POLICY BRIEFS

Action Guides for Legislators and Government Executives

Based on research and program development projects of the National Institute of Justice

Crime Victim Compensation

THE PROBLEM

The victim of crime often receives little attention from the government or the criminal justice system. If he or she is considered at all, it is usually as the witness to a crime having a civic duty to participate in criminal justice proceedings. With rare exception, the costs of victimization—both emotional and financial—are borne by the victim alone.

The price of this inattention includes:

- Decreased public support for a system which overlooks victims' needs while devoting substantial attention and resources to the offender;
- Decreased victim incentives to cooperate with the criminal justice system, since the costs of reporting and testifying may outweigh the benefits of participation; and
- Initial hardship for those injured victims of violent crime who are unable to support the actual costs and income losses resulting from their victimization.

CONTENTS OF THIS BRIEF

I. Describes the experience of several states over the past 15 years in providing monetary assistance to victims injured as the result of a criminal incident. Established by legislative action, victim compensation programs provide a tangible demonstration of the state's concern for the innocent victim of violent crime.

II. I-II provide information on the characteristics and benefits of statewide crime victim compensation programs.

IV. Contains a brief discussion of the actions which legislators and government executives undertake to develop victim compensation programs.

V. Includes sample legislation and lists sources of additional information and assis-
I. INTRODUCTION

The Need and Benefits of Crime Victim Compensation

In the decade of the 1970s, the violent crime rate has risen approximately 48 percent on a national basis. At the same time, medical costs and the cost of living have risen 96 and 84 percent, respectively. Thus, not only are the chances of victimization increasing; the costs borne by victims are rising as well.

For most victims, however, the costs of a criminal injury are still relatively small. Studies of crime victim compensation program costs estimate that most victims' medical expenses are under $100, and that the average loss of income due to victimization is also less than $100.\(^1\),\(^2\) This should not obscure the fact that in certain cases the costs of victimization may be ruinous. These same studies estimate that in one year alone, some 98,000 victimizations resulted in more than 10 days lost from work, while in approximately 30,500 cases, the out-of-pocket medical costs of injured victims were over $1,000.

In theory there are many systems of financial relief available to injured parties. Yet all suffer from serious shortcomings which limit their usefulness to injured victims of crime:

- **Civil Remedies.** Victims have the right to institute a civil action against an offender to recoup damages. However, convicted offenders may lack the financial resources to pay, and civil court procedures are costly to the victim.

- **Third Party Litigation.** Under certain circumstances, victims of crime may obtain reparations from third parties who had the obligation to prevent a crime, and yet failed to do so. However, use of this approach is limited by:
  - the sovereign immunity claimed by many governments,
  - the expense of litigation, and
  - the relatively few instances in which such a suit would be appropriate.

- **Private Insurance.** While private insurance offers excellent financial protection, many victims—especially the young, indigent, or unemployed—may not have adequate medical insurance. One study of insurance coverage estimated that 11 to 18 million people were without health care coverage in 1978, representing 5 to 8 percent of the U.S. population.\(^3\)

- **Public Assistance.** Welfare, Social Security, Medicaid, and Medicare are helpful to those who qualify but may be unavailable to many victims who do not meet appropriate standards of financial need, age, or disability.

- **Restitution.** In some instances offenders may be required to make direct payments to victims of crime. Drawbacks of this approach are the low number of offenders actually apprehended, the limited financial resources of many offenders, and the reluctance of criminal justice officials to impose a restitution order, either because of the added burden it may place on the offender or the increased workload for criminal justice agencies.

Recognizing the serious needs of many crime victims and the shortcomings of available systems of financial relief, many states have developed special crime victim compensation programs to respond to some of the financial consequences of victimization. These programs compensate innocent victims injured as a result of crime, and in cases of death, compensate the surviving dependents of the victim. Funds are provided for unreimbursed medical costs, loss of earnings, loss of support and funeral expenses.

Many feel that compensation programs offer the most equitable and accessible source of monetary assistance for crime victims. Unlike private insurance, there is no bias against the infirm,
elderly, unemployed, or low-income individual. Financial relief is not contingent upon the apprehension of the offender, nor does it rely on the offender's ability to pay. Finally, it does not require that the victim institute any private civil actions against the offender.

Although compensation programs may be justified on humanitarian grounds alone, they are also intended to provide more specific benefits. Figure 1 illustrates these objectives.

Figure 1
Objectives of Victim Compensation Programs

- Demonstration of the state’s concern for the victim of violent crime
- Reduction of the financial impact of criminal injuries
- Increased reporting of crime
- Increased victim cooperation
- More effective delivery of assistance to victims
- Improved victim services throughout the state

Current Status of State Programs

In 1965, California passed the first victim compensation statute in the United States. New York and Hawaii followed in 1967, while Maryland and Massachusetts enacted compensation statutes in 1968. (A description of the early history of these programs is available in Public Compensation to Victims of Crime.\(^4\)) To date, 29 states have enacted some form of compensation legislation, while one state (Rhode Island) has passed a bill but delayed its implementation. For each of these states, Table 1 lists the year legislation was passed, program beneficiaries, and benefits.

Table 1
Status of State Victim Compensation Programs

<table>
<thead>
<tr>
<th>State</th>
<th>Year Legislation Enacted</th>
<th>Beneficiaries</th>
<th>Maximum Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>1972</td>
<td>victims; intervenors; dependents; persons who assume costs for the victim</td>
<td>$25,000 per victim; $40,000 for two or more survivors</td>
</tr>
<tr>
<td>California</td>
<td>1965</td>
<td>victims; dependents; persons who assume costs for the victim; intervenors</td>
<td>$10,000 medical; $10,000 lost earnings/support; $3,000 rehabilitation; $5,000 for intervenors or their dependents</td>
</tr>
<tr>
<td>State</td>
<td>Year Legislation Enacted</td>
<td>Beneficiaries</td>
<td>Maximum Benefits</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------------</td>
<td>---------------------------------------------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1978</td>
<td>victims; intervenors; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Delaware</td>
<td>1975</td>
<td>victims; dependents; persons who assume costs for the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Florida</td>
<td>1978</td>
<td>victims; intervenors; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Georgia</td>
<td>1967</td>
<td>intervenors; dependents; persons who assume costs for the intervenor</td>
<td>$5,000</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1967</td>
<td>victims; intervenors; dependents; persons who assume costs for victims and intervenors</td>
<td>$10,000</td>
</tr>
<tr>
<td>Illinois</td>
<td>1973</td>
<td>victims; intervenors; dependents; relatives who assume costs for the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Indiana</td>
<td>1978</td>
<td>victims; intervenors; dependents; law and fire officers injured in performance of duties</td>
<td>$10,000</td>
</tr>
<tr>
<td>Kansas</td>
<td>1978</td>
<td>victims; intervenors; dependents; other third persons</td>
<td>$10,000</td>
</tr>
<tr>
<td>Kentucky</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$15,000</td>
</tr>
<tr>
<td>Maryland</td>
<td>1968</td>
<td>victims; intervenors; dependents</td>
<td>$45,000; unlimited permanent disability and death benefits</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>1968</td>
<td>victims; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Michigan</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$15,000</td>
</tr>
<tr>
<td>State</td>
<td>Year Legislation Enacted</td>
<td>Beneficiaries</td>
<td>Maximum Benefits</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1974</td>
<td>victims; intervenors; dependents; victims' estates; persons who assume costs for the victim</td>
<td>$25,000</td>
</tr>
<tr>
<td>Montana</td>
<td>1977</td>
<td>victims; intervenors; dependents</td>
<td>$25,000</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1978</td>
<td>victims, intervenors; dependents; persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Nevada</td>
<td>1969</td>
<td>intervenors; dependents; persons responsible for the injured party</td>
<td>$5,000</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1971</td>
<td>victims; intervenors; dependents; persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>New York</td>
<td>1967</td>
<td>victims; dependents</td>
<td>unlimited medical; $20,000 wage loss</td>
</tr>
<tr>
<td>North Dakota</td>
<td>1975</td>
<td>victims; intervenors; dependents</td>
<td>$25,000</td>
</tr>
<tr>
<td>Ohio</td>
<td>1975</td>
<td>victims; intervenors; dependents; specific third persons</td>
<td>$50,000</td>
</tr>
<tr>
<td>Oregon</td>
<td>1977</td>
<td>victims; intervenors; dependents</td>
<td>$23,000</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$25,000 loss of earnings/support; $15,000 death benefits</td>
</tr>
<tr>
<td>Rhode Islanda</td>
<td>1976</td>
<td>victims; dependents; persons responsible for maintenance of the victim</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

*aThe Rhode Island statute will not go into effect until passage of federal victim compensation legislation.*
Table 1 (continued)

<table>
<thead>
<tr>
<th>State</th>
<th>Year Legislation Enacted</th>
<th>Beneficiaries</th>
<th>Maximum Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tennessee</td>
<td>1976</td>
<td>victims; intervenors, dependents, persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
<tr>
<td>Texas</td>
<td>1979</td>
<td>victims; intervenors; dependents</td>
<td>$50,000</td>
</tr>
<tr>
<td>Virginia</td>
<td>1976</td>
<td>victims; intervenors; dependents</td>
<td>$10,000</td>
</tr>
<tr>
<td>Washington</td>
<td>1974</td>
<td>victims; intervenors; dependents</td>
<td>unlimited, amounts set by Workmen's Compensation</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1976</td>
<td>victims; intervenors, dependents, persons responsible for maintenance of the victim</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

Support for Victim Compensation

Since the mid-1960s, considerable national attention has been given to the concept of victim compensation:

- At its Annual Conference on October 6, 1966 the International Association of Chiefs of Police adopted a resolution calling for state and/or federal legislation to indemnify the victims of violent crime and their surviving dependents.

- In 1967, the President’s Commission on Law Enforcement and the Administration of Justice released *The Challenge of Crime in a Free Society*. That report states: “the Commission believes that the general principal of victim compensation . . . is sound and that the experiments now being conducted with different types of compensation programs are valuable.”

- In 1970, the National Conference of Commissioners on Uniform State Laws began the development of a model crime victim compensation bill. Three years of work culminated in the adoption of the Uniform Crime Victims Reparations Act. The House of Delegates of the American Bar Association approved this act in 1974. A copy of the Act is included in the Appendix.

- Over the past two decades, numerous bills requiring federal support for victim compensation have been introduced in the U.S. House and Senate. The latest measures introduced in the House (H.R. 4257) and the Senate (S. 190) call for federal subsidies of state victim compensation programs and set certain standards which programs must meet to qualify for supplemental funding. (A copy of the House bill is provided in the Appendix.)
• In 1980, the National Institute of Justice initiated a series of workshops on compensating the victims of crime under its criminal justice research utilization program. Through these workshops, held in 8 locations across the country, policymakers investigate the types of compensation available and the range of existing methods for providing compensation.5

Costs of Victim Compensation

Throughout the history of crime victim compensation in the United States, program cost has been the single most important issue for government executives, legislators, and program operators. Major concerns center around the possible financial impacts of the compensation program and the advisability of establishing new financial assistance programs in the face of growing public concern over rising government expenditures. Cost considerations have had a considerable impact on the development of victim compensation in the United States:

• Implementation of compensation legislation has been delayed or prevented in some areas. Rhode Island passed a compensation bill but stipulated that implementation was contingent upon passage of a federal compensation statute. Louisiana also enacted a compensation statute, but repealed the legislation when faced with the prospect of implementing the program without federal support.

• Almost half the states have not yet passed compensation statutes. For many, concern about cost is the major obstacle.

• Numerous attempts have been made to enact a federal crime victim compensation statute providing financial support to state programs. At least in part, opposition to federal involvement has revolved around the issue of cost.

• Cost considerations also affect the form and operations of existing compensation programs. Most victim compensation schemes contain provisions restricting victim eligibility and benefit payments. Minimum loss criteria, maximum payment levels, and limitations on types of losses compensated are all intended as cost-saving measures.

While costs continue to be a legitimate concern for policymakers, the experience of existing compensation programs shows that the actual expenditures of victim compensation programs are relatively low. The National Institute’s Crime Victim Compensation—Program Model6 which provides detailed cost information on the yearly administrative expenses and benefits payments of 18 programs shows a range from approximately $44,000 to almost $5.5 million. As may be expected, smaller states and those with lower caseloads spent considerably less for victim compensation than larger states. The effect of state size on compensation costs was demonstrated in the Program Model, which found that the range among state benefit expenditures was far less dramatic when examined on a per capita basis. On the average, programs spent only $.18 per resident per year on benefit payments; half the states spent $.12 per capita or less.

Many are concerned that attempts to contain costs through eligibility and benefit restrictions may unduly limit victim access to the compensation program. For example, one estimate shows that only 8 percent of the injured victims of violent crimes would qualify for compensation under current eligibility restrictions.7

This concern, coupled with states’ growing familiarity with the resource demands of compensation efforts, has prompted a number of states to ease some limitations. For example, Alaska and Minnesota raised their maximum benefits from $10,000 to $25,000, while New York State eliminated its minimum loss criteria. As more states gain experience in operating compensation programs and estimating their costs, opposition and restrictions based on issues of cost may gradually be eliminated.

6
II. KEY FEATURES OF VICTIM COMPENSATION PROGRAMS

The various options for developing crime victim compensation programs are examined in depth in Crime Victim Compensation—Program Model,6 published in 1980 by the National Institute of Justice. Key features of compensation programs are noted below.

Coverage. Almost every program provides funds for unreimbursed medical costs, lost wages, loss of support, and funeral expenses. Some states, such as California, also cover the cost of rehabilitation services. A number of states reimburse the expense of replacing the services which the victim would have performed free of charge for his or her family. Although less common, some states also cover treatment costs for psychological injuries resulting from crimes. Property loss is compensated only under very limited circumstances.

Eligibility. Persons eligible for compensation generally include victims of crime, intervenors (persons who have attempted to prevent a crime or aid a law enforcement officer), and the dependents of deceased victims and intervenors. In addition, some statutes allow compensation to persons who have incurred expense for the maintenance or care of an injured victim. Common restrictions on eligibility include residency requirements, minimum loss criteria and financial need requirements. Persons who contribute to their own injury may be denied compensation; those who are related to the offender or who have failed to report the crime are almost always excluded. Several of these restrictions have been challenged by practitioners and researchers alike.8

Application Process. Victim compensation programs require claimants to submit a written application which provides information on (1) the criminal incident giving rise to the claim and (2) the financial losses resulting from the crime. The forms vary greatly in terms of length, complexity, and intrusiveness. Information on the application is verified, and if necessary, additional information may be sought through an investigation; the extent of verification and investigation carried out differs considerably among programs. Hearings are a common feature in many states. Most states conduct these proceedings on an as-needed basis; however, some programs conduct hearings on every claim, while others conduct no hearings at all.

Claims Decisions. The procedures and personnel used for claims decisions are determined by the placement of the program and the specific claims processing options prescribed in the victim compensation statute. In most cases, the initial decision is open to review or appeal. In some programs, appeals may be held at two levels: internal/administrative and judicial. However, it is not uncommon for programs to offer only one of these two appeal procedures.

Public Awareness. Lack of public awareness of victim compensation services and requirements is a major problem. Some programs make no special effort to improve this situation, fearing that widespread public awareness will result in substantial increases in claims volumes and subsequent strains on the program budget. Other programs assume responsibility for public awareness by instituting one or more of the following procedures:

• distribution of printed materials such as brochures and posters;
• use of public service announcements on radio and television;
• news coverage of the program’s activities and services; and
• paid advertisements.

Outreach. Some programs go beyond simple public awareness efforts. Rather than relying on the victim to take the initiative, these programs contact victims directly. Among the available outreach approaches are:
• requiring the police to inform every violent crime victim of the compensation program. Such an approach was implemented in New York in 1977, and preliminary results indicate a noticeable increase in victims' awareness following implementation. 9

• enlisting the assistance of other agencies which are likely to come into contact with crime victims: hospital emergency rooms, social service agencies, and victim/witness assistance programs. These groups can easily notify victims of the compensation program benefits and procedures.

• providing individualized notification. Under this system, police incident reports are screened and all potentially eligible victims are sent information concerning victim compensation. Notification may be carried out by compensation program staff, police agencies, or victim/witness assistance groups.

Benefits. Victim compensation programs cover a wide variety of expenditures relating to criminal injuries. Most programs provide for:

• all medical costs not reimbursed through other sources;

• unreimbursed loss of earnings;

• payments for loss of support for dependents of deceased victims;

• funeral costs;

• medical costs of the deceased victim; and

• short-term emergency awards for claimants who may experience severe financial difficulty without immediate assistance.

In addition to these basic benefits, some programs offer:

• reimbursement for rehabilitation training;

• reimbursement for the costs of replacing the services which the victim would normally provide for the family free of charge;

• replacement of certain medical devices such as hearing aids, eyeglasses, or artificial limbs;

• attorneys' fees incurred by victims engaging in the compensation process;

• costs of psychiatric treatment necessitated by the crime;

• compensation for disability or disfigurement; and

• in some rare cases, awards for pain and suffering.

Award Limitations. Almost every program places some maximum limit on the benefits offered, usually ranging from $10,000 to $50,000. In general, the limits are viewed as cost-saving measures. However, a number of programs, such as those of New York, Alaska, and Minnesota, have raised their maximum limits as they have gained greater experience with the demands of victim compensation. 6, 8 It is also common for programs to limit weekly payments to some specific maximum, usually between $100 and $250. Maximums may also be set on particular categories of benefits, such as attorneys' fees, funeral costs, or wage loss. In addition to maximum limits, many programs require certain minimum losses or minimum deductibles. Commonly, these are expressed either as a minimum dollar loss, ranging from $25 to $250, or some minimum time lost from work, usually one or two weeks. Again, these criteria are intended to reduce program costs.
Payment Methods. Depending on the amount and type of award, programs may offer either lump sum or protracted payments. The lump sum award is generally used in cases where the costs are easily determined and the award is moderate in size. Protracted payments, on the other hand, are used for large awards, for awards in which costs are not fixed, and for long-term disability or loss of earnings/support.
III. EXPANDING VICTIM SERVICES

Victim compensation programs are one component of the growing movement to provide services to the victims of crime. Programs' participation in this broader movement can take several forms:

- establishment of working relations with criminal justice, health, and social service agencies;
- interdependent relations with victim service agencies for victim notification and referrals;
- development of direct victim service efforts by the compensation program;
- compensation program involvement in statewide coordination of victim service efforts.

Developing Interagency Liaison

Because victim compensation programs must rely on several different agencies and organizations throughout the state for information and assistance, it is essential that they develop standard working relationships with police departments, the courts, the medical community, the insurance industry, public assistance programs, and victim service groups. The delineation of complementary responsibilities is particularly important in order to minimize duplication of services and enhance the effectiveness of all groups.

A wide variety of techniques may be used to establish interagency relations. Key approaches include:

- prescribing interagency relations through the compensation statute, the program's rules and regulations, or the procedures and forms used by the program.
- capitalizing on the prior relationships and personal contacts of compensation program staff. For example, staff members with backgrounds in law enforcement may be able to develop good relations with police agencies.
- ensuring that other programs are aware of the victim compensation programs by providing special training sessions or informational materials to staff of other agencies. In Minnesota, for example, the compensation program director regularly presents victim compensation training sessions at the Police Academy.10
- developing ongoing relations with professional organizations in the state, such as the bar association, hospital administrative and planning boards, medical associations, and local and statewide police organizations.

Problems which victim compensation programs may encounter in establishing these relationships include financial constraints, staffing limitations, and the large number of relevant agencies and organizations in the state.

Interdependent Relationships with Victim Service Agencies

Many local jurisdictions now offer specialized counseling and crisis intervention, assistance in obtaining community services, and special witness notification and support services for victims participating in the criminal justice process.12 In states with victim compensation programs, victim service groups have frequently taken the initiative to inform victims of the availability of compensation and to assist in preparing application materials. In turn, some victim compensation programs have developed cooperative relationships with local victim service groups, using them as a referral resource for needy victims.
Providing Victim Services

Some compensation programs arrange for victim assistance as well as compensation. In Delaware, for example, the Violent Crimes Compensation Board was one of the leading forces behind the development of their statewide victim/witness assistance program which remains functionally and administratively independent of the Compensation Board. In New York State, the Crime Victims Compensation Board instituted a special form of assistance for elderly crime victims in its New York City office. The Elderly Unit, consisting of two investigators and one support staff member, handles all claims from individuals aged 60 or over. Each elderly applicant is contacted personally, and if it appears that the applicant is having difficulty in completing the application materials, a member of the Elderly Unit may make a personal visit to the claimant to assist him or her with the application.

Statewide Coordination of Victim Assistance

A unique approach to the interaction of victim services and victim compensation has recently been undertaken in New York State. The legislature authorized the Crime Victims Compensation Board to implement a statewide strategy for serving the needs of crime victims, made it responsible for coordination of state-funded victim assistance services, and designated the Board as the primary liaison between such programs and state government. The New York Board is presently the only victim compensation program with such a mandate. A copy of the legislation authorizing this move is included in the Appendix.

To support this coordinative function, the New York State Board was awarded a grant from the Law Enforcement Assistance Administration through its National Victim/Witness Strategy Program. Other states which have received LEAA grants to develop a statewide network of victim services are California, Connecticut, Florida, Illinois, Kentucky, Massachusetts, and New Jersey. In those states, however, the victim compensation program was not designated as the implementing agency.
Establishment of a victim compensation program requires a dual initiative:

- Determination of an appropriate administrative body and revenue source; and
- Enactment of authorizing legislation which sets forth the scope, policies, and procedures of the compensation effort.

Decisions that are made by legislators and government executives in the initial planning of a victim compensation program are likely to require later refinement and revision as experience is gained with program operations.

### Determining the Program Placement

The administrative placement of the compensation program is a key concern, since it may have a strong influence on the procedure, operations and structure of the program. Three major options are available:

- **New Administrative Agency.** Creation of a new administrative agency is the most common choice among states having victim compensation programs. Generally, a commission appointed by the Governor is given responsibility for claims decisions and general program policy. Depending on the program size, the agency may have a staff of administrative, investigative, and/or support personnel. Advantages of this placement include: exclusive focus on victims and compensation issues; administrative flexibility; accountability; and the potential capacity to process large claims volumes effectively. Disadvantages include higher implementation costs, high operating costs in states with low claims volumes; and longer implementation periods than other program placements.

- **Existing Administrative Agency.** Another common approach is to expand the jurisdiction of an existing administrative agency to include the compensation effort. Most frequently, the State Industrial Insurance Agency (Worker's Compensation) or the agency which hears claims against the state (e.g., a State Board of Claims) is designated as the parent agency. Benefits of this approach include: ease of implementation, potential cost savings realized through sharing of facilities and services, decentralization through use of any regional offices of the parent agency, and the ability to draw on the contacts and relationships established by the host agency. Drawbacks of this arrangement are resistance of parent agency staff, potential difficulty in handling large claims volumes, and potential conflicts of the compensation procedures with traditional duties of the parent agency.

- **Court System.** Placement in the court system has been chosen by only four states. In court-operated compensation programs, claims decisions are made by judges or commissioners, claims investigations are carried out by the State Attorney General's Office or local district attorneys, and claims processing is conducted by the court clerk. Advantages of court placement include: ready availability of highly specialized and trained personnel; the possibility of lower implementation costs through sharing of resources and personnel; and more formalized procedures which may safeguard claimants' rights. Disadvantages include lack of central administrative authority and responsibility for the program; inadequate staff to handle additional demands of the program; conflicts due to court case backlogs; and potentially high costs, as salaries of judicial personnel and the Attorney General's staff are often higher than those of administrative personnel.

There is no single administrative placement which is appropriate for all states, and the program placement decision will depend on the administrative structure of the particular state government, the willingness of various agencies to assume responsibility for crime victim compensation, and legislators' philosophies concerning the nature of the compensation decision and the way
that the decision should be made. In addition, the demographic characteristics of the state may influence the placement decision; for example, states with large victim compensation claims volumes may find the new agency placement to be more feasible than placement in the courts, where existing caseloads may preclude any addition of claims responsibilities. Additional information on the advantages, drawbacks, and operational requirements of various program placements is provided in the National Institute publication *Crime Victim Compensation—Program Model.*

Obtaining Funds

A major concern in establishing or modifying compensation programs is the source of program funding. Several primary and supplemental sources should be considered.

- **General state revenues.** Most compensation programs rely on general state revenues for the bulk of their operating costs and benefit payments. While the sufficiency of these funds depends on the state appropriations process, general revenues usually offer the most consistent and stable source of funding for compensation programs.

- **Surcharge or fine.** In many states, offenders convicted of certain criminal charges may be assessed an additional monetary penalty, ranging from $5 to $21. Once collected, these monies are placed in a special victim indemnity fund for use by the program. In most states fines provide only supplemental funding; however, for some compensation programs they constitute the primary revenue source.

- **“Son of Sam” provisions.** Instituted in New York State in 1977, the “Son of Sam” provision requires that any proceeds offenders may gain by selling the rights to their story to the media must be placed in an escrow account and used for reparation payments to the victims of the incident in question. However, the constitutionality of this provision is still under consideration.

- **Filing fees.** Court-based victim compensation programs often impose a small ($5-$10) filing fee. Although not a major source of program income, these fees may help to offset some of the costs of program administration. However, strong criticism has been voiced about the propriety of this procedure.

- **Alternate funding approaches.** Recommendations have also been made for such alternate funding approaches as use of the proceeds from police department sales of unclaimed property or use of funds earned by offenders employed in prison industries programs.¹³

Instituting or Revising the Compensation Statute

There are three general sources of guidance for states which have not yet enacted victim compensation legislation:

- **Uniform Crime Victims Reparations Act.** Drafted in 1973 by the National Conference of Commissioners on Uniform State Laws, the Uniform Act provides a comprehensive model for states wishing to establish compensation programs under a new agency placement. Many states have adopted the Uniform Act in whole or in part. A copy of the Act is provided in the Appendix.

- **Existing legislation.** Existing state victim compensation statutes provide other models for new legislation. States’ experience with various placement, funding, administrative, and procedural provisions can be a valuable source of guidance for drafters of new legislation.
• **Federal legislation.** The latest federal crime victim compensation bills (H.R. 4257 and S. 190) prescribe basic standards which state victim compensation programs must meet to qualify for federal support. Policymakers may therefore wish to consider the probable federal requirements when drafting new state legislation. Should federal legislation be passed, the requirements of the statute are likely to have a major influence on the operations of existing programs and the development of new programs. H.R. 4257 is reproduced in the Appendix.

After the state has gained some experience in administering the victim compensation program, certain revisions or modifications of the statute may be necessary. Two approaches may be taken:

• **Legislative amendments.** Common areas for legislative amendment include eligibility criteria, statutory limits on certain benefits, and structural concerns such as the size of the compensation board or the administrative placement of the program. The New York State legislation authorizing the Crime Victims Compensation Board to assume a statewide advocacy and coordination role is another example of a possible area for legislative action.

• **Legal challenges.** Legal challenges to the compensation statute may offer another avenue for reform. For example, at one time the Massachusetts state victim compensation program required that sums recovered from such sources as insurance, workmen's compensation, or Medicare be deducted from the upper award limit. This provision was successfully challenged and modified through the State Supreme Court decision in *Gurley v. Commonwealth*. However, legal challenges are as yet relatively uncommon, and there is little case law to provide guidance in formulating challenges to specific provisions. Areas which may be open to legal challenge include residency requirements, definitions of dependency, and upper limits on recovery.
V. SOURCES FOR FURTHER INFORMATION AND ASSISTANCE

The appendices contain the text of the Uniform Crime Victims Reparations Act, the New York State legislation authorizing the Compensation Board to assume an advocacy role, and the most recent U.S. House bill on crime victim compensation.

The following written reports, referenced in the text of this Brief, can be consulted for more information on victim compensation programs and legislation:


For information on the National Institute's Criminal Justice Research Utilization Program Workshop on crime victim compensation contact:

Dr. Sheldon S. Steinberg  
Project Director  
Criminal Justice Research Utilization Program  
University Research Corporation  
5000 Wisconsin Avenue  
Washington, D.C.

The following individuals are experienced in the planning and operation of crime victim compensation programs and may be contacted for information and advice:

Martin M. Moylan  
Chairman, National Association of Crime Victim Compensation Programs  
Executive Director, Maryland Criminal Injuries Compensation Board  
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Baltimore, Maryland  21201

Richard Godegast  
Assistant Executive Secretary  
State Board of Control  
926 J. Street, Suite 300  
Sacramento, California  95814

Brian Huseby  
Adjudicator  
Crime Victim Compensation Division  
Department of Labor and Industry  
General Administration Building  
Olympia, Washington  98504
APPENDIX

- New York State House Bill 2366-A, authorizing the New York Crime Victims Compensation Board to assume a victim advocacy role.

- Uniform Crime Victims Reparations Act

- Federal crime victim compensation bill: H.R. 4257
AN ACT to amend the executive law, in relation to the powers and duties of the crime victims compensation board and to repeal subdivision nine of section six hundred twenty-three of such law, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1. Section 1. Legislative findings and intent. The legislature hereby finds and declares that:

1. The continued prevalence of violent crime has placed a great strain on the criminal justice system of the state.
2. The impact of violent crime upon the prevention, prosecution, rights, care, punishment and rehabilitation of the criminal offender has sometimes led to the neglect of the rights and interests of innocent victims of crime.
3. Recent studies have indicated that nearly one-half of violent crimes in large cities go unreported by crime victims.
4. The ability of the criminal justice system to reduce crime depends in part on the cooperation and participation of citizens, particularly crime victims.
5. It is the intent of the legislature, by this legislation, to strengthen and expand the role of the crime victims compensation board so that the board may actively speak for and advocate the rights and interests of crime victims throughout the state, thereby encouraging a restoration of faith by citizens in the criminal justice system and an eventual reduction of fraud by citizens in the criminal justice system and an eventual reduction of fraud by citizens.

2. § 2. Subdivision nine of section six hundred twenty-three of the executive law, as added by chapter eight hundred ninety-four of the laws of nineteen eighty-five, is amended to read as follows:

EXPLANATION — Matter in ( ) is new; matter in brackets [ ] is added law in effect.

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this article, including rules for the approval of attorneys' fees for representation before the board or before the appellate division upon judicial review as provided for in section six hundred twenty-nine of this article, and rules for the authorization of qualified persons to assist claimants in the preparation of claims for presentation to the board or board members.
2. § 3. Subdivision nine of section six hundred twenty-three of such law is repealed and subdivision ten is reenumbered subdivision twenty-one and twelve new subdivisions nine through twenty are added to read as follows:
3. To establish and maintain a special investigative unit to expedite processing of claims by victim citizens and special emergency situations, and to promote the establishment of a volunteer program of home visits to elderly and frail victim citizens of violent crime.
4. To advise and assist the governor in developing policies designed to recognize the legitimate rights, needs and interests of crime victims.
5. To coordinate state programs and activities relating to crime victims.
6. To cooperate with and assist political subdivisions of the state in the development of local programs for crime victims.
7. To study the operation of laws and procedures affecting crime victims and recommend to the governor proposed improvements in the administration and effectiveness of such laws.
8. To establish an advisory council to assist in formulation of policies on the problems of crime victims.
9. To advocate the rights and interests of crime victims of the state before federal, state and local administrative, regulatory, legislative, judicial and criminal justice agencies.
10. To promote and conduct studies, research, analyses and investigations of matters affecting the interests of crime victims.
11. To sponsor conferences relating to the problems of crime victims.
12. To serve as a clearinghouse for information relating to crime victims.
13. To keep informed of new developments in the field of crime victims.
14. To keep informed of the progress in the development of local crime and drug abuse programs for crime victims.
15. To keep informed of the progress in the development of state programs for crime victims.
16. To keep informed of the progress in the development of federal and state programs for crime victims.
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41. To keep informed of the progress in the development of federal and state programs for crime victims.
UNIFORM CRIME VICTIMS REPARATIONS ACT

Drafted by the
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-SECOND YEAR
AT HYANNIS, MASSACHUSETTS
JULY 26-AUGUST 2, 1973

WITH PREATORY NOTE AND COMMENTS
APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING IN HOUSTON, TEXAS, FEBRUARY 5, 1974

The committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Crime Victims Reparations Act was as follows:

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Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611

PREATORY NOTE

This Act establishes a state-financed program of reparations to persons who suffer personal injury and dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or to apprehend criminals. Reparations are measured by economic loss such as medical expenses, loss of earnings, and costs incurred in obtaining services as a substitute for those the victim would have provided. Throughout, the emphasis is on the victim rather than the perpetrator of the crime.

The civil and criminal liability of the offender is not covered by this Act; save for provisions directing the offender to reimburse the State. The actual financial return to the State through this mechanism is not anticipated to be large, and a realistic appraisal is that the costs of the program will be borne by the State and its citizens. A variety of limitations and exclusions stated in the Act are designed to limit those costs. The suggested maximum allowance of $50,000 per victim, the exclusion of motor vehicle accidents (with some exceptions), and elimination of pain and suffering as an element of awards are illustrations.

Probably the most perplexing policy choice to be made by any state instituting a program of this sort relates to the relevance, if any, of the financial condition of the victim. Some would further reduce costs by denying reparations to victims able to bear the economic loss caused by crime. Others would conclude that the victim's losses should be borne by the State irrespective of his financial resources. This Act is drafted to accommodate either choice, but the clear preference is to eliminate any "financial need" or "financial stress" test as a condition precedent to receipt of benefits. For those states taking the other view, the Act contains a provision including this condition but defining it in terms of financial hardship or stress rather than "need." The objective of that definition is to ensure that the program is not an unnecessary substitute for welfare but is a program to protect against substantial changes in life style caused by losses through crime.

A kindred issue is that of allocation of criminally caused loss through personal injury among competing sources of payment such as insurance, worker's compensation and Social Security. This Act reflects the policy choice that these programs are primary. Implementation of that policy occurs in two ways. First, insurers are not entitled to claim reimbursement from the State for their expenditures. Second, victims who have been paid, or who are entitled to be paid, by insurer: will have their claims against the State fund reduced by the amount of available insurance. In somewhat overly simplistic terms, the policy of the Act is to preclude double recovery for any criminal incident.

Administration of the Act is entrusted to a three-man Board whose members will serve full or part time, depending upon the expectable workload in any state. The Act includes procedural details which will be seen to parallel provisions of the Uniform Administrative Procedures Act. Any State legislature in a state having such an administrative procedures act will be well advised to eliminate the duplicate provisions herein.

UNIFORM CRIME VICTIMS REPARATIONS ACT

SECTION 1. [Definitions.]  
(a) As used in this Act, the words and phrases in this Section have the meanings indicated.
(b) "Board" means the Crime Victims Reparations Board created under Section 3.
(c) "Claimant" means any of the following claiming reparations under this Act: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them.
(d) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this Act which the victim or claimant has received, or which is readily available to him, from:
(1) the offender;
(2) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this Act;
(3) Social Security, Medicare, and Medicaid;
(4) state required temporary non-occupational disabil-
ity insurance;
(5) workmen's compensation;
(6) wage continuation programs of any employer;
(7) proceeds of a contract of insurance payable to the
victim for loss which he sustained because of the criminally
injurious conduct; or
(8) a contract providing prepaid hospital and other
health care services, or benefits for disability.

(c) "Criminally injurious conduct" means conduct that
(1) occurs or is attempted in this State, (2) poses a substan-
tial threat of personal injury or death, and (3) is punishable
by fine, imprisonment, or death, or would be so punishable
but for the fact that the person engaging in the conduct lacked
capacity to commit the crime under the laws of this State.
Criminally injurious conduct does not include conduct
of the ownership, maintenance, or use of a motor vehicle
except when intended to cause personal injury or death.

(f) "Dependent" means a natural person wholly or par-
tially dependent upon the victim for care or support and in-
cludes a child of the victim born after his death.

(g) "Economic loss" means economic detriment consisting
only of allowable expense, work loss, replacement services
loss, and, if injury causes death, dependent's economic loss
and dependent's replacement services loss. Noneconomic deter-
minant of economic loss. However, economic detriment shall
be limited to that which is excess of the victim's earnings in
ordinary and necessary services in lieu of those that the injured
person would have performed if he had not been in-
jured, and expenses reasonably incurred by him in obtaining
ordinary and necessary services in lieu of those he would have for-

(1) "Allowable expense" means reasonable charges in-
curred for reasonably needed products, services, and accom-
mmodations, including those for medical care, rehabilitation,
rehabilitation occupational training, and other reasonable
treatment and care. The term includes a total charge not in-
excess of $500 for expenses in any way related to funeral,
cremation, and burial. It does not include that portion of a
charge for a room in a hospital, clinic, convalescent or nurs-
ing home, or any other institution engaged in providing
nursing care and related services, in excess of a reasonable
and customary charge for semi-private accommodations,
unless other accommodations are medically required.

(2) "Work loss" means loss of income from work the in-
jured person would have performed if he had not been in-
jured, and expenses reasonably incurred by him in obtaining
services in lieu of those he would have performed for in-
come, reduced by any income from substitute work actually
performed by him or by income he would have earned in
ordinary and necessary services in lieu of those that the injured
person would have performed, not for income but for the benefit of himself or his family,
if he had not been injured.

(4) "Dependent's economic loss" means loss after dece-
dent's death of contributions of things of economic value to
his dependents, not including services they would have re-
ceived from the decedent if he had not suffered the fatal
injury, less expenses of the dependents avoided by reason
of decedent's death.

(5) "Dependent's replacement services loss" means loss
reasonably incurred by dependents after decedent's death
in obtaining ordinary and necessary services in lieu of those
the decedent would have performed for their benefit if he
had not suffered the fatal injury, less expenses of the depen-
dents avoided by reason of decedent's death and not
subtracted in calculating dependent's economic loss.

(h) "Non-economic detriment" means pain, suffering, in-
convenience, physical impairment, and other non-pecuniary
damage.

(i) "Victim" means a person who suffers personal injury or
death as a result of (1) criminally injurious conduct, (2) the
good faith effort of any person to prevent criminally injurious
conduct, or (3) the good faith effort of any person to appre-
hend a person suspected of engaging in criminally injurious
conduct.

COMMENT
The words "criminally injurious conduct" are used throughout this Act
rather than the simple word "crime" because if the word "crime" were used,
it could need to be given an antithetical meaning. The reason is that not all
crimes will result in reparations under this Act, and those crimes which are
reparable fall under the definition here given for "criminally injurious con-
duct.

The definitions of "economic loss" and its components are derived,
with essential modifications, from the Uniform Motor Vehicle Accident Repara-
tions Act.

SECTION 2. [Award of Reparations.] The Board shall
award reparations for economic loss arising from criminally
injurious conduct if satisfied by a preponderance of the evi-
dence that the requirements for reparations have been met.

SECTION 3. [Crime Victims Reparations Board.] The
(a) A Crime Victims Reparations Board is created [in the
executive branch], consisting of three members appointed by
the Governor [with the advice and consent of the Senate]. At
least one member shall be a person admitted to the bar of this
State.
(b) The term of office of each member shall be [5] years
and until his successor is appointed and qualified, except that
the members first appointed one each shall be appointed
to serve for terms of [2], [4], and [6] years. A person ap-
pointed to fill a vacancy shall be appointed for the remainder
of the unexpired term.
(c) The Governor shall designate a member who is admit-
ted to the bar of this State to serve as chairman at the pleasure
of the Governor.
(d) Members shall serve full time, receive an annual salary
prescribed by the governor within the available appropriation
not exceeding [ ] dollars. [Serve part time, and receive [ ] dollars per diem,] and be reimbursed for actual ex-
penditures incurred in performance of their duties in the same
manner as State officials generally.

SECTION 4. [Powers and Duties of the Board.] The
(a) In addition to the powers and duties specified else-
where in this Act, the Board has the powers and duties speci-
fied in this section.
(b) The duty to establish and maintain a principal office
and other necessary offices within this state, appoint em-
ployees and agents as necessary, and prescribe their duties
and compensation.
(c) The duty to adopt by rule a description of the organi-
sation of the board stating the general method and course of
operation of the Board.
(d) The duty to adopt rules to implement this Act, includ-
ing rules for the allowance of attorney's fees for representation
of claimants; and to adopt rules providing for discovery in
proceedings, including medical examination consistent with
other proceedings.
(e) The duty to prescribe forms for applications for repa-
rations.
(f) The duty to hear and determine all matters relating to
claims for reparations, and the power to reinvestigate or re-
open claims without regard to statutes of limitations or peri-
ods of prescription.
(g) The power to request from prosecuting attorneys and
law enforcement officers investigations and data to enable the
Board to determine whether, and the extent to which, a claim-
ant qualifies for reparations. A statute providing confiden-
tiality for a claimant's or victim's juvenile court records does
not apply to proceedings under this Act.
(h) The duty, if it would contribute to the function of the
Board, to subpoena witnesses and other prospective evidence,
administer oaths or affirmations, conduct hearings, and re-
defer relevant, nonprivileged evidence.
(i) The power to take notice of judicially cognizable facts
and general, technical, and scientific facts within their spe-
cialized knowledge.
(j) The duty to make available for public inspection all
Board decisions and opinions, rules, written statements of pol-
(k) The duty to publicize widely the availability of reparations and information regarding the filing of claims therefor.

**COMMENT**
This section and section 8 contain details which are redundant in a state having an adequate Administrative Procedures Act. Incorporation of these details in this Act ought not to be taken as encouragement to repetitious legislation. Each state must tailor the Act to its situation, by eliminating needless procedural details.

This Act does not include elaborate requirements for public notice and hearing relating to the rule making function of the Board, because the kinds of beneficiaries to be expected under this Act do not have an identifiable interest in procedural rules.

1 SECTION 5. [Application for Reparations; Awards; Limitations on Awards.]

(a) An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the Board.

(b) Reparations may not be awarded unless the claim is filed with the Board within one year after the injury or death upon which the claim is based.

(c) Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or his accomplice. (Unless the Board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a person living in the same household with, the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.)

**COMMENT**
The victims of a large percentage of crimes are relatives by blood or marriage of the offender or his accomplice, or live in the same household with him. The award of reparations in these cases involves serious questions of policy. Among these questions are the cost of the program, the possibility of fraud and collusion, and other social judgments. The unjust enrichment language at the end of the first sentence of subsection (c) may or may not alone provide adequate protection. The bracketed language at the end of subsection (c) should be included or omitted in an enacting State according to the legislative appraisal of the questions of policy involved.

(d) Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the Board finds there was good cause for the failure to report within that time.

(e) The Board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of reparations.

(f) Reparations otherwise payable to a claimant shall be reduced or denied:

(1) to the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources, and

(2) to the extent the Board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims.

(g) (1) Reparations may be awarded only if the Board finds that unless the claimant is awarded reparations he will suffer financial stress as the result of economic loss otherwise repayable. A claimant suffers financial stress only if he cannot maintain his customary level of health, safety, and education for himself and his dependents without undue financial hardship.

(ii) In making its finding the Board shall consider all relevant factors, including:

(i) the number of claimant's dependents;

(ii) the usual living expenses of the claimant and his family;

(iii) the special needs of the claimant and his dependents;

(iv) the claimant's income and potential earning capacity; and

(v) the claimant's resources.

(2) Reparations may not be awarded if the claimant's economic loss does not exceed ten per cent of his net financial resources. A claimant's net financial resources do not include the present value of future earnings and shall be determined by the Board by deducting from his total financial resources:

(i) one year's earnings;

(ii) the claimant's equity, up to $30,000, in his home;

(iii) one motor vehicle; and

(iv) any other property exempt from execution under the general personal property exemptions statute of this State.

(3) Notwithstanding paragraph (2):

(i) the board may award reparations to a claimant who possesses not financial resources in excess of those allowable under paragraph (2) if, considering the claimant's age, life expectancy, physical or mental condition, and expectancy of income including future earning power, it finds that the claimant's financial resources will become exhausted during his lifetime; or

(ii) the Board may (A) reject the claim finally, or (B) reject the claim and reserve to the claimant the right to reopen his claim, if it appears that the exhaustion of claimant's financial resources is probable, in which event the Board may reopen pursuant to an application to reopen if it finds that the resources available to the claimant from the time of denial of an award were prudently expended for personal or family needs.

**COMMENT**
Inclusion of a requirement of economic need or financial stress on the part of the victim only acts to be accountable only as a cost-reduction factor. While the argument that the State ought not bear the loss of persons rich enough to care for themselves has appeal, in essence it reads a welfare concept into a program not related to welfare. Inclusion of the test will unquestionably increase administrative costs by requiring elaborate investigations into the resources of each claimant. Any savings produced by a needs test may thus be dissipated in the cost of administering that test. On balance, then, elimination of any requirement of financial stress seems wise. If the test is included, however, a real threat to the integrity of the program is posed because a strict "needs" requirement will limit benefits of the program to persons already on welfare and thus be merely an exercise in bookkeeping. The details suggested in the criteria for economic stress are designed to prevent that result.

(h) Reparations may not be awarded if the economic loss is less than [$100].

**ALTERNATIVE A**

[(i) Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed $200 per week.]

**ALTERNATIVE B**

[(i) Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed the amount by which the victim's income is reduced below $200 per week.]

**COMMENT**
Alternative A should be adopted in a State which desires a maximum weekly limit on reparations but does not incorporate the financial stress test of subsection (g). Alternative B should be adopted in a State which enacts subsection (d).

[(i) Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed [$50,000] in the aggregate.]

1 SECTION 6. [Notice to Attorney General; Function of Attorney General.]

2 Promptly upon receipt of an application for reparations, the Board shall forward a copy of the application and all supporting papers to the Attorney General, who in appropriate cases may investigate the claim, appear in hearings on the claim, and present evidence in opposition to or support of an award.

1 SECTION 7. [Informal Disposition; Contested Case.]

2 Unless precluded by law, informal disposition may be made of a claim by stipulation, agreed settlement, consent order, or default. A claim not so disposed of is a contested case.
31 in connection with its consideration of the case; and
32 a statement of matters officially noticed;
30 all pleadings, motions, and intermediate rulings;
29 A record of the proceedings shall be made and shall be furnished:
27 a statement of the legal authority and jurisdiction
under which the hearing is to be held;
25 a reference to the particular sections of the statutes
and rules involved; and
23 a short and plain statement of the matters asserted.
To the extent that the board is unable to state the matters
at the time the notice is served, the initial notice may be
limited to a statement of the issues involved. Thereafter
upon application a more definite statement shall be furnished.
(c) Every interested person shall be afforded an opportunity
to appear and be heard and to offer evidence and argument
on any issue relevant to his interest, and examine witnesses
and offer evidence in reply to any matter of an evidentiary
nature in the record relevant to his interest.
(d) A record of the proceedings shall be made and shall include:
   (1) the application and supporting documents;
   (2) all pleadings, motions, and intermediate rulings;
   (3) evidence offered, received, or considered;
   (4) a statement of matters officially noticed;
   (5) all staff memoranda or data submitted to the Board
in connection with its consideration of the case; and
   (6) offers of proof, objections, and rulings.
(e) Oral proceedings or any part thereof shall be transcribed
on request of any party, who shall pay transcription costs unless otherwise ordered by the Board.
(f) Determinations of the Board shall be made in writing,
supported by findings of fact and conclusions of law based
exclusively on the record, and mailed promptly to all parties.

Section 9. Evidence of Physical Condition.
(a) There is no privilege, except privileges arising from the
attorney-client relationship, as to communications or records
relevant to an issue of the physical, mental, or emotional condition
of the claimant or victim in a proceeding under this Act
in which that condition is an element.
(b) If the mental, physical, or emotional condition of a
victim or claimant is material to a claim, the Board may order
the victim or claimant to submit to a mental or physical ex-
amination by a physician or psychologist, and may order an
autopsy of a deceased victim. The order may be made for good
cause shown upon notice to the person to be examined and to
all persons who have appeared. The order shall specify the
time, place, manner, conditions, and scope of the examination
or autopsy and when such examination or autopsy shall be made, and may require the person to file with the Board a detailed written
report of the examination or autopsy. The report shall set out
his findings, including results of all tests made, diagnoses,
prognoses, and other conclusions and reports of earlier exami-
nations of the same conditions.
(c) On request of the person examined, the Board shall
furnish him a copy of the report. If the victim is deceased,
the Board, on request, shall furnish the claimant a copy of the
report.
(d) The Board may require the claimant to supplement
the application with any reasonably available medical or psy-
chological reports relating to the injury for which reparations
are claimed.

Section 10. Enforcement of Board's Orders.
If a person refuses to comply with an order under this Act or asserts
a privilege, except privileges arising from the attorney-client
relationship, to withhold or suppress evidence relevant to a
claim, the Board may make any just order including denial of
6 the claim, but may not find the person in contempt. If neces-
sary to carry out any of its powers and duties, the Board may
person the fee for an appropriate order, but the
Court may not find a person in contempt for refusal to submit
to a medical or physical examination.
expense is not exempt from a claim of a creditor to the extent
that he provided products, services, or accommodations the
costs of which are included in the award.
(e) An assignment or agreement to assign a right to repara-
trations for loss accruing in the future is unenforceable, ex-
cept (1) an assignment of a right to reparations for work
loss to secure payment of alimony, maintenance, or child sup-
port; or (2) an assignment of a right to reparations for allow-
able expense to the extent that the benefits are for the cost of
products, services, or accommodations necessitated by the in-
jury or death on which the claim is based and are provided or
to be provided by the assignee.

SECTION 15. [Tentative Awards.] If the Board determines
that the claimant will suffer financial hardship unless a tenta-
tive award is made, and it appears likely that a final award will
be made, an amount may be paid to the claimant, to be deduct-
ed from the final award or repaid by and recoverable from the
claimant to the extent that it exceeds the final award.

SECTION 16. [Reconsideration and Review of Board Deci-
sions.]
(a) The Board, on its own motion or on request of the
claimant, may reconsider a decision making or denying an
award or determining its amount. The Board shall reconsider
at least annually every award being paid in installments. An
order on reconsideration of an award shall not require refund
of amounts previously paid unless the award was obtained by
fraud.

(b) The right of reconsideration does not affect the finality
of a Board decision for the purpose of judicial review.
(c) A final decision of the Board is subject to judicial re-
view on appeal by the claimant, the [Attorney General], or
the offender [in the same manner and to the same extent as
the decision of a state trial court of general jurisdiction].

SECTION 17. [Reports.] The Board shall prepare and trans-
mit [annually] to the Governor and the Legislature a report
of its activities, including the name of the claimant, a brief
description of the facts, and the amount of reparations award-
ed in each case, and a statistical summary of claims and awards
made and denied.

SECTION 18. [Uniformity of Application and Construc-
tion.] This Act shall be applied and construed to effectuate
its general purpose to make uniform the law with respect to
the subject of this Act among those states enacting it.

SECTION 19. [Severability.] If any provision of this Act
or the application thereof to any person is held invalid, the
invalidity does not affect other provisions or applications of
the Act which can be given effect without the invalid provision
or application, and to this end the provisions of this Act are
severable.

SECTION 20. [Title.] This Act may be cited as the Uniform
Crime Victims Reparations Act.
A BILL

To help States assist the innocent victims of crime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Victims of Crime Act of 1979".

POWERS OF THE ATTORNEY GENERAL

SEC. 2. (a) Subject to the availability of amounts appropriated, the Attorney General shall make an annual grant and may make supplemental grants for compensation of victims of crime to each State program that qualifies under section 4. Except as provided in section 5, the grants made to a qualifying State program under this Act with respect to a Federal fiscal year shall equal—

(1) 25 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(A); and

(2) 100 per centum of the then current cost, as determined by the Attorney General, of such State program with respect to qualifying crimes that are described in section 7(8)(B).

(b) For the purpose of carrying out the provisions of this Act, the Attorney General is authorized to—

(1) prescribe such rules as are necessary to carry out this Act, including rules regarding the data to be kept by State programs receiving assistance under this Act and the manner in which these data shall be reported to the Attorney General; and

(2) approve in whole or in part, or deny, any application for an annual or supplemental grant under this Act.

(c) Grants under this section may be made in advance or by way of reimbursement. The Attorney General shall not have the power to modify the disposition of any individual claim that has been processed by any State program.

ADVISORY COMMITTEE

SEC. 3. (a) There is established an Advisory Committee on Victims of Crime (hereinafter in this Act referred to as the "Committee") which shall advise the Attorney General with respect to the administration of this Act and the compensation of victims of crime. The Committee shall consist of nine members, one of whom shall be designated the Chairman, all appointed by the Attorney General. Seven members of the Committee shall be officials of States with programs qualifying under section 4. The Committee shall meet at least two times a year, and at such other times as the Attorney General may direct. The term of office for each member of the Committee shall be one year. The Committee shall remain in existence until September 30, 1983.

(b) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel and transportation expenses, including per diem allowance, in the same manner and to the same extent as persons employed intermittently in the Government service are allowed travel and transportation expenses under subchapter I of chapter 57 of title 5 of the United States Code.

QUALIFYING STATE PROGRAMS

SEC. 4. (a) A State proposing to receive grants under this Act shall submit an application to the Attorney General at such time and in such form as the Attorney General shall by rule prescribe. A State program for the compensation of victims of crime qualifies for grants under this Act if the Attorney General finds that such program is in effect in such State on a statewide basis during any part of the Federal fiscal year with respect to which grants are to be made and that such program meets the following criteria:

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(1) The program offers—

(A) compensation for personal injury to any individual who suffers personal injury that is the result of a qualifying crime; and

(B) compensation for death to any surviving dependent of any individual whose death is the result of a qualifying crime.

(2) The program offers the right to a hearing with administrative or judicial review to aggrieved claimants.

(3) The program requires as a condition for compensation that claimants cooperate with appropriate law enforcement authorities with respect to the qualifying crimes for which compensation is sought.

(4) There is in effect in the State a requirement that appropriate law enforcement agencies and officials take reasonable care to inform victims of qualifying crimes about—

(A) the existence in the State of a program of compensation for injuries sustained by victims; and

(B) the procedure for applying for compensation under that program.

(5) There is in effect in the State a law or rule that the State is subrogated to any claim the victim, or a dependent of the victim, has against the perpetrator of the qualifying crime for damages resulting from the qualifying crime, to the extent of any money paid to the victim or dependent by the program.

(6) The program does not require any claimant to seek or accept any benefit in the nature of welfare unless such claimant was receiving such benefit prior to the occurrence of the qualifying crime that gave rise to the claim.

(7) The program requires denial or reduction of a claim if the victim or claimant contributed to the infliction of the death or injury with respect to which the claim is made.

(8) There is in effect in the State a law or rule that, in addition to or in lieu of any other penalty, a perpetrator of a crime may be required to make restitution to any victim or victim's surviving dependent for that crime.

(9) The program does not require that any person be apprehended, prosecuted, or convicted of the qualifying crime that gave rise to the claim.

(10) There is in effect in the State a law or rule that there be assessed upon any person convicted of a qualifying crime as a cost of court (in addition to any other costs assessed under law) a sum not less than $5.

(11) There is in effect in the State a law or rule requiring any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article, relating to such crime to deposit any proceeds owing to such individual under the terms of the contract into an escrow fund for the benefit of any victims of such qualifying crime or any surviving dependents of any such victim, if such individual is convicted of that crime, to be held for such period of time as the State may determine is reasonably necessary to perfect the claims of such victims or dependents.

(b) If a State has a crime victim compensation program in effect on the effective date of this Act which does not otherwise qualify under subsection (a), such program shall be deemed qualified for grants under this Act until the day after the close of the first regular session of the State legislature that begins after the effective date of this Act.

LIMITATIONS ON FEDERAL GRANTS

Sec. 5. For purposes of computing the annual cost of a qualifying State program for grants under section 2, there shall be excluded from such cost—

(1) administrative expenses of the program;

(2) any State compensation award for—

(A) pain and suffering; or

(B) property loss;

(3) any State compensation award to any claimant—
(A) who failed to file a claim under the State program within one year after the occurrence of the qualifying crime, unless good cause for such failure has been found by the appropriate State agency; or

(B) who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime, unless good cause for such failure has been found by the appropriate State agency;

(4) any amount by which compensation awards with respect to a victim exceed $25,000;

(5) any compensation for loss compensable under the State program that a claimant was entitled to receive from a source other than—

(A) the State compensation program; or

(B) the perpetrator of the qualifying crime;

(6) any State compensation award for lost earnings or loss of support to the extent such award is greater than $200 a week per victim.

REPORT OF THE ATTORNEY GENERAL

SEC. 6. Not later than one hundred and thirty-five days after the end of each Federal fiscal year in which grants are made to State programs under this Act, the Attorney General shall submit a report to the House and Senate Committees on the Judiciary. The report shall include—

(I) with regard to each qualifying State program—

(A) the number of persons compensated;

(B) a statistical presentation of—

(i) the kinds and corresponding amounts of loss compensated;

(ii) the range in monetary value of claims awarded;

(iii) the reasons for denial of claims; and

(iv) the types of crimes that resulted in claims;

(C) a description of the administrative mechanisms and procedures used in processing claims, including claims for emergency assistance if the program provides for such assistance;

(D) the time required to process claims, including claims for emergency assistance if the program provides for such assistance;

(E) efforts made to publicize the program;

(F) administrative expenses; and

(G) the number of qualifying crimes described in section 7(8)(B) that were compensated; and

(2) with regard to the activities of the Attorney General in carrying out this Act—

(A) an itemized statement of grants and expenditures;

(B) copies of rules made under section 2(b); and

(C) projected expenditures for the Federal fiscal year in which the report is required to be submitted.

DEFINITIONS

SEC. 7. As used in this Act—

(1) the term "dependent" means, with respect to a State compensation program, any dependent as defined by such State for purposes of such program;

(2) the term "personal injury", with respect to a State compensation program, means personal injury as defined by the State for such program;

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(4) the term "compensation for personal injury" means compensation for loss that is the result of personal injury caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the State;
(B) all reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

(C) loss of past and anticipated future earnings;

(5) the term "property loss" does not include expenses incurred for medical, dental, surgical, or prosthetic services and devices;

(6) the term "compensation for death" means compensation for loss that is the result of death caused by a qualifying crime, including—

(A) all reasonable expenses necessarily incurred for funeral and burial expenses; and

(B) loss of support to any dependent of a victim, not otherwise paid as compensation for personal injury, for such period as the dependency would have existed but for the death of the victim;

(7) the term "administrative expenses" means any expenses not constituting compensation for death or compensation for personal injury, and includes any fee awarded by the State agency administering a State compensation program to any claimant's attorney, if such fee is paid in addition to, and not out of, the amount of compensation awarded to such claimant; and

(8) the term "qualifying crime", with respect to a qualifying State program, means—

(A) any criminally punishable act or omission which such State designates as appropriate for compensation under its program; or

(B) any act or omission that would be a qualifying crime under subparagraph (A) except for the fact that such act or omission is subject to exclusive Federal jurisdiction.

AUTHORIZATION

SEC. 8. For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $15,000,000 for the fiscal year ending September 30, 1981; $25,000,000 for the fiscal year ending September 30, 1982; and $35,000,000 for the fiscal year ending September 30, 1983.

EFFECTIVE DATE

SEC. 9. This Act shall take effect on October 1, 1979, and grants may be made under this Act with respect to the fiscal year which ends September 30, 1980, and succeeding fiscal years.