	<u>Percent</u>
Homicide	47	8.5
Kidnapping	19	3.4
Rape	16	2.9
Other sex offense	13	2.3
Robbery	139	25.0
Assault	63	11.4
Burglary	43	7.7
Theft/larceny	64	11.5
Vehicle theft	6	1.1
Forgery/fraud	34	6.1
Heroin	21	3.8
Drugs: unspecified or other than heroin or marijuana	44	7.9
Marijuana	8	1.5
Weapons	8	1.5
All other	<u>30</u>	<u>5.4</u>
Total	<u>555</u>	<u>100.0</u>

As the chart indicates, 53.5 percent of the witnesses' most serious preprogram arrests were for violent crimes (homicide, kidnapping, rape, other sex offenses, robbery, and assault); 26.4 were property crimes (burglary, theft/larceny, vehicle

theft, and forgery/fraud); and 13.2 percent were drug-related (heroin, marijuana, and other drug offenses).

The chart below is a frequency distribution of the 170 witnesses' most serious postprogram arrests.

<u>Most severe offense</u>	<u>Number of witnesses</u>	<u>Percent</u>
Homicide	6	3.5
Kidnapping	4	2.4
Rape	1	.6
Other sex offense	-	-
Robbery	19	11.2
Assault	23	13.5
Burglary	9	5.3
Theft/larceny	28	16.5
Vehicle theft	5	2.9
Forgery/fraud	18	10.6
Heroin	1	.6
Drugs: unspecified or other than heroin or marijuana	11	6.5
Marijuana	8	4.7
Weapons	6	3.5
All other	<u>31</u>	<u>18.2</u>
Total	<u>170</u>	<u>100.0</u>

As the chart indicates, 31.2, 35.3, and 11.8 percent of the witnesses' most serious postprogram arrests were for violent, property, and drug-related offenses, respectively.

The observation that protected witnesses were arrested more often and charged with more serious crimes before they entered the program when compared with postprogram arrest data may be almost entirely caused by differences in the pre- and post-program observation periods. For example, many witnesses had criminal histories of 10 or more years before they entered the program, while the average postprogram observation period for the witnesses sampled was only about 3.5 years.

TWO YEAR RECIDIVISM RATE FOR PROTECTED WITNESSES

About 21 percent of the protected witnesses we examined for recidivism were arrested within 2 years of entering the program. This recidivism rate is similar to previous studies by

Justice. However, methodological differences make comparisons inappropriate. A previous recidivism study on federal prison releasees employing methodology similar to ours found a recidivism rate of 47 percent. While comparable to our study from a methodological standpoint, the differences in the recidivism rates of protected witnesses and federal releasees may be due to differences in group composition and in how each group recidivates over time.

Overall arrest data converted
to a revidivism rate

Traditional recidivism studies define recidivism as the percentage of individuals who relapse within a specified period of observation. For our purposes, we have defined recidivism rate as the number of witnesses with prior criminal records who are arrested within 2 years of entering the program as a percentage of all witnesses who were observed for the 2-year period. We were unable to ascertain how many of the arrests led to a conviction because the rap sheets had been sanitized of any identifying information. We had to make several adjustments to our witness arrest data to make it conform to this traditional method of measuring recidivism.

As mentioned earlier, we received 573 federal rap sheets. However, 208 witnesses' rap sheets had to be excluded for the following reasons:

- 18 witnesses were arrested only after they entered the program and, by definition, could not be considered recidivists;
- 107 witnesses were incarcerated at the time they entered the Witness Security Program and were not released in time to allow them to have the 2 year follow-up period; and
- 83 witnesses had incomplete or unavailable information to perform this analysis.

Of the 365 federal witness rap sheets analyzed, 78 witnesses were arrested within the 2 year observation period. Thus, the 2 year recidivism rate for protected witnesses was 21.4 percent.

Past Justice efforts to compute witness recidivism

The Justice Department conducted two studies to assess the extent of criminal activity by relocated witnesses. While both studies resulted in similar recidivism rates, neither computed a recidivism rate over a specified period of time. Thus, neither study is comparable to our analysis.

In 1978, the Witness Security Review Committee, as a part of its overall evaluation of the Witness Security Program, reported that 15 percent of the 200 sampled witnesses admitted to the program between 1970 and 1977 had been arrested at least once since their entry into the program. In fiscal year 1982, the Marshals Service reviewed the files for 1,174 witnesses entering the program from October 1978 to April 1982 and found that 17 percent of the witnesses not in prison had been arrested since their entry into the program. Both studies were prepared differently from traditional recidivism studies in that they used different follow-up periods for each witness. Specifically, some witnesses may have had 3 years in which to have been arrested, while others may have had only 6 months. In contrast, our study evaluated whether a witness had been arrested within a specified time period (2 years) after the witness entered the program. Because our study was conducted in this latter fashion, it is not directly comparable with the previous Justice Department studies.

Observations on comparison of recidivism rates

As noted above, 21.4 percent of the protected witnesses entering the program during fiscal years 1979 and 1980 were arrested within 2 years. In contrast, 47 percent of the people released from federal prison were arrested within 2 years of their release. In the aggregate, protected witnesses in our sample recidivated less than prison releasees within 2 years; however, caution must be used in comparing this data.

At first glance, it would appear that the Witness Security Program may have a general rehabilitative effect on its participants when compared with prison releasee recidivism. However, drawing this conclusion requires the making of two major assumptions; that

--the compositions of the two groups are similar enough to allow a direct comparison, and

--the two groups' rates of recidivism are similar over time.

Group composition

The previous histories or characteristics of a control group play an important part in both predicting recidivism and interpreting its occurrence. For example, one would not normally expect a group of first time offenders and a group of habitual criminals to recidivate at the same rate. However, after certain characteristics of both groups (e.g., type and frequency of criminal arrests) are quantified and analyzed, it might become clearer why one group recommit crimes at a higher rate than the other group.

Many criminal justice research projects have been conducted trying to correlate a person's characteristics, including past criminal history, with his/her propensity to recidivate. Different methods have been employed to predict future criminal conduct. They have ranged from a simple scoring device using items found to be predictive to more sophisticated mathematical weighting methods, such as multiple regression.

On the federal level, the Parole Commission uses an additive device--the salient factor score--to aid the parole decisionmaking process by attempting to predict future criminality of prison releasees. The current salient factor device scores each prospective releasee on six variables, and a total score of from 0 to 10 is computed. On the basis of the score, a releasee is placed in one of four risk categories. The following chart taken from a 1979 study² illustrates the relationship between risk categories and recidivism.

²"Post Release Arrest Experiences Of Federal Prisoners: A Six-Year Follow-up" Journal of Criminal Justice, Vol. 7, No. 3, 1979, pp. 193-216.

<u>Risk category</u>	<u>Number in category</u>	<u>Number arrested^a</u>	<u>Percent arrested</u>
Poor	532	346	65.0
Fair	472	256	54.2
Good	483	187	38.7
Very good	<u>319</u>	<u>57</u>	17.9
Total	<u>1,806</u>	<u>846</u>	46.8

^aWithin 2 years of release.

The linear relationship between risk category (as determined by the salient factor score) and recidivism rate has been affirmed on several occasions by the Parole Commission. One can easily see how a different composition of prison releasees in terms of risk categories would dramatically affect the groups' overall recidivism rate. Validating the hypothesis that the Witness Security Program may have a rehabilitative effect on its participants would be inappropriate without first determining what the expected recidivism rate of the participants would be absent the program (e.g., placing witnesses in the various risk categories). It could be that our sample of protected witnesses had a high concentration of persons classified in the "good" and "very good" risk categories and that the expected 2-year recidivism rate of the group was only 15 percent.³ In this situation, one could not say that the program, with a computed recidivism rate of 21.4 percent, had a rehabilitative effect.

Comparing rates over time

The recidivism rate we computed is, in essence, a "snapshot" of what has happened the first 2 years after a witness entered the program or was released from prison. In comparing the recidivism rates of prison releasees and protected witnesses, the second major assumption that has to be scrutinized is whether each group's rates are comparable over time. In

³This is assuming that the validity of the salient factor device was successfully tested against a sample of protected witnesses.

other words, does one group tend to recidivate during the first years of observation, whereas the other group recidivates later, perhaps after the observation period.

In its previous studies, the Parole Commission has shown that the overall recidivism rates of prison releasees increase over time, but at a decreasing rate. For example, in the study cited earlier, while 46.8 percent of the releasees were arrested within 2 years, only 15.7 percent releasees were arrested during the next 4 years. It is not certain how this long term declining recidivism rate would hold up for protected witnesses. While 73 percent of our sampled protected witnesses had prior criminal records and many had been state or federal parolees, characteristics unique to the Witness Security Program may alter the recidivism rate over time relationship.

After entering the program, protected witnesses are given a monthly living subsistence while employment is being sought. Witnesses are often being transported to and from their "danger" area to testify during their initial period in the program. As a result, seeking employment during this period is difficult and the average witness remains on subsistence for 18 months. This factor, along with the frequent contact with Marshals Service personnel during the initial period in the program, could "delay" a protected witness' propensity to commit a crime during his/her initial period in the program. A longer follow-up period than the 2 years our study encompasses would be necessary to determine whether any recidivism "delay" was permanent (proving the program's rehabilitation hypothesis) or temporary (proving a different recidivism to time relationship).

In the future, refinements in data collection would make comparison of recidivism rates more definitive. Assigning a past group of protected witnesses a salient factor score would allow direct comparison with prison releasees in terms of expected recidivism rates and risk categories. Furthermore, expanding the follow-up period would isolate some unique characteristics of the Witness Security Program that may be affecting the recidivism over time relationship.

CHAPTER 4
POTENTIAL COST OF A LEGISLATIVE
PROPOSAL TO COMPENSATE VICTIMS
OF PROTECTED WITNESSES

House bill 4249 would authorize a \$2 million annual appropriation to fund a program to compensate victims of violent crimes committed by federally protected witnesses. The program can be modeled, to a large extent, after compensation programs now in existence in 37 states, the District of Columbia, and the Virgin Islands. Because of the relatively small number of compensable victimizations committed by protected witnesses in a year (25 in fiscal year 1982), the annual cost would be, at most, \$2.3 million. This estimate was made without taking two unquantifiable factors into consideration that would likely lower the cost of such a program. One of these factors is the bill's requirement that victims seek compensation from collateral sources (state compensation program) before applying for compensation under this program.

VICTIM COMPENSATION PROGRAMS
ARE PREVALENT BELOW THE
FEDERAL LEVEL

Victim compensation programs below the federal level have been in effect since California introduced its program in 1965. Since that time, a total of 37 states, the District of Columbia, and the Virgin Islands have established programs to pay benefits to victims of crime. These programs have various characteristics and differ in administrative form, victim eligibility criteria, maximum awards, and funding formulas.¹

¹The information on existing compensation programs presented in this chapter was taken largely from Compensating Victims of Crime: An Analysis of American Programs, prepared for the National Institute of Justice by Abt Associates Inc. and released in July 1983.

Eligibility criteria in
the various jurisdictions

Each jurisdiction has its own set of criteria for inclusion into its victim compensation program, but some requirements and restrictions are more prevalent than others. In every jurisdiction studied, the only losses which are compensable are the out-of-pocket expenses of the victim. If the cost of medical service or time lost from work is covered by insurance or workman's compensation, no compensation is given. In addition, property loss or "pain and suffering" resulting from a victimization are not reimbursed in the great majority of jurisdictions with programs.

A variety of other criteria is taken into consideration by the 39 jurisdictions when granting compensation, including: financial need (12 jurisdictions), minimum loss (24 jurisdictions), victim cooperation with local police and other investigative agencies (34 jurisdictions), residency of victims (14 jurisdictions), and relationship of victim to offender (24 jurisdictions).

Two methods are used to determine which types of crimes are to be compensated. Most jurisdictions (29) work under a general definition of conduct that constitutes a compensable crime. The remaining 10 jurisdictions have a specific compensable crimes list in their victim compensation statute which details exactly which offenses are eligible for compensation. The crimes most often listed on these statutes are: murder, rape, kidnapping, manslaughter, robbery, assault, and battery.

The costs of existing compensation programs are made up of two components--payments to victims and administrative costs. The cost in the jurisdictions in which cost data was available varies considerably. Nine programs cost less than \$500,000 annually while three cost over \$5 million. Appendix II contains a detailed list of existing programs broken down by total cost, number of claims awarded, average award, and average administrative cost per award.

FEDERAL EFFORT TO COMPENSATE
VICTIMS OF PROTECTED WITNESSES

A bill, H.R. 4249, which passed the House on May 22, 1984, would authorize a \$2 million annual appropriation to establish a compensation program for victims of violent crimes committed by protected witnesses. As requested, we developed a range of cost estimates for such a program on the basis of different interpretations of the sample data concerning crimes committed by protected witnesses. In all except our "worst case" estimate, the estimated annual cost for this program was less than the \$2 million appropriation proposed in H.R. 4249. In addition, each of these estimates was derived without taking into account two factors which, although unquantifiable, would very likely reduce the federal burden. These factors include the bill's requirement that victims seek compensation from collateral sources, (insurance, workman's compensation, and state victim compensation) prior to applying for federal compensation and the fact that a study has shown that a relatively small number of victimizations will typically meet the statutory criteria for compensation.

Basis for cost estimate

As with the existing compensation programs, the cost to the federal government for this program would be in two categories: benefits paid to victims and administrative costs. To calculate a cost estimate, information on the following three variables is needed:

- number of annual compensable victimizations,
- average award to a victim, and
- administrative cost per award.

Historical cost experience of existing compensation programs provides a good basis for the cost portions of this estimate. However, computing an expected number of victimizations is more difficult because a confident projection cannot be statistically generated from our sample. Therefore, we can only hypothesize about expected annual compensable victimization rates and the array of possible outcomes. We have developed a range of victimization rates with these factors in mind.

The rap sheets we analyzed showed 25 arrests of protected witnesses in fiscal year 1982 for crimes most likely to result

in physical injury to a third party. (Fiscal year 1982 was chosen for analysis because our sample witnesses entered the program during fiscal years 1979 and 1980 and many witnesses might have been in prison during fiscal year 1981.) These crimes include homicide, rape, robbery, kidnapping, assault, and battery. The crimes included in our analysis are similar to those listed by the 10 jurisdictions that maintain a specific crimes list and with the categories of violent crime listed by the Federal Bureau of Investigation in its annual crime report.

To develop our range of three victimization estimates, we first assumed that our 1979 and 1980 sample witnesses committed violent crimes at the same rate as all witnesses who have entered the program. Thus, if our sample of 761 witnesses committed 25 potentially compensable crimes in 1982, all 4,090 witnesses in the program would have committed 134 compensable crimes in the same year.² We believe this estimate is a "worst case scenario" because recidivism studies have shown that recidivism rates, while increasing over time, do so at a decreasing rate. Stated differently, prison releasees have a greater chance of being arrested in their first or second year of freedom than they do in their 8th, 9th, or 10th year of freedom.

We are not certain how this recidivism-to-time relationship has impacted on protected witnesses. Therefore, we made the following two additional assumptions that take this relationship into account in varying degrees:

--The compensable crimes committed by our sampled witnesses represent 25 percent of the compensable crimes committed by all witnesses in a year.

--The compensable crimes committed by our sampled witnesses represent 50 percent of the compensable crimes by all witnesses in a year.

Thus, we have developed three assumptions--proportional, 25 percent, and 50 percent--to project the number of victimizations by our sampled witnesses to the total number of protected witnesses. Given our three assumptions, we calculated victimization rates of 134, 100, and 50, respectively.

²(4,090/761) x 25 = 134.36

As mentioned earlier, existing compensation program data provides us with a benchmark for generating our range of cost estimates. Appendix II illustrates that the costs vary considerably from jurisdiction to jurisdiction. The average award costs vary from \$1,100 in Hawaii to \$12,548 in Rhode Island, while the administrative costs per award vary from \$197 in Hawaii to \$3,524 in Maryland. To compute our estimate, we used both the highest and lowest jurisdictional cost in both categories--\$12,548 and \$1,100 per award, and \$3,524 and \$197 administrative cost per award--and have adjusted these costs to 1983 dollars by using the Consumer Price Index. All of the variables put together yield the following results.

<u>Number of compensable victimizations</u>	<u>Highest jurisdictional cost</u>	<u>Lowest jurisdictional cost</u>
134	\$2,348,983	\$189,561
100	1,752,973	141,463
50	876,486	70,732

Probable cost reduction factors

These cost estimates were computed without taking into account two factors which, most likely, would reduce the federal cost of this proposed program. These variables were not included in the cost estimates because the magnitude of each could vary considerably depending on who is victimized and where. However, in every victimization where either one or both of the following factors applies, the federal cost would be reduced or eliminated.

The first factor is contained in H.R. 4249. The bill would require victims of protected witnesses to seek compensation from collateral sources prior to applying for federal victim compensation. These sources include private insurance claims, workman's compensation, and state or local victim compensation programs. Any compensation derived from these sources would be deducted from the federal claim and may, in fact, eliminate the need for federal compensation for many victims under this program. Essentially, this bill would provide for a victim compensation program of last resort.

A second cost reduction factor not included in our cost estimate relates to the nature of a criminal victimization

itself. Many victims are not eligible for compensation because their injuries, if any, did not require medical attention or result in time lost from work. A study performed for the U.S. Department of Justice found that only 8 percent of all victimizations that involved injury met the necessary criteria for compensation under typical state victim compensation statutes. Taking these additional factors into account, it appears that the costs of this program would likely be less than either the highest estimate we generated--\$2.3 million--or the \$2 million proposed in H.R. 4249.

MATRIX OF PROGRAM USE
BY TYPE OF CRIME AND
TYPE OF CRIME GROUP

<u>CRIME</u>	<u>CRIME GROUPS</u>	<u>ONE CRIME BY PERSON OR GROUP</u>	<u>MOTORCYCLE GANG</u>	<u>PRISON GANG</u>	<u>TRADITIONAL ORGANIZED CRIME GROUP</u>	<u>PUBLIC OFFICIAL</u>	<u>UNION OFFICIAL</u>	<u>WHITE COLLAR PROFESSIONAL</u>	<u>OTHER ORGANIZED CRIME GROUP</u>	<u>TOTAL</u>
WEAPONS/EXPLOSIVES		1	1	—	1	—	1	—	4	8
ARSON		4	—	—	5	—	—	—	2	11
MURDER/CONSPIRACY TO COMMIT MURDER		15	2	4	8	1	—	1	5	36
CORRUPTION		—	—	—	—	12	5	—	—	17
RAPE		1	1	—	—	—	—	—	—	2
EXTORTION/LOANSHARKING		—	1	—	13	1	—	—	—	15
BURGLARY		2	—	—	3	—	—	—	5	10
PROSTITUTION		—	—	—	—	1	—	—	6	7
COUNTERFEITING		1	—	—	—	—	—	—	4	5
ROBBERY		8	1	—	3	—	—	—	8	20
PORNOGRAPHY		—	—	—	1	—	—	—	2	3
DRUG-RELATED		4	3	—	17	2	—	2	59	87
TAX EVASION		—	—	—	4	—	—	—	2	6
INTERSTATE TRANSPORTATION OF STOLEN GOODS		3	—	—	6	—	—	—	7	16
FRAUD/SWINDLES		1	—	—	4	—	—	1	6	12
RICO		—	1	1	4	—	—	—	5	11
GAMBLING		—	—	—	4	—	—	—	—	4
OTHER		1	—	—	1	1	—	—	3	6
TOTAL		41	10	5	74	18	6	4	118	276

COSTS OF VICTIM COMPENSATION
PROGRAMS BELOW THE FEDERAL LEVEL

<u>Jurisdiction</u>	<u>Total costs^a</u>	<u>Average award</u>	<u>Administrative cost per award</u>	<u>Number of claims awarded</u>
Alaska	\$ 339,300	\$3,500	b	b
California ^c	17,084,579	2,275	b	b
Colorado	b	b	b	b
Connecticut	719,650	2,200	b	b
Delaware	382,154	3,000	\$ 905	155
District of Columbia	b	b	b	b
Florida	2,180,000	2,900	1,262	301
Hawaii	509,931	1,100	197	393
Illinois	2,310,900	2,928	b	710
Indiana	b	3,000	b	120
Iowa	b	b	b	b
Kansas	235,025	2,086	746	83
Kentucky ^d	410,533	2,500	b	b
Louisiana	b	b	b	b
Maryland	2,197,753	6,376	3,524	222
Massachusetts ^d	905,679	3,546	b	256
Michigan	1,980,800	1,445	b	b
Minnesota	647,084	b	292	253
Missouri	b	b	b	b
Montana	321,559	1,514	b	b
Nebraska	99,686	1,900	b	35
Nevada	b	b	b	b
New Jersey	2,353,996	3,000	579	691
New Mexico	b	b	b	b
New York	6,832,279	1,948	366	2,952
North Dakota ^c	135,145	1,500	1,039	45
Ohio	9,185,519	4,900	1,239	1,236
Oklahoma	b	b	b	b
Oregon	623,000	1,700	491	212
Pennsylvania	1,068,000	2,600	672	375
Rhode Island	b	12,548	b	19
South Carolina	b	b	b	b
Tennessee ^d	801,452	8,500	b	b
Texas	1,252,068	2,856	763	346
Virgin Islands	137,967	3,696	696	23
Virginia	485,462	2,940	271	202
Washington	2,628,634	2,088	210	1,189
West Virginia	b	b	b	b
Wisconsin	1,400,000	2,600	458	437

Source: Compensating Victims of Crime: An Analysis of American Programs, National Institute of Justice, Department of Justice, July 1983, pp. 184-195.

^aExcept as otherwise noted, these costs are for 12-month periods ranging from July 1979 to December 1981.

^bNot available.

^c24-month period.

^dExcludes administrative costs.



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-197739

AUG 17 1983

The Honorable Robert W. Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties, and the
Administration of Justice
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

During the hearing conducted by your subcommittee concerning H.R. 3086 on June 22, 1983, some differences arose between our testimony and the Department of Justice's. The differences related to the Federal Bureau of Investigation (FBI) sharing information in its on-line computer network on a protected witness' criminal history with State and local criminal justice agencies requesting this information. We pursued this question with officials of the FBI to reconcile the differences expressed during the hearings. The FBI has reviewed and concurs with the facts contained in this letter. As requested by your office, this letter details the results of our subsequent work.

In our testimony, we stated that because of security concerns, the Department of Justice has not cross-indexed the criminal arrest records of protected witnesses under their old identities to their new identities in the National Crime Information Center's (NCIC) on-line computer criminal history file. Consequently, a check of the NCIC's criminal history file in the new identity of a protected witness would produce a "no-record" response even if the witness had been arrested under his/her old identity. This concerned us because such responses are very likely to be inaccurate. Over the years the Marshals Service has estimated that 95 percent of the protected witnesses have prior criminal backgrounds.

Contrary to our testimony, the Marshals Service's comments on this matter at the hearing implied that a mechanism existed to ensure that law enforcement officials checking NCIC's criminal history file under the new identity of a protected witness

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will receive a correct response concerning the past criminal activities of that witness. The Marshals Service official stated that if a law enforcement agency requested the criminal history of a witness under the new identity, the requestor would not get an on-line response indicating the witness' past record. Rather, the request would be flagged at FBI headquarters, and the FBI would notify the Marshals Service. The Marshals Service would then advise the FBI to respond to the request. All this would occur within 72 hours of the request. The Marshals Service then stated that on-line requests related to traffic violations and misdemeanors by protected witnesses would not be responded to at all.

In an effort to reconcile these differences, we met with representatives of the FBI responsible for operating its various criminal information systems. We discussed the existing procedures for disseminating a protected witness' criminal record. Essentially, there are two ways to determine whether a person has a criminal record. One is to submit through the mail a fingerprint card or name-check request to the FBI's Identification Division. The second is to make an on-line inquiry of the NCIC's criminal history file--the Interstate Identification Index. According to FBI officials these systems work as follows in relation to protected witnesses.

Regarding the first method, the Justice Department has established a mechanism to provide a protected witness' criminal record identified through a fingerprint or name search to a requesting agency. The FBI has placed flags on the fingerprint cards of protected witnesses in its files. When a fingerprint card or name check is matched to a card with a flag, routine processing is halted and the FBI determines the reason for the flag. If the flag relates to a protected witness, the FBI notifies the Marshals Service of the nature of the inquiry (e.g. an arrest, or employment or licensing matter) and the identity of the inquirer. The Marshals Service then has up to 72 hours to advise the FBI whether to respond routinely (mail the criminal record) or whether the record should be personally delivered by an FBI agent who would caution the recipient on the possible dangers to the witness from uncontrolled disclosure. FBI officials told us they always provide the criminal record when a fingerprint or name match is made on a witness. They said it did not matter whether the request related to a misdemeanor or an employment or licensing check. FBI officials emphasized that

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the credibility of their criminal information system would be undermined if they did not take this approach.

Regarding the second method--querying the Interstate Identification Index--it is important to understand that there have been recent changes in NCIC's criminal history file. The original file was called the Computerized Criminal History (CCH). The CCH file was a centralized on-line data bank established in November 1971. It contained the criminal records for about 2 million individuals. According to the FBI, the criminal records of protected witnesses were excluded from CCH because of security concerns and the fact that it was well known in the criminal justice community that CCH was a limited and incomplete system.

The Index which replaces CCH is a more decentralized system and presently contains information on about 7 million individuals. Basically, the Index will either refer requestors to State(s) having a criminal record for a queried individual or indicate that the person has a record at the FBI. A follow-up request can be made to the appropriate agency to obtain the records. The Index was established by combining records in the CCH file with those in the FBI's Automated Identification Division System. With limited exceptions (e.g. criminals who are subjects of wanted notices or are under parole/probation supervision and instances involving incorrect fingerprint readings), the latter system contains the criminal records of only those persons whose first arrest was on or after July 1, 1974.

In contrast to the CCH file, the FBI made no effort to purge the criminal records of protected witnesses when establishing the Index. FBI officials said the Index includes the criminal records of about 600 protected witnesses. Although they could provide no estimate, FBI officials told us that most of these 600 records would be retrievable only under a protected witness' old identity. They said that records would be cross-indexed between a witness' old and new identity only if two conditions are met--(1) the witness had been arrested under both his/her old and new identity, and (2) the witness' initial arrest (except as noted in the above paragraph) occurred on or after July 1, 1974. Thus, according to FBI officials, the criminal records of almost all witnesses in the program are presently not retrievable from the Index under their new identities.

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FBI officials said that inquiries into NCIC criminal histories are coded by purpose and can be related only to one of the following general reasons: administrative, criminal justice, employment or licensing, and review or challenge of a record. Inquiries made for criminal justice purposes cannot be further broken down as to whether they relate to traffic violations, misdemeanors or felonies.

With regard to notifying the Marshals Service, FBI officials told us that all inquiries of the Index for detailed records are recorded to provide an audit trail on system use as required by law (5 U.S.C. 552(c)). The records disseminated are compared daily with the 600 protected witnesses in the Index. If it is determined that information on a protected witness was disseminated through the Index, the FBI informs the Marshals Service within 24 hours. We were not aware of this comparison and notification procedure at the time of the hearing before your subcommittee.

Our discussion with FBI officials largely substantiates the comments we made before your subcommittee. FBI officials stated that except for a few witnesses, they have not cross-indexed the arrest records of protected witnesses from their old identities to their new identities within NCIC's on-line criminal history file. FBI officials related two reasons for this situation. The first concerns the impact such an action could have on program security. The second involves political concerns that cross-indexing would give the FBI the ability to improperly monitor and conduct surveillance over protected witnesses through its criminal information system.

There is an obvious difference in the Department's basic disclosure policy on sharing a protected witness' criminal record through a name and fingerprint search and through NCIC's on-line criminal history file. The importance of this difference is enhanced with the development and continued growth of the Index because it is a more comprehensive, and thus useful, on-line system than CCH. We plan to continue pursuing the desirability of maintaining an incomplete Index with respect to protected witnesses and to determine whether the Department's concerns can be resolved or mitigated as a part of our review for you.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director

(181740)





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