SCARS OF SURVIVAL

GUN VIOLENCE AND BARRIERS TO REPARATION IN THE USA

AMNESTY INTERNATIONAL

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Ambulances outside the Medical Examiner's office where victims from the mass shooting at the southwestern Virginia University, Virginia Tech were taken April 16, 2007 in Roanoke, Virginia.
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1. EXECUTIVE SUMMARY

> ***"Surviving day to day is almost as bad as the event, as being shot"***
>
> Sara Cusimano, gunshot survivor

Gun violence in the USA is a human rights crisis. Over half a million-people died of gunshot injuries between 2001 and 2017 and a further 1.3 million people sustained firearm-related injuries. This report focuses on the survivors of gun violence – many of whom experience what can be life-threatening and life-changing injuries. Being shot is a violent and traumatic event that can leave the survivor with lifelong effects and debilitating pain; this research examines the challenges that gunshot survivors experience when trying to access health care and other forms of support following their injury. It also evaluates the effectiveness of existing federal and state mechanisms for compensation.

The research considers federal and state annual reports on victim compensation programmes, academic studies that quantified the costs of treatment for firearm injuries and information from public record requests that Amnesty International filed with relevant state authorities. Quantitative data, particularly around health costs and victim compensation payments, disaggregated for firearm injury, is not easily or uniformly available in the USA. Where this existed, Amnesty International has included an analysis of quantitative data and secondary literature to supplement the conclusions and main themes that emerged from its discussions with survivors. Survivors are often hesitant to participate in research due to numerous sensitivities associated with their circumstances. In compiling this report, Amnesty International interviewed 25 gunshot survivors as well as dozens of carers, health workers, public health experts, social workers, advocates and activists in three states – Miami, Tampa, Baltimore and New Orleans – with differing levels of gun violence and different approaches to providing remedy and reparation to survivors. In March 2019, Amnesty International sent the authorities responsible for the victim compensation programmes in Louisiana, Maryland, and Florida letters informing them of the summary findings of this report and asking specific questions. In June 2019, Amnesty International sent relevant authorities a summary of the findings of this report, requesting their response. Where authorities have responded, and institutions shared information with Amnesty International, it has been included in the text of this report.

> ***"A bullet can wind up a long way from where it enters the body, shredding tissue and organs, and splintering bones along the way."***
>
> Dr Thomas Scalea, Director of the R Adams Cowley Shock Trauma Center

In 2018 Amnesty International published a report, *In the Line of Fire: Human Rights and the US Gun Violence Crisis*, which framed firearm violence in the USA as a human rights crisis. The report argued that the US government has failed to meet its obligations to exercise due diligence to protect people's rights to life, security of the person and other human rights, including by failing to exercise adequate control over the purchase, possession and use of firearms by private actors. Most notably, the US government has failed to implement a comprehensive, uniform and coordinated system of gun safety laws and regulations.

Scars of survival: gun violence and barriers to reparation in the USA considers whether the US government has met its obligation under international human rights law to provide effective remedies, including reparation, to gun violence victims and survivors. Full and effective reparation for harms caused includes: rehabilitation in the form of medical and psychological care; compensation for economically assessable harms, including lost opportunities and the costs of medicine and medical services; and the provision of psychological and social services. It also includes access to information about all available medical, psychological, social, administrative and other services which survivors may have a right to access.

OBSTACLES TO ACCESSING HEALTH CARE AND REHABILITATION

Being shot is a life altering experience. Gunshot survivors have to deal not only with trauma, fear and anxiety after their injury, but can also face long-term chronic and often severe pain and disability. The effects of the injury often dictate their future options and opportunities, including the kind of jobs they can do, where they can live and to what extent they are able to participate in community and public life.

Despite the gravity of the impact of gun violence, the state does not provide survivors with access to any specifically designed support and benefits. Survivors have to rely on the same mechanisms and systems to access health care as others in the USA and face a range of challenges in this process. Survivors of violence, especially those on lower incomes, often face numerous economic barriers while trying to access the health care they need. This situation is often exacerbated by the fact that they are unable to return to work until they have fully recovered. Even for those who sustain less serious injuries, this increases survivors' economic vulnerability.

The costs of health care emerged as a key concern among the gunshot survivors, carers and health-care workers who spoke to Amnesty International. A study by the Johns Hopkins University found that the average charge for a visit to the emergency department for each person who was shot was US$5,254 and the average charge for initial hospitalization (that is, the charge for each person admitted to hospital

through the emergency room) was US$95,887. While the costs will obviously depend on the nature and severity of the injuries, in some cases gunshot survivors also require long-term health care to address their injuries and the consequences of being shot. These can involve significant additional costs.

The cost to the individual or their family will depend on the gunshot survivor's insurance status. Regardless of whether and how an individual is insured, health care in the USA will likely incur some out-of-pocket costs. Those who are uninsured (usually because they cannot afford insurance) can be left responsible for catastrophic medical expenses. Gunshot survivors told Amnesty International how they were often burdened by financial problems which have long-term consequences.

> ***"Even basic follow up care after being shot is challenging… if a patient is unfunded and uninsured, they have to rely on charity care for rehabilitation, wound care, etc."***
>
> Dr Marie Crandall, Professor of Surgery, University of Florida College of Medicine Jacksonville

Gunshot survivors repeatedly told Amnesty International that bureaucracy and paperwork were among the key barriers they faced in accessing long-term health care. They described the difficulties they had making and keeping medical appointments, seeking information about which health professionals and services were covered by their insurance and maintaining personal records, especially at a time when they were often also trying to come to terms with changes in their health, family lives, jobs or job prospects following the shooting. Survivors also referred to the need for assistance to enable them to navigate a fragmented and complicated system to access the health care and other support they needed to achieve the best recovery possible.

LIMITATIONS OF CRIME VICTIM COMPENSATION PROGRAMMES

> ***"It's a nightmare. I think the process of getting victim compensation is as traumatic as the experience itself."***
>
> Megan Hobson, gunshot survivor

Crime victim compensation funds are often the only public programmes available to victims and survivors of gun violence. These serve all victims of crime and are typically run by states, with support from federal funding. They offer financial assistance and partial reimbursement to individuals who incur out-of-pocket

expenses as a direct result of a violent crime. Statistics indicate that the number of victim compensation applications filed represents a very small fraction of all victims of crimes. In 2017, for example, 1,247,321 violent crimes occurred across the USA, but only 294,990 applications for victim compensation were filed nationwide (representing around 23.6% of the crimes committed). Determinations were made in 217,208 applications, of which 77% were deemed eligible for some amount of compensation and 23% were denied.

ELIGIBILITY REQUIREMENTS

While eligibility requirements differ across states, in general they require the victim or their family to undertake a number of steps, within a specific period of time, in order to get compensation. For example, in some states, victims, including gunshot survivors, with prior felony convictions are not eligible to access victim compensation funds. Such eligibility requirements are a key reason why gunshot survivors or the families of victims are often unable to access victim compensation funds.

In 2017, state victim compensation boards denied or closed 22% of applications nationwide for victim compensation because the applicant was considered ineligible. In 2017, in Louisiana, for example, 1,113 claims were approved by the Louisiana Victim Compensation Board and 90 claims were denied. A majority of the denials were linked to eligibility requirements: 43 victims were denied compensation on the grounds that they had a prior felony conviction and 33 because they were deemed to have "contributed" to the crime.

LIMITS ON COMPENSATION AMOUNTS

Victim compensation funds cover specific types of expenses. Usually these include medical expenses, including mental health; counselling and dental expenses; funeral/burial expenses; economic support; crime scene clean up; and relocation.

States often set an upper limit for the amount of money that applicants can claim, both in any individual expense category and overall. These amounts are frequently insufficient to reimburse the full costs of rehabilitation or to compensate victims for other economically assessable harms. As a consequence, gunshot survivors who have no other source of funds (e.g. insurance) to meet health-care expenses are left to cover a large part of these costs themselves.

LACK OF INFORMATION AND AWARENESS

Lack of information and awareness about victim compensation programmes emerged as a significant problem in Amnesty International's interviews with gunshot survivors, carers and health-care workers. Several survivors and their families said that they were not aware of the victim compensation programme around the time of the shooting. A few who knew about it said that they were unsure what expenses it covered. Most states appear to have some standard routes through which they disseminate information about the victim compensation fund. However, even when such systems are in place, they appear to be ineffective as the information is not reaching those who require it. For example, Walker Gladden, a resident of Baltimore, told Amnesty International that he was not aware that he could approach the victim compensation fund for financial assistance and support when his son was fatally shot in 2016. He was not given any information, by the police or at the hospital where his son was taken about the victim compensation process or that he might be eligible for these funds.

CUMBERSOME PROCESS

Victim compensation funds are structured as a fund of last resort and applicants therefore have to demonstrate that they have exhausted all other sources of financial support before approaching them. The application process is cumbersome, requiring significant amounts of form filling and supporting documentation. Amnesty International researchers spoke to survivors who said that dealing with this level of bureaucracy at a stressful time when they or a close family member had been shot was extremely taxing and difficult. In 2017, the most common reason for denying or closing a victim compensation application across all US states was incomplete information; around 24% of all denials were because applications were not complete, showing the extent to which completing the paperwork may act as a barrier to accessing victim compensation.

CONCLUSIONS AND RECOMMENDATIONS

Gun violence in the USA is a human rights crisis. By failing to adequately regulate the purchase, possession and use of firearms by private actors, the US government has failed to meet its obligations to exercise due diligence to protect people's rights to life, security of the person and other human rights. It therefore has a responsibility to provide effective remedies, including reparation, to the victims and survivors of gun violence.

Under international human rights law, this should include medical and psychological care, compensation for economically assessable harms, as well as access to information about all available services which survivors may have a right to access. As this report shows, the US government is failing to comply with its obligations and ensure gunshot survivors have access to effective remedies, including reparation.

Despite the seriousness of the physical and mental harm that gunshot survivors often suffer, the US government has not created any special programmes to provide for the specific health and rehabilitation needs of gunshot survivors. Interviewees told Amnesty International about the numerous challenges they faced in accessing health care, notably the high costs of care along with the bureaucracy associated with accessing existing systems of health care and other support, such as housing.

Under existing systems, whether the person shot is covered by Medicaid, Medicare or privately insured, they are likely to need to personally cover part of the costs of their health care. Gunshot survivors who are uninsured are saddled with large medical bills and debilitating debt. Even where survivors are insured, they can struggle to find health professionals who accept their insurance. As a result, gunshot survivors, whatever their circumstances and wherever they live, can be left in precarious situations.

Victim compensation funds are the only public programmes available to victims and survivors of gun violence to seek any form of compensation and these are inadequate. While the programmes in Maryland, Louisiana, and Florida function slightly differently, stringent eligibility requirements, limits on compensation amounts, a lack of information and awareness about these programmes, and a cumbersome application process mean that they often fail to provide survivors of gun violence with full and effective compensation.

Amnesty International therefore calls on US federal and state authorities, including states legislatures, to ensure that gunshot survivors can access their right to reparation. In particular they should:

1. Ensure that survivors of firearm violence have access to rehabilitation, including affordable and quality medical and psychological care, which includes necessary, long-term health interventions, rehabilitation services, mental health care and long-term pain management.
2. Ensure that survivors of firearm violence are fully informed about the health care and other benefits they are eligible for and have the assistance they require to access, obtain and manage them.
3. Revise existing crime victim compensation programmes or establish additional mechanisms to ensure that all survivors of gun violence can access full and effective compensation addressing all forms of economically assessable harms they have suffered. This includes removing inappropriate and arbitrary eligibility barriers to compensation; establishing effective outreach programmes to inform victims of gun violence of their ability to claim compensation; taking steps to facilitate the process of accessing victim compensation funds; and allocating sufficient funds to provide full and effective compensation to victims without imposing arbitrary ceilings on awards.

A full list of recommendations can be found at the end of this report.

2. METHODOLOGY

This report builds on Amnesty International's 2018 report *In the line of fire: Human Rights and the US gun violence crisis (In the line of fire)*, which framed gun violence in the USA as a human rights crisis.[1] It argued that in the face of clear evidence of persistent firearm violence, and easy access to firearms for individuals likely to misuse them, the US government is failing to meet its obligation to protect and promote human rights and prevent violations.

Scars of survival: surviving gun violence and barriers to reparation in the USA, builds on those findings and examines the extent to which gunshot survivors can access essential long-term health care, support, rehabilitation, and compensation. It argues that in light of the US government's glaring failure to exercise due diligence to protect people from firearm violence by private individuals, the state has a responsibility to ensure that victims are provided with full and effective reparation to address the harms they have suffered.

This report is based on interviews carried out by Amnesty International researchers in four cities across three US states: Miami and Tampa, Florida; New Orleans, Louisiana; and Baltimore, Maryland in January, April, August and September 2018. These cities were chosen because they represent different approaches to regulating health care (for example, whether Medicaid – a federal and state programme that supports health costs for some people on lower incomes – has been expanded or not); different models for victim compensation (for example, whether people with prior felonies can access victim compensation funds or not); differing levels of rates of poverty (based on US census data from 2017);[2] and differing rates of firearm violence (based on US Center for Disease Control and Prevention (CDC) statistics).[3]

- Louisiana, in the southern USA, has one of the highest rates of poverty in the country, with about 20% of its population living below the poverty threshold.[4] Levels of gun violence are high across the state and in its cities; the state has the fourth highest firearm death rate in the country, and New Orleans

1. Amnesty International, *In the Line of Fire* (2018), available here: https://www.amnestyusa.org/wp-content/uploads/2018/09/Gun-Report-Full_10.pdf [*"In the Line of Fire"*].

2. US Census Bureau, Poverty 2016 – 2017, Table1, page 4, available here: https://www.census.gov/content/dam/Census/library/publications/2018/acs/acsbr17-02.pdf

3. See here for the 2017 CDC statistics: https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm

4. The federal poverty guidelines are specified by the size of a household. In 2017, the guidelines stated as follows: US$12,060 for one person; US$16,240 for a household of two; US$20,420 for a household of three; etc. More details are available here: https://aspe.hhs.gov/2017-poverty-guidelines#threshholds

has the fourth highest homicide rate of all US cities.[5] Louisiana has expanded Medicaid and, at the time of interviews, did not allow people with certain types of prior criminal convictions to access victim compensation funds.[6]

- Florida, also in the south, is a relatively poor state, with 14% of its population living below the poverty threshold.Levels of gun violence are average for the US; Florida has the country's 29th highest firearm death rate. The cities of Miami and Tampa have the 33rd and 36th highest homicide rates of all US cities. Florida does not have expanded Medicaid and also does not allow people with certain types of prior criminal convictions to access victim compensation funds.
- Maryland, on the eastern seaboard, is one of the richest states in the USA, with an overall poverty rate of less than 10%. In most of the state, levels of gun violence are relatively low, although much of the poverty and gun violence is concentrated in the city of Baltimore, which has the second highest homicide rate in the country. Maryland has expanded Medicaid and permits people with prior criminal convictions to access victim compensation funds.

Amnesty International faced two significant challenges in gathering evidence for this report. It was often difficult to identify, locate and contact gunshot survivors. Through the research, Amnesty International found that gunshot survivors were often reluctant to participate in research studies: some do not want to appear "weak" as a result of their injuries; some are involved in court cases or other proceedings; others fear compromising their medical or social benefits. In addition, data on access to health care and national victim compensation schemes is often not disaggregated by firearm injury, making it more difficult to obtain and analyse quantitative data on this issue.

Working within these limitations, Amnesty International identified survivors through local organizations and activists, journalists and medical staff. Researchers interviewed 25 gunshot survivors, women and men, in the four target cities between August and September 2018. In addition, researchers interviewed 11 people who were past or current carers for a gunshot survivor and 17 health workers, including trauma surgeons, who have worked extensively with gunshot survivors. Amnesty International also spoke to 40 public health experts, advocates, social workers, journalists covering gun violence, victim advocates, human rights activists and non-profit service providers about the challenges survivors face in accessing care and support. The names of some of those who spoke to Amnesty International have been withheld in this report, at their request.

Amnesty International analysed federal and specific state annual reports on victim compensation and academic studies that quantified the costs for treatment for firearm injuries. Quantitative data, particularly around health costs and victim compensation payments, disaggregated for firearm injury, is not easily or uniformly available in the USA. Where this existed, Amnesty International has included an analysis of quantitative data and secondary literature to supplement the conclusions and main themes that emerged from our discussions with survivors, health workers and experts.

Amnesty International researchers also met representatives from the Maryland Criminal Injuries Compensation Board and the Louisiana Crime Victims Reparations Fund in September 2018 and

5. The Trace has sourced the murder rate of major US cities Murder Rates per 100,000 residents, based on data from FBI Uniform Crime Reports (2017). F Mirabile and D Nass "What's the Homicide Capital of America? Murder Rates in U.S. Cities, Ranked", 27 September 2018, available here: https://www.thetrace.org/2018/04/highest-murder-rates-us-cities-list/

6. At the time of writing, the Louisiana legislature had passed legislation that prohibits the state's Crime Victims Reparations Board from denying an application for financial assistance because of a victim's criminal history. This was still pending assent by the governor.

corresponded by email with representatives of the Bureau of Victim Compensation at the Florida Office of the Attorney General. In December 2018, Amnesty International filed public record requests with these institutions, asking for a range of information around the operation of the victim compensation funds. This included the number of applications for victim compensation made and approved in 2017-18 where a firearm was used in the crime; copies of all applications for victim compensation made between 1 July 2017 and 31 December 2017; and annual expenditure for the fiscal year 2016 and 2017 on public information and awareness. All three institutions responded, although not with all the information requested.[7]

In March 2019, Amnesty International sent these institutions letters informing them of the summary findings of this report and asking specific questions. In June 2019, Amnesty International sent relevant authorities a summary of the findings of this report, requesting their response. Where authorities responded, and institutions shared information with Amnesty International, this has been included in the text of this report.

This report does not look at on remedies for survivors of firearm violence by law enforcement and other state actors – Amnesty International has previously documented the excessive use of lethal force by police.[8] Rather, it focuses on reparation for survivors of firearm violence carried out by private individuals, the area where gaps in state protection is greatest. Furthermore, suicides account for a significant percentage of firearm-related deaths in the USA (around 60% as of 2017).[9] While this raises several human rights concerns, many of which are documented in *In the line of fire*, these are not the focus of this report.

Amnesty International would like to express our profound gratitude to all those who shared their stories; without them this report would not have been possible. Amnesty International would also like to thank Dr. Jennifer Avegno, Director, Department of Health, New Orleans, Louisiana; Dr. Sonita Singh, Principle Investigator, Tulane University School of Public Health and Tropical Medicine, New Orleans, Louisiana; Dr. Peter Scharf, Professor, School of Public Health, Louisiana State University; Frannie Grissom, Coordinator, Trauma Survivors Network, University of Maryland Medical Center; Elizabeth Banach, Executive Director, Marylanders to Prevent Gun Violence; and the staff at the University of Maryland Medical Center and University Medical Center New Orleans. We are also grateful to Dr Tanya Zakrison, a trauma and acute care surgeon at Ryder Trauma Center (Miami) who reviewed an early draft of this report and to Elizabeth Van Brocklin, reporter at *The Trace* (an independent, nonprofit news organization dedicated to expanding coverage of guns and gun violence in the USA) for her advice on methodology.

7. Officials from all three state governments responded to Amnesty International's requests for information, however, they were not all able to provide the information requested. The Governor's Office of Crime Control and Prevention, Maryland, for example, said "there were no documents responsive to request no. 4", that is, annual expenditure on public information and awareness about the victim compensation program. They provided answers to all other questions. In response to Amnesty International's request to see all applications for victim compensation made to the Louisiana Crime Victims Reparations Board between 1 July 2017 and 31 December 2017, the Louisiana Commission on Law Enforcement said it would cost $ 2,540 to access copies of the 1527 applications filed in this period. Amnesty International chose to not pursue this route in light of the costs involved. The Louisiana Commission on Law Enforcement provided answers to all other questions. The Office of the Attorney General (Florida) said they had "no responsive records to requests" on how many applications involved instances of firearm violence, and annual expenditure on public information and awareness about the victim compensation program; and said our request to see all applications for victim compensation between 1 July 2017 and 31 December 2017 was "exempt from the Public Records Act pursuant to section 119.071(2)(j)1, Florida Statutes". They provided details on how they disseminated information on the victim compensation program, and the number and costs of staff associated with the program.

8. See, for example: Amnesty International, Deadly Force : Police Use of Lethal Force in the United States (2015), available at: https://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf.

9. Data sourced from the Centers for Disease Control and Prevention, Fatal Injury Reports, National, Regional and State, 1981 – 2017, available here: https://webappa.cdc.gov/sasweb/ncipc/mortrate.html [CDC Fatal Injury Reports, 1981 – 2017]

3. BACKGROUND

WILLIAM "TIPPER" THOMAS

"A lot of people don't understand how long it takes to recover from a gunshot wound. There is the physical aspect, but then the mental and emotional aspect takes much longer…this impacts how I think about the future… Will I be able to dance at my wedding? What if I have kids, can I keep them safe, can I play with them … All these questions come from the shooting, it happens because I was shot"

William "Tipper" Thomas, gunshot survivor[10]

William "Tipper" Thomas was a high-school student when he was shot and injured in 2004. Two young men, one aged 17, opened fire on a crowd of students in a school parking lot following a basketball game.

Tipper was rushed to hospital and estimates that his medical costs in the immediate aftermath – including multiple emergency operations, hospital stays and specialists' fees – were around US$1.5 million. Tipper told Amnesty International that he was happy with care he received at the hospital, but more support post recovery support would have been good. As a result of the shooting, Tipper has only one lung and is paralysed from the waist down.

Despite his injuries, with the support of his family and friends, Tipper was able to go back to school and is now working as an engineer. He has also set up an organization committed to providing financial relief and emotional support to victims and their families as they recover from a traumatic injury. He does a lot of mentorship work: "I work with survivors of trauma who cannot walk again and help them understand what that life looks like and how to cope".

10. Interview with Amnesty International, Baltimore, 13 September 2018

3.1. SCALE OF GUN VIOLENCE

Gun violence in the USA is pervasive. According to the CDC, more than half a million people died of gunshot injuries in the USA between 2001 and 2017.[11] In 2017 alone, there were 39,773 firearm deaths; about 38% of these were homicides, 60% were suicides and the rest were accidental or undetermined.[12] Firearm fatalities are overwhelmingly male (85%)[13] and disproportionately young.[14] The CDC estimates the rate of firearm death is about twice as high for people who are identified as black by the CDC than for those who are identified as white.[15] Looking more specifically at the CDC's firearm homicides data, men identified by the CDC as young and black are more than 10 times as likely to be killed by a firearm than young white men.[16]

> ***"Surviving day to day is almost as bad as the event, as being shot"***
>
> Sara Cusimano, gunshot survivor

Although popular discourse around gun violence tends to focus on the number of people killed, more than twice as many people who are shot survive.[17] The CDC estimates that more than 1.3 million people were shot and injured between 2001 and 2017, with the totals tending to increase year on year. By 2017, an average of around 366 people a day nationwide were shot and survived.[18] When the data from 2001 to 2017 is disaggregated by gender and age, the pattern is similar to that of firearm deaths: men are more than eight times as likely to be shot and injured as women;[19] younger adults are most at risk;[20] and those identified as black by the CDC are at the highest risk.[21]

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11. CDC Fatal Injury Reports, 1981 – 2017. According to the CDC, 554,773 people have died of gunshot injuries between 2001 and 2017.

12. CDC Fatal Injury Reports, 1981 – 2017.

13. CDC Fatal Injury Reports, 1981 – 2017. Of a total of 554,773 deaths related to firearms between 2001 and 2017, 477,402 men were killed and 77,371 women were killed.

14. CDC Fatal Injury Reports, 1981 – 2017. The highest crude rates for firearm deaths are amongst people who are 20 to 24 years old (19.62) and 25 to 29 years old (17.29).

15. CDC Fatal Injury Reports, 1981 – 2017. The crude rate of firearm deaths for deaths between 2001 and 2017 for those identified as black is 19.51 per 100,000, and for those identified as white is 9.74 per 100,000.

16. CDC Fatal Injury Reports, 1981 – 2017. For deaths between 2001 and 2017, the CDC estimated that crude rate for white men between 20 to 24 years old was 8.66 and between 25 to 29 was 7.37; while the crude rate for black men between 20 to 24 years old was 92.68 between 25 to 29 was 82.58.

17. Data sourced from the CDC, Nonfatal Injury Reports, 2000-2017, available here: https://webappa.cdc.gov/sasweb/ncipc/nfirates.html [CDC Nonfatal Injury Reports, 2000-2017]. According to the CDC, between 2001 and 2017, 1,337,953 were shot and survived.

18. CDC Nonfatal Injury Reports, 2000-2017. The CDC estimates 133,895 non-fatal firearm injuries estimated for 2017. While gun homicides tend to be accurately recorded, there are no nationwide records kept specifically on non-fatal gunshot injuries, so the totals are difficult to confirm prone to fluctuation. Investigators for the Trace have queried the methodology, particularly the small sample size, and have noted that the 2016 figure of more than 116,000 injuries is a significant increase over the 85,000 estimated for 2015, and that the increase is not reflected in other datasets. See: S Campbell, D Nass, et al, "The CDC says gun injuries are on the rise, but there are big problems with its data", *The Trace*, 4 October 2018, available here: https://www.thetrace.org/2018/10/cdc-nonfatal-gun-injury-data-estimate-problems/. On the other hand, gunshot injuries also tend to be under-reported by hospitals, which may list only the resulting injury rather than the cause, and because those with minor gunshot injuries may not have them treated in hospitals at all.

19. CDC Nonfatal Injury Reports, 2000-2017. 1,190,787 men and 146,789 women were shot and injured. The crude rate for men is 46.57 and for women is 5.55.

20. CDC Nonfatal Injury Reports, 2000-2017. The crude rate for the adults of ages between 15 to 19 is 64.42; between 20-24 is 91.39; and between 25-29 is 64.63. Compare this to the crude rate between 50 to 54 which is 11.91, and 60 to 64, which is 6.77.

21. CDC Nonfatal Injury Reports, 2000-2017. The CDC does not calculate crude rates by race and ethnicity for non-fatal firearm injuries. However, according to their data, 498,383 of a total of 706,370,185 people identified as black were injured by a firearm, and 308,206 of a total of 3,396,646,805 people identified as white were injured by a firearm during the same time period.

Although people who have been shot can generally access emergency trauma care in the USA, survivors can suffer debilitating and complex injuries, requiring repeated surgery and hospitalization. They often face a lifetime of increased health-care needs, chronic pain and permanent disability. Many are uninsured or underinsured. They have difficulty accessing adequate follow-up care, pain management, rehabilitation and ongoing physical therapy, as well as the mental health care needed to address the profound psychological consequences of being shot (see Chapter 4). Firearm injuries often have a permanent impact on the survivor's physical and mental health, as well as a deep and lasting emotional and financial impact on their families, friends and even entire communities.

"Gun violence needs to be seen as a symptom, rather than the root cause, of the problem…the bullet hole is the smallest aspect of the ripple effect of gun violence."

Dr Rishi Rattan, trauma surgeon at the Ryder Trauma Center, Miami[22]

The causes of gun violence, and its increased prevalence in certain communities, are linked to multi-faceted and entrenched issues around poverty, discrimination and inadequate employment opportunities. As David Hemenway, Professor of Health Policy and Director of the Harvard Injury Control Research Center, has noted: "There's no question that if there were no mental health problems, if no one had anger or alcohol problems, we'd have less violence. If we had less poverty and inequality, we'd have less violence. If we didn't have racial tensions, we'd have less violence. If we had better education and better parenting, we'd have less violence".[23]

These factors, combined with easy access to firearms, are among the key drivers of gun violence in the USA. Addressing the root causes of gun violence – and community-level violence more generally – is beyond the scope of this report. However, it is clear that without preventive action, care and support for gunshot survivors – while necessary – can be no more than a "band-aid".[24]

In its earlier report, *In the line of fire*, Amnesty International highlighted the urgent need for measures aimed at reducing the risk and likelihood of people being injured or killed by firearms. Furthermore, public health groups have been calling for firearm violence to be understood and recognized as a public health problem and for urgent measures to reduce its consequences, including more research on the issue and the implementation of urgent solutions.[25]

22. Interview with Amnesty International, on the phone, 10 December 2018.

23. "Off the Cuff: What don't we know about the causes of gun violence? Almost everything" Harvard Public Health Magazine 2016, available here: https://www.hsph.harvard.edu/magazine/magazine_article/off-the-cuff-what-dont-we-know-about-the-causes-of-gun-violence-almost-everything/

24. Dr. Marie Crandall, University of Florida College of Medicine, Jacksonville. Interview with Amnesty International, on the phone, December 2018.

25. See for example: "Over 100 Medical and Public Health Organizations Call for Federal Gun Research" 6 April 2016, available here: http://www.drsforamerica.org/press-releases/over-100-medical-and-public-health-organizations-call-for-federal-gun-research; "Health professionals declare gun violence a public health threat" 5 March 2018, available here: https://www.nurse.com/blog/2018/03/05/health-professionals-declare-gun-violence-a-public-health-threat/; "Firearm-Related Injury and Death in the United States: A Call to Action From 8 Health Professional Organizations and the American Bar Association" 7 April 2015, available here: https://annals.org/aim/fullarticle/2151828/firearm-related-injury-death-united-states-call-action-from-8

3.2. WHY GUN VIOLENCE IS A HUMAN RIGHTS ISSUE

> ***"Given the potential harm and devastating impact of the misuse of firearms on the enjoyment of human rights, public policies with respect to civilian access to firearms should be reviewed and formulated through a human rights lens."***
>
> Office of the United Nations High Commissioner for Human Rights (2016)[26]

The prevalence of gun violence in the USA raises serious human rights concerns, particularly around the rights to life and security of person. States have a positive obligation to prevent violations of the right to life by taking measures to address actual or foreseeable threats to life. Some forms of firearm violence are largely predictable, with foreseeable consequences. Firearm possession in the home is a well-documented risk factor for all forms of firearm violence,[27] including intimate partner homicide. And firearm violence in particular cities and neighbourhoods is known to be prevalent and persistent.[28] If, in the face of clear evidence of persistent firearms violence, a State does not exercise adequate control over the possession and use of arms by private actors, then it is in breach of its obligations under international human rights law. Persistent community-wide firearm violence can also undermine the enjoyment of economic, social and cultural rights, such as the right to health and the right to education.[29]

Amnesty International's 2018 report, *In the line of fire*, undertook a critical assessment and analysis of laws, policies, existing research and incidents of gun violence in the USA. It reviewed and analysed US federal and state case law and legislation governing the regulation of firearms and their acquisition, possession and use by private individuals. Amnesty International developed a clear set of criteria for assessing whether or not states have met their obligations to protect human rights, including the rights to life and security of person, in the context of gun violence by private individuals in non-conflict settings.[30]

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26. OHCHR, Human rights and the regulation of civilian acquisition, possession and use of firearms, A/HRC/32/21, 15 April 2016, paragraphs 52, 54, available here: www.documents-dds-ny.un.org/doc/UNDOC/GEN/G16/078/72/PDF/G1607872.pdf?OpenElement

27. A Anglemyer et al, "The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-analysis" Annals of Internal Medicine vol. 160 (2), 21 January 2014, available at: http://annals.org/article.aspx?articleid=1814426

28. Office of Policy Development and Research, U.S. Department of Housing and Urban Development, "Neighbourhoods and Violent Crime", Summer 2016, available here: https://www.huduser.gov/portal/periodicals/em/summer16/highlight2.html

29. OHCHR, Human rights and the regulation of civilian acquisition, possession and use of firearms, A/HRC/32/21, 15 April 2016, paragraph 52, available here: www.documents-dds-ny.un.org/doc/UNDOC/GEN/G16/078/72/PDF/G1607872.pdf?OpenElement

30. See *In the Line of Fire*, pp. 30 – 39. The US is a party to the International Covenant on the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). It has also signed but not ratified other treaties which are of relevance such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination on all Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC). Under international law, while not legally bound, as in the case of treaties it has ratified, the United States must refrain from acts that would defeat the object and purpose of the treaties it has signed.

States' responsibilities to prevent firearm violence, as part of their obligation to protect the right to life and other human rights,[31] require two interrelated approaches:

i. Restricting access to firearms and ammunition, especially by those most at risk of misusing them; and

ii. Taking effective steps to put in place and implement violence reduction or protection measures where firearms misuse persists.

The USA has both the highest absolute and highest per capita rates of gun ownership in the world.[32] Yet the US government has failed to implement a comprehensive, uniform and coordinated system of gun safety laws and regulations. Instead, a patchwork of inconsistent and inadequate federal and state laws governs the training, licensing and registration of firearms.

For example, although US federal law prohibits the purchase and possession of firearms by people convicted of serious crimes, including domestic violence, it does not currently require universal comprehensive background checks on all firearm purchases or transfers, nor does it have any provision to recover weapons from those who have become prohibited persons. Background checks prior to firearm purchases are a crucial safeguard against firearms ending up in the hands of those likely to misuse them. However, it is possible to circumvent this requirement[33] and one survey showed that 22% of all lawful firearm transfers are conducted without any background check.[34]

Even when a background check is required, it may not be sufficiently comprehensive or accurate because relevant records are often not properly and/or promptly submitted for inclusion in state and federal databases.

As of 2018, individuals could lawfully carry concealed firearms in public in every state in the USA: 38 states required permits for concealed carry, although the basis for issuing them varies widely, and 12 states did not require any permit or licence. Forty-five states allowed the open carrying of firearms in public in some form, however, there is no nationwide uniformity in laws governing the carrying of firearms in public.[35]

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31. The ICCPR protects all persons' right to life and right to security of person. States have a positive obligation not only to ensure that they do not engage in acts that would pose a threat to the right to life and security of person but to also prevent violations of the right to life by private individuals by taking measures to address actual or foreseeable threats to the right to life. States must exercise due diligence to prevent, punish, investigate and ensure effective remedies, including reparation, for victims not only for violations by their own agents but abuses by private actors which would negatively impact the right to life. They are also under an obligation to protect individuals from foreseeable threats to life or bodily integrity from private actors. This includes responding appropriately to "patterns of violence against categories of victims" including women experiencing domestic or other gender-based violence, and children. Due diligence in the context of gun violence by private individuals, includes the duty of the state to take steps towards reducing and preventing violent acts against individuals and communities. In communities where gun violence has led to chronic insecurity, states' obligations are to protect life and ensure security for all through human rights-compliant law enforcement; community interventions and tightening regulations on firearms possession and use. The UN Human Rights Committee, an expert body which monitors states' implementation of the ICCPR, has stressed the obligation of states to "protect their populations… against the risks posed by excessive availability of firearms." See generally UN Human Rights Committee, General comment No. 36, UN Doc. CCPR/C/GC/36, 30 October 2018, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf and UN Human Rights Committee, General comment No. 35, UN Doc. CCPR/C/GC/35, 16 December 2014, available at: https://bit.ly/2JjM68w

32. *In the Line of Fire*, p 8.

33. *In the Line of Fire*, p 107: There are four ways an individual purchasing a firearm may circumvent a legally required background check: (1) by arranging a purchase through a private seller rather than an FFL; (2) if the background check takes more than three working days; (3) if they have a firearm permit from a state where such a permit overrides the federal requirement to pass a background check; or (4) by presenting false or forged identification documents which are not required to be verified at the point of sale. Purchasers may also avoid background checks in numerous other ways, including by using a straw purchaser (someone who buys a gun for someone else), purchasing from a "dirty dealer" (dealers who intentionally violate or fail to comply with the law) or by purchasing firearm parts separately and building a "ghost gun" (a self-manufactured firearm without a serial number).

34. M Miller et al, "Firearm Acquisition Without Background Checks: Results of a National Survey" Annals of Internal Medicine, 21 February 2017, available at: https://annals.org/aim/fullarticle/2595892/firearm-acquisition-without-background-checks-results-national-survey

35. *In the Line of Fire*, "Regulating the carrying of firearms in public" page 122.

Another gap in state and federal laws is the failure to require unlicensed gun dealers and private gun owners to report the loss or theft of firearms. Lost and stolen guns fuel the underground illicit gun market, allowing prohibited purchasers and others to obtain the guns used to carry out violent crimes. Stolen and trafficked guns not only facilitate human rights violations and abuses, but also hamper the investigations to hold those responsible to account.

Certain types of firearms and ammunition represent a dangerously high risk to public safety because they are likely to cause excessive or unintended injury or large-scale casualties or fatalities. Such arms include semi-automatic assault rifles, semi-automatic shotguns, semi-automatic submachine guns and large-capacity magazines. A federal ban on "bump stocks", which enable semi-automatic weapons to mimic an automatic firing cycle, was enacted in March 2019, requiring all such devices to be destroyed.[36] However, there is no federal law regulating the domestic use, possession or sale of these types of weapons and few states prohibit the possession or sale of firearms included in the definition of assault weapons.

Although the impact of gun violence on those living in the USA has frequently been characterized as "a public health crisis", federal legislation, known as the "Dickey Amendment", which prohibits the use of federal funds to "advocate or promote gun control", has effectively restricted federal funding for firearm research through the CDC for more than 20 years.[37] A compromise reached in March 2018 clarified that the amendment should not prohibit the funding of research into the *causes* of gun violence. Nevertheless, the legislation itself has not been withdrawn and even after the compromise a lack of dedicated and adequate government funding means there has been no increase in research into the causes of gun violence.[38] Such restrictions on gun violence research have left researchers, policy makers and experts inadequately resourced to fill huge gaps in knowledge about the causes, consequences and prevention of gun violence.

These failures by the authorities to fully acknowledge, let alone address, the national epidemic of gun violence – particularly in light of the large number of firearms in circulation – perpetuate unrelenting and potentially avoidable violence. No part of US society is unaffected by gun violence, although some individuals and groups are disproportionately at risk of death or injury. Failure to implement adequate policies and measures to address access to firearms by private individuals has far-reaching consequences, particularly for young African-American men, children, victims of domestic violence, people at risk of self-harm and the families of gun violence survivors. Where firearm violence is already prevalent – including in many deprived urban contexts in the USA – there is a lack of well-funded, long-term, evidence-based violence reduction interventions.

The US government has failed to meet its obligations to exercise due diligence to protect people's rights to life and security of person and other human rights.[39] It has failed to exercise adequate control over the purchase, possession and use of firearms by private actors. Under international human rights law, the state therefore bears responsibility for providing effective remedies, including reparation, to the victims and survivors.

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36. B Chappell, "Bump Stock Ban Takes Effect As Gun Rights Groups Ask Supreme Court For Delay" NPR, 26 March 2019, available at: https://www.npr.org/2019/03/26/706905757/bump-stock-ban-takes-effect-as-gun-rights-groups-ask-supreme-court-for-delay

37. US Government, Public Law 104–208, 110 STAT. 3009, 30 September 1996, available here: https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf

38. J Greenburg, "Spending bill's gun research line: Does it nullify Dickey amendment?" Politifact, 27 March 2018, available here: https://www.politifact.com/truth-o-meter/article/2018/mar/27/spending-bills-gun-research-line-does-it-matter/

39. In addition to the rights mentioned above, *In the Line of Fire* contains analysis of how the nature and levels of firearm violence in the US impacts economic, social and cultural rights and how it intersects with gender-based violence. See Chapter 1, "Firearm Violence: A Human Rights Framework" *In the Line of Fire*, p 24.

3.3. THE RIGHT TO EFFECTIVE REMEDY AND REPARATION

All victims of human rights violations have a right to effective remedy. This right lies at the very core of international human right law. It also stems from a general principle of international law that every breach gives rise to an obligation to provide a remedy.[40] The right to effective remedy has been recognized under various international and regional human rights treaties and instruments[41] and also as a rule of customary international law.[42]

The right to effective remedy requires states to provide all victims of human rights violations with:

i. Equal and effective access to justice;

ii. Adequate, effective and prompt reparation for harm suffered; and

iii. Access to relevant information concerning violations and reparation mechanisms.[43]

Reparation – measures to repair the harm(s) caused to victims of human rights violations – can take many forms. The forms of reparation in each case should take into account the nature of the right violated, the harm suffered and the wishes of those affected. Reparation must be full and effective. As a general principle, this means that it must seek to remove the consequences of the violation and, as far as possible, restore those who have been affected to the situation they would have been in had the violation not occurred.[44] Recognizing that in many cases of human rights violations this may not be possible, including where persons have suffered serious injuries or loved ones have been killed, reparation must seek to repair the harm suffered by victims as far as possible.

There are five recognized forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[45]

Restitution: This is intended to restore the victim to the original situation that they were in before the abuse took place and includes, as appropriate, "restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property".[46]

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40. Chorzów Factory (Germany v. Poland), 1928 Permanent Court of International Justice (ser. A) No. 17, at para 73 (Sept. 13). "[I]t is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation."

41. Article 8, Universal Declaration of Human Rights, Article 2 (3), International Covenant on Civil and Political Rights, Article 2, International Covenant on Economic, Social and Cultural Rights, Article 6, International Convention on Elimination of all Forms of Racial Discrimination, Article 2, Convention on the Elimination of all forms of Discrimination Against Women, Article 14, Convention Against Torture, Article 25, American Convention on Human Rights, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34, 29 November 1985; and UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006, amongst others.

42. Prosecutor v. André Rwamakuba, Case No. ICTR- 98-44C, Decision on Appropriate Remedy, para 40 (31 January 2007); and Cantoral-Benavides v. Perú, 2001 Inter-Am. Ct. H.R. (ser. C) No. 88, at para 40 (Dec. 3, 2001).

43. Principle 11, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006; UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34, 29 November 1985; UN Human Rights Committee General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 26 May 2004

44. Chorzow Factory Case (Germany v. Poland), 1928 P.C.I.J. (ser. A) No. 17, para 125.

45. Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 16, Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (article 12), UN Doc. E/C.12/2000/4, 11 August 2000, para 59,, Principle 18, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.

46. Principle 19, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006

Compensation: monetary compensation should be provided for economically assessable harm. This includes "(a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; and (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."[47]

Rehabilitation: This includes any medical and psychological care needed by the victim as well as support from legal and social services.[48]

Satisfaction: This covers a broad range of measures which will be applicable as appropriate to the circumstances and includes: verification of the facts and full and public disclosure of the truth; a public apology, including acknowledgement of the facts and acceptance of responsibility; and judicial and administrative sanctions against those responsible for the violation.[49]

Guarantees of non-repetition:[50] The prevention of further abuses can be achieved through a number of measures, any or all of which will contribute to non-repetition in the future. For example, changes in laws to prevent discrimination or ensuring that proper oversight mechanisms are put in place, may be necessary to guarantee non-repetition. Failure to investigate and prosecute crimes that result in human rights violations is a key driver of impunity and further violations and abuses. Prosecution systems which ensure that those responsible for human rights violations and abuses are prosecuted, in a manner that respects their rights to a fair trial, can also be an effective guarantee of non-repetition.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power encourages the establishment, strengthening and expansion of national funds for compensation to victims.[51] It calls on governments to ensure that victims receive "the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means".[52] It also states that "Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them."[53]

Many survivors of gun violence suffer from injuries that have a long-term life-changing impact on them and their families. The need for health care can extend well beyond the immediate emergency treatment after the shooting to the care required to address a range of long-term, serious and debilitating health conditions. Without adequate and timely support, rehabilitation and compensation it is difficult, and sometimes impossible, for survivors to rebuild their lives.

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47. Principle 20, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.

48. Principle 21, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.

49. Principle 22, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.

50. Principle 23, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.

51. Principle 13, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34, 29 November 1985.

52. Principle 14, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34, 29 November 1985.

53. Principle 15, UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/R Interview with Amnesty International, Miami, 29 August 2018.

Compensation and rehabilitation are two key components of the right to reparation. Yet the US government has not created any special programmes to provide for the rehabilitation needs of gunshot survivors. As a result, survivors, especially those on lower incomes, face numerous economic barriers when trying to access the health care they need. Like other survivors of violence, their situation may be made worse, even if they have less serious injuries because they are unable to work while they recover. The following chapters focus on the scale of health needs of gunshot survivors and the challenges they face in getting access the care and support they need.

4. ACCESS TO HEALTH CARE AND REHABILITATION

MEGAN HOBSON[54]

Megan Hobson was 16 years old when she was shot in Miami in 2012. She was in her sister's car, dropping a friend off after a birthday dinner, when people began shooting around them. Hobson was shot in the crossfire by two bullets from a high-powered assault rifle and was rushed to the hospital. Emergency treatment saved her life, but she continues to live with health conditions linked to the shooting, including difficulties walking, complications caused by bullet fragments in her uterus and the need for mental health care and support.

Hobson told Amnesty International that she was still in debt because of the medical bills she incurred for treatment after she was shot: "I was a victim, I had nothing to do with my crime. I was just in the wrong place at the wrong time according to detectives. But today, I cannot tell bill collectors I was in the wrong place at the wrong time and expect my debt to disappear".

Although Hobson had health insurance, she still incurred costs associated with emergency health care (around US$50,000) and her recovery in hospital (around US$35,000). The injuries caused by the shooting were severe and Hobson continues to need regular health care for which she has to pay. For example, she has a leg brace to aid with walking, which cost US$800. She needs to visit a podiatrist regularly because of the calluses on her feet linked to her use of the leg brace. The most conveniently located podiatrist does not take her insurance and she needs to pay him US$50 per session. She told Amnesty International, "If I could go every week, it would be US$200 a month, but because of budget constraints I try to stretch it to as much as once every 2-3 months." Hobson visited a psychiatrist briefly, but her insurance did not cover these sessions and the cost was prohibitive. Hobson's case was declared inactive because there were no leads. Today, she is an activist working with gunshot survivors nationally, providing them with trainings and safe spaces to heal. She is also the Miami coordinator of the national network crime survivors, Crime Survivors for Safety and Justice.

54. Interview with Amnesty International, Miami, 29 August 2018.

Despite its obligation to provide survivors with effective remedy, including reparation, the US government has not created any special programmes to provide for their rehabilitation needs. As a result, survivors – many of whom have serious and long-term health care needs – rely on inadequate mechanisms and systems to access health care. Like others with long-term health-care needs in the USA, they face barriers and challenges in accessing the care they require. This chapter looks at the health care needs of gunshot survivors and the response of the current health system in providing survivors with the care and support they need.

4.1. GUNSHOT SURVIVORS' HEALTH CARE NEEDS

> ***"A bullet can wind up a long way from where it enters the body, shredding tissue and organs, and splintering bones along the way."***
>
> Dr Thomas Scalea, Director of the R. Adams Cowley Shock Trauma Center[55]

> ***"I got shot three times. Three different times I mean. The second time I got shot, I drove myself to the hospital. My people called the ambulance and 20 minutes passed… I took my car and drove myself to the hospital. I knew I couldn't wait."***
>
> Gunshot survivor[56]

It is difficult to give a general estimate of what health needs a gunshot survivor may have because the extent and nature of the injuries vary widely. However, what is clear is that being shot is traumatic event and can result in extremely painful and potentially life-threatening or fatal injuries.

In 2016, M. was shot by her partner. She told Amnesty International: "I got shot at close range with a .22, right in the side of my chest … it almost killed me cause my lung collapsed". She ran out of her house and was taken to hospital by some passers-by. "That bullet went nearly all the way through… I thought I was going to die… it was very hard cause it blew right through me, through my kidney and there was a lot of blood, and the man [in the car] told me I had to press on it hard or I was going to bleed out and die".[57]

55. Interview with Amnesty International, 13 April 2018.

56. Interview with Amnesty International, New Orleans, 12 September 2018.

57. Interview with Amnesty International, New Orleans, 12 September 2018.

Dr Rishi Rattan, a trauma surgeon at the Ryder Trauma Center in Miami, told Amnesty International: "One of the first issues is getting [the wounded person] to a hospital as quickly as possible… Access to trauma care is crucial. The longer someone has to wait to get to a trauma centre, the worse their outcomes are, and the higher their chance of death".[58]

Depending on the severity of the injury, the need for emergency health care can be extensive. Antonius Wiriadjaja, who was shot in New York in July 2013, explained: "a bullet entered my chest between two ribs, destroyed my spleen, hit my pancreas and lodged itself in my stomach. I was cut open and my guts were pinned down while they repaired my stomach, removed the top of my pancreas and took out my spleen. In the process of surgery, they had to reconstruct my diaphragm, put a breathing tube in my left chest below the armpit and place me in a four-day coma".[59]

After the emergency trauma care, follow-up regular and quality health care is crucial. Gunshot injuries can result in a range of long-term, serious and debilitating health needs. Gunshot survivor Derrick Strong told Amnesty International that he had "at least eight or nine [follow up surgeries] maybe more. They had to put a rod in my left leg, and they had to remove bullets from my left arm and fix the fracture. I had about seven operations alone on my kidney and bladder, not to mention another one on my intestine where they had to cut me open the first time, then another to get bullets out of my back. I think that's all. But I still got one bullet left, in my hip".[60]

"Being shot in your dominant hand can mean a permanent disability and pain. If you are shot in the head, you have a poor chance of survival, and if you do survive, chances of brain damage are high and permanent injury are high… People shot in the back are likely to face paraplegia and quadriplegia", Dr Marie Crandall, a surgeon at the University of Florida College of Medicine Jacksonville told Amnesty International.[61]

Dr Rishi Rattan told Amnesty International that people shot in the abdomen "can experience leakages of stool, need colostomy bags, and can have lifelong problems including with wounds, which can lead to malnutrition".[62] Other survivors will be in pain for the rest of their lives. Elijah J, aged 17, spoke to Amnesty International six months after he had been shot in the leg and after his fifth operation for what doctors would classify as a non-life-threatening injury. When he spoke to Amnesty International, he had a plate inserted in his lower leg to hold the bones together and was undergoing procedures for skin grafts, tissue infection and vascular reconstruction. He was in a lot of pain and was unsure if he would be able to make a full recovery. He told Amnesty International he was not sure he would ever be able to move his ankle properly, and doctors warned him that one leg might be shorter than the other.[63]

It is difficult to have a general estimate of what health needs a gunshot survivor may have, as the scale and nature of the injury can vary widely.

58. Interview with Amnesty International, on the phone, 10 December 2018.

59. *In the Line of Fire* page 96. See also Antonius Wiriadjaja's blog (reproduced with permission of author) here www.gunsurvivor.antoni.us/

60. Interview with Amnesty International, New Orleans, April 2018, as quoted in In the Line of Fire, page 96.

61. Interview with Amnesty International, on the phone, 7 December 2018.

62. Interview with Amnesty International, on the phone, 10 December 2018.

63. Interview with Amnesty International, April 2018, as quoted in In the Line of Fire – 96,

According to the US National Spinal Cord Injury Statistical Center, acts of violence (primarily gunshot wounds) are the third most common cause of spinal cord injury.[64] Their estimates suggest that since 2015, about 30% of people with spinal cord injuries are re-hospitalized one or more times during any given year following injury, usually for problems associated with the uro-genital system, skin diseases, as well as respiratory, digestive, circulatory and musculoskeletal diseases. In the longer term, they are at risk for developing a range of other health conditions, including bladder and bowel dysfunction, cardio-vascular disease, cysts, spinal cord pain, osteoporosis and fractures and breathing difficulties.[65] It is therefore evident that survivors need access to sustained and regular health care to prevent morbidity and premature mortality.

Gunshot injuries can also have profound psychological consequences for those who are wounded, their families and their communities.

"It is often easy for us to fix the actual bullet hole. But the holes that the gunshot creates in people's minds still remains", Dr Rishi Rattan explained.[66] A 2016 study that examined the needs of victims of gun violence after they were discharged from hospital in Chicago described patients as "having flashbacks, and feeling anxious, scared, and depressed" and requesting mental health support for themselves and their families.[67]

> ***"There is a real need for mental health support… this needs to be dealt with as a priority. For gunshot survivors, even hearing news about other shootings can be traumatizing."***
>
> Gunshot survivor[68]

Many people Amnesty International spoke to echoed this and emphasized the importance of having access to mental health care and support in the aftermath of their injury. This is also true of the families of people who have been shot. For example, a woman whose son died from a gunshot injury told Amnesty International: "When my son got killed I went into a deep depression… I couldn't even go out of the house and was always looking over my back and thinking that I am going to get shot too."[69]

64. National Spinal Cord Injury Statistical Center, Spinal Cord Injury Facts and Figures at a Glance, 2019 SCI Data Sheet, available at: https://www.nscisc.uab.edu/Public/Facts%20and%20Figures%202019%20-%20Final.pdf

65. https://www.sci-info-pages.com/other-health-issues.html

66. Interview with Amnesty International, on the phone, 10 December 2018.

67. D Patton et al, "Post-Discharge Needs of Victims of Gun Violence in Chicago: A Qualitative Study" Journal of Interpersonal Violence, 1–21 (2016). This study looked at the self-identified post-discharge needs of patients injured by gun violence and is based on data from 10 trauma registry patients (9 black men and one black woman) between the ages of 18 and 40 who had been injured by firearm violence.

68. Interview with Amnesty International, Miami, 29 August 2018.

69. Interview with Amnesty International, New Orleans, 12 September 2018.

SARA CUSIMANO

In 1994, when Sara Cusimano was 13, she was kidnapped, raped and shot in the head.

Her father's insurance did not cover the full costs of her emergency treatment. However, her family was eventually able to afford care because relatives and friends collected the necessary money through community fundraising at local events and the hospital also wrote off a big part of the cost. Cusimano told Amnesty International:

"That took care of my initial stay. Then it became more of an issue to access care on a regular basis, especially mental health care. PTSD [post-traumatic stress disorder] wasn't as well known then, so I had to find people who were able to treat it. I remember it cost US$25,000 to access therapy… You could get care, but you would have to pay for it."

Cusimano was able to access some treatment for her PTSD through the money her family and friends collected, although this was far from sufficient. Being shot has meant a lifetime of health care complications for her. Cusimano had brain surgery eight years ago and neck surgery four years ago linked to her gunshot injury. She still suffers chronic migraines, back and neck pain and faces further surgery and still worries that the "bullet that didn't kill me then, still might."

"It's been 24 years, and every health event I have had has been linked to that shooting", she told Amnesty International. Cusimano knew from when she was very young that she had to find some way to access insurance. "This has always been a consideration", she said. While she is insured now, costs still add up. "My co-pay is around $50 a month, medication costs around $50 a month. My deductible is $6000. I have a teaching union job that gives me insurance, but my salary is not so high. I have three kids. I am divorced. I don't have a lot of extra cash lying around".

"Access to care is such an ignored part of this issue", Cusimano told Amnesty International, "the fact that people who are shot are not getting appropriate physical and mental health care is not talked about or recognized". Sara believes that she has been "lucky", she has always had supportive health care providers and is insured today. "My health care is a luxury, but it is not the norm", she said.[70] Today Cusimano is an activist with the grassroots movement Moms Demand Action for Gun Sense in America.

70. Interview with Amnesty International, New Orleans, 7 September 2018.

4.2. UNAFFORDABLE: HEALTH CARE FOR GUNSHOT SURVIVORS

Federal and state governments in the USA have not created any special programmes to provide for the rehabilitation needs of gunshot survivors.[71] This means that those affected by gun violence must seek medical and psychological care through the general health system, where they face numerous economic barriers to accessing the health care they need, especially if they are on low incomes. Even those who sustain less serious injuries may find their situation is made worse by the fact that they are unable to work while they recover. Survivors who are left with permanent disabilities that prevent them undertaking full-time paid work or whose injuries require long-term treatment face the greatest challenges in accessing affordable medical and psychological care.

4.2.1 OVERVIEW OF THE US HEALTH SYSTEM

Access to health care in the US is fragmented: some people have private health insurance, others are covered by some form of government-supported health insurance, and some do not have any insurance. Most people with full-time jobs are covered through their employer, although the quality of plans and the cost to the employee vary enormously. Full-time workers who are not covered by their employers are left to buy insurance themselves.

The government administers two health insurance programmes: Medicare and Medicaid. Medicare is a federally administered system that provides health insurance for older people and certain categories of people with disabilities, such as those who receive disability benefits from the social security administration.[72] Those eligible for Medicare in different states would enjoy the same coverage.

Medicaid is a programme jointly run by the state and federal government that provides health coverage for some people on low incomes.[73] Following the 2010 Affordable Care Act, states had the opportunity to expand Medicaid coverage to nearly everyone on very low-incomes (including certain categories of single people who had not been covered before). This includes people who are classified as living in "deep poverty"; that is, below half the poverty threshold. As of 2018, 37 states had expanded Medicaid.[74] The Veterans Administration is responsible for universal coverage of care to military personnel and their families.

In 2017, a total of 28.5 million people (8.8% of the total population) did not have any health insurance at all.[75] This was for a variety of reasons, including the cost of insurance, the decision by some states not to expand Medicaid and a lack of information about enrolment.[76] People who are uninsured are most vulnerable to exorbitant health-care costs and more likely to refrain from accessing health care.

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71. There have been some recent legislative efforts in this area, including the recently introduced "Resources for Victims of Gun Violence Act", the text is available here: https://www.casey.senate.gov/download/resources-for-victims-of-gun-violence-act-bill-text

72. As of February 2019, 60,605,828 people were enrolled in Medicare, available at: https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Dashboard/Medicare-Enrollment/Enrollment%20Dashboard.html

73. Initially, Medicaid covered low income families, qualified pregnant women and children, and certain categories of people with disabilities. As of December 2018, 65,852,256 individuals were enrolled in Medicaid. See December 2018 Medicaid & CHIP Enrollment Data Highlights, available at: https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html

74. https://www.medicaid.gov/medicaid/index.html

75. US Census Bureau, Health Insurance Coverage in the United States: 2017, available at: https://www.census.gov/library/publications/2018/demo/p60-264.html

76. Henry J Kaiser Family Foundation, Key Facts about the Uninsured Population, December 2018, available at: https://www.kff.org/uninsured/fact-sheet/key-facts-about-the-uninsured-population/

Health care in the USA is rarely free and those needing treatment will usually have to pay something towards the cost. Medicare, Medicaid and private insurance plans usually involve some form of cost sharing (though this is minimal in the case of Medicaid and low in the case of Medicare), including premiums (regular payments for keeping coverage), deductibles (a dollar amount that must be met before services are covered) and co-payments (dollar amounts people must pay when they receive services):

- Medicaid: Cost sharing in Medicaid is minimal as it is designed for people on lower incomes. However, states may charge premiums for people at a certain income level and may ask adults to contribute to the costs of certain health services. Overall, these costs should not exceed 5% of household income.[77]
- Medicare: Medicare coverage is made up of parts A, B C and D, all covering different aspects of health care. Part A covers hospital expenses, for example, and Part B is insurance to cover medical services and goods.[78] All can involve premiums, deductibles, and co-insurance (the need to pay a percentage of service costs). In 2019, depending on individual circumstances, the premium for Part A could be up to US$437; and the deductible for Part A was US$1,364 for each benefit period. The premium for Part B was at least US$135.5, and the deductible was US$185 per year, after which at least 20% of service costs need to be paid for.[79]
- Private insurance: The coverage and costs of private insurance depend on the nature and quality of the plan. For example, a study by the Kaiser Family Foundation found that on average people covered by employer-sponsored health insurance, contributed US$1,186 for single coverage for their premiums; had an average deductible of US$1,573; and paid an average co-payment of US$25 per appointment for primary care, US$40 per appointment for specialty care, and US$284 per hospital admission.[80]

People who are not insured potentially pay the full costs of their care.

A study by researchers from Stanford University published in 2017 found that 6% of gunshot survivors who received trauma care were covered by Medicare; 29.1% were covered by Medicaid; 21.4% were privately insured; and 29.4% were defined as self-pay (meaning they did not have insurance).

As this graph indicates, a greater percentage of people with firearm injuries are uninsured or supported by public insurance compared to the general population.[81]

77. For more details, see "Cost Sharing Out of Pocket Costs", available here: https://www.medicaid.gov/medicaid/cost-sharing/out-of-pocket-costs/index.html and Henry J Kaiser Family Foundation "Medicaid and CHIP Eligibility, Enrollment, Renewal, and Cost Sharing Policies as of January 2018: Findings from a 50-State Survey" 21 March 2018, available here: https://www.kff.org/report-section/medicaid-and-chip-eligibility-enrollment-renewal-and-cost-sharing-policies-as-of-january-2018-findings-from-a-50-state-survey-premiums-and-cost-sharing/ I

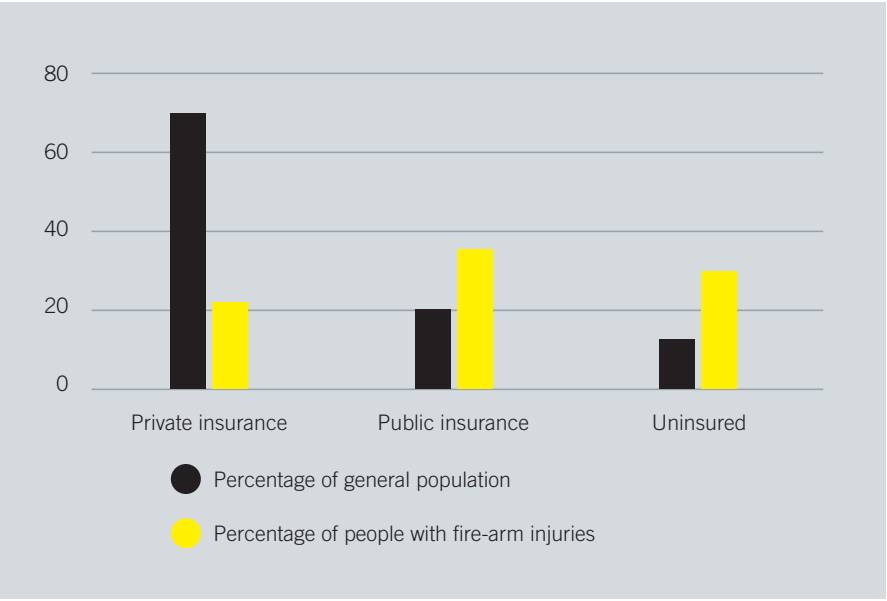
78. https://www.medicare.gov/what-medicare-covers

79. https://www.medicare.gov/your-medicare-costs/medicare-costs-at-a-glance

80. Henry J Kaiser Family Foundation, Employer Health Benefits – 2018 survey, available here: http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2018

81. S Spitzer et al, "Costs and Financial Burden of Initial Hospitalizations for Firearm Injuries in the United States, 2006–2014" American Journal of Medical Health, 11 April 2017 available at: https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2017.303684. This research used data from the Healthcare Cost and Utilization Project Nationwide Inpatient Sample to identify and analyze initial hospitalizations caused by firearm-related injuries. This included information regarding 267265 patients who were admitted for firearm-related injuries from 2006 through 2014.

Insurance status



NOTE ON DATA

Large-scale health system data disaggregated by firearm injury is not readily available. It is difficult to estimate what kind of follow-up health care gun violence survivors need and how much this costs because in most cases, after their care in the emergency room, this information is not classified by the cause of injury but by the nature of injury.

Furthermore, certain federal laws effectively discourage research on gun violence and its impact. For example, the 1996 "Dickey Amendment" (see Section 3.2 above) states that "none of the funds made available for injury prevention and control at the Center for Disease Control and Prevention may be used to advocate or promote gun control".[82] effectively limiting the ability of the CDC to research firearm injuries. This has been included by the US Congress in every annual spending bill that funds the CDC.[83] A 2018 clarification noted that the CDC may research gun violence prevention; however, this has not yet resulted in dedicated and adequate funding to conduct the research.[84]

82. US Government, Public Law 104–208, 110 STAT. 3009, 30 September 1996, available here: https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf

83. S Zhang, "Why Can't the U.S. Treat Gun Violence as a Public-Health Problem?" The Atlantic, 15 February 2018, available here: https://www.theatlantic.com/health/archive/2018/02/gun-violence-public-health/553430/

84. J Greenburg, "Spending bill's gun research line: Does it nullify Dickey amendment?" Politifact, 27 March 2018, available here: https://www.politifact.com/truth-o-meter/article/2018/mar/27/spending-bills-gun-research-line-does-it-matter/

4.2.2 COSTS OF EMERGENCY AND LONG-TERM HEALTH CARE

> ***"Trauma care is not free. Most people do end up making some payments, and [for people who are not insured] these can be destructive."***
>
> Dr Marie Crandall[85]

Under the US Emergency Medical Treatment and Active Labor Act (EMTALA), a federal law enacted in 1986, everyone is entitled to receive emergency medical treatment, whether or not they are insured or can afford to pay for it.[86] However, while hospitals are required by law to provide necessary emergency medical treatment, they are not required to waive costs.[87] Medicaid and Medicare cover all emergency costs. Most private insurance also covers emergency health care. However, depending on the type of insurance they have, people are often left with residual costs. Those who are uninsured (usually because they cannot afford insurance in the first place) can be left responsible for ruinous medical expenses.

A study by researchers at Johns Hopkins University published in 2017 looked at the costs of care for people who came to emergency departments across the country with a firearm injury between 2006 and 2014.[88] This included people who were discharged after being treated in the emergency room as well as those who needed hospitalization for more complex injuries. The study found that about 37% of gunshot victims treated in emergency departments were hospitalized. The average charge per person for a visit to the emergency department was US$5,254 and the average per person charge for being hospitalized in the emergency department was US$95,887 (for those who spend time in a long-term recovery or rehabilitation unit, the costs would be higher). According to the authors, this study likely underestimates costs since it does not account for costs of care for people who died before reached the hospital or who did not go to an emergency department after sustaining a firearm-related injury.

Another study by researchers from Stanford University published in 2017 looked at the costs of initial hospitalizations for firearm injuries from 2006 to 2014.[89] Unlike the previous analysis, this looked at all hospitalizations and was not limited to emergency departments. The study also looked at actual costs,

85. Interview with Amnesty International, on the phone, 7 December 2018.

86. https://www.healthcare.gov/using-marketplace-coverage/getting-emergency-care/

87. See page 26 for how some hospitals write off costs of care for patients who cannot afford it.

88. F Gani, S Sakran et al, "Emergency Department Visits For Firearm-Related Injuries In The United States, 2006–14" Health Affairs 36 (10), October 2017, available at: https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.0625?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub%3Dpubmed. This study used data from the Nationwide Emergency Department Sample to assess trends and costs associated with emergency department visits for firearm-related injuries. Their findings were based on data from 150,930 patients, a weighed sample of the total.

89. S Spitzer et al, "Costs and Financial Burden of Initial Hospitalizations for Firearm Injuries in the United States, 2006–2014" American Journal of Medical Health, 11 April 2017 available at: https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2017.303684. This research used data from the Healthcare Cost and Utilization Project Nationwide Inpatient Sample to identify and analyze initial hospitalizations caused by firearm-related injuries. This included information regarding 267265 patients who were admitted for firearm-related injuries from 2006 through 2014.

not what people might be charged (costs are often lower than charges).[90] It found that 6% of patients were covered by Medicare; 29.1% were covered by Medicaid; 21.4% were privately insured; 29.4% were defined as self-pay (meaning they did not have insurance); and 14.1% were not charged by the hospital or had alternative forms of insurance.

The study found that over 80% of self-pay patients were not likely to have a high household income and were "unlikely to be able to absorb health care costs". In addition, patients who were not insured, often faced much higher charges for their treatment than would have been the case if they had been insured. This was because they did not benefit from support from the insurance company to negotiate and reduce the charges. Again, this study is limited as it does not include the costs of readmissions, rehabilitation, long-term care or disability.

The total actual cost associated with being shot has not been extensively researched and there are limited studies on the costs of long-term care for survivors of firearm violence. A recent study on readmission costs for firearm injuries found that the total initial admission cost for firearm injuries in the one year the study reviewed was US$1.45 billion nation-wide, and the total cost for all firearm injury related readmissions in that one year was US$131 million. Some 64% of those injured by firearms were publicly insured or uninsured.[91]

The cost of emergency treatment and how it is covered depend on the patient's insurance status, the nature of their insurance and where they sought treatment. People who are on low incomes and are uninsured can be left in a precarious situation because they are expected to pay for the treatment themselves.

While hospitals cannot refuse to provide emergency treatment to someone who needs it, regardless of health insurance status or ability to pay, they can chose to bill those who are not insured for the costs of their emergency care.[92] Therefore, gunshot survivors who are not insured or who are left with some residual costs for their treatment, even after having been insured, are responsible for making these payments. Amnesty International spoke with N. who was shot seven times in 1998. Although since the passing of the Affordable Care Act, N. has been covered by Medicaid, she did not have coverage at the time she was shot and was therefore liable for the costs of her emergency treatment. She told Amnesty International: "So what happened before Medicaid was the hospital come and try and collect and try to give you a bill even if it was [for the] emergency room. They can send you a bill, really they can keep sending you bills if they know who you are, they send you bills all the time."[93]

90. "Cost" is the expense incurred by providers to deliver health care services to patients. "Charge" is the amount asked by a provider for a health care good or service, which appears on a medical bill. Charges are usually higher than costs, https://journalofethics.ama-assn.org/article/challenge-understanding-health-care-costs-and-charges/2015-11

91. R Rattan et al "Hidden Costs of Hospitalization After Firearm Injury: National Analysis of Different Hospital Readmission" Annals of Surgery 267(5):1 September 2017. The study used the 2013 to 2014 Nationwide Readmissions Database to analyse costs and risk factors for patients admitted after firearm injury. 45,462 patients were admitted after firearm injury during the study period.

92. The Emergency Medical Treatment And Labor Act is a federal law that requires hospital emergency departments to screen every person who seeks emergency care and to stabilize or transfer those with medical emergencies, regardless of health insurance status or ability to pay. Hospitals and physicians violating EMTALA are subject to civil monetary penalties and face the threat of Medicare de-certification.

93. Interview with Amnesty International, New Orleans, 12 September 2018.

DWAYNE DILLING

Dwayne Dilling, a 40-year-old man, was shot by armed burglars in his home in August 2015. The bullet hit him in his chest. “It travelled to my spine and it kind of sat there, the bullet didn't go straight through,” he said. He was rushed to the emergency room. He spent five months in the hospital getting care for multiple injuries linked to the shooting including spinal injuries, broken ribs, a collapsed lung, internal haemorrhage and bed sores and ulcers. Dilling estimates that he had between 10 and 20 surgeries. His lower body remains paralysed. “It was madness for me, because I had never been in a hospital for any length of time, no more than a day or so, and so it was all brand new to me,” he told Amnesty International. After the hospital, he was moved to a rehabilitation centre for six weeks.[94]

When Dwayne Dilling was shot, he was insured through his employers. While they covered his initial care, his insurance did not cover his rehabilitation. Therefore, he says, he still owes the rehabilitation centre around US$20,000. “I'm still paying them on a plan, they debit it out of my card, like US$40 every two weeks, but it's the most I could afford, and I really can't even afford that. “It wasn't until I got to [the rehabilitation centre] and I didn't have my insurance [he was not insured by this time] that things started to mount up … you try to block it out, but it's depressing because I've always been a person that wants to pay my bills and do things right, and now my credit is ruined. And so, they throw stuff on your credit sometime without even giving you a chance to pay”.

A social worker found him a different insurance plan. “The premium was so high, it was US$500 a month,” he said. He has changed his insurance provider and enrolled in Medicare. However, he still has co-payments for accessing some aspects of his health care which are covered by his insurance but not by Medicare. “The co-pays are mounting up. I pay them when I can… they're still mounting up and they're constantly coming... because [of] the different things I go to, wound care, urologist… regular primary care, it's all adding up. It's in the thousands [of dollars].” Dilling also struggles with constant pain in his back and chest and had recently been referred to a pain management specialist.

While gunshot survivors are able to access emergency treatment when they are shot, ensuring that their subsequent health needs are met is much harder.

> ***“Even basic follow up care after being shot is challenging … if a patient is unfunded and uninsured, they have to rely on charity care for rehabilitation, wound care, etc.”***
>
> Dr Marie Crandall[95]

94. Interview with Amnesty International, New Orleans, 12 September 2018.

95. Interview with Amnesty International, on the phone, 7 December 2018.

All gunshot survivors and health workers who spoke to Amnesty International noted the challenges and difficulties gunshot survivors face regarding the high costs of long-term health care. They indicated that these challenges existed regardless of a person's health insurance status, although they manifest differently depending on coverage.

For example, gunshot survivors can experience chronic pain related to their injuries and may need access to pain management for several years after being shot. Health workers told Amnesty International about problems accessing care for pain management because people could not afford it. Dr Tanya Zakrison noted that: "Most of our patients [who are shot] do not have primary care physicians. So, they self-treat for their physical and psychological pain with marijuana".[96]

Dr Thomas Scalea told Amnesty International: "If you get shot, and end up with a chronic pain syndrome, you can't work, or you do but you hurt all the time, and we don't have great medicines for that. Most don't have any insurance, so the chronic pain people won't see them, and they don't have access to acupuncture or alternatives that may give them some relief… Even if you have insurance they might not pay, or they will only pay for this much oxy [Oxycodone], and if you've still got pain after that – and you will – you are screwed, you pay for your own or you go out on the street. And guess what? Heroin is a pretty good pain medicine. So, this is kind of a predictable trajectory".[97]

A 2016 study that examined the post-discharge needs of gunshot patients at a university hospital in Chicago echoed some of these concerns and described patients having difficulties getting medicines for their pain management because of lack of medical insurance or financial resources.[98]

EXAMPLE: COSTS OF LIVING WITH SPINAL CORD INJURY

Even those with medical insurance can spend significant amounts of money on their health care, particularly for long-term conditions.

For example, gunshot wounds often result in spinal cord injuries (acts of violence – primarily gunshot wounds – are the third most common cause of spinal cord injury in the USA).[99] Such injuries result in long-term health care needs that can include frequent hospitalization and treatment for a variety of conditions including skin respiratory, digestive, circulatory and musculoskeletal diseases; bladder and bowel dysfunction; cardio-vascular disease; cysts, spinal cord pain, osteoporosis and fractures; and difficulties with respiratory function.[100]

96. Interview with Amnesty International, on the phone, 14 December 2018.

97. Interview with Amnesty International, 13 April 2018, as quoted in In the Line of Fire, page 98.

98. D Patton et al, "Post-Discharge Needs of Victims of Gun Violence in Chicago: A Qualitative Study" Journal of Interpersonal Violence, 1–21 (2016). This study looked at the self-identified post-discharge needs of patients injured by gun violence and is based on data from 10 trauma registry patients (9 black men and one black woman) between the ages of 18 and 40 who had been injured by firearm violence.

99. National Spinal Cord Injury Statistical Center, Spinal Cord Injury Facts and Figures at a Glance, 2019 SCI Data Sheet, available at: https://www.nscisc.uab.edu/Public/Facts%20and%20Figures%202019%20-%20Final.pdf

100. https://www.sci-info-pages.com/other-health-issues.html

The National Spinal Cord Injury Statistical Center has estimated that the average yearly expenses (health care costs and living expenses) for someone living with a spinal cord injury can range from US$368,562 to US$1,129,302 in the first year of the injury, and between US$44,766 and US$196,107 in each subsequent year.[101]

Amnesty International looked at two examples of health insurance plans to model what health-care costs might look like for someone living with a spinal cord injury who has insurance.

Plan A is classified as a "bronze" plan; that is, it has low premiums and high out-of-pocket costs. The average premium for this type of plan for a 40-year-old is approximately US$500 per month.[102] The deductible for the plan is US$4,500 (that is, the insurance only begins to cover costs after the patient has spent US$4,500 that year). There is a 30% co-insurance fee (that is, the percentage of costs of a covered health care service that the patient pays, after the deductible) on every primary care visit, specialist visit, diagnostic test, surgery, hospital stay and rehabilitation visit. These rates can reach 50% if an out-of-network provider is used. The co-insurance for drugs is between 30% and 50%.[103]

Plan B is classified as a "silver" plan; that is, it is considered to have moderate premiums and moderate out-of-pocket costs. The average premium for this type of plan for a 40-year-old is approximately US$650 per month.[104] The deductible for the plan is US$3,200. There is a 20% co-insurance on every primary care visit, specialist visit, diagnostic test, surgery, hospital stay and rehabilitation visit. These rates can reach 40% if an out-of-network provider is used. The co-insurance fee for drugs is between 20% and 40%.[105]

Following the Affordable Care Act, out-of-pocket limits have been established; that is, the maximum a person has to pay for covered services in a plan year.[106]

The average hospital charge in one hospital that made these details public, for bowel surgery is US$37,959.64[107] – which means someone on Plan A could have to pay around US$6,887 and someone on Plan B could have to pay around US$4,391 (assuming the deductible is met). This does not include the costs for routine blood work (US$326), diagnostic testing (US$218) as well as physician fees, such as payments to anaesthesiologists, pathologists, radiologists, cardiologists, emergency room physicians and other specialists who may participate in care.

101. National Spinal Cord Injury Statistical Center, Spinal Cord Injury Facts and Figures at a Glance, 2019 SCI Data Sheet, available at: https://www.nscisc.uab.edu/Public/Facts%20and%20Figures%202019%20-%20Final.pdf

102. https://www.valuepenguin.com/best-cheap-health-insurance-louisiana#metal

103. https://www.bcbsla.com/web/applications/sbcportal/sbcs/2019/19636LA0240011-01.pdf

104. https://www.valuepenguin.com/best-cheap-health-insurance-louisiana#metal

105. https://www.bcbsla.com/web/applications/sbcportal/sbcs/2018/19636LA0240010-01.pdf

106. For example, in 2019, the out-of-pocket limit for a Marketplace plan is US$7,900 for an individual plan and US$15,800 for a family plan, see https://www.healthcare.gov/glossary/out-of-pocket-maximum-limit/

107. This figure is anecdotal and indicative only. See, https://www.hopkinsmedicine.org/the_johns_hopkins_hospital/_docs/jhh_charges.pdf

The challenges of accessing follow-up care are further compounded when the survivors are irregular migrants[108] who are not eligible for Medicare and Medicaid and are often not insured. For example, M.R. was an irregular migrant when he was shot in the chest during an attempted robbery in 2015, when he was shot in the chest. Although he received the emergency treatment that he needed and stayed in hospital for nine days, but he has had problems accessing the necessary follow-up care. "Now I have pain, and some phlegm that keeps coming up and I think it has something to do with my damaged lung from the bullet. I did not go back to the University hospital. I went to another clinic for these problems, but I felt that they did not want to treat me, they asked me about my visa status – they said that I should not be coming here – I should go back to the University hospital." M.R. has not attempted to get treatment for his ongoing health problems since then.[109]

People who are insured may end up receiving care from providers that are not in their plans' provider networks, exposing them to much higher costs. A recent study found that nearly one in five inpatient admissions includes a claim from an out-of-network provider.[110] According to the study, this happened for several reasons. Sometimes people preferred a provider outside their network. Sometimes the out-of-network service use was inadvertent and people did not know that their insurance was not covering their care; a 2016 survey of medical debt found that among individuals who faced out-of-network bills they could not afford to pay, nearly seven in 10 did not know the provider was out of network at the time they received care.[111]

Hospitals have different strategies for dealing with patients who are not able to pay for their health care. In some cases, hospitals, including those located within the three states focused on in this report, chose to write off or heavily discount the costs of care and effectively absorb these costs. For example, in 1994, when 13-year-old Sara Cusimano was shot in the head, her father's insurance did not cover the full costs of her treatment and the hospital wrote off a part of her initial medical expenses.[112]

Similarly, Tampa General Hospital in Florida offers a number of options for people who are uninsured and under-insured through their Financial Assistance (Charity and Discounted Care) Programs.[113] They do not bill patients who have an income between below 200% of the Federal Poverty Level (FPL) and they do not bill patients if their income is under 400% of the FPL and hospital charges are greater than 25% of their annual income.

The University of Maryland Medical Center has developed a sliding scale for discounting care costs to patients, depending on their income. A person whose household income level is below 200% of the FPL would not need to pay anything. For every 10% increase in household income after that, patients would

108. The International Organization for Migration uses the following understanding of who is an "irregular migrant": Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. See: https://www.iom.int/key-migration-terms

109. Interview with Amnesty International, New Orleans, 3 September 2018.

110. G Claxton et al, "An analysis of out-of-network claims in large employer health plans" 13 August 2018, available at: https://www.healthsystemtracker.org/brief/an-analysis-of-out-of-network-claims-in-large-employer-health-plans/#item-start

111. G Claxton et al, "An analysis of out-of-network claims in large employer health plans" 13 August 2018, available at: https://www.healthsystemtracker.org/brief/an-analysis-of-out-of-network-claims-in-large-employer-health-plans/#item-start

112. Interview with Amnesty International, New Orleans, 7 September 2018.

113. For more details, see here: https://www.tgh.org/financial-assistance

have to pay an additional 10% for their case (10% if between 200% and 210%), and if a patient has an income over 300% of the FPL, they would need to pay the full amount.[114]

Where people need to pay for care and are not able to, hospitals may develop longer-term payments plans with patients, based on their financial circumstances, to recover costs.[115] For example, Johns Hopkins All Children's Hospital in Florida offers a number of interest-free payment plans to families who are unable to pay their deductible, co-insurance and co-payment amounts. Some parameters of their payment plans are publicly available on their website. For example, if a patient owes between US$3001 and US$6,000 and is unable to make the full payment, they would have to pay at least US$175 over a maximum of 18 months.[116]

People can often struggle to pay their medical bills. In a recent survey of debtors about factors that contributed to their bankruptcy, 58.5% of the respondents "very much" or "somewhat" agreed that medical expenses contributed, 44.3% cited illness-related work loss, and 66.5% cited at least one of these two reasons.[117]

Even when people are ultimately able to pay their medical bills, they may be burdened by other financial problems with long-term consequences. A study by the Commonwealth Fund (an organization supporting independent research on health care issues and making grants to improve health care practice and policy)[118] on the high costs of health care generally found that many people who struggled to pay their medical bills faced lingering financial problems: 40% of their respondents said they had received a lower credit rating because of their medical bills.[119] Lower credit ratings due to unpaid debt can impact people in different ways, beyond just access to credit. For example, employers in the USA can ask for potential employees' credit ratings before hiring them. One gunshot survivor told Amnesty International how his credit rating suffered because of his inability to pay his medical bills, which he believes made it harder for him to find a job.[120]

For many gunshot survivors, these costs come at a time when their injuries have already created a double burden: on the one hand, their injuries make it harder for survivors to get back to work, and on the other hand, the injuries may require long-term and expensive adjustments in people's lives, such as needing to make their home physically accessible. For example, Dwayne Dilling, whose case is detailed earlier in this section, told Amnesty International that he had been saving up to buy a house when he was shot in 2015 and would have been eligible for a mortgage. He said that his credit history was ruined because of the difficulties he faced in paying his mounting medical bills, which would make it difficult for him to get a mortgage in future. Four years after the shooting, Dilling, who now uses a wheelchair, is aiming to return to work and is trying to rebuild his credit history in order to buy a house that will be accessible for him.

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114. For more details, see here: https://www.umms.org/ummc/-/media/files/umms/patients-and-visitors/financial-assistance-policy/english-umms-financial-assistance-policy.pdf?upd=20180913132033&la=en&hash=1C52A335CAA9A68AE9868C85798F9154D41A5AE8

115. Interview with Amnesty International, Tampa, 29 August 2018.

116. For more information, please see: https://www.hopkinsallchildrens.org/Patients-Families/Patient-Financial-Information/Payment-Plans-and-Financial-Assistance

117. D Himmelstein et al, "Medical Bankruptcy: Still Common Despite the Affordable Care Act" March 2019 American Journal of Public Health, available here: https://ajph.aphapublications.org/doi/10.2105/AJPH.2018.304901?eType=EmailBlastContent&eId=a5697b7e-8ffc-4373-b9d2-3eb745d9debb&. This study contacted 3200 debtors chosen from records of all US bankruptcy filers from 2013 to 2016 with a survey to assess the incidence of medical bankruptcy in the current era. 910 debtors responded, and their responses form the basis of the paper's conclusions.

118. See https://www.commonwealthfund.org/about-us

119. Commonwealth Fund, "How Well Does Insurance Coverage Protect Consumers from Health Care Costs?" October 2017, Kaiser Family Foundation, available here: https://www.commonwealthfund.org/sites/default/files/documents/___media_files_publications_issue_brief_2017_oct_collins_underinsured_biennial_ib.pdf

120. Interview with Amnesty International, New Orleans, 10 September 2018.

AFFORDABLE HOUSING AND DISABILITY BENEFITS FOR GUNSHOT SURVIVORS

Jamie Williford was 16 when she was shot in the back in 2009. She was left paralysed and with severe and ongoing health needs, including recurrent pain, respiratory and digestive complications, proclivity to infection and pressure ulcers, muscle spasms, anxiety and depression. She now uses a wheelchair.[121] At the time she was shot, she was a runaway from foster care. She spent several months in hospital in New Orleans and when she was discharged, there were no wheelchair-accessible foster care facilities available, so the authorities placed her in a care home for adults with intellectual disabilities.

Williford signed herself out of the care home when she turned 18 but has been struggling to find a permanent home since: "It was very difficult to find a house that I could afford that had wheelchair access. I had no one to show me the ropes." In the years since, she has lived largely in shared accomodation, sometimes with friends, but has not been able to secure suitable permanent housing. On a couple of occasions, she has tried to access homeless shelters, however they are not appropriate for her: "Most shelters do not have disabled access, or some say they don't have any free bottom bunks. Also, they are not fit for purpose for someone like me – you have to leave during the day – where can I go?"

Williford feels that her housing insecurity adds to the general anxiety she has felt since she was shot. "People need to be aware of the mental anxiety that gun violence victims suffer from. There are also issues of basic security. I am always hyper vigilant. I don't feel safe anywhere," she said.

A 2016 report by the Consortium for Citizens with Disabilities (a coalition of organizations working to advocate for better policies for children and adults with disabilities) found that the average annual income of a single person receiving disability benefits was US$9,156 (approx. US$763 monthly) – about 22% below the FPL. The average rent for a one-bedroom apartment was US$10,332 (approx. US$861 monthly) per year and is unaffordable for people whose only income is the disability benefits they receive.[122] While the federal government provides some housing support for people with disabilities,[123] reports have shown how the general shortage in affordable housing in the USA[124] has translated into a "critical" shortage of permanent supportive housing opportunities for people with significant disabilities.[125] Furthermore, the general availability of affordable housing in the US falls far short of overall demand.[126]

Several gunshot survivors pointed to difficulties in getting sufficient support with transport to reach their health care appointments; insurance schemes, Medicaid and Medicare often do not cover the cost of such transport. These difficulties were particularly acute for people who could not afford to hire taxis and were fearful on public

121. Interviews with Amnesty International, New Orleans, April and September 2018.

122. CCD and TAC, "Priced Out: The Housing Crisis for People with Disabilities" December 2017, available at http://www.tacinc.org/media/59493/priced-out-in-2016.pdf

123. For example, the Section 811 Permanent Supportive Housing Programme is exclusively for providing affordable, accessible housing for non-elderly, very low-income people with significant disabilities. Other affordable housing programmes include the Section 8 Housing Choice Voucher Programme, Public Housing and the National Housing Trust Fund.

124. The National Low Income Housing Coalition has reported that extremely low-income renters in the U.S. face a shortage of seven million affordable and available rental homes and that there are only 37 affordable and available rental homes for every 100 extremely low-income households. Maryland and Florida both have less than the national average of affordable homes per 100 households. See: The National Low Income Housing Coalition, The Gap: A Shortage of Available Homes, arch 2019, available here: https://nlihc.org/gap

125. CCD and TAC, "Priced Out: The Housing Crisis for People with Disabilities" December 2017, available at http://www.tacinc.org/media/59493/priced-out-in-2016.pdf

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transport. One man who had been shot told Amnesty International: "I just wasn't able to find a place to get treatment. Yeah, you know if you're coming from the West Bank or anywhere from the other side of the river, and you don't have transportation, how you even gonna get to the bus when you feel like shit? I couldn't walk far. But if somehow you get an appointment, the clinics are nowhere near the buses, and they do not supply transportation. You gotta do the best you can, but there ain't no person in the system to help you".[127]

As Dr Marie Crandall told Amnesty International: "Medicaid expansion has been helpful; however, it does not cover several aspects of care. It can still be a problem to access social support, to access transport".[128] Some states, including Maryland, have a system in place for people with disabilities who are unable to use the regular public transport system. However, to be considered eligible for this system, people need to complete a detailed application form which requires additional information from a medical practitioner, followed by an interview and assessment with the Maryland Transit Administration. R., who was shot in 1994 during a robbery in Baltimore, told Amnesty International: "I didn't ask to get shot, I was a working man… someone wanted my money and thought it was more important than my life".[129] He described how he found it cumbersome to use the specialized transport in Maryland which was not suitable for emergency, short-notice travel as he needed to book for it at least a day in advance.[130] R. only used this service once, when it took him a total of six hours to be picked up and dropped off. After this, he either walks using his crutches to places or relies on friends to drive him.

Other survivors also told Amnesty International about the difficulties of getting around, including for doctors' appointments, due to lack of appropriate transport options. Derrick Strong was shot nine times in 2016, including four times in the leg, and suffered massive tissue loss and multiple fractures. He still has bullet fragments in his heel and shin, a bullet in his hip, and a pin in his lower leg. He said that he found it very difficult to use public transport, as he needed to put his leg up on the seat and could not afford to take taxis. He had applied for disability benefits in 2017 but had been rejected. When Amnesty International met Derrick Strong in 2018, he had filed an appeal and was waiting for the next hearing.[131]

4.3. OVERWHELMING BUREAUCRACY AND DIFFICULTIES ACCESSING INFORMATION

Gunshot victims repeatedly identified bureaucracy and paperwork as one of the key barriers they face in accessing long-term health care. Shooting victims living in unstable environments often find it difficult to make and keep appointments, seek information, maintain personal records and complete paperwork. In addition, they are often trying to negotiate and process the changes in their health, family lives, jobs or job prospects caused by the shooting. They need to navigate a fragmented and complicated system to access the health care and other support they need to achieve the best recovery possible. Survivors and people who work with them told Amnesty International that the amount of bureaucracy and paper work can be overwhelming.

127. Interview with Amnesty International, New Orleans, 12 September 2018.

128. Interview with Amnesty International, on the phone, 7 December 2018.

129. Interview with Amnesty International, Baltimore, 13 September 2018

130. See for more requirements and rules here: https://s3.amazonaws.com/mta-website-staging/mta-website-staging/files/Mobility/Mobility_Riders_Guide_2018.pdf

131. Interview with Amnesty International, New Orleans, 9 September 2018.

The government does not have a programme in place to help gunshot survivors with these processes. Hospitals have social workers who can connect people with available resources, give them their insurance and financial options and sometimes set up follow-up appointments. However, one of the social workers Amnesty International spoke to explained how most social workers are overworked and would find it impossible to follow up with each individual patient. Amnesty International spoke with five hospital-based social workers who all agreed that the volume of paperwork was not easy for patients to deal with and that the patients they dealt with "did not have a high comprehension of paper work".[132] "Now imagine someone was in the wrong place, at the wrong time, was shot and placed in the middle of all this [implying bureaucracy and paperwork]", one of them said.[133]

None of the people Amnesty International interviewed had approached Medicaid and Medicare offices for help even though their websites provide a free hotline that people can call for help. Medicaid applications can also be extremely taxing. While application requirements may vary according to state, most Medicaid applications require proof of age, citizenship or immigration status, all sources of income (including tax returns or payslips, as well as proof of any income from benefits such as social security, Supplemental Security Income and so on), other assets (through bank statements for example), disability if relevant and residence (a rental or mortgage agreement). Even when these hurdles are overcome, this does not guarantee survivors can visit the nearest or most convenient health care provider; they then have to then start to navigate the health-care system which can lead to additional challenges as discussed below. Megan Hobson, who was shot when she was 16, told Amnesty International: "From the beginning, you're walking this road alone, figuring out what to do. It would be good to have someone showing you along the way [besides the victim advocate]".[134]

A 2016 study that examined the post-discharge needs of trauma patients treated in a university hospital who had been injured as a result of gun violence in Chicago said patients "reported needing help to figure out the insurance paperwork and information regarding resources that could help them".[135]

Even when survivors were provided with some information, they explained how it could be difficult to follow up on it, given how overwhelming the aftermath of being shot can be. One gunshot survivor told Amnesty International that the hospital where he received emergency treatment following his shooting told him he was eligible for free health care. "But I never went through with the process to get it," he said. "They did send someone to tell me about the free care program when I was still in the hospital … But I didn't proceed with it and I didn't fill out the forms, it was too much then … all they told me about was the building where I had to go to apply for the free care, they didn't do nothing else", he added.[136]

In an interview with Amnesty International the brother of a man who had been shot explained: "For health care, if you want to get more care or any [Medicare] cover, they start to ask have you ever worked and if you say yes they want to see cheque stubs for six months, and they want your birth certificate, they want

132. Interview with Amnesty International, Tampa, 29 August 2018.

133. Interview with Amnesty International, Baltimore, 10 September 2018.

134. Interview with Amnesty International, Florida, 29 August 2018.

135. D Patton et al, "Post-Discharge Needs of Victims of Gun Violence in Chicago: A Qualitative Study" Journal of Interpersonal Violence, 1–21 (2016). This study looked at the self-identified post-discharge needs of patients injured by gun violence and is based on data from 10 trauma registry patients (9 black men and one black woman) between the ages of 18 and 40 who had been injured by firearm violence.

136. Interview with Amnesty International, New Orleans, 12 September 2018

a social security card, they want all that stuff and we ain't got it".[137] A woman who was shot explained a similar difficulty: "You really need someone to help you fill out all the paperwork 'cause a lot of people don't do it… And I don't understand why they have so much paperwork… half the things they ask you we don't even know".[138]

Additionally, even when gunshot survivors have health coverage and can overcome the bureaucratic hurdles, making sure they can find a doctor who will accept their insurance is not straightforward. For example, Medicaid covers a large range of services and would technically allow gunshot survivors to access the care they need. However, in many states, survivors face challenges getting the appointment they need because not all health providers accept Medicaid. Data suggests that only 70% of all physicians accept Medicaid.[139] The rates in Florida and Louisiana, two states with relatively high levels of gun violence, are much lower than the national average.[140] As a result, survivors have to face the additional burden of undertaking research just to find out which health care providers may accept their insurance before they begin to access the care they need.

Since he was shot in 2016, rap artist and community organizer Derrick Strong has experienced chronic pain and needs regular physical therapy and physical rehabilitation. He is currently covered by Medicaid but has found that many places don't accept his insurance: "Many places don't accept Medicaid. I have to navigate the system and find out on my own. It's never easily accessible. You just have to go on Google [to find out]... some people also help. [but] my friends are just as lost as I am". He has also found it hard to access mental health care for the same reason. "You need help with navigating the system, you need counselling. I try to meditate past the trauma. My sister and brother need counselling too, but it is only because I am coping that they can get past it," he said.[141] Similarly, Jamie Williford told Amnesty International that she is covered by Medicaid but still faces significant bureaucratic challenges, particularly in trying to access mental health care. When she asked the Medicaid office (an office managed by the state government to process Medicaid applications) for help in locating a doctor who would accept her insurance, Williford said they told her to "try Google" to find a doctor. "So, I had to find one on my own", she said.[142]

Furthermore, survivors need to navigate bureaucracy and considerable paperwork for every necessary service – be it disability benefits, housing or compensation (see Chapter 5). Cumulatively this can be overwhelming. It can be particularly difficult for people who are processing this while also coming to terms with being shot, or a family member being shot, and while keeping up with the changes the shooting has caused in their lives. As one survivor told Amnesty International, "When you are going through being shot, when you are recovering, you don't want to deal with [paperwork]. Who would have the frame of mind to keep track of all that? That's a crazy expectation... Even now I sometimes don't get refunds I'm entitled to because the bureaucracy and paperwork is too much and is very stressful. Who can add that to their plate?

137. Interview with Amnesty International, New Orleans, 12 September 2018.

138. Interview with Amnesty International, New Orleans, 12 September 2018.

139. J Paradise, "Data Note: A Large Majority of Physicians Participate in Medicaid" Kaiser Family Foundation, 10 May 2017 https://www.kff.org/medicaid/issue-brief/data-note-a-large-majority-of-physicians-participate-in-medicaid/

140. J Paradise, "Data Note: A Large Majority of Physicians Participate in Medicaid" Kaiser Family Foundation, 10 May 2017 https://www.kff.org/medicaid/issue-brief/data-note-a-large-majority-of-physicians-participate-in-medicaid/

141. Interview with Amnesty International, New Orleans, September 2018

142. Interview with Amnesty International, New Orleans, 8 September 2018

Having a gunshot wound means you miss work. You are living pay check by pay check. Where does the time for the paper work fit in?"[143]

In the absence of a more specialized programme that responds more practically to the urgent needs of a person who has been shot, the US government is falling short of meeting survivors' serious and long-term health needs. Survivors, especially those on lower incomes, face numerous economic barriers while trying to access the health care they need. They may also face additional difficulties in accessing other forms of social support, such as adequate and appropriate housing. Furthermore, the amount of bureaucracy and paper work involved in accessing health care can be overwhelming and act as a barrier for gunshot survivors.

143. Interview with Amnesty International, New Orleans, 7 September 2018.

5. ACCESS TO CRIME VICTIM COMPENSATION

This chapter examines the extent to which gunshot survivors can access compensation for the harm suffered, including costs of treatment and support. As mentioned above, despite gunshot survivors' right to remedy, including full and effective reparation, the US government has not created any special programs to provide for their rehabilitation needs. While some survivors have successfully pursued compensation claims against shooters, firearm sellers and firearm manufacturers through the courts, this is not straightforward. A federal law, the 2005 Protection of Lawful Commerce in Arms Act (PLCAA), shields licensed firearms and ammunition manufacturers, dealers and sellers, and trade associations from civil liability "resulting from the criminal or unlawful misuse" of a firearm or ammunition, with limited exceptions.[144] Several states have enacted similar state-level laws.[145] The PLCAA and similar state laws have discouraged lawyers from pursuing cases against the gun industry[146] and resulted in several lawsuits against the firearm industry being dismissed.[147]

Even where recourse to the courts is possible, not all gunshot survivors have the means or sufficient information to file such a case. Others may have immediate needs for care and support, such as urgent health needs, which cannot wait for resolution of the case through courts. Therefore, even where courts offer potential for access to remedy, in most cases this would not act as a substitute for a more systemic state-led reparation programme.

In the USA, crime victim compensation programmes are the only public ones available to survivors of gun violence. However, these were not designed to serve as a comprehensive programme to provide full and effective reparation, including compensation for all losses and costs incurred by survivors, and therefore fall short of the requirements of international human rights law and standards. The fact that the programmes work on the basis of reimbursement also means that they end up being ineffective for people who cannot afford to pay up front for medical and other costs.

144. Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-7903.

145. See *In the Line of Fire*, page 146.

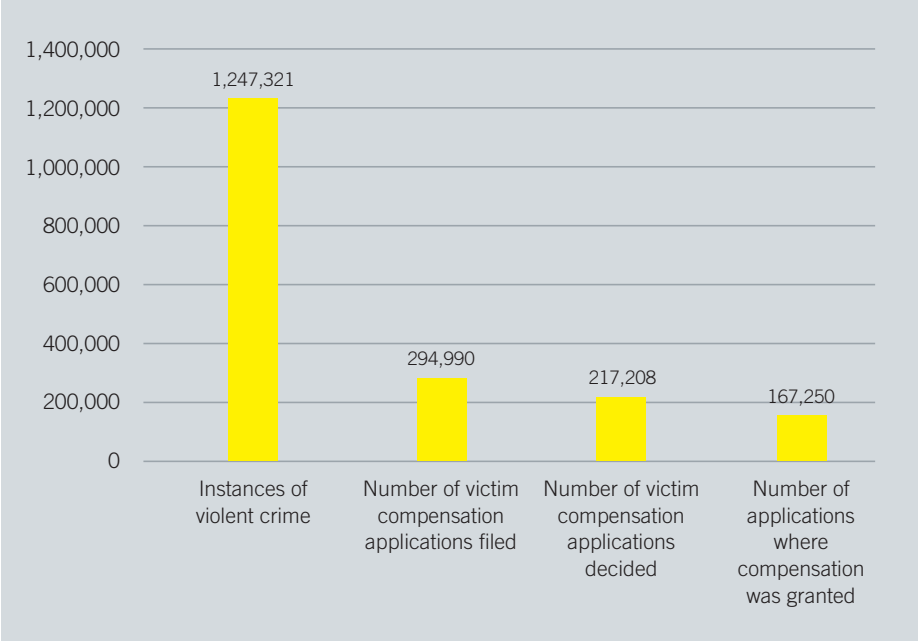
146. See *In the Line of Fire*, page 146.

147. See *In the Line of Fire*, page 146.

Crime victim compensation programmes are typically run by states, with support from federal funding. They offer financial assistance and partial reimbursement to individuals who incurred out-of-pocket expenses as a direct result of a violent crime. The reimbursements can be applied to health care, counselling, funeral or burial costs and lost income. None of the three states that were the focus of Amnesty International's research for this report allow claims for other forms of economically assessable harms, such as pain and suffering.[148] Victim compensation programs are extremely important and a potential, although limited, avenue of assistance for gunshot survivors who are often struggling to pay for the costs of their health care as well as meet other expenses related to their injury.

While all states have crime victim compensation programmes and they are meant to cover victims of the full range of violent crimes, statistics indicate that these programmes have limited scope and reach. As the chart below shows, in 2017, for example, 1,247,321 violent crimes occurred across the USA.[149] In the same year, only 294,990 applications for victim compensation were filed nationwide.[150] Determinations were made in 217,208 applications, of which 77% were deemed eligible for some amount of compensation and 23% were denied.[151]

Use of victim compensation programs



148. See what these programs cover here: Florida - http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8CVP5T/$file/BVCVictimCompensationBrochure.pdf; Maryland - http://goccp.maryland.gov/wp-content/uploads/cicb-resource-guide-pamphlet-english.pdf; and Louisiana - http://www.lcle.state.la.us/programs/cvr.asp

149. FBI, Crime in the United States – 2017, available here: https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/violent-crime

150. Office for Victims of Crime, "Victims of Crime Act Victim Compensation Formula Grant Program Fiscal Year 2017 Data Analysis Report" available at: https://www.ovc.gov/grants/vocanpr_vc17_508.pdf at page 3.

151. Office for Victims of Crime, "Victims of Crime Act Victim Compensation Formula Grant Program Fiscal Year 2017 Data Analysis Report" available at: https://www.ovc.gov/grants/vocanpr_vc17_508.pdf at page 3.

A total of US$367,525,175 was disbursed as victim compensation across all states and all crime types in 2017,[152] and on average successful applications received around US$1,466 each. As these figures indicate, in general, the number of victim compensation applications filed represent a very small fraction of all victims of crimes. The averages differ across states: for example, in 2016-2017, the average payment per claim paid out was US$1,265 in Louisiana; US$4,146 in Maryland and US$1,141 in Florida.[153]

Data on victim compensation is not disaggregated by type of injury in the national reports and therefore it is impossible to know with certainty how many of these applications related to crimes involving firearms or the costs of treating firearm injuries.

Some states do collect this data. As a part of its research for this report, Amnesty International requested information from authorities responsible for the victim compensation funds in Florida, Louisiana, and Maryland on the following: (i) how many applications were submitted for victim compensation in 2017 and 2018 where a firearm was used in the crime; and (ii) how many applications for victim compensation were approved in 2017 and 2018 where a firearm was used in the crime.

- Florida responded saying they had "no responsive records to [these] requests".
- The Louisiana Commission on Law Enforcement and Administration of Criminal Justice told Amnesty International that 356 applications for compensation for crimes involving a firearm were submitted over 2017 and 2018, combined and 243 such applications were approved during this two-year period.[154] In 2017, alone, there were over a 1,000 firearm-related deaths in Louisiana,[155] and 585 people were either killed or wounded by guns in New Orleans alone.[156]
- The Governor's Office of Crime Control and Prevention in Maryland told Amnesty International that 199 and 187 victim compensation applications where a firearm was used in the crime were filed in 2017 and in 2018 respectively and 54 such applications were approved in 2017 and 79 in 2018.[157] In 2017, there were over 700 firearm-related deaths in Maryland.[158]

There is clearly a disparity between the number of people injured and/or killed by firearms in the USA and the number of people who successfully claim victim compensation where a firearm was used in the crime. This suggests that the current victim compensation system may not be suited to supporting the health and rehabilitation needs of survivors of firearm violence. This is further supported by the factors discussed in greater detail, below.

152. Office for Victims of Crime, "Victims of Crime Act Victim Compensation Formula Grant Program Fiscal Year 2017 Data Analysis Report" available at: https://www.ovc.gov/grants/vocanpr_vc17_508.pdf at page 12.

153. See Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Florida 2017, available at: https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/FL.pdf; Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Maryland 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/MD.pdf; and Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Louisiana 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/LA.pdf

154. Response to a request for information filed by Amnesty International. Copy of response on file.

155. CDC, Firearm Mortality by State – 2017, available at: https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm

156. E Lane, "Gun violence in New Orleans in 2017: Who was shot, when and where" The Time Picayune, 22 February 2018, available at: https://www.nola.com/crime/2018/02/new_orleans_shootings_2017_num.html

157. Response to a request for information filed by Amnesty International. Copy of response on file.

158. CDC, Firearm Mortality by State – 2017, available at: https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm

5.1. ELIGIBILITY REQUIREMENTS

While eligibility requirements for victim compensation programmes differ across states, in general, in order to claim compensation for any violent crime most states require the person who has survived crime or their family to:

- Report the crime to law enforcement within a specific time period;
- File the compensation application within a specific time period after the crime was committed;
- Cooperate with law enforcement in the investigation of the crime;
- Require the claimant not to have not been involved or have participated in the crime; and
- Exhaust all other means of payment.

At the time of the research for this report, victims with prior felony convictions were ineligible for victim compensation through these programmes in seven states (Arkansas, Florida, Louisiana, Mississippi, Ohio, North Carolina, and Rhode Island).[159] Of the three states that were the focus of Amnesty International's research for this report, at the time of the research, Maryland alone did not exclude some people with prior felony convictions from victim compensation programmes.[160] A non-exhaustive list of the eligibility requirements in these states are set out below:

159. A Santo, "The victims who don't count" The Marshall Project, 13 October 2018, available at: https://www.themarshallproject.org/2018/09/13/the-victims-who-don-t-count

160. At the time of writing, the Louisiana legislature had passed legislation that prohibits the state's Crime Victims Reparations Board from denying an application for financial assistance because of a victim's criminal history. This was still pending assent by the governor.

FLORIDA[161]	MARYLAND[162]	LOUISIANA[163]
The crime must be reported to law enforcement within 72 hours	Unless good cause is shown, the victim must report the crime to the appropriate authorities within 48 hours	The crime must be reported to law enforcement within 72 hours after the incident unless there is a good reason why the crime was not reported within this time period
The application must be filed within one year of the crime or within two years if good cause is shown for the filing delay	The victim or claimant must apply to the Criminal Injuries Compensation Board (CICB) within 3 years of the date of the incident. In cases of child abuse, the victim has until the age of 25 to apply for compensation, or later with good cause for not applying in time	The application must be filed within one year of the crime unless there is a good reason why the application was not submitted within this time period.
The victim must fully cooperate with law enforcement, the State Attorney's Office and the Attorney General's Office	Failure to cooperate with authorities or CICB, unless good cause is shown, may make a victim ineligible to apply for compensation	The victim and/or claimant must cooperate fully with law enforcement officials in the investigation and prosecution of the case
Victims/applicants are not eligible if they have been confined or in custody in a county or municipal facility, a state or federal correctional facility, or a juvenile detention, commitment, or assessment facility; if they have been adjudicated as a habitual felony offender, habitual violent offender or violent career criminal; or found guilty of a forcible felony offence		Victims are not eligible for compensation if they have had a felony conviction(s) within five years of the date of the crime; if they served a sentence or probation in the five years preceding/subsequent to the crime (except for victims of a sexual related offence); if they were incarcerated in a penal institution when the crime occurred. * At the time of field research, the period had been reduced to three years. At the time of writing, the Louisiana state legislature had passed legislation that prohibits the state's Crime Victims Reparations Board from denying an application for financial assistance because of a victim's criminal history. This was still pending assent by the Governor.
Victims are not eligible if were engaged in an unlawful activity at the time of the crime or contributed to the situation that brought about their injuries	Victims may not be not eligible if there is substantial evidence suggesting they caused, provoked, failed to avoid or contributed to the crime that caused the injury	Victims/claimants are not eligible if they were engaged in illegal activity at the time of crime or were offenders or were accomplices of an offender; victims/claimants whose own behaviour contributed to the crime may have benefits denied or reduced.
Victims must provide proof of third-party payments such as insurance, restitution, judgments or settlements, where applicable	As the payer of last resort, the CICB must determine if some other source was available to reimburse the claimed expense; this may include insurance, paid leave or other public or private benefits	The Crime Victims Reparations Fund, as the payer of last resort, is a secondary source that pays for certain out-of-pocket expenses related to the crime that the victim has no other way of paying. Other sources that have to pay first include: health, disability and life insurance; vacation and sick leave or other types of leave paid by an employer, workers' compensation benefits, social security and Medicare or Medicaid

161. For details on eligibility criteria, see: http://myfloridalegal.com/webfiles.nsf/WF/MRAY-8CVP5T/$file/BVCVictimCompensationBrochure.pdf

162. For details on eligibility criteria, see: http://goccp.maryland.gov/wp-content/uploads/cicb-resource-guide-pamphlet-english.pdf

163. For details on eligibility criteria, see: http://www.lcle.state.la.us/programs/cvr.asp

These eligibility requirements are a key reason why people are often unable to access necessary victim compensation funds. At a national level, in 2017, 22% of applications for victim compensation were denied or closed by state victim compensation boards because the application was deemed "ineligible".[164]

In 2017, in Louisiana alone, the Louisiana Victim Compensation Board approved 1,113 claims across all crime categories and denied 90 claims. A majority of the denials were linked to the eligibility requirement: 43 victims were denied compensation on the grounds that they had a felony conviction and 33 were denied because the victim was deemed to have "contributed" to the crime.[165] Patterns of denials were similar in 2016 and the vast majority of denials were linked to the victims' prior felony conviction.[166]

IMPACT OF THE FELONY BAN

The Marshall Project, a news organization working on criminal justice issues, recently studied the impact of the prior felony conviction ban on victim compensation applications. The organization contacted the seven states in which victims with prior felony convictions are ineligible and filed information requests to obtain copies of denied victim compensation applications.

The Marshall Project analysis showed how the prior felony ban disproportionately impacted African Americans seeking victim compensation. For example, in Florida, while African Americans accounted for only about 30% of people who listed their race when applying for victim compensation in 2015 and 2016, they made up 61% those denied aid because they had a criminal record.[167]

The Marshall Project's investigation also revealed how in Florida the median time between the year someone was convicted of a felony and when they became a victim was about 10.5 years. In nine cases, at least 40 years had passed, indicating that people were being denied victim compensation because of unrelated crimes committed decades earlier.

For example, the Marshall Project documented the case of 65-year-old John Phelis, who was the victim of an attack in 2015. He was denied victim compensation because he had been convicted of stealing some beer from a truck in 1970, when he was 17. In the case of Andre Winston, who was killed in 2015 when he tried to protect a woman who was being threatened, his family's application to the Ohio compensation programme for help pay for his funeral was denied because Winston had been convicted of possessing cocaine in 2008.

164. Office for Victims of Crime, "Victims of Crime Act Victim Compensation Formula Grant Program Fiscal Year 2017 Data Analysis Report" available at: https://www.ovc.gov/grants/vocanpr_vc17_508.pdf at page 4.

165. Louisiana, Crime Victim Reparation Board, Annual Report Fiscal Year 2017 [on file with Amnesty International]

166. Louisiana, Crime Victim Reparation Board, Annual Report Fiscal Year 2016 [on file with Amnesty International]. 2018 figures are also available. However, Amnesty International has not highlighted these as there is a discrepancy in the denials data. On page 7, the report states there were 54 denials in 2018 and on page 8 the report states there were 32 denials.

167. A Santo, "The victims who don't count" The Marshall Project, 13 October 2018, available at: https://www.themarshallproject.org/2018/09/13/the-victims-who-don-t-count

Wayne Rawlins works with Walking One Stop, a community- based organization that works with victims of gun violence and helps connect them to social services and counselling services. He told Amnesty International: "The person doesn't know the service exists. If they do, they don't know how to access it. And if they try to access it, they are often not eligible".[168]

Pauline Mandel of the Maryland Crime Victims Resource Center told Amnesty International that she assists survivors file victim compensation claims through the Center. In her experience, the most common reason given by the compensation board for refusing claims is that the person who was shot was not an innocent bystander and that they were engaged in criminal activity. She said that sometimes the victim might have a bit of marijuana in their pocket and this was sufficient for the disqualification of the compensation claim regardless of whether the marijuana in the victim's pocket was linked to the crime that was committed.[169]

Reporting by *The Trace* on this issue noted that: "state laws that govern compensation programs can ultimately exclude people at the highest risk of being shot".[170] Shooting victims often fear retaliation and are hence more nervous of cooperating with the police. African-American men are at greater risk than any other group of suffering gun violence,[171] but are also the most likely to be adversely affected by the felony conviction ban. Furthermore, data on denials may only tell a part of the story; in many cases, there is a risk that the eligibility requirements deter survivors who think they might be ineligible from attempting to file a victim compensation application.

Under international human rights law, all victims and survivors of human rights violations have a right to remedy, including full and effective reparation. Although reparation mechanisms can take into account the circumstances of each case in determining compensation awards, individuals should not be arbitrarily denied their right to compensation because they have been convicted of committing a crime at some point in their past. Similarly, arbitrarily precluding compensation on the ambiguous grounds that the victim engaged in unlawful activity at the time of the crime or because they failed to cooperate with criminal investigations ignores the complexity of individual cases, which should be considered by compensation programmes to ensure that their decisions are just and reasonable. For example, requiring victims to cooperate with investigations may exclude some victims who are genuinely at risk if they do so. These requirements risk excluding people who need the compensation to access timely medical care and other support and, as the Marshall Project study indicates, also have a discriminatory impact in that African Americans are disproportionately impacted.

168. Interview with Amnesty International, Miami, 1 September 2018.

169. Interview with Amnesty International, Baltimore, 13 September 2018.

170. E Van Brocklin, "States Set Aside Millions of Dollars for Crime Victims. But Some Gun Violence Survivors Don't Get the Funds They Desperately Need" The Trace, 12 February 2018, https://www.thetrace.org/2018/02/gun-violence-victims-of-crime-compensation/

171. See discussion in Chapter 3.

5.2. LIMITS ON AMOUNT OF COMPENSATION

In 2017, a total of US$367,525,175 was disbursed through victim compensation programmes across the country for all crimes and all expense types. Of this, 37% was used for medical/dental expenses (US$136,667,704) and 8% (US$28,849,204) for mental health.[172] While the federal government monitors how victim compensation funds allocate money, it does not disaggregate the data by whether a firearm was involved. Hence there is no way of knowing how much of this went towards helping gunshot survivors.

Victim compensation funds cover specific types of expenses. Usually these include medical and dental costs, mental health and counselling expenses, funeral/burial costs, economic support, crime scene clean-up and relocation. None of the three US states that were the focus of Amnesty International's research for this report allowed claims for other forms of harm, such as pain and suffering.

States often set an upper limit for the money that it would be possible for applicants to claim both in an individual expense category and as a whole. The threshold for these amounts varies from state to state. In Louisiana, for example, total recovery cannot exceed US$10,000, unless someone has been permanently and completely disabled because of the crime, in which case they are eligible for US$25,000.[173] The Maryland Criminal Injuries Compensation Board allows victims to claim up to US$45,000 for medical and dental expenses; up to US$5,000 for counselling; up to US$25,000 for lost wages and disability; up to US$5,000 for funeral and burial costs; up to US$250 for crime scene clean up; and up to US$25,000 for loss of support. However, the maximum award possible under the rules is US$45,000.[174] This means that a victim cannot claim for the maximum possible for medical/health expenses and counselling and disability since this would amount to US$75,000.

The rules of victim compensation programmes in these three states do not specify whether victims can apply to the fund repeatedly for on-going health care. The head of an NGO helping victims file compensation applications in Louisiana told Amnesty International that she did not believe it was possible to apply to the fund repeatedly.[175] The Maryland Criminal Injuries Compensation Board told Amnesty International: "Applicants have the ability to file more than one application per crime (for example, if the crime involves the parent as both the Victim and Claimant, along with a minor who was also injured). In cases that involve examples such as long-term healthcare or disability, an applicant need not file a separate application as they can receive an initial award, as well as submit supplemental awards at a later time, up to the monetary caps set by statute".[176] Furthermore, the fact that applicants must file claims within a limited period after the injury makes it unlikely that they will provide funding for long-term health care needs which can last for decades after the injury.

Although the amounts involved are limited, in the absence of other avenues of support for victims, these payments can help survivors access essential health care or free up money to cover other costs such as paying the rent to avoid homelessness. A gunshot survivor in New Orleans told Amnesty International that he got a couple of cheques for US$5,000 each which he used to pay for some of his medical expenses and essential supplies.

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172. Office for Victims of Crime, "Victims of Crime Act Victim Compensation Formula Grant Program Fiscal Year 2017 Data Analysis Report" available at: https://www.ovc.gov/grants/vocanpr_vc17_508.pdf at page 7

173. http://www.lcle.state.la.us/programs/cvr.asp#expenseselg

174. Criminal Injuries Compensation Board, Instruction sheet for crime victim compensation, available here: https://www.dpscs.state.md.us/cicb/English-CICB-Instructions-and-Application.pdf

175. Interview with Amnesty International, on the phone, 16 March 2019.

176. Response on file with Amnesty International.

He also told Amnesty International that with the help of his social worker and the crime victims compensation office in New Orleans, he was able to get an emergency amount of US$500 as soon as he was shot.[177]

It is clear that even the limited sums disbursed through the funds make a big difference to the survivors who receive them. That said, victim compensation funds do not provide anywhere near amounts required for survivors' rehabilitation needs or other economically assessable harms. As discussed in the earlier chapter the average cost of hospitalization for initial emergency care for gunshot survivors alone is US$95,887 per patient.[178] This does not include the costs of follow up care, as well as the other economic impacts of a serious gunshot injury, which can be staggering and lifelong. In situations where a gunshot survivor does not have health insurance, or support from hospitals [as described in chapter 4], Maryland's maximum provision of US$45,000 for medical expenses, for example, would not even cover the cost of initial hospitalization let alone follow-up care, which some survivors continue to require for many years, if not the rest of their lives.

A 2003 report by the Urban Institute on Maryland's victim compensation programme raised similar challenges.[179] It noted that victims reported incurring expenses from the crime which were not covered, even though they were eligible. According to the report, "While the number of cases available for analyses of these data is quite small, we see again that the leading types of unmet service needs were those covered by compensation – medical services and mental health counselling".[180]

5.3. LACK OF INFORMATION AND AWARENESS

Most states have some standard routes through which they disseminate information about the victim compensation fund. This includes through victim advocates who work with law enforcement and states attorneys' offices, social workers in hospitals, organizations working on victims' assistance, and outreach by the staff of the victim compensation fund itself.

For example, in 2017, Florida reported that it "continued education to victim advocates, service providers, law enforcement support staff, and community partners who engage victims of crime".[181] In 2017, the

177. Interview with Amnesty International, New Orleans, 12 September 2018.

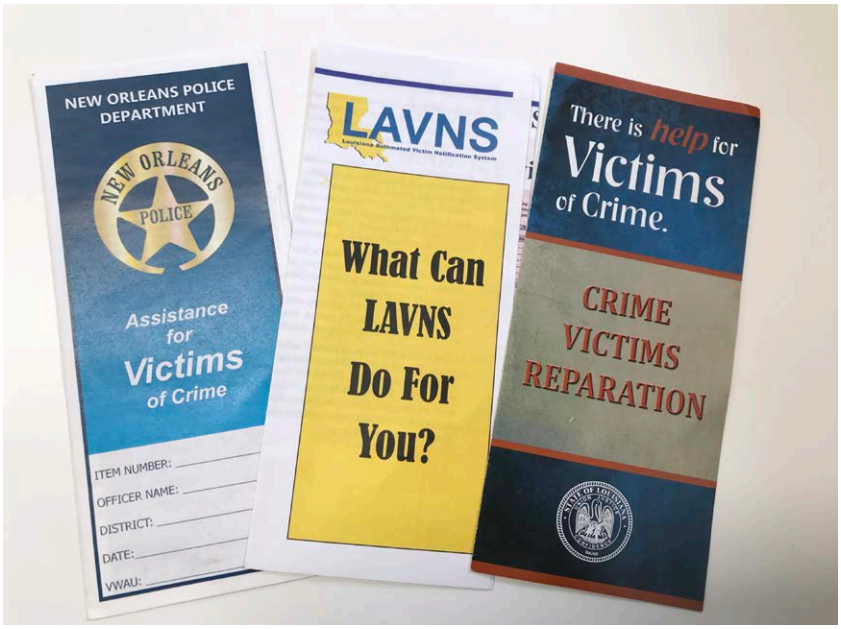
178. F Gani, S Sakran et al, "Emergency Department Visits For Firearm-Related Injuries In The United States, 2006–14" Health Affairs 36 (10), October 2017, available at: https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2017.0625?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub%3Dpubmed. This study used data from the Nationwide Emergency Department Sample to assess trends and costs associated with emergency department visits for firearm-related injuries. Their findings were based on data from 150,930 patients, a weighed sample of the total.

179. L Newmark et al, "Crime Victims Compensation in Maryland: Accomplishments and Strategies for the Future" The Urban Institute, Research Report May 2003, available at: https://www.urban.org/sites/default/files/publication/59316/410799-Crime-Victims-Compensation-in-Maryland.PDF. This report is based on telephone and mail surveys. Mail surveys were sent to 406 people who had submitted victim compensation claims in Maryland, of which 66 responded. For phone surveys, researchers tried to reach 156 crime victims to ask about their experience with the victim compensation system on the phone. They eventually spoke with 29 people. People were asked questions about the nature of their crime, experience with the victim compensation program, and expenses incurred.

180. L Newmark et al, "Crime Victims Compensation in Maryland: Accomplishments and Strategies for the Future" The Urban Institute, Research Report May 2003, available at: https://www.urban.org/sites/default/files/publication/59316/410799-Crime-Victims-Compensation-in-Maryland.PDF, at page 48.

181. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Florida 2017, available at: https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/FL.pdf. Additionally, in response to Amnesty International's request for information on this issue, the Office of the Attorney General in Florida responded saying: "a main part of the duties of the regional victim advocates is to educate, inform and instruct nonprofit, for-profit and governmental entities about the State of Florida Victim Compensation Program and the Victim Advocacy services provided by this office and the VOCA-funded victim service programs. The advocates attend regular community meetings, law enforcement meetings and other governmental agency meetings to discuss victim compensation requirements and services. They also work with victim services providers such as funeral homes, hospitals, mental health providers, etc., to assist them with billing and eligible services questions and inquiries … the victim services brochure and poster, which explain the available services to crime victims, is on our website and made available to all law enforcement agencies and service providers along with any citizen seeking information about victim services in Florida … Please also note that all law enforcement agencies and their advocates provide notice of the available services through our office to crime victims at the time of the victimization".

Maryland Criminal Injuries Compensation Board obtained a grant from the federal Office for Victims of Crime that "combine[d] their victim advocacy and outreach efforts".[182] Louisiana has enacted a law that requires the Crime Victims Reparations Board to prepare a brochure on victims' rights, including victim compensation. These brochures are to be made available in sheriff's offices, police departments, hospitals, doctor's offices, as well as other service agencies. Furthermore, according to their annual report on victim compensation, public service announcements are distributed to all radio and television stations licensed to broadcast in Louisiana.[183] Louisiana has a contact person in each parish who works for the sheriff's office, and also liaises with other stakeholders to raise awareness of the Crime Victims Reparations Program.[184]



Brochures about crime victim compensation from the Louisiana Crime Victims Reparations Fund
© Amnesty International

Nevertheless, these methods do not appear to be effective. Studies of victim compensation programmes confirm that there is a disconnect between purported state efforts and information accessible to gunshot survivors and their families. The lack of information and awareness about victim compensation programmes emerged as a key theme in Amnesty International's interviews with gunshot survivors, carers and health-care workers. Several survivors and their families said that they were not aware of the victim compensation programme around the time the injury happened and were not given this information at the hospital or by the police. A few who knew about it were not sure what expenses it covered.

182. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Maryland 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/MD.pdf

183. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Louisiana 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/LA.pdf at page 8

184. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Louisiana 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/LA.pdf

When Walker Gladden's son was fatally shot in 2016, he was not aware that he could approach the victim compensation fund for some financial assistance and support. He was not given any information by the police or at the hospital where his son was taken about the victim compensation process or that he might be eligible for these funds. He told Amnesty International: "I was not offered any help. I was not offered any counselling. I was not offered anything for my other children. No one talked to me [about victim compensation] … What should the family do? How do we cope?". He feels it is important that the police and hospital tell people about the victim compensation program. "There is no one to help people manoeuvre through the system. No one to educate people about the process. [In hospitals] the attitude seems to be, if you don't ask, we won't tell. But how can ask for something that you don't know?"[185]

Reports and studies about victim compensation programmes often point to a lack of awareness as a major barrier to access to compensation. For example, reporting by *The Trace* on this issue noted how few crime survivors, including gunshot survivors, knew that these programmes existed.[186] A report by the John Jay College of Criminal Justice found that victims and survivors were not always aware that victim compensation programmes existed and stated that: "lack of awareness is often the primary obstacle that victims and survivors must overcome".[187] According to a survey of crime victims and survivors in California, nearly one in three crime victims said they were interested but unaware of the victim compensation programme.[188] As M.R.'s case below demonstrates, these barriers are often exacerbated when the survivor has limited proficiency in English.

M.R.

M.R.,[189] aged 46, was shot by armed men at his home in 2015 in New Orleans. He told Amnesty International he and his brother were returning home from work when two men wearing hoodies held the two men at gun point, then shot M.R. in the chest when he broke away. His brother called 911 but did not speak enough English to give their address and there was no Spanish speaker at emergency services. He then called a local community activist who called 911, then came to their house and started to drive M.R. to the hospital. An ambulance met them mid-way.

185. Interview with Amnesty International, Baltimore, 13 September 2018.

186. E Van Brocklin, "States Set Aside Millions of Dollars for Crime Victims. But Some Gun Violence Survivors Don't Get the Funds They Desperately Need" The Trace, 12 February 2018, https://www.thetrace.org/2018/02/gun-violence-victims-of-crime-compensation/

187. D Evans, Compensating Victims of Crime, John Jay College of Criminal Justice, June 2014, available at: https://johnjayrec.nyc/wp-content/uploads/2014/06/jf_johnjay3.pdf. This paper is a review of the operations and requirements of all state-based victim compensation program, based on the data made available by the state and national government on this issue.

188. Californians for Safety and Justice, California Crime Victims' Voices, July 2013, available here: https://drive.google.com/file/d/1NYx8mtWLXOj7OOXXMSMGQEqZoLPsa06j/view. This survey was conducted by the Californians for Safety and Justice to fill in gaps in knowledge around the experience of crime victims in California. More than 2,600 Californians were surveyed and 500 self-identified as having been victims of crime. These responded answered a survey of 61 questions regarding their experiences and perspectives as victims of crime, which have been represented in this report.

189. Interview with Amnesty International, New Orleans, 3 September 2018.

M.R. sustained a broken rib and a punctured lung and was treated at the hospital for nine days. Since M.R. was an irregular migrant at the time, he was not eligible for Medicaid and did not have insurance. He received two bills following the treatment – for US$250 and US$1,580 – that he was unable to pay because he had been out of work. He could not work for nearly five months after the shooting and was financially supported by his brother and nephew. He has since changed his address and has not received any further bills. He was also given a prescription for pain management that cost him about US$100, which he had to pay for himself. "At least they could have given me free medicines," he told Amnesty International.

M.R. received very little information about what services he might be entitled to at the hospital: "There was no social worker at the hospital to explain what help I could get. Nobody told me about victim compensation". He therefore did not file a claim for victim compensation at the time. Later on, a community activist helped him to apply for a "U visa", a visa for victims of certain crimes who have suffered mental or physical abuse. He now works as a welder in New Orleans.

Amnesty International met community leaders who also said that they had never heard of a victim compensation fund. The head of one of the larger churches in New Orleans told Amnesty International that several people in his congregation had been victims of gun violence. He added that he had called the New Orleans Sheriff's Office several times about whether any assistance could be made available to victims of gun violence in his church but had never been told about this fund or how it could help.[190]

A 2003 report by the not-for-profit research organization Urban Institute on Maryland's victim compensation programme identified similar challenges.[191] It found that only a fourth of victims surveyed had heard of victim compensation before the survey. According to Urban Institute's report: "While the findings from our survey of victims must be interpreted carefully, they suggest that a majority of potentially eligible victims, perhaps in the neighbourhood of three-fourths, are not familiar with compensation". The report also noted that: "Many victims had contact with a variety of service providers after the crime, but none of these were particularly likely to inform them of compensation" and recommended additional outreach efforts.

Even when the systems to disseminate information about victim compensation programmes are in place, the information does not necessarily reach people. C. was shot on two different occasions in New Orleans: "In 2002, I was shot while walking down the street – the bullet missed an artery by half an inch. In 2012, I was shot in the chest," he told Amnesty International. Both times, he received emergency trauma care in the nearest hospital. He received one call from the police when he was shot the first time and had no

190. Interview with Amnesty International, New Orleans, 8 September 2018.

191. L Newmark et al, "Crime Victims Compensation in Maryland: Accomplishments and Strategies for the Future" The Urban Institute, Research Report May 2003, available at: https://www.urban.org/sites/default/files/publication/59316/410799-Crime-Victims-Compensation-in-Maryland.PDF. This report is based on telephone and mail surveys. Mail surveys were sent to 406 people who had submitted victim compensation claims in Maryland, of which 66 responded. For phone surveys, researchers tried to reach 156 crime victims to ask about their experience with the victim compensation system on the phone. They eventually spoke with 29 people. People were asked questions about the nature of their crime, experience with the victim compensation program, and expenses incurred.

contact with the police when he was shot the second time. No one had given him any information about the Crime Victims Compensation Fund.[192]

Increasing awareness and outreach would improve access to victim compensation programmes: an increase in awareness and outreach usually results in an increase is the numbers of claims filed, indicating that if more people knew the funds were an option, they would likely file an application. In 2017, 13 states reported an increase in the number of applications filed, of which four states attributed this increase to targeted outreach or additional victim service programmes.[193] Maryland reported: "CICB had a slight rise in applications we attribute to increased outreach by the staff".[194] Similarly, Florida noted that: "historically we know that when victim service program funding increases dramatically and more people are in the field helping victims, compensation applications increase".[195] However, this requires better resourcing.

Part of the difficulty with increasing outreach has to do with the budget and staffing devoted to this at the offices managing some victim compensation programmes. In a conversation with Amnesty International, officials from the Orleans Parish Sheriff's Office, responsible for victim compensation in New Orleans, explained the extent of their responsibilities and the challenges they faced keeping up with their workload. They said additional staffing would go a long way in allowing them to spend more time on outreach and awareness raising.[196]

Amnesty International requested information from the states of Louisiana, Maryland and Florida on: (i) annual expenditure for the fiscal years 2016 and 2017 on public information and awareness about the victim compensation programme; and (ii) the number of staff working on activities associated with the victim compensation programme. The Louisiana Commission on Law Enforcement spent around US$4,032 in 2016 and US$2,675 in 2017 on awareness raising about its victim compensation programme, and had only four staff members for all activities associated with the Louisiana Crime Victims Reparations Fund during these two years.[197] This is inadequate, given there were 26,477 instances of violent crime in Louisiana in 2016 and 26,092 instances in 2017.[198]

Maryland did not provide information on the amount spent on awareness raising during this period, saying "there were no documents responsive to [this] request". It had 13 staff members in 2017 and 14 in 2018 working on activities associated with the victim compensation fund.[199] According to the latest data, in 2016, there were 28,991 instances of violent crime in Maryland.[200] In contrast, the Office of the Attorney General

192. Interview with Amnesty International, New Orleans, 8 September 2018.

193. Office for Victims of Crime, "Victims of Crime Act Victim Compensation Formula Grant Program Fiscal Year 2017 Data Analysis Report" available at: https://www.ovc.gov/grants/vocanpr_vc17_508.pdf at page 4.

194. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Maryland 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/MD.pdf at page 8

195. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Florida 2017, available at: https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/FL.pdf at page 9

196. Interview with Amnesty International, New Orleans, 7 September 2018.

197. Response to a request for information filed by Amnesty International. Copy of response on file.

198. Louisiana Commission on Law Enforcement and Administration of Criminal Justice, "2017 Crime in Louisiana", page 32, available here: http://lcle.la.gov/programs/uploads/2017%20Crime%20in%20Louisiana%20rs.pdf

199. Response to a request for information filed by Amnesty International. Copy of response on file.

200. Governor's Office of Crime Control and Prevention, Violent Crime & Property Crime Statewide, available here: https://opendata.maryland.gov/Public-Safety/Violent-Crime-Property-Crime-Statewide-Totals-1975/hyg2-hy98

of Florida replied that there were "60 full time equivalent positions" in the Bureau of Victim Compensation in, both, 2016 and 2017.[201] They also did not provide information on the amount spent on awareness raising during this period, saying "this office has no responsive requests".

Advocacy efforts in certain states have resulted in new proposals for improving access to information about victim compensation programmes. A recent investigation by a newspaper, *NJ.Com*, into the victim compensation programme in New Jersey reported problems with the fund including lack of awareness among victims about the programme and a cumbersome claims process. It found that the programme failed to distribute all the relief money it had and returned US$382,833 earmarked for separate federal victims' assistance grants to the federal government.[202] At the time of writing, lawmakers in the state were trying to introduce legislation that would require hospitals and emergency rooms to provide information about compensation and other help available to victims.[203]

5.4. CUMBERSOME PROCESS

> ***"It's a nightmare. I think the process of getting victim compensation is as traumatic as the experience itself."***
>
> Megan Hobson, gunshot survivor[204]

Victim compensation applications are cumbersome and require significant amounts of detail and supporting documentation. In Maryland, for example, applications claiming for medical and dental expenses require a police report, itemized bills, a letter from a doctor or medical documentation relating the injury to the crime and the treatment, a treatment plan and details of medical insurance. If the claimant has no private insurance, the Maryland Criminal Injuries Compensation Board requires the claimant to apply for Medicaid before filing for compensation.[205]

Similarly, claims for lost wages in Louisiana require an employment verification form (completed by the employer), a lost Wages/Earnings Claim Form (completed out by claimant), a disability verification form (completed by a doctor) and proof of income through payroll check stubs or a copy of the previous year's federal income tax return.[206] Such requirements can be particularly challenging for people in precarious or irregular employment.

201. Response to a request for information filed by Amnesty International. Copy of response on file.

202. T Sherman, "Twice the Victim" 28 August 2018, available at https://projects.nj.com/investigations/victims/index.html

203. T Sherman, "Crime victims often end up in the ER. That's where they should be told there is help available, lawmakers say" 16 October 2018 https://www.nj.com/news/index.ssf/2018/10/crime_victims_often_end_up_in_the_er_thats_where_t.html

204. Interview with Amnesty International, Miami, 7 September 2018

205. https://www.dpscs.state.md.us/cicb/English-CICB-Instructions-and-Application.pdf

206. http://lcle.la.gov/programs/uploads/cvr_forms/LOST_WAGES_CLAIMS_2014.pdf

As victim compensation funds are structured as funds of last resort, applicants need to demonstrate that they have exhausted all other financial sources and support before approaching them. Even where these requirements might seem reasonable, it is crucial to note that the need to collect this documentation comes at a time that is very stressful for people who have been shot and their families. Therefore, the process of getting this paperwork together can act as a barrier to accessing victim compensation funds.

In 2017, for example, the most common reason for denying or closing a victim compensation application across all states was incomplete information. A total of 24% of all denials were because applications were not complete.[207] A review of annual reports indicates a similar trend in previous years as well.

A Victim Services Coordinator at Maryland's Criminal Injuries Compensation Board, told Amnesty International that, in her experience, one of the biggest causes for the rejection of applications was not having an original signature.[208] Service providers working with victims raised similar concerns. The head of an organization assisting victims to file compensation applications in New Orleans, told Amnesty International:

"Overall, the process is too cumbersome… The application for the fund is online but the victims are required to submit it in person. They require all medical bills to be submitted in original, all receipts. If you are seeking compensation for loss of work, you have to submit three cheque stubs. In addition to this you need an employment verification form to be signed by your employer. Many of our clients find it hard to get these [as they] work in the informal economy. You also need birth certificate, social security card. If you have a disability you have to submit the medical diagnosis or the hospital records stating whether this is short or long term, whether the disabilities or the paraplegia is caused by the gunshot injury. All this is not easy to get and takes time. Your primary care physician needs to verify this and many who don't have insurance find it very difficult [as you need to pay for the verification]".[209]

Some of the requirements can deter some survivors from applying at all. For example, irregular migrants are technically eligible to apply for victim compensation funds. However, the forms ask for a social security number, which irregular migrants do not have. A member of Louisiana's victim compensation board told Amnesty International how the requirement for a social security number and some form of proof of identity often meant that irregular migrants were either unable to file an application or did not feel comfortable doing so.[210] However, when Amnesty International specifically asked officials working on the fund this question, they reassured Amnesty International that the social security number was optional and not required. It is unclear whether people applying to the fund are aware of this or not. Furthermore, irregular migrants may find it difficult to apply for some types of compensation – such as lost wages – since they are often not likely to be able to produce proof of employment or tax returns, even if they are working, as it is probable that they work in the informal economy.

Phyllis spoke with Amnesty International three weeks after her son was shot 23 times. He survived the shooting, after eight surgeries. She is his sole carer. She also cares for her other children and

207. Office for Victims of Crime, "Victims of Crime Act Victim Compensation Formula Grant Program Fiscal Year 2017 Data Analysis Report" available at: https://www.ovc.gov/grants/vocanpr_vc17_508.pdf at page 4

208. Interview with Amnesty International, Baltimore, 11 September 2018.

209. Interview with Amnesty International, New Orleans, 6 September 2018.

210. Interview with Amnesty International, New Orleans, 10 September 2018

grandchildren. The hospital processed the paperwork and Phyllis does not know if he is covered by Medicaid (Maryland has expanded Medicaid so it is likely that he is). Someone in a support group Phyllis attends told her that her son might be eligible for victim compensation. "I've been keeping all my receipts and bills", she told Amnesty International. She plans to give them to her son when he is better, so he can file for compensation. She told Amnesty International that the hospitals had sent some bills home which she had not opened. "I can't look at them now, I've just put them away", she said.[211]

Survivors and their families may be too overwhelmed with other responsibilities to follow up on victim compensation applications to see why they have not received any assistance. "It's a full-time job to keep track of resources and paperwork", a gunshot survivor told Amnesty International. "When you've just been shot, you are too stressed out to have to try to figure out who should be paying for all this", he said.[212] After Megan Hobson was shot (see Chapter 3), she was given a number to call for victim compensation. Her mother filled out the forms and necessary paperwork and submitted the application to the victim compensation fund to support Hobson's care. They received no information on how the application was being processed. After three or four months, they were told that their case worker had left and they would need to resend all the paper work, which they did soon after. They didn't hear back about any progress with the application and finally gave up.[213] "It's a nightmare. I think the process of getting victim compensation is as traumatic as the experience itself", Hobson told Amnesty International.

Difficulties with the process are exacerbated for people who also face language barriers. In Florida's Annual State Performance Report for 2016-2017, organizations working on victim assistance noted that: "Numerous agencies do not have interpreters to assist non-English speaking crime victims… There were additional challenges assisting with the Pulse mass shooting victims, some of whom were non-English speaking, due to having fewer bi-lingual victim advocates".[214] A community activist working in New Orleans raised a similar concern, noting how she was often called in by law enforcement to translate and/or interpret for victims and witnesses who did not speak English.[215]

One way to support survivors would be to reduce the administrative burden the application process places on them. While a lot of the documentation currently requested is reasonable, the onus is on the claimant to source and provide this material. This can be extremely difficult, given the traumatic nature of the circumstances in which gunshot victims, survivors and their families find themselves. A report by the John Jay College on Criminal Justice suggested that "programs should use proactive approaches to acquire the necessary documentation to process the compensation claim. For example, program officials could contact law enforcement and insurance companies to attain the necessary documentation directly from them and avoid waiting for claimants who are often unaccustomed to communicating with agencies and eliciting documentation".[216]

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211. Interview with Amnesty International, Baltimore, 14 September 2018

212. Interview with Amnesty International, Baltimore, 10 September 2018.

213. Interview with Amnesty International, Miami, 29 August 2018.

214. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Florida 2017, available at: https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/FL.pdf at page 10.

215. Interview with Amnesty International, New Orleans, 6 September 2018.

216. D Evans, Compensating Victims of Crime, John Jay College of Criminal Justice, June 2014, available at: https://johnjayrec.nyc/wp-content/uploads/2014/06/jf_johnjay3.pdf. This paper is a review of the operations and requirements of all state-based victim compensation program, based on the data made available by the state and national government on this issue.

Another way to support survivors through the process would be for the state to increase the staff and assistance available for helping claimants file victim compensation applications. Survivors who have received this type of support have had positive experiences. For example, C.R.'s son was fatally shot in 2015 in Baltimore. When she filed for victim compensation, an advocate at the state attorney's office filled out her paperwork and submitted it. She found the process accessible and it did not take her long to receive the compensation.[217]

Officials in charge of victim compensation programmes are aware of how cumbersome the application process can be and keen to be of assistance where possible. However, they often do not have the time to help all claimants fill out their paperwork. "If we had more staff, funds and time we could do much more outreach in the community and help victims of crime", an officer at the Crime Victims Compensation Fund in New Orleans told Amnesty International.[218]

5.5. DELAYS AND LACK OF ADEQUATE FUNDING

In certain states, delays in the processing of victim compensation claims often mean that survivors do not get the money when they need it most. For example, according to their annual reporting, in Louisiana the average length of time it takes to process an application for claim eligibility is 92 days[219] and in Maryland the equivalent figures is 76 days. However, officials from the New Orleans Sheriff's Department told Amnesty International in September 2018 that claims from 2016 were still being paid out. At times, these delays are linked to the verification process for the application forms. Sometimes, however, the delay is because the compensation fund has run out of money. For example, R. was shot in 1993 in Baltimore during a robbery. He applied for victim compensation but was told that they had run out of money for the year. "After that I gave up, I never followed up", he told Amnesty International.[220]

The victim compensation fund in Louisiana has been struggling financially. In their most recent reporting to the federal Office of Victims of Crime, Louisiana officials stated: "We need additional funding really badly in order to assist our victims". Elsewhere in the report, they acknowledged that: "We are having a serious problem with being able to pay out our claims due to a lack of funds".[221] Similarly, Maryland reported that: "Court collections for the fines and fees that make up the Criminal Injuries Compensation Fund continue to drop. This has had an impact on our ability to meet the demands against the fund".[222]

The shortfalls may be linked to how victim compensation programmes are funded. Most are partly funded by the state and partly supported by federal funding through the Crime Victim Fund (CVF), established by

217. Interview with Amnesty International, Baltimore, 13 September 2018.

218. Interview with Amnesty International, Louisiana, 7 September 2018.

219. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Louisiana 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/LA.pdf at page 8

220. Interview with Amnesty International, Baltimore, 10 September 2018. To follow up on this case, Amnesty International asked the Maryland Criminal Injuries Compensation Board if the board had ever run short of funding and therefore had to decline or postpone claims on that basis. They responded saying that they had "not run short of funding claims under the Governor's Office of Crime Control and Prevention". The Board moved to the Governor's Office of Crime Control and Prevention relatively recently, in 2018, and therefore, their response would not apply to older cases.

221. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Louisiana 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/LA.pdf at page 9

222. Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Maryland 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/MD.pdf at page 8

the federal Victims of Crime Act (VOCA). State funding comes from a variety of sources, including court costs, offender fines and traffic fees.[223] The CVF is administered by the Department of Justice and financed by fines and penalties paid by convicted federal offenders.[224] Federal funds for crime victim compensation are allotted based on a formula: a state is awarded 60% of the amounts awarded during the preceding fiscal year (two years prior to the grant year).[225]

Given how the CVF is financed, there have always been fears about the stability of the fund. In 2000, Congress placed an annual cap on how much money could be disbursed from the CVF, "to ensure future funding and to protect against possible fluctuations in receipts".[226] In 2015 and 2016, the appropriation caps were US$2.361 billion and US$3.042 billion, respectively. In the same years, over US$4 billion was deposited into the fund and the CVF had a balance of over US$11 billion in 2016.[227] Of the total allocation amount, a significant majority of CVF funding goes to victim assistance grants; that is, grants to organizations that provide direct services to crime victims. These organizations and grants are also crucial sources of support for victims and survivors of crime. In 2015, for example, only 7.21% of the money allotted (US$141.3 million) went towards victim compensation across all programmes in the USA. In 2016, only 6.43% of the money allotted (US$165.4 million) went to victim compensation.[228]

The amount of funding is often not linked to victims' need or levels of crime. For example, as the table below demonstrates, the amount of the annual VOCA grants, state revenues for the victim compensation fund and actual funds disbursed do not correlate to the incidence of violent crime in Louisiana:[229]

223. D Evans, Compensating Victims of Crime, John Jay College of Criminal Justice, June 2014, available at: https://johnjayrec.nyc/wp-content/uploads/2014/06/jf_johnjay3.pdf. This paper is a review of the operations and requirements of all state-based victim compensation program, based on the data made available by the state and national government on this issue. See annex A

224. https://www.ovc.gov/about/victimsfund.html

225. https://www.ovc.gov/grants/cvfa2018.html

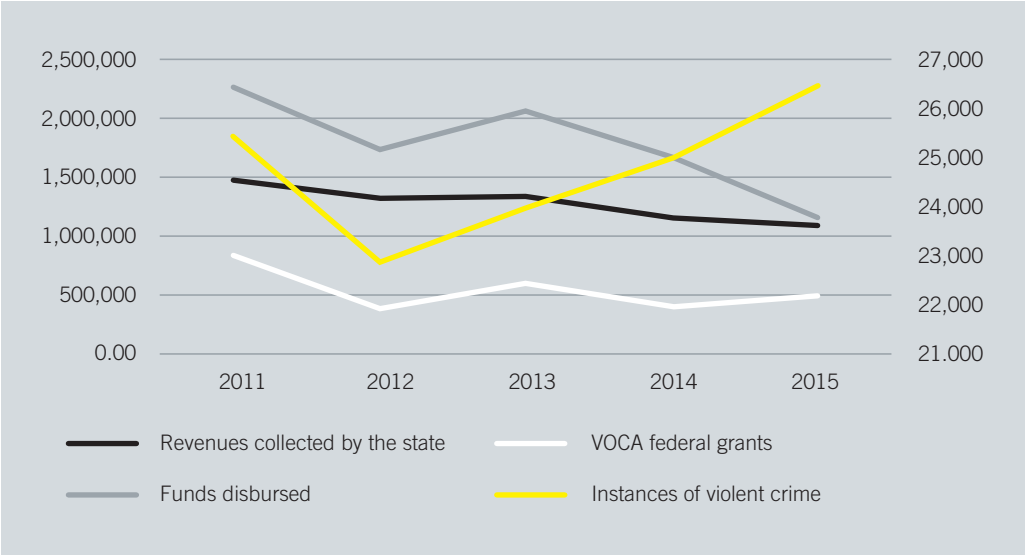
226. http://www.navaa.org/budget/

227. https://www.ovc.gov/pubs/reporttonation2017/crime-victims-fund.html

228. https://www.ovc.gov/pubs/reporttonation2017/images/Exhibits/rtn2017_fig-1.jpg

229. Graph sourced from the following: Louisiana Commission on Law Enforcement, Crime in Louisiana 2016, available here: http://www.jrsa.org/pubs/sac-digest/vol-28/la-criminlou2016-may.pdf; Office for Victims of Crime Victim Compensation Formula Grant Program, Annual Performance Measures Report – Louisiana 2017, available at https://www.ovc.gov/grants/VOCA-Victim-Compensation-FY-2017-State-Performance-Report/LA.pdf; State of Louisiana Crime Victim Reparation Board, Annual Report Fiscal Year 2015, available at: http://lcle.la.gov/programs/uploads/2015_CVR_Annual_Report.pdf

Louisiana: crime and victim compensation



As stated earlier, crime victim compensation programmes, which serve all victims of violent crimes, are the only public programme available to victims and survivors of gun violence to seek compensation. However, for a range of reasons, these state-run programmes are inadequate. Stringent eligibility requirements are a key reason why people are often unable to access necessary compensation from these funds. For example, in some states victims with prior felony convictions not eligible for support from victim compensation funds. Indeed, two of the three states that are the focus of this report had such a rule in place when Amnesty International undertook its research. The lack of information and awareness about victim compensation programmes also emerged as a key theme in Amnesty International's interviews with gunshot survivors, carers and health-care workers. These factors, combined with limits on compensation amounts and cumbersome application processes, mean that these programmes often fail to provide survivors of gun violence with full and effective compensation.

6. CONCLUSIONS AND RECOMMENDATIONS

> ***"If the government is backing gun stores, why shouldn't they back health care for the people who are shot?"***
>
> Megan Hobson, gunshot survivor[230]

By failing to adequately regulate the purchase, possession and use of firearms by private actors, the US government has failed to meet its obligations to exercise due diligence to protect people's rights to life, security of the person and other human rights. It is, therefore, responsible for providing effective remedies, including reparation, to the victims and survivors of gun violence. Under international human rights law, this should include medical and psychological care, compensation for economically assessable harms and access to information about all available services to which survivors may have a right to access.

This report has documented how the US government is failing survivors of gun violence by not fulfilling its obligations to ensure they have access to effective remedies, including reparation.

There are no special programmes to provide for the specific health and rehabilitation needs of gunshot survivors in the USA. Survivors told Amnesty International how they faced numerous challenges in accessing health care, notably the high costs of care. They also highlighted how the level of bureaucracy and paperwork associated with accessing existing systems of health care and other support like housing can be overwhelming.

Crime victim compensation programmes, which serve all victims of violent crimes, are the only public programme available to victims and survivors of gun violence to seek any form of compensation. However, for a range of reasons, these state-run programmes are inadequate.

This report analysed how crime victim compensation programmes worked in three states: Maryland, Louisiana and Florida. While each of the programmes functioned slightly differently, a number of common

230. Interview with Amnesty International, Miami, 7 December 2018

factors emerged. Stringent eligibility requirements are a key reason why people are often unable to access necessary compensation from these funds. For example, in some states victims with prior felony convictions not eligible for support from victim compensation funds. Indeed, two of the three states that are the focus of this report had such a rule in place when Amnesty International undertook its research.

The lack of information and awareness about victim compensation programmes also emerged as a key theme in Amnesty International's interviews with gunshot survivors, carers and health-care workers. Limits on compensation amounts and a cumbersome application process meant that these state-run programs often failed to provide survivors of gun violence with full and effective compensation.

RECOMMENDATIONS

In light of these findings and conclusions, Amnesty International calls on the US federal and state authorities to implement the following recommendations.

Ensure that gunshot survivors can access:

- Rehabilitation, including medical and psychological care, so gunshot survivors can access the health care they need, including all necessary, long-term health interventions, rehabilitation services, mental health care and long-term pain management; and
- Compensation for all economically assessable harms, including all health-related costs, and make sure that these do not act as a deterrent to survivors of gun violence seeking to access necessary care or impose catastrophic financial burdens on them and their families.

To this end, US federal and state authorities must:

1. Ensure that survivors of firearm violence have access to rehabilitation, including affordable and quality medical and psychological care, which includes necessary, long-term health interventions, rehabilitation services and long-term pain management. State and federal authorities should consider all avenues to this end, depending on the context in each state, including, for example, Medicaid expansion, increasing enrolment in Medicaid and Medicare, or setting up dedicated programmes to ensure firearm violence survivors can access this rehabilitation.
2. Ensure that survivors of firearm violence are fully informed about the health care and other benefits they are eligible for and have the assistance they require to access, obtain and manage them.
3. Revise existing crime victim compensation programmes or establish additional mechanisms to ensure that all survivors of gun violence can access full and effective compensation addressing all forms of economically assessable harms they have suffered, including by:
    - Removing inappropriate and arbitrary eligibility barriers to compensation, such as:

      – Repealing rules that make victims with prior felony convictions ineligible to apply for victim compensation, where such rules exist; and

      – Establishing fair and transparent procedures for mechanisms to consider whether the victim's character or behaviour or other circumstances merit any reduction in compensation, including an opportunity for the victim to seek a judicial review of a decision before a court of law.

- Establishing effective outreach programmes to inform victims of gun violence of their ability to claim compensation, including by:

  – Distributing information at hospitals, emergency rooms and trauma centres, and requiring social workers at hospitals to inform people about their eligibility for victim compensation;

  – Ensuring that police, prosecutors and other state agencies inform all victims of crime about their eligibility for victim compensation;

  – Increasing the amount of time that staff at victim compensation programmes can spend on outreach and awareness raising, including by increasing staff numbers and budget allocations, where necessary;

  – Making information about victim compensation programmes available across a variety of media – online, newspapers and so on;

  – Making information and paperwork about victim compensation programmes available in all relevant languages; and

  – Supporting community-based organizations working with victims and survivors of crime to increase awareness of victim compensation programmes, including by increasing the financial support available to community-based organizations.

- Taking steps to facilitate the process of accessing victim compensation funds, including by:

  – Putting in place proactive approaches to access the information required for the victim compensation application so that the onus for collecting this information does not fall entirely on claimants;

  – Increasing the numbers of staff available at victim compensation programmes so they can support claimants in filling out application forms and claims;

  – Supporting community-based organizations working with victims and survivors of crime to help claimants fill out victim compensation application forms, including by providing technical advice and training on the process of claiming victim compensation and financial support to ensure community-based organizations have adequate staff to provide assistance.

- Removing time limits for the filing of victim compensation applications.

- Allocating sufficient funds to provide full and effective compensation to victims without imposing arbitrary ceilings on awards.

4. Ratify the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

Please also refer to *In the line of fire* for a full list of conclusions and recommendations presented in that report to address the human rights crisis of gun violence in the USA.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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SCARS OF SURVIVAL

GUN VIOLENCE AND BARRIERS TO REPARATION IN THE USA

Gun violence in the USA is a human rights crisis. Over half a million people died of gunshot injuries between 2001 and 2017 and a further 1.3 million people sustained firearm-related injuries. This report focuses on the survivors of gun violence – many of whom experience what can be life-threatening and life-changing injuries. It examines the challenges that gunshot survivors experience when trying to access health care and other forms of support following their injury and evaluates the effectiveness of existing federal and state mechanisms for compensation.

Despite the seriousness of the physical and mental harm that gunshot survivors often suffer, the US government has not created any special programmes to provide for the specific health and rehabilitation needs of gunshot survivors. People told Amnesty International about the numerous challenges they faced in accessing health care, notably the high costs of care along with the bureaucracy associated with accessing existing systems of health care and other support, such as housing.

Victim compensation funds are the only public programmes available to victims and survivors of gun violence to seek any form of compensation and these are inadequate. Stringent eligibility requirements, limits on compensation amounts, a lack of information and awareness about these programmes, and a cumbersome application process mean that they often fail to provide survivors of gun violence with full and effective compensation. The US government is therefore failing to comply with its human rights obligations to ensure gunshot survivors have access to effective remedies, including reparation.

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