







# CRIME VICTIM COMPENSATION

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON CRIMINAL JUSTICE  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
NINETY-FOURTH CONGRESS  
FIRST AND SECOND SESSIONS  
ON  
VICTIMS OF CRIME COMPENSATION LEGISLATION

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## CRIME VICTIM COMPENSATION—SUPPLEMENT

REMARKS OF SENATOR MIKE MANSFIELD BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE OF THE COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES, NOVEMBER 4, 1975

Mr. Chairman, members of the Subcommittee on Criminal Justice, I commend you for bringing attention through these hearings to the countless thousands of innocent victims of crime. In the Senate I have myself introduced S. 1399, the "Victim of Crimes Act of 1975." I have renewed my efforts in this endeavor out of a deep sense of personal concern for the effects of violence upon society today. Indeed, it is a society where attitudes of concern and compassion have yielded too often recently to those of apathy and indifference. What happens when one is victimized was portrayed recently in an article by Mr. Ron Shaffer which appeared on the front page of the Washington Post on October 29, 1975.

The story told is of a young woman's experience following her being shot on the streets of Washington. In a larger sense it depicts how America has suffered deeply and in many different ways from the ravages of crime. Across this land the press documents daily seemingly endless episodes of violence, of aggravated assault and arson, of burglary and murder, of rape, riot and robbery. Not much is written about the victim. Attention is directed instead to the perpetrator of the act—the criminal and to his pursuer—the law enforcement agency. But what of the victim? What of his treatment by society? What of his plight?

There is the Constitution and there are the laws of this Nation. Together they provide a carefully framed system of law enforcement and criminal justice. Wherein in that system lies concern for the victim?

Recent efforts by the Congress and other institutions of government have been directed to new approaches designed to stem and even reverse the rate of crime and violence. But what of the victim? Where is the effort in his behalf? Under our code of justice, there are but two parties: the people and the criminal. It is a system that too often finds the government bogged down in court. It is a system that finds the criminal—if convicted—more hardened and even more expert at his trade locked in a penal institution ill-equipped and unable to perform its basic task of rehabilitation. And what of the criminal victim? What of his injury and suffering, his personal loss and financial impairment? As a practical matter, he is left to pursue a cause of action for damages against a defendant who if apprehended is typically destitute and judgment proof.

In effect, under our system, the criminal victim is virtually separated from the crime, often left helpless, often destitute and always unattended.

As this Committee knows, in the last two Congresses the Senate passed legislation that would change this pattern. Most recently it was S. 300, approved in the 93rd Congress. What the Senate has recognized by acting in this area and what this Committee of the House is now considering is a concept that finds its historical base in the very first criminal justice code. But without belaboring its traditional validity, I would just say that the justification for such a program for crime victims stems today from a number of diverse yet totally compelling notions. There is first the idea that once society undertakes to furnish protection to its members by way of police and safety facilities, it should, if those protection efforts fail, assume a responsibility for the victim and for his loss. Beyond this contractual arrangement there are numerous precedents based on similar social responsibilities. There is a striking similarity in rationale and origin, for example, between the idea of compensating workers, assuring them a reasonably safe place in which to work and compensating victims of crime, assuring them a reasonably safe society in which to live.

Social security and medicare, aid to dependent children, assistance for the handicapped, the aged and the blind, notions of no-fault insurance and national health insurance—all reflect a recognition of collective responsibility.

Fulfilling this responsibility with regard to victims of crime is no easy task. The bill I introduced in the Senate attempts to face the problem. It is similar to the proposals passed previously by the Senate, all of which I authored.

If adopted at the federal level, however, it would by no means represent the first such step taken in modern times by a nation. Indeed, within the last 12 years, New Zealand, England, particular provinces in Canada and Australia—all have enacted government programs to compensate innocent victims of violence. In addition, the States of California, Hawaii, Nevada, Maryland, Massachusetts, New York and, more recently, Illinois, New Jersey and Alaska, Rhode Island and Washington, all have enacted some type of program along these lines.

May I say that I have endeavored to study this problem as deeply as any that has gained my interest and concern in all my years in public life. In my judgment, there is no more compelling concept than to at long last give recognition to the crime victim as a formal undertaking of our national life. What the Senate expressed on the issue is contained in the measure passed on five occasions before.

There have been minor changes made in my bill as introduced this year reflecting, perhaps, the evolution of the concept as it has been developed by the legislative process to date. One significant change involves the structure of the program—to express it in terms of *reimbursement* rather than compensation.

Reimbursement or reparations, in my judgment, exhibits a more accurate characterization of what is involved. What we are seeking to do is to restore the innocent victim to his financial status immediately before the crime which caused his loss. He is being reimbursed for those losses that are not covered otherwise—either by insurance, by judgments obtained in a court of law or by whatever means. A second element different from prior bills passed relates to the so-

called "means test." Under prior proposals considered by the Senate, to qualify for recovery an injured victim of crime would have to suffer what is defined as "undue financial stress." That test has been patterned upon standards set forth in the New York State statute.

In practice, it is not a valid test simply because most of those victims of crime to whom it applies are covered by insurance and for that reason would be ineligible to obtain recovery under such a program.

In practice, I would say, too, that the New York experience has shown that only a very small fraction of claims are denied for failure to meet the "undue financial stress" standard.

In this respect, also, it should be noted that all citizens of this Nation are equal before the bar of justice. I would hope that the same concept of equality might exist for victims of crime; when seeking to assert his rights and redress his wrongs the victim of crime deserves similar equity.

A third element of change in bills previously considered involves the matter of an indemnity fund which is recommended to provide the centerpiece for the financial base of any program at the federal level. Under the proposal I have authored, reparations are paid to victims and for that purpose a criminal victim indemnity fund is created. Its primary base would be the fines and penalties paid into the federal criminal system by convicted criminal defendants.

It is contemplated that supplemental amounts would be provided by other sources, including monies earned within the U.S. Prison Industries. This approach would place the bulk of the victim's economic burden directly on the criminal—where it belongs. Under the state grant portion of my bill is imposed upon the states a similar undertaking so that in all criminal jurisdictions which recognize the victim's rights, the criminal is compelled to work—in part at least—to pay—truly pay—for his crime. This requirement ultimately would be a condition to the receipt of any federal monies to support state programs.

This brings me to another point which I believe is of some concern. In my judgment, the core of any federal program in this area must necessarily be provided by the District of Columbia. I certainly would agree with the sentiment that local people and local personnel ought to be depended upon for their particular expertise and knowledge and awareness of crime and its effects within the District of Columbia when administering this type of program. Such a notion, however, would not be inconsistent with or preclude the inclusion of the District of Columbia in the federal part of any bill. Indeed, I think it may be indispensable to the viability of a federal program that the District be so included.

Finally, I should say that this matter of crime victim's reimbursement or compensation has undergone exhaustive study by the Senate Committee on the Judiciary. Under the able and dedicated leadership of Senator McClellan, this concept was included as a part of S. 1 of the 94th Congress—the very first item of business introduced. Of course, S. 1 involves a large-scale restructuring of the criminal laws and criminal justice system and in that process it is my opinion that the victim be included.

Before long, Mr. Chairman, it is my hope that the legislative process will have been completed and that there will be established on the federal level the principle that violent crime is not just a two-party affair, but that it includes three parties—the victim, the criminal and the state.

In the last 100 years the criminal and the state have dominated the arena of crime and punishment to the injurious exclusion of the victim. To revive at this time the proposition that citizens are entitled to protection, and failing such protection, that citizens are entitled at least to be reimbursed for the losses they suffer from violence, can only serve to strengthen the social fiber of our Nation.

For the information of the Committee I have attached a copy of my bill, S. 1399, together with a comparative analysis of the various measures on this issue prepared at my direction. [For S. 1399, *see*, hearings on Victims of Crime Compensation Legislation, before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, 94th Cong., 1st and 2d Sess., No. 39 (1975-76) at p. 1200.]

## A COMPARATIVE ANALYSIS OF BILLS TO COMPENSATE VICTIMS OF CRIME

### H.R. 287 (MR. CARNEY) "CRIMINAL INJURIES COMPENSATION ACT OF 1975"

Establishes an independent agency, the Violent Crimes Compensation Commission, within the executive branch of the Federal government, to be composed of 3 members appointed by the President with the advice and consent of the Senate. Provides that the Commission may, in its discretion, order payment of compensation in any case in which a person is injured or killed by another person in the act of committing any of the following offenses: assault with intent to kill, rob or rape; assault with a deadly weapon; assault; malicious disfiguring; threats to do bodily harm; indecent act with children; arson; kidnapping; robbery; murder; voluntary manslaughter; attempted murder; rape; or other crimes involving force to the person, *if* such offense occurs within the special maritime and territorial jurisdiction of the United States or within the District of Columbia.

Provides that persons eligible for compensation are the injured person, any person responsible for his maintenance who has incurred expenses, the dependents or closest relative of a deceased victim, or any person who has suffered pecuniary loss for funeral expenses of the victim. Authorizes payment of compensation for the following losses: expenses actually and reasonably incurred as a result of the injury or death; loss of earning power; pecuniary loss to dependents of a deceased victim; pain and suffering of the victim; and any other pecuniary loss which the Commission determines to be reasonable. Requires deduction from the amount of compensation awarded any payments recovered by the victim or his dependents from or on behalf of the offender, from the United States, or from a State or any of its subdivisions. Disqualifies from eligibility for benefits any victim who was at the time of the offense living with the offender as spouse. Provides that no award shall be in excess of \$25,000. Authorizes the Attorney General to institute proceedings against any person convicted

of an offense for which compensation has been made for recovery of the amount paid.

Authorizes the Commission to make grants to States for programs to compensate victims of violent crimes which meet certain prescribed criteria substantially similar to the Federal program. Provides that the Federal share of such State programs shall be 75 percent per fiscal year.

Authorizes appropriations for FY's 1976, 1977, and 1978 for grants to states in unspecified amounts, and such sums as may be necessary to carry out the other provisions of the Act.

#### H.R. 598 (MR. LEHMAN) "VICTIMS OF CRIME ACT OF 1975"

Substantially similar to H.R. 1449 (below) with regard to the Federal compensation program, with these differences:

(1) Authorizes payment of compensation in any case in which the offense giving rise to the claim occurs within the special maritime and territorial jurisdiction of the United States, within the District of Columbia, or within Indian country, and is among the following offenses: aggravated assault; arson; assault; burglary; forcible sodomy; kidnapping; manslaughter; mayhem; murder; negligent homicide; rape; robbery; riot; unlawful sale or exchange of drugs; unlawful use of firearms or explosives; any other crime, including poisoning, which poses a substantial threat of personal injury; or attempts to commit any of the foregoing.

(2) Disqualifies from eligibility for compensation any member of the family or household of the offender or his accomplice, or any person maintaining unlawful sexual relations with either of them.

(3) Provides that no compensation shall be awarded unless the claimant will suffer financial stress.

Substantially similar to S. 1399 (below) with regard to the Federal grant program to state victim compensation programs.

#### H.R. 1449 (MR. GONZALEZ) "VICTIMS OF CRIME ACT OF 1974"

Establishes a Violent Crimes Compensation Board within the Department of Justice to be composed of 3 members appointed by the President with the advice and consent of the Senate. Authorizes payment of compensation in any case in which the offense giving rise to the claim is an offense against the laws of any state, or of the United States.

Provides that persons eligible for compensation are the intervenor or victim, or the surviving dependents of a deceased intervenor or victim. Authorizes payment of compensation for the following losses:

(1) In the case of an intervenor or his surviving dependents, all damages including property losses but excluding pain and suffering;

(2) In the case of a victim or his surviving dependents, all appropriate and reasonable medical and other expenses relating to physical and psychiatric care; expenses for physical and occupational therapy or rehabilitation; loss of past and future earnings up to \$150 per week; child care up to \$75 per week; funeral and burial expenses; loss of support to dependents of a deceased victim up to \$150 per week. Provides that anticipated loss of earnings or support shall be compensated to the extent such loss continues for 90 days or more, or for ten years, whichever is less.

Excludes from compensation any losses which are otherwise recoverable from insurance programs, the United States, a state or local government, or by other public or private means. Authorizes the Board to hold compensation in abeyance until the victims or his surviving dependents have exhausted their liquid assets. Requires a minimum loss of \$100 or a week's earnings or support, whichever is less. Provides that no award shall be in excess of \$50,000. Authorizes the Attorney General to institute proceedings against any person convicted of an offense for which compensation has been made for recovery of the amount paid.

Establishes an Advisory Council on the Victims of Crime to be composed of the Board members and representatives from state victim compensation programs to review the administration of this program and make policy recommendations.

Establishes a Criminal Victim Indemnity Fund in the United States Treasury. Provides that in any Federal court, upon conviction of a person for an offense resulting in injury, death or property damage, the court may, in addition to any other penalty, order payment of a fine in any amount up to \$10,000 to be deposited into the Criminal Victim Indemnity Fund.

**H.R. 1903 (MR. MATSUNAGA) "CRIMINAL INJURIES COMPENSATION ACT OF 1975"**

Establishes a Violent Crimes Compensation Commission to be composed of 3 members appointed by the President with the advice and consent of the Senate. Provides that the Commission may, in its discretion, order payment of compensation in any case in which a person is injured or killed by another person in the act of committing any of the following offenses: assault with intent to kill, rob, rape or poison; assault with intent to commit mayhem; assault with a dangerous weapon; assault; mayhem; malicious disfiguring; threats to do bodily harm; lewd, indecent, or obscene acts; indecent act with children; arson; kidnapping; robbery; murder; voluntary manslaughter; attempted murder; rape; attempted rape; or other crimes involving force to the person, *if* such offense occurred within the special maritime and territorial jurisdiction of the United States or within the District of Columbia.

Provides that persons eligible for compensation are the injured person, any person responsible for his maintenance who has incurred expenses, or the dependents or closest relative of a deceased victim. Authorizes payment of compensation for the following losses: expenses actually and reasonably incurred as a result of the injury or death; loss of earning power; pecuniary loss to dependents or a deceased victim; pain and suffering of the victim; and any other pecuniary loss which the Commission determines to be reasonable. Disqualifies from eligibility for benefits any victim who at the time of the offense was living with the offender as wife or husband. Provides that no award shall be in excess of \$25,000. Authorizes the Attorney General to institute proceedings against any person convicted of an offense for which compensation has been made for recovery of the amount paid.

Authorizes appropriations in such sums as may be necessary to carry out the provisions of the Act.

H.R. 2748 (MR. JAMES V. STANTON) "COMPENSATION TO CRIME VICTIMS ACT"

Provides that the United States attorney for each judicial district shall receive and process all claims under this Act. Authorizes the U.S. attorneys to order payment of compensation in any case in which a person is injured or killed by another person within any state or political subdivision thereof during the commission of any of the following offenses: assault with intent to kill, rob, or rape; assault with intent to commit mayhem; assault with a dangerous weapon; assault; mayhem; malicious disfiguring; threat to do bodily harm; lewd, indecent, or obscene act; indecent act with a child; arson; kidnapping; robbery; murder; voluntary manslaughter; attempted murder; rape; attempted rape; or any other crime involving force to the person.

Provides that persons eligible for compensation are the injured victim, any person responsible for the maintenance of the victim who has incurred expenses, the dependents or closest relative of a deceased victim, or any person who has suffered pecuniary loss for funeral expenses. Authorizes payment of compensation for the following losses: expenses actually and reasonably incurred as a result of the injury or death, including 100 percent of all hospital and medical bills; loss of earning power not to exceed twice the average weekly industrial wage; pecuniary loss to dependents of a deceased victim; any other pecuniary loss resulting from the injury or death, including 100 percent of funeral and burial expenses. Requires deduction from the amount of compensation awarded any payments recovered by the victim or his dependents from or on behalf of the offender, from the United States, or from a state or any of its subdivisions.

Authorizes appropriations of such sums as may be necessary to carry out the provisions of the Act.

H.R. 3907 (MR. WIGGINS) "CRIMINAL JUSTICE REFORM ACT OF 1975"

(Ch. 41, Secs. 4111-4115). Identical to same provisions of S. 1 below).

H.R. 8753 (MR. GREEN) "CRIMINAL INJURIES COMPENSATION ACT OF 1975"

Substantially similar to H.R. 287.

H.R. 9074 (MR. RODINO) "VICTIMS OF CRIME ACT OF 1975"

Establishes a Violent Crimes Compensation Commission to be composed of 5 members appointed by the President with the advice and consent of the Senate. Authorizes the Commission to make annual grants of 50 percent of the cost of qualifying State victim compensation programs. Requires that in computing the cost of such State program for the purpose of establishing the amount of the Federal grant, the following costs shall be excluded:

(1) Amounts representing compensation for pain and suffering and property loss;

- (2) The amount by which any individual award exceeds \$50,000;
- (3) Amounts representing compensation to victims who have received compensation from any other source;
- (4) Amounts representing lost earnings of more than \$150 per week;
- (5) Amounts representing awards to claimants who failed to file claims within one year after the injury or death, or who failed to report the incident to law enforcement authorities more than 72 hours after its occurrence.

S. 1 (MR. McCLELLAN) "CRIMINAL JUSTICE REFORM ACT OF 1975"

Establishes a United States Victim Compensation Board and a Criminal Victim Compensation Fund in the United States Treasury. Authorizes payment of compensation to an injured victim or surviving dependents of a deceased victim of any offense involving the person over which Federal jurisdiction exists.

Authorizes payment of compensation for the following losses: all appropriate and reasonable medical and other expenses relating to physical and psychiatric care; expenses for physical and occupational therapy; loss of past and future earnings not to exceed \$150 per week; funeral and burial expenses; loss of support to dependents of the victim not to exceed \$150 per week. Provides that anticipated loss of earnings or support shall be compensated to the extent such loss continues for 90 days or more, or for 10 years, whichever is less. Requires deduction from the amount of compensation awarded any recovery of damages by a claimant from any other source. Requires a minimum loss of \$100 or one week's earnings or support, whichever is less. Provides that an award shall not exceed \$50,000. Authorizes the Attorney General to institute proceedings against any person convicted of an offense for which compensation has been made for recovery of the amount paid.

S. 1399 (MR. MANSFIELD) "VICTIMS OF CRIME ACT OF 1975"

Establishes a Violent Crimes Reimbursement Board within the Department of Justice to be composed of 3 members appointed by the President with the advice and consent of the Senate. Authorizes payment of compensation in any case in which the offense giving rise to the claim is among the following: aggravated assault; arson; assault; burglary; forcible sodomy; kidnapping; manslaughter; mayhem; murder; negligent homicide; rape; robbery; riot; unlawful sale or exchange of drugs; unlawful use of firearms or explosives; any other crime, including poisoning, which poses a substantial threat of personal injury; or attempt to commit any of the foregoing, if such offense occurred within the Federal, special, or extraterritorial jurisdiction of the United States.

Provides that persons eligible for compensation are the intervenor or victim, or the surviving dependents of a deceased intervenor or victim. Authorizes payment of compensation for the following losses:

- (1) In the case of an intervenor or his surviving dependents, all damages including property losses but excluding pain and suffering;
- (2) In the case of a victim or his surviving dependents, all appropriate and reasonable medical and other expenses relating to physical

and psychiatric care; expenses for physical and occupational therapy or rehabilitation; loss of past and future earnings not to exceed \$150 per week; child care not to exceed \$75 per week; funeral and burial expenses; loss of support to dependents of a deceased victim not to exceed \$150 per week.

Provides that anticipated loss of earnings or support shall be compensated to the extent such loss continues for 90 days or more, or for 10 years, whichever is less. Excludes from compensation any losses which are otherwise recoverable from insurance programs, the United States, a state or local government, or by other public or private means. Requires a minimum loss of \$100 or a week's earnings or support, whichever is less.

Provides that no award shall be in excess of \$50,000. Disqualifies from eligibility for benefits any member of the family within the third degree of affinity or consanguinity or household of either the offender or his accomplice, or any person continuing unlawful sexual relations with either of them. Authorizes the Attorney General to institute proceedings against any person convicted of an offense for which compensation has been made for recovery of the amount paid.

Establishes an Advisory Council on the Victims of Crime, a Criminal Victim Indemnity Fund, and a special fine for convicted offenders to be deposited in the fund identical to those established by H.R. 1449 (above). In addition, authorizes the Federal Prison Industries to withhold up to 10 percent of the wages of any offender employed in such industries to be deposited into the Fund.

Amends the Omnibus Crime Control and Safe Streets Act of 1968 to provide grant money through the Law Enforcement Assistance Administration to fund up to 90 percent of the cost of State programs substantially similar in coverage and limitations to the Federal program.

Authorizes appropriations of \$1,000,000 for FY 1975 for the State grant program.

#### S. 2022 (MR. HARTKE) "CRIMINAL LOSS RECOVERY ACT OF 1975"

Establishes an independent agency, the Criminal Loss Recovery Commission, within the Executive branch of the Federal government, to be composed of 3 members appointed by the President with the advice and consent of the Senate. Authorizes payment of compensation in any case in which the offense giving rise to the claim is a violation of a penal law of the United States or any State, if such offense occurs within the special maritime and territorial jurisdiction of the United States, within the District of Columbia, or in any State.

Provides that persons eligible for compensation are the injured intervenor or victim, any person responsible for the maintenance of either who has incurred expenses, the dependents or closest relative of an intervenor or victim, or any person who has suffered pecuniary loss for funeral expenses. Authorizes payment of compensation for the following losses: medical and hospital expenses; loss of past and future earnings; other expenses actually and reasonably incurred as a result of the injury; funeral and burial expenses; loss of support to dependents of a deceased victim; not property damage. Provides that compensation shall not be awarded if unjust enrichment to the offender would result, but does not prohibit family or household members or relatives from recovering. Requires deduction from the amount

of compensation awarded any payments recovered by the victim or his dependents from or on behalf of the offender, from the United States, or from a State or any of its subdivisions. Provides that there shall be no limitation on the amount that may be recovered.

Authorizes the Commission to make grants to States to fund up to 90 percent of programs approved by the commission that are in substantial compliance with the Federal program.

Authorizes appropriations in an unspecified amount for fiscal year 1975 for grants to States, and such sums as are necessary to carry out the other provisions.

## H.R. 3907 EXCERPT—IDENTICAL TO S. 1 AND H.R. 10850

### "Chapter 41.—ANCILLARY PRIVATE CIVIL REMEDIES

#### "Subchapter

"A. Private Actions for Damages.

"B. Actions for Compensation of Victims of Crime.

#### "Subchapter A.—Private Actions for Damages

##### "Sec.

"4101. Civil Action against a Racketeering Offender.

"4102. Civil Action against an Eavesdropping Offender.

"§4101. Civil Actions against a Racketeering Offender

"A person injured in his business or property by reason of a violation of section 1801 (Operating a Racketeering Syndicate), 1802 (Racketeering), or 1803 (Washing Racketeering Proceeds) shall have a civil cause of action therefor in an appropriate district court of the United States and shall be entitled to recover:

"(a) three times the damages sustained; and

"(b) a reasonable attorney's fee and other litigation costs reasonably incurred.

"§ 4102. Civil Action against an Eavesdropping Offender

"A person whose private oral communication is intercepted, disclosed, or used in violation of section 1521 (Eavesdropping) shall have a civil cause of action in an appropriate district court of the United States against a person who intercepts, discloses, or uses, or procures another person to intercept, disclose, or use, such communication, and shall be entitled to recover from such person:

"(a) actual damages, but not less than liquidated damages of \$1,000 or of \$100 per day for each day of violation, whichever is the greater;

"(b) punitive damages; and

"(c) a reasonable attorney's fee and other litigation costs reasonably incurred.

Reliance in good faith on a court order or legislative authorization constitutes a complete defense to a civil proceeding brought under this section or under any other provision of law.

#### "Subchapter B.—Actions for Compensation of Victims of Crime

##### "Sec.

"4111. Establishment of a Victim Compensation Fund.

"4112. Claim for Compensation.

"4113. Limitation on Compensation.

"4114. Subrogation.

"4115. Definitions for Subchapter B.

"§ 4111. Establishment of a Victim Compensation Fund

"There is established in the Treasury of the United States a revolving fund, to be known as the Criminal Victim Compensation Fund, that shall be the depository of:

"(a) all criminal fines paid in the courts of the United States;

"(b) all criminal fines collected by the Attorney General pursuant to section 3812(b);

"(c) all dividends received pursuant to 28 U.S.C. 584;

"(d) all funds reimbursed pursuant to section 4113(e)(2);

"(e) all funds collected as a result of actions instituted pursuant to section 4114; and

"(f) all contributions to such Fund from public or private sources.

“§ 4112. Claim for Compensation

“(a) CLAIM.—The victim of an offense set forth in chapter 16 over which federal jurisdiction exists, or of an attempt to commit such an offense, or a surviving dependent of such a victim, may file a claim with the United States Victim Compensation Board for compensation in accordance with this subchapter.

“(b) HEARING ON CLAIM.—A hearing on a claim filed brought under this subchapter shall be open to the public unless the Board determines that, in the interest of justice, the hearing, or a portion of the hearing, shall not be open to the public.

“(c) SCOPE OF COMPENSATION.—The Board, subject to the provisions of section 4113, shall order the payment of compensation to:

“(1) a victim who has suffered personal injury as a result of the offense, or his estate; or

“(2) a surviving dependent of a victim who has suffered death as a result of the offense.

“(d) AMOUNT OF COMPENSATION.—The Board shall determine the amount of compensation to be awarded to a claimant. The Board, subject to the provisions of section 4113, may order the payment of compensation for:

“(1) the actual pecuniary loss of the claimant; and

“(2) the loss of:

“(A) anticipated earnings of the victim if personal injury resulted from the offense; or

“(B) anticipated support to the victim's surviving dependent if death resulted from the offense

to the extent that such loss continues for a period of ninety days or more, in the form of periodic payments during such period, or during a period of ten years, whichever is less.

“(e) EMERGENCY COMPENSATION.—If, prior to taking final action upon a claim, the Board determines that such claim is one with respect to which compensation will probably be ordered to be paid, the Board may order emergency compensation to be paid, not to exceed \$1,500, pending final action on the claim. The amount of any emergency compensation ordered and paid shall be deducted from the amount of any final order for compensation. If the amount of any emergency compensation ordered and paid exceeds the amount of the final order for compensation, or if no final order for compensation is made, the claimant may be ordered to make reimbursement to the Fund of the difference between such amounts.

“(f) RECONSIDERATION OF CLAIM.—The Board at any time may reconsider a claim and modify or rescind an order for the payment of compensation based upon a change in circumstances of the claimant.

“(g) BAR TO CLAIM.—No claim may be brought under this subchapter if the injury or the death was caused by the operation of a vehicle, unless the injury or death was intentionally inflicted through the use of the vehicle, or unless the vehicle was an implement used in the commission of an offense to which this subchapter applies.

“(h) DEFENSE PRECLUDED.—It is not a defense to an action brought under this subchapter that, by reason of immaturity, incompetency, or otherwise, the person engaging in the conduct that caused the injury or death was legally incapable of being convicted of the offense.

“(i) OTHER RIGHTS UNAFFECTED.—Except as otherwise provided, the availability or payment of compensation under this subchapter does not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

“(j) EXECUTION OR ATTACHMENT BARRED.—An order for the payment of compensation under this subchapter is not subject to execution or attachment.

“§ 4113. Limitation on Compensation

“(a) PREREQUISITES TO RECOVERY OF COMPENSATION.—An order for the payment of compensation under this subchapter shall not be made unless:

“(1) the offense giving rise to the claim was reported to a law enforcement officer within seventy-two hours after its occurrence, unless the Board finds that the failure to report within such time was justified by good cause;

“(2) the claim is commenced within one year after the date of the offense giving rise to the claim, unless the Board finds that the failure to commence the action within such time was justified by good cause; and

“(3) the claimant has suffered a pecuniary loss exceeding \$100 or an amount equal to a week's earnings or support, whichever is less, as a proximate cause of the offense giving rise to the claim.

"(b) **MAXIMUM AMOUNT OF COMPENSATION.**—An order for the payment of compensation under this subchapter may not exceed a total of \$50,000, including lump-sum payments and periodic payments, for each offense against a victim.

"(c) **RESPONSIBILITY OF VICTIM OR CLAIMANT FOR THE OFFENSE.**—The Board, in determining whether to order payment of compensation and the amount of compensation to be ordered, shall consider the behavior of the victim or claimant with regard to the circumstances of the offense giving rise to the claim, shall determine whether the victim or claimant bears any share of responsibility for the offense because of provocation or otherwise, and shall:

"(1) reduce the amount of compensation to the claimant in accordance with its assessment of the degree of such responsibility attributable to the victim or claimant; or

"(2) deny compensation if the behavior of the victim or claimant was a substantial contributing factor to the offense giving rise to the claim.

"(d) **CONTINUING DUTY OF VICTIM OR CLAIMANT TO COOPERATE.**—The Board, upon finding that a victim or claimant has not substantially cooperated with all government agencies involved in the investigation, prosecution, or adjudication of the offense that gave rise to the claim, may deny, rescind, or reduce the amount of any order for the payment of compensation under this subchapter.

"(e) **EFFECT OF COMPENSATION FROM OTHER SOURCES.**—In the event that a claimant:

"(1) recovers damages from any other source based upon an offense giving rise to a claim under this section and subsequently files a claim under this section based upon such offense, in determining the amount of compensation to be awarded under this section such damages shall be considered first to offset losses that do not qualify as pecuniary losses, and then to offset pecuniary losses; or

"(2) receives compensation under this section and subsequently recovers damages from any other source based upon the offense that gave rise to compensation under this section, the claimant shall be ordered to make reimbursement to the Fund for the compensation previously paid to the same extent that compensation would have been reduced under paragraph (1) had recovery preceded compensation.

#### "§ 4114. Subrogation

"The Attorney General may, within three years after the entry of an order for the payment of compensation under this subchapter, institute, against an offender convicted by a federal, state, or local court of an offense involving the act giving rise to a claim under this subchapter, an action for the recovery of all or part of such compensation in the United States District Court for any judicial district in which such person resides or is present. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. Any amounts recovered under this subsection shall be forwarded to the Treasury of the United States for credit to the Criminal Victim Compensation Fund.

#### "§ 4115. Definitions for Subchapter B

"As used in this subchapter:

"(a) 'dependent' means:

"(1) a spouse;

"(2) an individual who is a dependent within the meaning of section 152 of the Internal Revenue Code of 1954 (26 U.S.C. 152); or

"(3) a posthumous child;

"(b) 'pecuniary loss' means loss occasioned by:

"(1) personal injury, including:

"(A) all appropriate and reasonable expenses necessarily incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services relating to physical or psychiatric care;

"(B) all appropriate and reasonable expenses necessarily incurred for physical and occupational therapy and rehabilitation; and

"(C) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury, at a rate not to exceed \$150 per week; and

"(2) death, including:

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

"(B) loss of support to a dependent of a victim, not otherwise compensated for as a pecuniary loss for personal injury, for such period of time as the dependency would have existed but for the death of the victim, at a rate not to exceed a total of \$150 per week for all dependents;

"(c) 'personal injury' includes bodily injury, pregnancy, mental distress, and nervous shock."

#### "Chapter 40.—UNITED STATES VICTIM COMPENSATION BOARD

"Sec.

"595. Organization and Membership.

"596. Powers of the Board.

"597. Procedures.

"598. Review.

##### "§ 595. Organization and Membership

"(a) The United States Victim Compensation Board is hereby established as an independent agency within the Department of Justice. The Board shall be composed of three members, each of whom shall have been a member of the bar of the highest court of a state for at least eight years, to be appointed by the President, by and with the advice and consent of the Senate. Not more than two members shall be affiliated with the same political party. The President shall designate one of the members of the Board to serve as Chairman.

"(b) No member of the Board shall engage in any other business, vocation, or employment.

"(c) The Board shall have an official seal.

"(d) The term of office of each member of the Board shall be eight years, except that (1) the terms of office of the members first taking office shall expire as designated by the President at the time of appointment, one at the end of four years, one at the end of six years, and one at the end of eight years and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

"(e) Each member of the Board shall be eligible for reappointment.

"(f) Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(g) The principal office of the Board shall be in or near the District of Columbia, but the Board or any duly authorized representative may exercise any or all of its powers in any place.

##### "§ 596. Power of the Board

"(a) The Board is authorized in carrying out its functions to:

"(1) appoint and fix the compensation of an Executive Director and a General Counsel and such other personnel as the Board deems necessary in accordance with the provisions of title 5 of the United States Code;

"(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5 of the United States Code, but at rates not to exceed \$100 a day for individuals;

"(3) promulgate such rules and regulations as may be required to carry out the provisions of subchapter B of chapter 41 of title 18 of the United States Code;

"(4) designate representatives to serve or assist on such advisory committees as the Board may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies developing or carrying out policies or programs related to the provisions of subchapter B of chapter 41 of title 18 of the United States Code;

"(5) request and use the services, personnel, facilities, and information (including suggestions, estimates, and statistics) of Federal agencies and those of State and local public agencies and private institutions, with or without reimbursement therefor;

"(6) enter into and perform, without regard to section 529 of title 31 of the United States Code, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its functions, with

any public agency, or with any person, firm, association, corporation, or educational institution, and make grants to any public agency or private nonprofit organization;

"(7) request and use such information, data, and reports from any Federal agency as the Board may from time to time require and as may be produced consistent with other law;

"(8) arrange with the heads of other Federal agencies for the performance of any of its functions under this part with or without reimbursement and, with the approval of the President, delegate and authorize the redelegation of any of its powers under this section;

"(9) request each Federal agency to make its services, equipment, personnel, facilities, and information (including suggestions, estimates, and statistics) available to the greatest practicable extent to the Board in the performance of its functions;

"(10) pay all expenses of the Board, including all necessary travel and subsistence expenses of the Board outside the District of Columbia incurred by the members or employees of the Board under its orders on the presentation of itemized vouchers therefor approved by the Chairman or his designate; and

"(11) establish a program to assure extensive and continuing publicity for the provisions relating to compensation under subchapter B of chapter 41 of title 18 of the United States Code, including information on the right to file a claim, the scope of coverage, and procedures to be utilized incident thereto.

#### § 597. Procedures

##### "(a) The Board:

"(1) may subpoena and require production of documents in the manner of the Securities and Exchange Commission as provided in subsection (c) of section (18) of the Act of August 26, 1935, except that such subpoena shall only be issued under the signature of the Chairman, and application to any court for aid in enforcing such subpoena shall be made only by the Chairman, but a subpoena may be served by any person designated by the Chairman;

"(2) may administer oaths or affirmations to witnesses appearing before the Board, receive in evidence any statement, document, information, or matter that may, in the opinion of the Board, contribute to its functions under this part, whether or not such statement, document information, or matter would be admissible in a court of law, provided it is relevant and not privileged; and

"(3) may, at the discretion of the Chairman, appoint an impartial licensed physician to examine any claimant under this part and order the payment of reasonable fees for such examination.

"(b) The provisions of chapter 5 of title 5 of the United States Code shall not apply to adjudicatory procedures to be utilized before the Board.

"(c) A claim for compensation under subchapter B of chapter 41 of title 18 of the United States Code may be acted upon by a member designated by the Chairman to act on behalf of the Board. In the event the disposition by a member as authorized in the preceding sentence is unsatisfactory to the claimant, the claimant shall be entitled to a de novo hearing of record on his claim by the full Board.

"(d) Decisions of the full Board shall be in accord with the will of a majority of the members and shall be based upon a preponderance of the evidence.

"(e) A claimant at such times as the full Board shall sit shall have the right to produce evidence and to cross-examine such witnesses as may appear.

"(f) The Board shall publish regulations providing that an attorney may, at the conclusion of proceedings under this part, file with the Board an appropriate statement for a fee in connection with services rendered in such proceedings. After such a fee statement is filed by an attorney, the Board shall award a fee to such attorney on substantially similar terms and conditions as is provided for the payment of representation under section 3403 of title 18 of the United States Code.

#### § 598. Review

The United States Court of Appeals for the District of Columbia shall have jurisdiction to review all final orders of the Board. No finding of fact supported by substantial evidence shall be set aside.

Sec. 726. Section 620(a)(3) is amended by deleting "commissioners" and inserting in lieu thereof "magistrates".

Sec. 727. Section 636 is amended

(a) by deleting "section 3146" in subsection (a)(2) and inserting in lieu thereof "chapter 35";

(b) by adding after the words "title 18," in subsection (a)(2) the words "except when the person is charged with a Class A felony,";

(c) by deleting "section 3401" in subsection (a)(3) and inserting in lieu thereof "section 3302"; and

(d) by deleting "section 3402" in subsection (c) and inserting in lieu thereof "section 3702".

## ALASKA STATUTES

### Chapter 67. Violent Crimes Compensation Board.

#### Section

- 10. Purpose
- 20. Criminal injuries compensation board
- 30. Application for compensation
- 40. Hearings
- 50. Attorney fees
- 60. Regulations
- 70. Standards for compensation
- 80. Awarding compensation
- 90. Recovery from collateral source
- 100. Incidents and offenses to which chapter applies
- 110. Nature of the compensation
- 120. Emergency compensation
- 130. Limitations on awarding compensation
- 140. Recovery from offender
- 150. False claim
- 160. Survival and abatement
- 170. Reports
- 180. Definitions

Revisor's note (1972).—In ch. 203, SLA 1972, AS 18.67.090—18.67.180 were designated 18.67.085—18.67.140.

Legislative committee report.—For report on ch. 203, SLA 1972 (SB 28 am), see 1972 House Journal, p. 343.

Sec. 18.67.010. Purpose. It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured and to dependents of persons killed as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals. (§ 1 ch 203 SLA 1972)

Sec. 18.67.020. Criminal injuries compensation board. (a) There is the Violent Crimes Compensation Board in the Department of Health and Social Services composed of three members to be appointed by the governor. One of the members shall be designated as chairman by the governor. At least one member shall be a medical or osteopathic physician licensed to practice in this state.

(b) The term of office of each member of the board is three years, except that of the members first appointed one shall be appointed for a term of three years, one for a term of two years, and one for a term of one year. All vacancies, except through the expiration of term, shall be filled for the unexpired term only.

(c) Each member of the board is eligible for reappointment and serves at the pleasure of the governor.

(d) Each member of the board is eligible for reappointment and any member of the board may be removed by the governor for inefficiency, neglect of duty or malfeasance in office after due notice and hearing.

(e) Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards.

(f) The board may appoint one or more hearing officers, who must be licensed to practice law in the state, to conduct hearings and take testimony in proceedings under this chapter, but final determinations of any matter shall be only by the board. A hearing officer acting under this section shall report his findings of fact and conclusions of law to the board, together with the reasons for the findings and conclusions. The board shall act only after consideration of the report and other evidence that it considers appropriate.

(g) The board may appoint and fix the duties of personnel necessary for carrying out its functions under this chapter. (§ 1 ch 203 SLA 1972)

Sec. 18.67.030. Application for compensation. (a) A person who may be eligible for compensation under this chapter may make application to the board. In a

case in which the person entitled to make application is a minor, the application may be made on his behalf by his parent or guardian. In a case in which the person entitled to make application is mentally incompetent, the application may be made on his behalf by his parent, guardian or other individual authorized to administer his estate.

(b) In order to be eligible for compensation under this chapter, the applicant shall, before a hearing on an application under this chapter, submit reports, if reasonably available, from all physicians or surgeons who have treated or examined the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the board shall order the reports and examination. (§ 1 ch 203 SLA 1972)

Sec. 18.67.040. Hearings. (a) Upon application made under the provisions of this chapter, the board shall fix a time and place for a hearing and shall give notice to the applicant.

(b) For the purpose of carrying out the provisions of this chapter, the board or its hearing officer may hold the hearings, sit and act at the times and places, and take the testimony that it or he considers advisable. The board or its hearing officer may administer oaths or affirmations to witnesses. The board has full powers of subpoena and compulsion of attendance of witnesses and production of documents, but no subpoena shall be issued except under the signature of a member of the board. Application to a court for aid in enforcing the subpoena may be made in the name of the board only by a board member. Subpoenas are served by any person designated by the board.

(c) The applicant and any other person having a substantial interest in a proceeding may appear and be heard, produce evidence and cross-examine witnesses in person or by his attorney. The board or its hearing officer also may hear other persons who in its or his judgment may have relevant evidence to submit.

(d) Admissibility of evidence is governed by the Administrative Procedure Act (AS 44.62).

(e) If a person has been convicted of an offense with respect to an act on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or a proceeding with regard to it is pending.

(f) Orders and decisions of the board shall be final. (§ 1 ch 203 SLA 1972)

Sec. 18.67.050. Attorney fees. The board may, as part of an order entered under this chapter, determine and allow reasonable attorney fees, which may not exceed 15 percent of the amount awarded as compensation under § 70 of this chapter, to be paid out of but not in addition to the amount of the compensation, to the attorney representing the applicant. It is unlawful for the attorney to ask for, contract for, or receive a larger sum than the amount allowed in the award. (§ 1 ch 203 SLA 1972)

Sec. 18.67.060. Regulations. In the performance of its functions, the board is authorized to make, rescind and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this chapter, and relating to other matters the board considers appropriate. (§ 1 ch 203 SLA 1972)

Sec. 18.67.070. Standards for compensation. For the purpose of determining the amount of compensation payable under this chapter, the board shall, insofar as practicable, formulate standards for uniform application of this chapter and take into consideration rates and amounts of compensation payable for injuries and death under other laws of the state and of the United States and the availability of funds appropriated for the purposes of this chapter. (§ 1 ch 203 SLA 1972)

Sec. 18.67.080. Awarding compensation. (a) In a case in which a person is injured or killed by an incident specified in § 100(1) of this chapter, or by the act of any other person which is within the description of offenses listed in § 100(2) of this chapter, the board may order the payment of compensation in accordance with the provisions of this chapter:

- (1) to or for the benefit of the injured person;

(2) in the case of personal injury of the victim, to a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury; or

(3) in the case of death of the victim, to or for the benefit of one or more of the dependents of the victim.

(b) For the purposes of this chapter, a person is considered to have intended an act notwithstanding that by reason of age, insanity, drunkenness, or otherwise, he was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including provocation, consent or any other behavior of the victim which directly or indirectly contributed to his injury or death, the prior case or social history, if any, of the victim, his need for financial aid, and any other relevant matters.

(d) An order may be made under this section whether or not a person is prosecuted or convicted of an offense arising out of the act which caused the injury or death involved in the application. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this chapter for a period it considers appropriate on the ground that a prosecution for an offense arising out of the act which caused the injury or death involved in the application has been commenced or is imminent. (§ 1 ch 203 SLA 1972)

Sec. 18.67.090. Recovery from collateral source. (a) The board shall deduct from compensation awarded under this chapter the payments received from the offender or from a person on behalf of the offender, or from the United States, a state, or any of its subdivisions or agencies, or a private source or emergency awards under § 120 of this chapter, for injury or death compensable under this chapter.

(b) If compensation is awarded under this chapter and the person receiving it also receives a collateral sum under (a) of this section which has not been deducted from it, he shall refund to the board the lesser of the sums or the amount of compensation paid to him under this chapter. (§ 1 ch 203 SLA 1972)

Revisor's note (1972).—In ch. 203, SLA 1972, AS 18.67.090—18.67.180 were designated 18.67.085—18.67.140.

Sec. 18.67.100. Incidents and offenses to which chapter applies. The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death which resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of a crime, or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: mayhem; indecent act with children; kidnapping; murder; manslaughter; rape; assault with intent to kill, rob, rape, or poison; assault with intent to maim; assault with a dangerous weapon; threats to do bodily harm; or lewd, indecent, or obscene acts. (§ 1 ch 203 SLA 1972)

Sec. 18.67.110. Nature of the compensation. The board may order the payment of compensation under this chapter for

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) loss of earning power as a result of total or partial incapacity of the victim;

(3) pecuniary loss to the dependents of the deceased victim; and

(4) any other loss resulting from the personal injury or death of the victim which the board determines to be reasonable. (§ 1 ch 203 SLA 1972)

Sec. 18.67.120. Emergency compensation. If it appears to the board that, prior to taking action on an application, the claim is one for which compensation is probable, and undue hardship will result to the applicant if immediate payment is not made, the board may make an emergency award of compensation to the applicant pending a final decision in the case. However,

(1) the amount of the emergency compensation may not exceed \$500;

(2) the amount of the emergency compensation shall be deducted from the final compensation made to the applicant;

(3) the excess of the amount of the emergency compensation over the final amount shall be repaid by the applicant to the board. (§ 1 ch 203 SLA 1972)

Sec. 18.67.130. Limitations on awarding compensation. (a) No order for the payment of compensation may be made under § 80 of this chapter unless the application has been made within two years after the date of the personal injury

or death, and the personal injury or death was the result of an incident or offense listed in § 100 of this chapter which had been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made.

(b) No compensation may be awarded if the victim

(1) is a relative of the offender ;

(2) is at the time of the personal injury or death of the victim living with the offender as a member of his family or household, or maintaining a sexual relationship, whether illicit or not, with the person or with a member of his family ;

(3) violated a penal law of the state, which violation caused or contributed to his injuries or death ; or

(4) is injured as a result of the operation of a motor vehicle, boat or airplane unless the vehicle was used as a weapon in a deliberate attempt to run the victim down.

(c) No compensation may be awarded under this chapter in an amount in excess of \$10,000 and all payments shall be made in a lump sum.

(d) Orders for payment of compensation under this chapter may be made only as to injuries or death resulting from incidents or offenses occurring on and after July 1, 1971. (§ 1 ch 203 SLA 1972)

Sec. 18.67.140. Recovery from offender. When an order for the payment of compensation for personal injury or death is made under this chapter, the board, upon payment of the amount of the order, is subrogated to the cause of action of the applicant against the person responsible for the injury or death and is entitled to bring an action against the person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the board shall pay the balance to the applicant. (§ 1 ch 203 SLA 1972)

Sec. 18.67.150. False claim. A person who knowingly makes a false claim under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$500, or by imprisonment for not more than one year, or by both, and shall forfeit any benefit received and shall repay the state for payment of compensation made under this chapter. (§ 1 ch 203 SLA 1972)

Sec. 18.67.160. Survival and abatement. The rights to compensation created under this chapter are personal and do not survive the death of a victim or dependent entitled to them, except that if the death occurs after an application for compensation has been filed with the Violent Crimes Compensation Board, the proceeding does not abate, but may be continued by the legal representative of the decedent's estate. (§ 1 ch 203 SLA 1972)

Sec. 18.67.170. Reports. The board shall prepare and transmit to the governor and legislature annually a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, and the amount of compensation awarded. (§ 1 ch 203 SLA 1972)

Sec. 18.67.180. Definitions. In this chapter

(1) "board" means the Violent Crimes Compensation Board ;

(2) "dependent" means a relative of a deceased victim, who was dependent upon the victim's income at the time of his death ; children of a victim born after a victim's death are included ;

(3) "personal injury" means actual bodily harm ;

(4) "relative" means spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parents ;

(5) "victim" means a person who is injured or killed by an incident specified in § 100 of this chapter. (§ 1 ch 203 SLA 1972)

## Chapter 67. Violent Crimes Compensation Board

### Section

- 10. Purpose
- 20. Criminal injuries compensation board
- 40. Action on application ; hearings
- 50. Attorney fees
- 80. Awarding compensation
- 90. Recovery from collateral source
- 110. Nature of the compensation
- 120. Emergency compensation
- 130. Limitations on awarding compensation
- 175. Duty to display information

Sec. 18.67.010. Purpose. It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the victim of a crime incur actual and reasonable expense as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals. (§ 1 ch 203 SLA 1972; am § 1 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, deleted "and" preceding "to dependents" and inserted the language beginning "and to certain other persons" and ending "reasonable expense."

Sec. 18.67.020. Criminal injuries compensation board. (a) There is the Violent Crimes Compensation Board in the Department of Health and Social Services composed of three members to be appointed by the governor. One of the members shall be designated as chairman by the governor. At least one member shall be a medical or osteopathic physician licensed to practice in this state and one member shall be an attorney licensed to practice in this state. (am § 2 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, added "and one member shall be an attorney licensed to practice in this state" to the end of the third sentence of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 18.67.040. Action on application; hearings. (a) Upon application made under the provisions of this chapter, the board shall consider the application and rule on it. The board may, upon its own motion, order a hearing, specifying the time and place it is to be held; if a hearing is ordered, the board shall give notice to the applicant. If, after consideration without a hearing, the decision is unfavorable to the applicant, in whole or in part, the board shall furnish him a written statement of the reason for the ruling. If, within 30 days after receipt of this statement, the applicant requests a hearing on his application, the board shall specify a time and place for hearing and shall give notice to the applicant. If no request for a hearing is made within the specified time, the decision of the board is final. (am § 3 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, rewrote subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 18.67.050. Attorney fees. The board may, as part of an order entered under this chapter, determine and allow reasonable attorney fees, which may not exceed 25 per cent of the first \$1,000 amount awarded as compensation, 15 per cent of the next \$9,000 amount awarded as compensation, and 7.5 per cent of the amount awarded as compensation over \$10,000 under § 70 of this chapter, to be paid in addition to the amount of the compensation, to the attorney representing the applicant. It is unlawful for the attorney to ask for, contract for, charge, demand, collect or receive a larger sum than the amount allowed by the board in the award of attorney fees. An attorney who violates this section shall forfeit any fee awarded and shall repay the state the fee awarded under this section. (§ 1 ch 203 SLA 1972; am § 4 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, inserted "25 per cent" for "15 per cent" in the first sentence, and inserted "first \$1,000" and the language beginning "15 per cent" and ending "over \$10,000" in that sentence, deleted "out of but not" following "to be paid" in that sentence, inserted "charge, demand, collect" and "by the board" in the second sentence, added "of attorney fees" to the end of that sentence, and added the third sentence.

Sec. 18.67.080. Awarding compensation. (a) In a case in which a person is injured or killed by an incident specified in § 100(1) of this chapter, or by the act of any other person which is within the description of offenses listed in § 100(2) of this chapter, the board may order the payment of compensation in accordance with the provisions of this chapter:

(1) to or for the benefit of the injured person;

(2) in the case of personal injury or death of the victim, to a person responsible or who had been responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury or death; or

(3) in the case of death of the victim, to or for the benefit of one or more of the dependents of the victim. (am § 5 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, inserted "or death" twice and "or who had been responsible" once in paragraph (2) of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 18.67.090. Recovery from collateral source. (a) Up to the maximum set in § 130(c) of this chapter, the board may award compensation for losses and expenses allowable under § 110 of this chapter for which the applicant is not compensated by the offender of a person on behalf of the offender, or by the United States, a state, or any of its subdivisions or agencies, or a private source for emergency awards under § 120 of this chapter, for injury or death compensable under this chapter.

(b) If compensation is awarded under this chapter and the person receiving it also receives a collateral sum under (a) of this section which has not been deducted from it, the board may require that he refund either the amount of the collateral sum or the amount of compensation paid to him under this chapter, whichever is less.

(c) Notwithstanding the provisions of (a) and (b) of this section, in the case of the death of a victim, the value of a life insurance policy may not be considered a collateral sum that may be deducted under this section. (§ 1 ch 203 SLA 1972; am § 6 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, substituted the language beginning "Up to the maximum set in § 130(c)" and ending "is not compensated by" for "The board shall deduct from compensation awarded under this chapter the payments received from" at the beginning of subsection (a), substituted "by" for "from" preceding "the United States" and deleted "from" preceding "a person on behalf of the offender" in that subsection, substituted "the board may require that he refund either the amount of the collateral sum" for "he shall refund to the board the lesser of the sums" in subsection (b), added "whichever is less" to the end of that subsection, and added subsection (c).

Sec. 18.67.110. Nature of the compensation. The board may order the payment of compensation under this chapter for

(2) loss of earning power as a result of total or partial incapacity of the victim, and reasonable expenses of job retraining of or similar employment-oriented rehabilitative services for the victim; (am § 7 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, added the language beginning "and reasonable expenses" to the end of paragraph (2).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 18.67.120. Emergency compensation. If it appears to the board that, prior to taking action on an application, the claim is one for which compensation is probable, and undue hardship will result to the applicant if immediate payment is not made, the board may make an emergency award of compensation to the applicant pending a final decision in the case. However,

(1) the amount of the emergency compensation may not exceed \$1,500; (am § 8 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, substituted "\$1,500" for "\$500" at the end of paragraph (1).

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 18.67.130. Limitations on awarding compensation.

(b) No compensation may be awarded if the victim

(1) is a relative of the offender;

(2) is, at the time of the personal injury or at the time of the injury which results in the death of the victim living with the offender as a member of the same family or household, or maintaining a sexual relationship, whether illicit or not, with the offender or with a member of the offender's family;

(3) violated a penal law of the state, which violation caused or contributed to his injuries or death; or

(4) is injured as a result of the operation of a motor vehicle, boat or airplane unless the vehicle was used as a weapon in a deliberate attempt to injure or kill the victim.

(c) No compensation may be awarded under this chapter in an amount in excess of \$25,000 per victim per incident. However, in the case of the death of a victim who has more than one dependent eligible for compensation, the total compensation which may be awarded as a result of that death may not exceed \$40,000. The board may prorate the total awarded among those dependents according to relative need. All payments shall be made in a lump sum. (am §§ 9, 10 ch 132 SLA 1975)

Effect of amendment.—The 1975 amendment, effective June 5, 1975, in subsection (b), inserted "at the time of the injury which results in the" in paragraph

(2), substituted "the same" and "the offender's" for "his" and "offender" for "person" in that paragraph, substituted "injure or kill" for "run" in paragraph (4), and deleted "down" following "victim" at the end of that paragraph. The Amendment also, in subsection (c), divided the former first sentence into the present first and fourth sentences by adding "\$25,000 per victim per incident" to the end of the present first sentence, adding the present second and third sentences, and substituting "All" for "\$10,000 and all" at the beginning of the present fourth sentence.

As the rest of the section was not affected by the amendment, it is not set out.

Sec. 18.67.175. Duty to display information. (a) Every hospital licensed by this state shall display prominently in its emergency room, main entrance, and business office posters notifying the public of the existence and general provisions of this chapter. The board may set standards for the location of this display and shall provide posters and general information regarding the provisions of this chapter to each hospital and to each physician licensed to practice medicine in the state.

(b) Every law enforcement agency in the state shall inform victims of violent crimes, or their surviving dependents, of the provisions of this chapter, and shall provide application forms to the victims, or their dependents, who desire to seek compensation under this chapter. The board shall provide application forms, all other documents and general information which law enforcement agencies may require to comply with this subsection. (§ 11 ch 132 SLA 1975)

Effective date.—Section 12, ch. 132, SLA 1975, makes this section effective on June 5, 1975, in accordance with AS 01.10.070(c).

## CALIFORNIA

### WEST'S ANNOTATED CALIFORNIA CODES

#### GOVERNMENT CODE—SECTIONS 12000 TO 18499—VOLUME 33

##### CUMULATIVE POCKET PART—FOR USE IN 1975

##### REPLACING PRIOR POCKET PART IN BACK OF VOLUME

#### CHAPTER 5. \* \* \* INDEMNIFICATION OF PRIVATE CITIZENS

Article:	Section
1. Victims Of Crime [New]-----	13959
2. Citizens Benefiting the Public [New]-----	13970

*Chapter 5, Victims of Crime, was added by Stats. 1967, c. 1546, p. 3707, § 1. The Chapter heading was amended to read as it now appears by Stats. 1969, c. 1111, p. 2167, § 1; Stats. 1969, c. 1431, p. 2936, § 1.*

#### ARTICLE 1. VICTIMS OF CRIME [NEW]

Sec.	
13959.	Declaration of public interest.
13960.	Definitions.
13961.	Application for assistance.
13961.5	Examination of sexual assault victims; costs [New].
13962.	Review, verification, and consideration of application.
13963.	Hearing.
13964.	Approval of application; ineligibility for assistance.
13965.	Types of assistance.
13966.	Subrogation; lien.
13967.	Imposition of fine for crime causing physical injury or death; proceeds.
13968.	Rules and regulations; notice of provisions of chapter.
13969.	Payment of claims.

*Article 1 was added by Stats. 1973, c. 1144, p. 2348, § 2, operative July 1, 1974.*

*Former Article 1, Victims of Crime, consisting of sections 13960 to 13966, added by Stats. 1967, c. 1546, p. 3707, § 1, was repealed by Stats. 1973, c. 1144, p. 2348, § 1, operative July 1, 1974. Heading of former Article 1 was added by Stats. 1969, c. 1111, p. 2167, § 2; Stats. 1969, c. 1431, p. 2936, § 2.*

Claims by victims, see 2 Cal. Adm. Code 648 et seq.

Asterisks \* \* \* indicate deletions by amendment.

## LAW REVIEW COMMENTARIES

Aid to victims of violent crimes in California. Willard Shank (1970) 43 So. Cal. L.R. 85.

Governmental compensation for riot victims. (1971) 11 Santa Clara L. 415.

Remedies for the victims of crime. LeRoy L. Lamborn (1970) 43 So. Cal. L.R. 22.

§ 13959. Declaration of public interest

It is in the public interest to indemnify and assist in the rehabilitation of those residents of the State of California who as the direct result of a crime suffer a pecuniary loss which they are unable to recoup without suffering serious financial hardship.

(Added by Stats. 1973, c. 1144, p. 2348, § 2, operative July 1, 1974.)

Indemnification on and after July 1, 1974, see 2 Cal. Adm. Code 949 et seq.

Sections 3, 4 of Stats. 1973, c. 1144, p. 2352, provides: "Sec. 3. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because duties, obligations, or responsibilities imposed on local governmental entities by this act are such that related costs are incurred as a part of their normal operating procedures.

"Sec. 4. This act shall become operative on July 1, 1974."

Derivation: Former section 13960, added by Stats. 1967, c. 1546, p. 3707, § 1.

## LAW REVIEW COMMENTARIES

Aid to victims of criminal violence (1965) 18 Stan. L.R. 266.

Marital violence. Elizabeth Truninger (1971) 23 Hast. L.J. 259.

Prospectus for research on victim-compensation in California. Gilbert Geis (1966) 2 C.W.L.R. 85.

Rehabilitation of victims of crime. (1973) 21 U.C.L.A. Law Rev. 317.

Victim compensation plans. (1969) 55 A.B.A.J. 159.

Library references: Criminal Law ⇔ 1220, C.J.S. Criminal Law § 2007.

## 1. In general

Where it was not shown that any employees of restaurant-bar knew that robber of coffee shop was waiting outside nor that establishment was a "tough joint", patron, who after employee allegedly asked him to obtain license number, went into parking lot and spoke to person, the robber, and was shot by him was not, as a matter of law, contributorily negligent and did not assume the risk but was precluded from recovery on ground that restaurant-bar could not be found to have anticipated that robber would not immediately flee or probability of injury resulting therefrom. *Young v. Desert View Management Corp.*, (1969) 79 Cal. Rptr. 848, 275 C.A.2d 204.

## § 13960. Definitions

As used in this article:

(a) "Victim" shall mean:

(1) A person who sustains physical injury or death as a direct result of a crime of violence;

(2) Anyone legally dependent for his support upon a person who sustains physical injury or death as a direct result of a crime of violence; and

(3) In the event of a death caused by a crime of violence, any individual who legally assumes the obligation, or who voluntarily pays the medical or burial expenses incurred as a direct result thereof.

(b) "Crime of violence" shall mean a crime or public offense as defined in Section 15 of the Penal Code which results in physical injury to a resident of this state, including such a crime or public offense, wherever it may take place, when such resident is temporarily absent from the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death shall constitute a crime of violence for the purposes of this article, except that a crime of violence shall include:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle; or,

(2) Injury or death sustained in an accident caused by a driver in violation of Section 20001, 23101, 23102, or 23106 of the Vehicle Code.

(c) "Board" shall mean the State Board of Control.

(d) "Pecnniary loss" shall mean the amount of medical or medical related expense and loss of income or support that the victim has incurred or will incur as a direct result of an injury or death to the extent that the victim has not been or will not be indemnified from any other source. Said loss shall be in an amount of more than one hundred dollars (\$100) or shall be equal to 20 percent or more of the victim's net monthly income, whichever is less.

(Added by Stats. 1973, c. 1144, p. 2348, § 2, operative July 1, 1974.)

Former section 13960, added by Stats. 1967, c. 1546, p. 3707, § 1, stating the purpose of the act on indemnification of victims of crime, was repealed by Stats. 1973, c. 1144, p. 2348, § 1, operative July 1, 1974. See, now, § 13959.

Derivation: Former section 13961, added by Stats. 1967, c. 1546, p. 3707, § 1.

#### § 13961. Application for assistance

(a) A victim of a crime of violence may file an application for assistance with the board provided that the victim was a resident of California at the time the crime was committed and either:

(1) The crime was committed in California; or  
 (2) The person whose injury or death gave rise to the application was a resident of California who was injured or killed while temporarily outside the state.

(b) The board shall supply and make available application forms for this purpose.

(c) The period prescribed for the filing of an application for assistance shall be one year after the date of the crime, unless an extension is granted by the board, except that such period may be extended by the State Board of Control for good cause shown by the victim.

(d) The application for assistance shall be verified and shall contain the following:

(1) A description of the date, nature, and circumstances of the crime or public offense.

(2) A complete financial statement including but not limited to the cost of medical care or burial expense and the loss of wages or support the victim has incurred or will incur and the extent to which the victim has been or may be indemnified for these expenses from any source.

(3) When appropriate, a statement indicating the extent of any disability resulting from the injury incurred.

(4) An authorization permitting the Attorney General to verify the contents of the application.

(5) Such other information as the board may require.

(Added by Stats. 1973, c. 1144, p. 2349, § 2, operative July 1, 1974.)

Contents of claims, see 2 Cal. Adm. Code 648.1

Form of claims set out, see 2 Cal. Adm. Code 648.2.

Time of presenting claims, see 2 Cal. Adm. Code 648.

Former section 13961, added by Stats. 1967, c. 1546, p. 3707, § 1, defining victim of crime, was repealed by Stats. 1973, c. 1144, p. 2348, § 1, operative July 1, 1974. See, now, § 13960.

Derivation: Former section 13962, added by Stats. 1967, c. 1546, p. 3707, § 1.

#### Law Review Commentaries

Aid to victims of criminal violence (1965) 18 Stan. L.R. 266.

Library references: States ⇔ 169, C.J.S. States § 199.

#### § 13961.5 Examination of sexual victims; costs

No costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault, when such examination is performed for the purposes of gathering evidence for possible prosecution, shall be charged directly or indirectly to the victim of such assault. Such costs shall be treated as local costs and charged to the appropriate local governmental agency as follows:

(a) If the treatment or services are provided at a county or city hospital, or hospital district facility, the county shall pay the expenses.

(b) If the treatment or services are performed at a private hospital, the expenses shall be paid by the local governmental agency in whose jurisdiction the alleged offense was committed.

(Added by Stats. 1974, c. 1001, p.—, § 1.)

Stats. 1974, c. 1001, p. —, § 2, provided: "Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to

this section nor shall there be an appropriation made by this act because duties, obligations, or responsibilities imposed on local governmental entities or school districts by this act are such that related costs are incurred as a part of their normal operating procedures."

**§ 13962. Review, verification, and consideration of application**

(a) The staff of the board shall appoint a clerk to review all applications for assistance in order to insure that they are complete. If the application is not complete, it shall be returned to the victim with a brief statement of the additional information required. The victim, within 30 days of receipt thereof, may either supply the additional information or appeal such action to the board which shall review the application to determine whether or not it is complete.

(b) If the application is accepted, it shall be referred to the Attorney General who shall promptly verify its contents and shall return the application for assistance and a report of his investigation to the board for its consideration. The board thereupon shall consider the application at a hearing at a time and place of its choosing. The board shall notify all interested persons, including the Attorney General, not less than five days prior to the date of the hearing.

(c) The victim shall cooperate with the Attorney General in the verification of the information contained in the application. Failure so to cooperate shall be reported to the board, which, in its discretion, may reject the application on this ground alone.

(Added by Stats. 1973, c. 1144, p. 2349, § 2, operative July 1, 1974.)

Former section 13962, added by Stats. 1967, c. 1546, p. 3707, § 1, relating to filing of claim by victim of crime, was repealed by Stats. 1973, c. 1144, p. 2348, § 1, operative July 1, 1974. See, now, § 13961.

Derivation: Former section 13963, added by Stats. 1967, c. 1546, p. 3707, § 1.

Library references: States ⇔ 173, C.J.S. States § 201 et seq.

**§ 13963. Hearing**

(a) At the hearing, the board shall:

(1) Review the application for assistance and the report prepared by the Attorney General thereon and any other evidence obtained as a result of his investigation.

(2) Receive such other evidence as the board finds necessary or desirable properly to evaluate the application.

(b) If the victim chooses not to appear at the hearing, the board may act solely upon the application for assistance, the Attorney General's report, and such other evidence as appears in the record.

(Added by Stats. 1973, c. 1144, p. 2350, § 2, operative July 1, 1974.)

Former section 13963, added by Stats. 1967, c. 1546, p. 3707, § 1, relating to hearing on and approval of claim, was repealed by Stats. 1973, c. 1144, p. 2348, § 1, operative July 1, 1974. See, now, sections 13962 to 13966.

Derivation: Former section, 13963, added by Stats. 1967, c. 1546, p. 3707, § 1.

**§ 13964. Approval of application; ineligibility for assistance**

After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim incurred an injury which resulted in a pecuniary loss which the victim is unable to recoup without suffering serious financial hardship. However, no victim shall be eligible for assistance under the provisions of this article if:

(a) The board finds that the victim or the person whose injury or death gave rise to the application knowingly and willingly participated in the commission of the crime;

(b) The victim or the person whose injury or death gave rise to the application failed to cooperate with a law enforcement agency in the apprehension and conviction of the criminal committing the crime;

(c) The board finds that the victim should not be allowed to recover because of the nature of his involvement in the events leading to the crime or the involvement of the persons whose injury or death gave rise to the application; or

(d) The board finds that the victim will not suffer serious financial hardship, as a result of the loss of earnings or support and out-of-pocket expense incurred as a result of the injury which gave rise to the application for assistance pursuant to this article. In determining such serious financial hardship, the board shall

consider all of the financial resources of the victim. The board shall establish specific standards by rule for determining such serious financial hardship.

(Added by Stats. 1973, c. 1144, p. 2350, § 2, operative July 1, 1974.)

Claim as basis for award, see 2 Cal. Adm. Code 648.4.

Determination of need, see 2 Cal. Adm. Code 648.5.

Disallowance of claims, see 2 Cal. Adm. Code 648.3.

Former section 13964, added by Stats. 1967, c. 1546, p. 3707, § 1, requiring imposition of fine in addition to punishment for conviction of crime of violence, was repealed by Stats. 1973, c. 1144, p. 2348, § 1, operative July 1, 1974. See, now, § 13967.

Derivation: Former sections 13963, 13965, added by Stats. 1967, c. 1546, p. 3707, § 1, amended by Stats. 1970, c. 389, p. 801, § 1.

#### Law Review Commentaries

Aid to victims of violent crimes in California. Willard Shank (1970) 43 So. Cal. L.R. 85.

Rehabilitation of victims of crime. (1973) 21 U.C.L.A. Law Rev. 317.

Library references: States ⇐ 182, C.J.S. States § 204.

#### § 13965. Types of assistance

(a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a cash payment to or on behalf of the victim equal to the pecuniary loss attributable to medical or medical related expenses directly resulting from the injury but not to exceed ten thousand dollars (\$10,000);

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury, but not to exceed ten thousand dollars (\$10,000);

(3) Authorize cash payments not to exceed three thousand dollars (\$3,000) to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

Cash payments made pursuant to this article may be on a one time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limits provided in paragraphs (1), (2), and (3) of subdivision (a).

(c) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less.

No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(Added by Stats. 1973, c. 1144, p. 2350, § 2, operative July 1, 1974.)

Former section 13965, added by Stats. 1967, c. 1546, p. 3707, § 1, amended by Stats. 1970, c. 389, p. 801, § 1, relating to informing persons of eligibility to file claim and requiring victim of crime to aid in apprehension and conviction of criminal committing crime, was repealed by Stats. 1973, c. 1144, p. 2349, § 2. See, now, §§ 13964, 13968.

Derivation: Former section 13963, added by Stats. 1967, c. 1546, p. 3707, § 1.

#### § 13966. Subrogation; lien

The State of California shall be subrogated to the rights of the victim to whom cash payments are granted to the extent of the cash payments granted, less the amount of any fine imposed by the court on the perpetrator of the crime. Such subrogation rights shall be against the perpetrator of the crime or any person liable for the pecuniary loss.

The state also shall be entitled to a lien in the amount of such cash payments on any recovery made by or on behalf of the victim. The state may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the victim.

(Added by Stats.1973, c. 1144, p. 2351, § 2, operative July 1, 1974.)

Former section 13966, added by Stats.1967, c. 1546, p. 3707, § 1, relating to appropriations for payment of claims, was repealed by Stats.1973, c. 1144, p. 2348, § 1, operative July 1, 1974. See, now, § 13969.

Derivation: Former section 13963, added by Stats.1967, c. 1546, p. 3707, § 1.

Library references: Criminal Law ⇔ 1220, C.J.S. Criminal Law § 2007.

§ 13967. Imposition of fine for crime causing physical injury or death; proceeds

Upon a person being convicted of a crime of violence committed in the State of California resulting in the injury or death of another person, if the court finds that the defendant has the present ability to pay a fine and finds that the economic impact of the fine upon the defendant's dependents will not cause such dependents to be dependent on public welfare the court shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim, but not to exceed ten thousand dollars (\$10,000). The fine shall be deposited in the Indemnity Fund in the State Treasury, hereby continued in existence, and the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this article.

(Added by Stats.1973, c. 1144, p. 2351, § 2, operative July 1, 1974.)

Derivation: Former section 13964, added by Stats.1967, c. 1546, p. 3707, § 1.

Library references: Fines ⇔ 1½, 20, C.J.S. Fines §§ 1 et seq., 19.

§ 13968. Rules and regulations; notice of provisions of chapter

(a) The Board of Control is hereby authorized to make all needful rules and regulations consistent with the law for the purposes of carrying into effect the provisions of this article.

(b) It shall be the duty of every hospital licensed under the laws of this state to display prominently in its emergency room posters giving notification of the existence and general provisions of this chapter. The board shall set standards for the location of such display and shall provide posters, application forms and general information regarding the provisions of this chapter to each hospital and physician licensed to practice in the State of California.

(c) It shall be the duty of every local law enforcement agency to inform victims of violent crimes of the provisions of this chapter and to provide application forms to victims who desire to seek assistance pursuant to this article. The board shall provide application forms and all other documents which local law enforcement agencies may require to comply with this section. The Attorney General shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with him a description of the procedures adopted by each agency to comply.

(Added by Stats.1973, c. 1144, p. 2351, § 2, operative July 1, 1974.)

Derivation: Former section 13965, added by Stats.1967, c. 1546, p. 3707, § 1, amended by Stats.1970, c. 389, p. 801, § 1.

§ 13969. Payment of claims

Claims under this article shall be paid from a separate appropriation made to the State Board of Control in the Budget Act and as such claims are approved by the board.

(Added by Stats. 1973, c. 1144, p. 2352, § 2, operative July 1, 1974.)

Derivation: Former section 13966, added by Stats. 1967, c. 1546, p. 3707, § 1.

## ARTICLE 2. CITIZENS BENEFITING THE PUBLIC [NEW]

Sec.

13970. Direct action of citizens as benefiting public; indemnification in certain cases.

13971. Private citizen defined.

13972. Claim for indemnification; filing; contents.

13973. Hearing; notice; evidence.

13974. Rules and regulations.

*Article 2 added by Stats. 1969, c. 1111, p. 2168, § 3.5; Stats. 1969, c. 1431, p. 2938, § 3.5.*

Indemnification of citizens benefiting public, see 2 Cal. Adm. Code 647 et seq.

§ 13970. Direct action of citizens as benefiting public; indemnification in certain cases

Direct action on the part of private citizens in preventing the commission of crimes against the person or property of others, or in apprehending criminals, or rescuing a person in immediate danger of injury or death as a result of fire, drowning or other catastrophe, benefits the entire public. In recognition of the public purpose served, the state may indemnify such citizens, their widows, \* \* \* their surviving children, *and any persons dependent upon such citizens for their principal support* in appropriate cases for any injury, death, or damage sustained by such citizens, their widows \* \* \*, their surviving children, *and any persons dependent upon such citizens for their principal support* as a direct consequence of such meritorious action to the extent that they are not compensated for the injury, death, or damage from any other source. *A claim shall be denied if an award has been made under Article 1 (commencing with Section 13960) of this chapter for the same incident.*

(Added by Stats. 1969, c. 1111, p. 2168, § 3.5; Stats. 1969, c. 1431, p. 2938, § 3.5. Amended by Stats. 1971, c. 1269, p. 2487, § 1.)

Section 5 of Stats. 1969, c. 1111, p. 2170, provided: "It is the intent of the Legislature, if the additions of Article 2 (commencing with Section 13970) to Chapter 5 of Part 4 of Division 3 of the Government Code proposed by both this bill and S.B. 108 [Stats. 1969, c. 1431, p. 2936] are enacted, that both additions be given effect and incorporated in Article 2 in the form set forth in Section 3.5 of this act. Therefore, in the event S.B. 108 is enacted and adds Article 2, Section 3.5 of this act shall become operative at the same time that Article 2 as added by S.B. 108 becomes operative, and at that time. Article 2 (commencing with Section 13970) of Chapter 5 of Part 4 of Division 3 of the Government Code as added by Section 3 of this act is repealed."

Section 5 of Stats. 1969, c. 1431, p. 2939, provided: "It is the intent of the Legislature, if the additions of Article 2 (commencing with Section 13970) to Chapter 5 of Part 4 of Division 3 of the Government Code proposed by both this bill and S.B. 368 [Stats. 1969, c. 1111, p. 2166] are enacted, that both additions be given effect and incorporated in Article 2 in the form set forth in Section 3.5 of this act. Therefore, in the event S.B. 368 is enacted and adds Article 2, Section 3.5 of this act shall become operative at the same time that Article 2 as added by S.B. 368 becomes operative, and at that time. Article 2 (commencing with Section 13970) of Chapter 5 of Part 4 of Division 3 of the Government Code as added by Section 3 of this act is repealed."

1971 AMENDMENT

Extended section to cover dependents and added last sentence.

DERIVATION

Penal Code former section 13600; added by Stats. 1965, c. 1395, p. 3315, § 1.

LAW REVIEW COMMENTARIES

Aid to victims of criminal violence (1965) 18 Stan. L.R. 266.

Background and general effect of 1965 addition of Pen. C. former § 13600. Rev. of 1965 Code Leg. (Cont. Educ. of Bar, 1965) page 201.

Library references: States ⇐ 123. C.J.S. States § 156.

1. In general—

Where it was not shown that any employees of restaurant-bar knew that robber of coffee shop was waiting outside nor that establishment was a "tough joint," patron, who after employee allegedly asked him to obtain license number, went into parking lot and spoke to person, the robber, and was shot by him was not, as a matter of law, contributorily negligent and did not assume the risk but was precluded from recovery on ground that restaurant-bar could not be found to have anticipated that robber would not immediately flee or probability of injury resulting therefrom. *Young v. Desert View Management Corp.* (1969) 79 Cal.Rptr. 848, 275 C.A.2d 294.

NOTE.—Italic indicates changes or additions by amendment.

§ 13971. Private citizen defined

At used in this article, "private citizen" means any natural person other than a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of such employment. (Added by Stats. 1969, c. 1111, p. 2168, § 3.5; Stats. 1969, c. 1431, p. 2928, § 3.5.)

Amendment of this section by Stats. 1969, c. 1111, p. 2167, § 3, and Stats. 1969, c. 1431, p. 2936, § 3, failed to become operative. See note under section 13970.

Derivation: Penal Code former section 13600.5, added by Stats. 1965, c. 1395, p. 3315, § 1.

Library references: Words and Phrases (Perm.Ed).

§ 13972. Claim for indemnification; filing; contents

In the event a private citizen incurs personal injury or death or damage to his property in preventing the commission of a crime against the person or property of another, in apprehending a criminal, or in materially assisting a peace officer in prevention of a crime or apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, the private citizen, his widow, his surviving children, a person dependent upon such citizen for his principal support, or a public safety or law enforcement agency acting on his or their behalf may file a claim with the State Board of Control for indemnification to the extent that the claimant is not compensated from any other source for such injury, death, or damage. The claim shall generally show:

(a) The date, place and other circumstances of the occurrence or events which gave rise to the claim;

(b) A general description of the activities of the private citizen in prevention of a crime, apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe;

(c) The amount or estimated amount of the injury, death, or damage sustained for which the claimant is not compensated from any other source, insofar as it may be known at the time of the presentation of the claim;

(d) Such other information as the Board of Control may require.

The claim shall be accompanied by a corroborating statement and recommendation from the appropriate state or local *public safety or law enforcement agency*.

(Added by Stats. 1969, c. 1111, p. 2168, § 3.5; Stats. 1969, c. 1431, p. 2938, § 3.5. Amended by Stats. 1971, c. 1260, p. 2488, § 2.)

Amendment of this section by Stats. 1969, c. 1111, p. 2167, § 3, and Stats. 1969, c. 1431, p. 2936, § 3, failed to become operative. See note under section 13970.

1971 Amendment. Provided for claims by dependents and by law enforcement agencies in the first paragraph and inserted the words "public safety or" in the last paragraph.

Derivation: Penal Code former section 13601, added by Stats. 1965, c. 1395, p. 3315, § 1.

1. *In general*.—State by providing procedure for indemnification of private citizens for damages sustained in preventing commission of crime did not assume liability for indemnifications of injuries and did no more than create procedure for receipt and evaluation of indemnity claims by board of control before board presents recommendation that appropriation be made by legislature. Worthington 1. State Bd. of Control (1968) 72 Cal. Rptr. 449, 266 C.A. 2d 697, 32 A.L.R. 3d 1441.

Library References: States ⇐ 123, 169 et seq., C.J.S. States §§ 156, 199 et seq.

§ 13973. Hearing; notice; evidence

Upon presentation of any such claim, the Board of Control shall fix a time and place for the hearing of the claim, and shall mail notices thereof to interested persons or agencies and to the Attorney General. At the hearing, the board shall receive recommendations from the Attorney General and *public safety or law enforcement agencies*, and evidence showing:

(a) The nature of the crime committed by the apprehended criminal or prevented by the action of the private citizen, or the nature of the action of the private citizen in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, and the circumstances involved;

NOTE.—*Italic* indicates changes or additions by amendment.

(b) That the actions of the private citizen substantially and materially contributed to the apprehension of a criminal, the prevention of a crime, or the rescuing of a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe;

(c) That as a direct consequence, the private citizen incurred personal injury or damage to property or died;

(d) The extent of such injury or damage for which the claimant is not compensated from any other source;

(e) Such other evidence as the board may require.

If the board determines, on the basis of a *preponderance* of such evidence, that the state should indemnify the claimant for the injury, death, or damage sustained, it shall \* \* \* *approve the claim for payment*. In no event shall a claim be approved by the board under this article in excess of five thousand dollars (\$5,000).

*In addition to any award made under this article, the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award. No attorney shall charge, demand, receive, or collect for services rendered in connection with any proceedings under this article any amount other than that awarded as attorney's fees under this section. Claims approved under this article shall be paid from a separate appropriation made to the State Board of Control in the Budget Act and as such claims are approved by the Board.*

(Added by Stats. 1969, c. 1111, p. 2168, § 3.5; Stats. 1969, c. 1431, p. 2938, § 3.5. Amended by Stats. 1971, c. 1269, p. 2488, § 3.)

Amendment of this section by Stats. 1969, c. 1111, p. 2167, § 3, and Stats. 1969, c. 1431, p. 2936, § 3, failed to become operative. See note under section 13970.

#### 1971 AMENDMENT

Inserted the words "public safety or" in the introductory paragraph; in the penultimate paragraph, inserted "a preponderance of" preceding "such evidence" and provided for an approval for payment instead of requiring a report and recommendation to the legislature; and added a paragraph relating to attorney fees.

Derivation: Penal Code former section 13602, added by Stats. 1965, c. 1395, p. 3316, § 1.

#### 1. In general—

Under Pen.C. former § 1600 et seq. (repealed. See, now, Gov.C. § 13970 et seq.) providing procedure for indemnification of private citizens for damages sustained in preventing commission of crime, court may not make direct award of money damages or specify kind of recommendation board of control shall render to legislature regarding amount of indemnification. *Worthington v. State Bd. of Control* (1968) 72 Cal.Rptr. 449, 266 C.A. 2d 697, 32 A.L.R.3d 1441.

#### § 13974. Rules and regulations

The Board of Control is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this \* \* \* article.

(Added by Stats. 1969, c. 1111, p. 2168, § 3.5; Stats. 1969, c. 1341, p. 2938, § 3.5. Amended by Stats. 1971, c. 1269, p. 2480, § 4.)

Amendment of this section by Stats. 1969, c. 1111, p. 2167, § 3, failed to become operative. See note under section 13970.

Derivation: Penal Code former section 13603, added by Stats. 1965, c. 1395, p. 3316, §.

#### 1. In general—

Holding of sum appropriated by legislature for indemnification of private citizen, who sustained damages as result of his attempt to prevent commission of crime, until citizen signed general release without authority, and release was ineffective. *Worthington v. State Bd. of Control* (1968) 72 Cal.Rptr. 449, 266 C.A.2d 697, 32 A.L.R. 3d 1441.

NOTE.—Asterisks (\* \* \*) indicate deletions by amendment.

## DELAWARE CODE ANNOTATED

REVISED 1974—1974 SUPPLEMENT

Prepared under the Supervision of The Delaware Code Revisors

JOHN T. GALLAGHER AND GEORGE C. HERING, III by The Editorial Staff of the Publishers

*Under the Direction of*

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## CHAPTER 85. STATE BUREAU OF IDENTIFICATION

Sec.

§511. Furnishing information to those in authority.

§ 511. Furnishing information to those in authority.

Upon application, the Bureau shall furnish a copy of all information available pertaining to identification and history of any person or persons of whom the Bureau has a record, or any other necessary information, to:

(4) Any person may request and receive a copy of his or her own Delaware criminal history record provided that such person (a) submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify one's self as the person whose record this individual seeks, and (b) pays a fee of \$5 per request payable to the Delaware State Police. (42 Del. Laws, c. 181, § 11; 11 Del. C. 1953, § 8511; 59 Del. Laws, c. 551.)

Effect of amendment.—59 Del. Laws, c. 551, added subdivision (4).

## PART VI—VICTIMS OF CRIMES

## CHAPTER 90. COMPENSATION FOR INNOCENT VICTIMS OF CRIME

Sec.

- 9001. Declarations of purpose.
- 9002. Definitions.
- 9003. Compensation Board.
- 9004. Functions of the Board.
- 9005. Administrative provisions: compensation.
- 9006. Denial of claim: reduction.
- 9007. Payment of compensation.
- 9008. Form of claim; investigation.
- 9009. Attorneys' fees.
- 9010. Recovery from the criminal.
- 9011. Assignment and subrogation.
- 9012. Penalty assessment.
- 9013. Annual reports.
- 9014. Compensating fine.

*Revisor's note.*—Section 2 of 59 Del. Laws, c. 519, provides: "There is hereby appropriated the sum of one hundred thirty-seven thousand dollars (\$137,000.00), of which twenty-five thousand dollars (\$25,000.00) shall be set aside for the salaries of all personnel under this Act. The remaining funds shall be set aside and paid into the Victim Compensation Fund, and shall be used for the necessary operations and expenses of the administration of this Act, including the payment of compensation to victims of crime. All funds set aside for salaries under this Act which remain unexpended on June 30, 1975, shall thereupon revert to the General Fund of the State. For budget purposes only, the Violent Crimes Compensation Board shall be deemed to be included within the Administrative Office of the Courts."

Section 3 of 59 Del. Laws, c. 519, provides: "This Act shall be strictly construed so as not to create new rights on behalf of claimants other than those which are specifically set forth, nor shall it create new duties or obligations of the State other than those which are specifically set forth within this Act. No rights under this Act shall accrue for crimes committed prior to the effective date of this Act."

Section 4 of 59 Del. Laws, c. 519, provides: "Notwithstanding any enactment date appended to this Act nor signature by the Governor, this Act shall not become effective until it is fully funded in accordance with Section 3 herein. Furthermore, if at any time the Victim Compensation Fund is abolished, exhausted or has insufficient funds to pay compensation which has been duly awarded under the provisions of this Chapter, then this Chapter shall cease and determine and no further awards shall be made nor hearings held."

Section 5 of 59 Del. Laws, c. 519, provides: "If any of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to that end this Act is declared to be severable."

Section 6 of 59 Del. Laws, c. 519, provides: "The Penalty Assessment set forth in this Act (page 11) shall take effect immediately upon signature by the Governor. The effective date of this Act, except for the Penalty Assessment, shall take effect on January 1, 1975. Funds collected in accordance with the Penalty Assessment shall be retained in the Victim Compensation Fund until January 15, 1975, at which time the Violent Crimes Compensation Board shall take full control of the Fund."

#### § 9001. Declaration of purpose.

The General Assembly hereby declares that it serves a public purpose, and is of benefit to the State, to indemnify those needy domiciliaries of this State who are victims of crimes committed within the State, and it is therefore the declared purpose of this chapter to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the families and dependents of those victims. (59 Del. Laws, c. 519, § 1.)

#### § 9002. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Board" shall mean the Violent Crimes Compensation Board as established by this chapter.

(2) "Child" shall mean an unmarried person who is under 18 years of age, and shall include the stepchild or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

(3) "Crime" for purposes of this chapter shall mean:

a. Any specific offense set forth in Chapter 5 of this title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, or unlawful use of firearms;

b. Any specific offense set forth in former Chapter 3 of this title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms.

(4) "Dependent" shall mean a person wholly or partially dependent upon the income of the victim at the time of victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim.

(5) "Guardian" shall mean a person who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent.

(6) "Incompetent" shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction.

(7) "Personal injury" shall mean bodily harm, or extreme mental suffering, and shall include pregnancy of the victim.

(8) "Pecuniary loss" in instances of personal injury shall include medical expenses, including psychiatric care; nonmedical remedial care and treatment

rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; and loss of future earnings because of a disability resulting from such personal injury. "Pecuniary loss" in instances of death of the victim shall include funeral and burial expenses and loss of support to the dependents of the victim. "Pecuniary loss" includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage.

(9) "Victim" shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this chapter. (59 Del. Laws, c. 519, § 1.)

#### § 9003. Compensation Board.

There is hereby established a Board, to be known as the Violent Crimes Compensation Board, which Board shall have the sole jurisdiction over the awarding of compensation for victims of crimes. The Board shall be composed of 5 members to be appointed by the Governor. No more than 3 members shall be of 1 major political party. Each appointment shall be effective only upon receiving the consent of the Senate. The initial Chairman of the Board shall be appointed by the Governor to serve as such for 1 year, and each year thereafter the Board shall choose its Chairman. The Chairman and 2 other members of the Board shall constitute a quorum. The term of office of each member of the Board shall be 3 years; provided, however, that 1 of the members first appointed shall be appointed for a term of 1 year, 2 others for a term of 2 years each, and the remainder of the members for a full term of 3 years. (59 Del. Laws, c. 519, § 1.)

#### § 9004. Functions of the Board.

The Board shall have the following functions, powers and duties:

- (1) To meet and function at any place within the State;
- (2) To appoint an Executive Secretary and such other employees as are necessary, the total number of which shall not exceed 5 at any given time. The Board shall prescribe the duties of the Executive Secretary and other employees;
- (3) To obtain the services of other governmental agencies upon request, and to utilize those services when necessary;
- (4) To adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out this chapter;
- (5) To receive, investigate and act upon applications for indemnification filed pursuant to this chapter;
- (6) To publish reports, information, and other data collected by the Board as results of its investigations and research;
- (7) To annually render to the Governor and the General Assembly a written report of its activities and of its recommendations;
- (8) To provide indemnification claim forms for purposes of this chapter, and to specify the information to be included in such forms. (59 Del. Laws, c. 519, § 1.)

#### § 9005. Administrative provisions; compensation.

In any instance in which a person is injured or killed by any crime as the same is defined in this chapter, then he or his estate may file a claim with the Violent Crimes Compensation Board for indemnification of all pecuniary loss which is a direct result of such crime:

- (1) If a claim is approved as filed, the award shall be the amount of pecuniary loss actually and reasonably sustained by reason of the personal injury in question minus the amount the claimant has or will receive as indemnification from any other source, including Blue Cross and Blue Shield insurance.
- (2) In the event of a death caused by a crime of violence, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses incurred as a direct result of such injury and death shall be eligible to file a claim with the Board. This provision for payment in case of death shall not apply to any insurer or public entity.
- (3) The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable. Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the superior court which has or had jurisdiction over the trial of the person or persons accused of the crime.
- (4) Payment may be made in accordance with this chapter whether or not the alleged perpetrator of the criminal act is prosecuted or convicted, in the

discretion of the Board. Payment may be made even though the person committing the crime is legally deemed to not have intended his act by reason of age, insanity, drunkenness, or is otherwise deemed legally incapable of mens rea.

(5) Upon determination of the Board of the amount of compensation due, the Board shall issue to the treasurer of the State a statement signed by the Chairman under oath certifying such amount. Upon receipt of such certification by the Board, the Treasurer shall pay to the person named therein such amounts as are specified and under the conditions specified therein. The Treasurer shall make no payments until the time for appeal of the certification has passed. If an appeal is made, there shall be no payment until there has been a binding legal adjudication of the matter. (59 Del. Laws, c. 519, §1.)

**§ 9006. Denial of claim; reduction.**

(a) The Board shall deny payment of a claim for the following reasons:

(1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred;

(2) Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime.

(3) Where the claimant refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question;

(4) Where the claim has not been filed within 1 year after the personal injury on which the claim is based, unless an extension is granted by the Board.

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death; unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury. (59 Del. Laws, c. 519, §1.)

**§ 9007. Payment of compensation.**

(a) Any person, regardless of age or mental condition, is entitled to make application for compensation under this chapter if he is a victim as defined herein. In any instance in which the person entitled to make application is deemed by law to be incompetent he may nevertheless appear in person or the application may be made on his behalf by any person acting as his relative, guardian or attorney. Every victim making application shall be entitled to appear and be heard by the Board.

(b) Except in cases of dire hardship, as determined by the Board, there shall be no payment of compensation where the claim is for less than \$25. Awards may be paid in a lump sum, or in periodic payments as determined by the Board. Each and every payment shall be exempt from attachment, garnishment, or any other remedy available to creditors for the collection of a debt.

(c) The Board may require any injured person filing a claim pursuant to this chapter to submit to a physical examination by a physician or physicians selected by the Board.

(d) No compensation shall be awarded under this chapter to any individual victim (or in case of the death of the victim to dependent relatives or to the victim's legal representative) in a total amount in excess of \$10,000. The Board shall deduct any payments received by the victim or by any of his dependents from the offender or from any person on behalf of the offender, from any insurer, or from the United States, the State or any state or any of its subdivisions from its award of compensation if such payments were in any manner made to compensate such person for personal injury or death arising from the same incident.

(e) Although a person otherwise incompetent may appear and press his claim before the Board, payment of compensation shall not be made directly to any person legally incompetent to receive same but shall be made to a third person for the benefit of such incompetent. In the case of any payment for the benefit of a child or incompetent, the Board shall order the payee to file an accounting

with the Board no later than January 31 of each year for the previous calendar year, and to take such other action as the Board shall determine to be necessary and appropriate for the benefit of the child or incompetent. (59 Del. Laws, c. 519, § 1.)

§ 9008. Form of claim; Investigation.

(a) All claims filed with the Board shall be verified and shall accurately describe the crime and circumstances which brought about the injury, damage or death, shall state the time and place the injury occurred, state the names of all persons involved if known, and shall contain the amount claimed by the applicant. If the Board in its discretion decides that a claim should be investigated such investigation must be initiated within 30 days of the filing of the claim. A claim may be summarily denied if it does not contain a full statement of the information required. If no investigation is initiated, the Board shall, within the 30 day period, notify the applicant to appear and meet with the members of the Board.

(b) If there is doubt concerning the existence or nonexistence of any material fact, the Board shall conduct its own investigation and, when the investigation is concluded, shall fix the time and place for a hearing on the claim. The Board shall mail notices of the time and place of such hearing to all interested persons and agencies. Within 90 days of the conclusion of any and all hearings on the matter, the Board shall mail a statement of its decision to award or deny the claim and a statement of any conditions under which the claim shall be awarded.

(c) Except in the event of the denial of a claim, the decision of the Board is not subject to appeal. In the event a claim is denied, the Board shall notify the claimant or his attorney if he has one and shall ensure such person of a reasonable opportunity to present his appeal to the Board. The claimant shall, within 90 days of receiving notice of such decision, file a notice of his intent to appeal. Such notice shall state the basis in law or in fact for the appeal. Upon receipt of the notice, the Board may request such further information as it may deem necessary.

(d) The full Board shall meet to hear each appeal. After hearing the appeal, the Board may approve the claim either wholly or in part, conduct further public hearings, or deny the claim. If the claim is denied upon appeal, the claimant may apply in the appropriate superior court for judicial review of the appeal to the Board by a judge sitting without a jury; provided, however, that no trial de novo of the facts determined by the Board shall be allowed. (59 Del. Laws, c. 519, § 1.)

§ 9009. Attorneys' fees.

A claimant need not be represented by an attorney before the Board, but if such person is represented the Board may award an amount for services rendered. Such fee shall not exceed \$1000 or 15% of the amount awarded, whichever sum is less, and shall be in addition to the amount of compensation awarded to the claimant. An attorney shall not charge, demand, receive or collect for services rendered in connection with any proceedings under this chapter any amount other than awarded as attorney's fees under this section. (59 Del. Laws, c. 519, § 1.)

§ 9010. Recovery from the criminal.

(a) Whenever any person is convicted of an offense and a payment of compensation is, or has been, made under this chapter for a personal injury or death resulting from the act constituting such offense, the State may institute an action against such person for the recovery of the whole or any specified part of the compensation in any Superior Court within the State, or in any other court, either state or federal, if such court has custody or control of funds of the criminal or which may be awarded to the criminal. Any amounts recovered under this section shall be deposited to the fund which finances the administration of this chapter.

(b) Any payment of compensation under this chapter shall not affect any right of any person to recover damages in a civil action from the person or persons convicted of the offense giving rise to the claim for compensation. (59 Del. Laws, c. 519, § 1.)

§ 9011. Assignment and subrogation.

(a) Awards and recoveries granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) There shall be no substitution or subrogation, whether conventional or legal, of any indebtedness or right of action by virtue of any claim of guarantee or surety, agency, lien, payments or advances made, or any claim made by the person convicted of the act giving rise to any compensation awarded under this chapter. (59 Del. Laws, c. 519, § 1.)

§ 9012. Penalty assessment.

(a) In addition to, and at the same time as, any fine is assessed to any criminal defendant, there shall be levied an additional penalty of 10% of every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses, other than fines imposed by a municipality as a penalty for a violation of a local ordinance. Where multiple offenses are involved, the penalty assessment shall be based upon the total fine for all offenses. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment shall not be suspended.

(b) Upon collection of the penalty assessment, the same shall be paid over to the Prothonotary or clerk of court, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this chapter, which account shall be designated the "Victim Compensation Fund," which is hereby created. (59 Del. Laws, c. 519, § 1.)

§ 9013. Annual reports.

The Board shall transmit to the Governor, State Auditor, and the General Assembly an annual report of its activities under this chapter, including the name of each applicant for compensation, a brief description of the facts in each case and the amount claimed, and the amount of compensation awarded. (59 Del. Laws, c. 519, § 1.)

§ 9014. Compensating fine.

In any court of this State upon the conviction of any person for a crime resulting in the personal injury or death of another person, the court may in addition to any other penalty, order such person to pay a compensating fine, in lieu of but greater than, the penalty set forth in § 9012 of this title. The amount of such fine shall be in the discretion of the court and shall be commensurate with the malice shown and the injury done to the victim. All fines paid in accordance with this section shall be deposited into the Victim Compensation Fund. (59 Del. Laws, c. 519, § 1.)

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GEORGIA

CODE OF GEORGIA, ANNOTATED

Including the Code of 1933 and All Laws of General Application Subsequently Enacted with Editorial Notes and Complete Annotations of the Decisions of The Supreme Court and Court of Appeals of Georgia and of All the Federal Courts Construing Georgia Laws

Recompiled by The Editorial Staff of The Publisher

KEPT TO DATE BY CUMULATIVE POCKET PARTS

BOOK 15

TITLE 46. Garnishment  
 TITLE 47. General Assembly  
 TITLE 48. Gifts  
 TITLE 49. Guardian and Ward  
 TITLE 50. Habeas Corpus  
 TITLE 51. Homestead and Exemptions

CITE THIS CODE—GA. CODE ANN.

THIS BOOK IS INCLUSIVE OF THE ACTS OF THE GENERAL ASSEMBLY OF THE REGULAR SESSION, 1973

The Annotations in This Book are Inclusive of

229, p. 832 Georgia Supreme Court Reports (with South Eastern Reporter parallel citations).

127, p. 607 Georgia Appeals Reports (with South Eastern Reporter parallel citations).

408 United States Supreme Court Reports.

35, p. 281 United States Supreme Court Reports, Lawyers' Edition, Second Series.

93, p. 883 Supreme Court Reporter.

470 Federal Reporter, Second Series.

354 Federal Supplement.

47-518 Compensation for damages resulting from attempts to prevent certain crimes; authority and procedure of Claims Advisory Board

(a) The Claims Advisory Board shall have authority to consider and make recommendations to the General Assembly concerning payment of compensation to innocent persons who sustain injury or property damage or both, and to dependent heirs of innocent persons killed, in attempting to prevent the commission of crime against the person of another or in aiding or attempting to aid officers of the law upon their request. In a particular case the board may appoint a special master to take testimony, supervise or conduct necessary investigations, and report to the board, but ultimate recommendation on any claim shall be made only by the board.

(b) The board shall provide by rule for proceedings before it and such rule shall emphasize, to the greatest extent possible, informality of proceedings. No claimant shall be required to be represented or accompanied by an attorney.

(Acts 1967, p. 712.)

47-519 Same; application for compensation

(a) Any person who is eligible for compensation under this law [ §§ 47-518 through 47-526 ] must give notice thereof in accordance with an Act creating the Claims Advisory Board [ §§ 47-504 through 47-509 ], in order to have such claim brought before the General Assembly for action.

(b) Any such claimant shall also, prior to introduction of a Resolution for compensation, submit all documents called for by the board, including reports from all physicians and surgeons that have treated or examined the victim and hospitals that have admitted the victim in relation to the injury for which compensation is claimed at the time or subsequent to the victim's injury or death. If, in the opinion of the board, reports on the previous medical history of the victim, examination of the injured victim and a report thereon or a report on the cause of death of the victim by an impartial medical expert would be of material aid in making its recommendation, the board shall call for the claimant to produce such reports and submit to such examinations.

(Acts 1967, pp. 712, 713.)

47-520 Same; standards for compensation

In making its recommendation, the board shall insofar as practicable, formulate standards for uniform application in recommending compensation, taking into consideration rates and amounts of compensation payable for injuries or property damage and death under other laws of this State and of the United States.

(Acts 1967, pp. 712, 713.)

47-521 Same; awarding compensation

(a) In any case in which a person is injured or sustains property damage or is killed by an incident described in section 47-522, the board may recommend to the General Assembly payment of compensation:

(1) To or for the benefit of the injured person; or

(2) In the case of personal injury of the victim, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of such injury; or

(3) In the case of death of the victim, to or for the benefit of any one or more of the heirs at law of the victim, who at the time of the victim's demise were dependent upon him for over half of their support; or

(4) To or for the benefit of the owner of the damaged property.

(b) In making its recommendation to the General Assembly the board shall consider a person to have intended an act notwithstanding that by reason of age, insanity, drunkenness, or otherwise, he was legally incapable of forming a criminal intent.

(c) In making its recommendation to the General Assembly, the board shall consider all circumstances surrounding the claim, including but not limited to provocation, consent or any other behavior of the victim which directly or indi-

rectly contributed to his injury or death; the prior case or social history, if any, of the victim or claimant; any need for financial aid present; and any other relevant matters.

(d) In making its recommendation to the General Assembly, the board shall take into consideration any amounts received or receivable from any other source by the victim or his dependents as a result of the incident or offense giving rise to the claim.

(e) Claims and recommendations may be made hereunder regardless of whether or not any person is prosecuted or convicted of any offense arising out of such act.

(Acts 1967, pp. 712, 714.)

#### 47-522 Same; incidents and offenses to which law applies

This law [ §§ 47-518 through 47-526 ] does not contemplate that compensation shall be awarded, and in no event shall the board recommend that compensation be awarded:

(a) To any victim of a criminal act or to anyone who comes to the aid of a member of his immediate family;

(b) To any officer of the law injured in the performance of his official duties.

The board shall, in an advisory way only, recommend to the General Assembly payment of compensation and the amount thereof, and the General Assembly shall act on such recommendation in accordance with law and the rules of the House and Senate for action upon such Resolutions.

(Acts 1967, pp. 712, 715.)

#### 47-523 Same; nature of the compensation

The General Assembly may by Resolution appropriate money for payment of a claim for compensation upon the recommendation of the board for:

(1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim; and

(2) Loss of earning power as a result of total or partial incapacity of such victim.

(Acts 1967, pp. 712, 715.)

#### 47-524 Same; limitations on awarding compensation

(a) No Resolution for the payment of compensation hereunder shall be adopted, unless notice of claim has been filed with the board within 18 months after the date of the personal injury or death, and the claim is otherwise presented in accordance with law, as aforesaid, and the personal injury or death was the result of an incident or offense defined in section 47-522 which had been reported to an officer of the law within five days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within five days of the time when a report could reasonably have been made.

(b) The board shall not recommend compensation on a claim if the victim:

(1) Is a spouse, parent, grandparent, child (natural or adopted), grandchild, brother, sister, half-brother, half-sister, or parent of the spouse of the offender; or

(2) Was at the time of the personal injury or death of the victim living with the offender as a member of his family or household, or maintaining a sexual relationship, whether illicit or not, with such person or with any member of the family of such person; or

(3) Violated a penal law of this State, which caused or contributed to his injuries or death; or

(4) Was injured as a result of the operation of a motor vehicle, boat or airplane, unless the same was used as a weapon in a deliberate attempt to run the victim down.

(c) No compensation shall be recommended by the board in an amount exceeding \$5,000 per claim.

(d) Payment of compensation pursuant to this law [ §§ 47-518 through 47-526 ] may be made only as to injuries or property damage or death resulting from incidents or offenses occurring on and after July 1, 1967.

(Acts 1967, pp. 712, 715.)

#### 47-525 Same; reports

The board shall prepare and transmit to the General Assembly along with its recommendation on each claim a report of its activities in connection therewith, including the name of the claimant, a brief description of the facts surround-

ing the claim, the amount of compensation recommended and the board's reasons therefor.

(Acts 1967, pp. 712, 716.)

**47-526 Same; recovery from offender**

Whenever an order for the payment of indemnification for personal injury or death or for damages to property is or has been made under this law [ §§ 47-518 through 47-526 ], the State of Georgia shall, upon payment of the amount of the order, be subrogated to the cause of action of the application against the person or persons responsible for such injury or death or damages to property and the Attorney General shall be authorized to bring an action against such person or persons for the amount of the damages sustained by the applicant. If an amount greater than that paid pursuant to the order is recovered and collected in any such action, the State, after deducting the expenses incurred, shall pay the balance to the applicant.

(Acts 1967, pp. 712, 716.)

**47-527 Procedure for consideration of the General Appropriations Bill**

The General Appropriations Bill shall be referred by the Speaker to the Appropriations Committee of the House of Representatives. In the event such bill is reported out of the Appropriations Committee as do pass by substitute or do pass as amended, neither the Committee of the Whole nor the House of Representatives shall consider such bill until at least 24 hours after such substitute or such amendments, as the case may be, have been printed and placed on the desk of each member.

(Acts 1969, pp. 680, 681.)

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HAWAII REVISED STATUTES

VOLUME 4—TITLES 16-21, CHAPTERS 281-400

Published by Authority

CERTIFICATE

Pursuant to section 12, Act 16, Session Laws of 1968, I, Hidehiko Uyenoyama, Revisor of Statutes, do hereby certify that I have examined the Hawaii Revised Statutes as printed in volumes 1 through 7 and have found that each section of the four-volume manuscript submitted to the Fourth Legislature of the State of Hawaii and enacted as law by Act 16 of the Session Laws of 1968, has been correctly reproduced therein, with the exception of the changes authorized by section 12, Act 16, Session Laws of 1968.

Dated at Honolulu, Hawaii, October 31, 1968.

HIDEHIKO UYENOYAMA,  
*Revisor of Statutes.*

CRIMINAL INJURIES COMPENSATION

Central registry of reported cases and may adopt such rules and regulations as may be necessary in carrying out this section. [L. 1967, c 261, § 3]

CROSS REFERENCES

Rulemaking, see chapter 91.

§ 350-3 *Immunity from liability.* Anyone participating in good faith in the making of a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed by or as a result of the making of such report. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report. [L. 1967, c 261, § 4]

§ 350-4 *Exemption.* No child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, be considered to be medically neglected under this chapter. [L. 1967, c 261, § 5]

§ 350-5 *Admissibility of evidence.* Neither the doctor-patient privilege nor the husband-wife privilege shall be ground for excluding evidence regarding a minor's injuries, or the cause thereof, in any judicial proceeding resulting from a report pursuant to this chapter. [L 1967, c 261, § 6]

## CHAPTER 351—CRIMINAL INJURIES COMPENSATION

### PART I. INTRODUCTORY

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### PART I. INTRODUCTORY

§ 351-1 *Purpose.* The purpose of this chapter is to aid victims of criminal acts, by providing compensation for victims of certain crimes or dependents of deceased victims, and for indemnification of private citizens for personal injury or property damage suffered in prevention of crime or apprehension of a criminal. [L 1967, c 226, pt of § 1]

§ 351-2 *Definitions.* As used in this chapter, unless the context otherwise requires:

"Child" means an unmarried person who is under twenty years of age and includes a stepchild or an adopted child;

"Commission" means the criminal injuries compensation commission established by this chapter;

"Dependents" mean such relatives of a deceased victim who were wholly or partially dependent upon his income at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and includes the child of the victim born after his death;

"Injury" means actual bodily harm and, in respect of a victim, includes pregnancy and mental or nervous shock; and "Injured" has a corresponding meaning;

"Private citizen" means any natural person other than a peace officer of the State;

"Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents;

"Victim" means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State which is within the description of any of the crimes specified in section 351-32 of this chapter. [L 1967, c 226, pt of § 1]

#### PART II. ESTABLISHMENT OF COMMISSION

§ 351-11 *Criminal injuries compensation commission.* There shall be a criminal injuries compensation commission which shall be composed of three members to be appointed and be removable in the manner prescribed by section 26-34. One member of the commission shall be an attorney who has been admitted to practice before the supreme court of the State for at least five years. No officer or employee of the State or any political subdivision thereof shall be eligible for appointment to the commission. The commission is placed within the department of social services for administrative purposes. [L 1967, c 226, pt of § 1]

#### CROSS REFERENCES

Boards and commissions generally, see § 26-34 and notes following.

§ 351-12 *Tenure and compensation of members.* The term of office of each member of the criminal injuries compensation commission shall be four years or until his successor is appointed except that (1) the terms of office of the members first taking office shall expire as designated by the governor at the time of the appointment, one on December 31, 1968, one on December 31, 1969, and one on December 31, 1970; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of the term. Each member of the commission shall be eligible for reappointment, subject to section 26-34. A vacancy in the commission shall not affect its powers. If any member of the commission is unable to act because of absence, illness, or other sufficient cause, the governor may make a temporary appointment, and such appointee shall have all the powers and duties of a regular member of the commission for the period of his appointment.

Each member of the commission except the chairman shall be compensated at the rate of \$50 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$6,000 per year. The chairman shall be compensated at the rate of \$55 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$7,200 per year. The members of the commission shall be paid their necessary travelling and subsistence expenses incurred in the discharge of their duties. [L 1967, c 226, pt of § 1]

§ 351-13 *Powers and procedures of commission.* Upon an application made to the criminal injuries compensation commission under this chapter, the commission shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant. The commission may hold such hearings, sit and act at such times and places, and take such testimony as the commission may deem advisable. The chairman and one other member of the commission shall constitute a quorum; and where opinion is divided and only one other member is present, the opinion of the chairman shall prevail. Any member of the commission may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have such powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as are conferred upon a circuit court. Subpoenas shall be issued under the signature of the chairman. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required may, upon the application of the commission, enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts, and shall be payable from funds appropriated for expenses of administration. [L 1967, c 226, pt of § 1]

§ 351-14 *Hearings and evidence.* Where any application is made to the criminal injuries compensation commission under this chapter, the applicant and the commission's legal adviser shall be entitled to appear and be heard. Any other person may appear and be heard who satisfied the commission that he has a substantial interest in the proceedings. In any case in which the person entitled to make an application is a child, the application may be made on his behalf by any person acting as his parent or guardian. In any case in which the person entitled to make an application is mentally defective, the application may be made on his behalf by his guardian or such other individual authorized to administer his estate.

Where under this chapter any person is entitled to appear and be heard by the commission, that person may appear in person or by his attorney. All hearings shall be open to the public unless in a particular case the commission determines that the hearing, or a portion thereof, should be held in private, having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

Every person appearing under this section shall have the right to produce evidence and to cross-examine witnesses. The commission may receive in evidence any statement, document, information, or matter that may in the opinion of the commission contribute to its functions under this chapter, whether or not such statement, document, information, or matter would be admissible in a court of law.

If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction shall, unless an appeal against the conviction or a petition for a rehearing in respect of the charge is pending or a new trial or rehearing has been ordered, be taken as conclusive evidence that the offense has been committed. [L 1967, c 226, pt of § 1]

§ 351-15 *Medical examination.* The criminal injuries compensation commission may appoint an impartial licensed physician to examine any person making application under this chapter, and the fees for the examination shall be paid from funds appropriated for expenses of administration. [L 1967, c 226, pt of § 1]

§ 351-16 *Attorneys' fees.* The criminal injuries compensation commission may, as a part of any order entered under this chapter, determine and allow reasonable attorneys' fees, which if the award of compensation is more than \$1,000 shall not exceed fifteen percent of the award, to be paid out of but not in addition to the award, to the attorneys representing the applicant, provided that the amount of the attorneys' fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant.

Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000. [L 1967, c 226, pt of § 1]

§ 351-17 *Judicial review.* Any person aggrieved by a final order or decision of the criminal injuries compensation commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the Supreme Court, provided the appeal is filed within thirty days after service of a certified copy of the order or decision. Except as provided in the preceding sentence, orders and decisions of the commission shall be conclusive and not subject to judicial review. [L 1967, c 226, pt of § 1]

### PART III. COMPENSATION TO VICTIMS OR DEPENDENTS

§ 351-31 *Eligibility for compensation.* (a) In the event any person is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim; or
- (2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury; or
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim.

(b) For the purposes of this chapter, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death and the commission shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a), provided an arrest has been made or such act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

(1) The act or omission did occur; and

(2) The injury or death of the victim resulted from the act or omission. Upon application from the prosecuting attorney of the appropriate county, the commission may suspend proceedings under this chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent. [L 1967, c 226, pt of § 1]

§ 351-32 *Violent crimes.* The crimes to which part III of this chapter applies are the following enumerated offenses and all other offenses in which any enumerated offense is necessarily included:

(1) Arson—Sec. 723-2;

(2) Intermediate Assault or Battery—Sec. 724-5;

(3) Aggravated Assault or Battery—Sec. 724-3 or any other aggravated assault offense enacted by law;

(4) Use of dangerous substances—Sec. 724-4;

(5) Murder—Sec. 748-1;

(6) Manslaughter—Sec. 748-6;

(7) Kidnapping—Sec. 749-1;

(8) Child-stealing—Sec. 749-4;

(9) Unlawful use of explosives—Sec. 753-3;

(10) Sexual Intercourse with a female under sixteen—Sec. 768-21;

(11) Assault with intent to rape or ravish—Sec. 768-26;

(12) Indecent Assault—Sec. 768-31;

(13) Carnal abuse of female under twelve—Sec. 768-36;

(14) Rape—Sec. 768-61;

(15) Attempted Rape—Secs. 702-1, 768-61. [L 1967, c 226, pt. of § 1]

§ 351-33 *Award of compensation.* The criminal injuries compensation commission may order the payment of compensation under this part for:

(1) Expenses actually and reasonably incurred as a result of the injury or death of the victim;

(2) Loss to the victim of earning power as a result of total or partial incapacity;

(3) Pecuniary loss to the dependents of the deceased victim;

(4) Pain and suffering to the victim; and

(5) Any other pecuniary loss directly resulting from the injury or death of the victim which the commission determines to be reasonable and proper. [L 1967, c 226, pt of § 1]

§ 351-34 *Relationship to offender.* No compensation shall be awarded, except for expenses specified in section 351-33(1), if the victim:

(1) Is a relative of the offender; or

(2) Was at the time of his injury or death living with the offender as spouse or as a member of the offender's household. [L 1967, c 226, pt of § 1]

§ 351-35 *Recovery from offender.* Whenever any person is convicted of an offense that includes any crime enumerated in section 351-32 and an order or the payment of compensation is or has been made under this part for injury or death resulting from the act or omission constituting such offense, the criminal injuries compensation commission may institute a derivative action against the person and against any person liable at law on his behalf, in the name of the victim or such of his dependents as have been awarded compensation under this part in the circuit court or the circuit in which any such person resides or is found, for such

damages as may be recoverable at common law by the victim or such dependents without reference to the payment of compensation under this part. The court shall have jurisdiction to hear, determine, and render judgment in any such action. The time from the occurrence of the act or omission until conviction of the offense and, thereafter, as long as the offender is in confinement for conviction of the offense, shall not constitute any part of the time limited for the commencement of the action by the commission under the applicable statute of limitations. Any recovery in the action shall belong to the State, provided that the commission shall amend its order of compensation to provide for the payment of any portion of the recovery in excess of the amount of compensation prescribed in the order to any of the persons entitled to receive compensation under section 351-31 in such proportions and upon such terms as the commission shall deem appropriate. If the legislature fails to appropriate funds to pay all or any part of the award of payment made by the commission and there is a recovery of the money from the offender, the commission shall pay all of such recovery to the claimant or such portion thereof, to the claimant as to the commission appears just and equitable, but in no case shall any claimant be given an award in excess of both the recovery and the award. [L 1967, c 226, pt of § 1]

#### PART IV. COMPENSATION TO PRIVATE CITIZENS

§ 351-51 *Eligibility for compensation.* In the event a private citizen incurs injury or property damage in preventing the commission of a crime within the State, in apprehending a person who has committed a crime within the State, or in materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such a person, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the private citizen; or
- (2) To any person responsible for the maintenance of the private citizen, where that person has suffered pecuniary loss or incurred expenses as a result of the private citizen's injury. [L 1967, c 226, pt of § 1]

§ 351-52 *Award of compensation.* The criminal injuries compensation commission may order the payment of compensation under this part for:

- (1) Expenses actually and reasonably incurred as a result of the injury of the private citizen;
- (2) Pain and suffering to the private citizen;
- (3) Loss to the private citizen of earning power as a result of total or partial incapacity; and
- (4) Pecuniary loss to the private citizen directly resulting from damage to his property. [L 1967, c 226, pt of § 1]

#### PART V. GENERAL PROVISIONS

§ 351-61 *Terms of order.* Except as otherwise provided in this chapter, any order for the payment of compensation under this chapter may be made on such terms as the criminal injuries compensation commission deems appropriate. Without limiting the generality of the preceding sentence, the order may provide for apportionment of the compensation, for the holding of the compensation or any part thereof in trust, and for the payment of the compensation in a lump sum or periodic installments. All such orders shall contain words clearly informing the claimant that all awards and orders for payments under this chapter are subject to the making of an appropriation by the legislature to pay the claim. [L 1967, c 226, pt of § 1]

§ 351-62 *Limitations upon award of compensation.* (a) No order for the payment of compensation shall be made under this chapter unless the application has been made within eighteen months after the date of injury, death, or property damage.

(b) No compensation shall be awarded under this chapter in an amount in excess of \$10,000. [L 1967, c 226, pt of § 1]

§ 351-63 *Recovery from collateral source.* (a) The criminal injuries compensation commission shall deduct from any compensation awarded under this chapter any payments received from the offender or from any person on behalf of the offender, or from the United States, a state, or any of its subdivisions, or any agency of any of the foregoing, for injury or death compensable under this chapter.

(b) Where compensation is awarded under this chapter and the person receiving same also receives any sum required to be, and that has not been deducted under subsection (a), he shall refund to the State the lesser of the sum or the amount of the compensation paid to him under this chapter. [L 1967, c 226, pt of § 1]

§ 351-64 *No double recovery.* Application may be made by any eligible person for compensation under both parts III and IV of this chapter, but no order shall have the effect of compensating any person more than once for any loss, expense, or other matter compensable under this chapter. [L 1967, c 226, pt of § 1]

§ 351-65 *Legal adviser.* The attorney general shall serve as legal adviser to the criminal injuries compensation commission. [L 1967, c 226, pt of § 1]

§ 351-66 *Exemption from execution.* No compensation payable under this chapter shall, prior to actual receipt thereof by the person or beneficiary entitled thereto, or their legal representatives, be assignable or subject to execution, garnishment, attachment, or other process whatsoever, including process to satisfy an order or judgment for support or alimony. [L 1967, c 226, pt of § 1]

§ 351-67 *Survival and abatement.* The rights to compensation created by this chapter are personal and shall not survive the death of the person or beneficiary entitled thereto, provided that if such death occurs after an application for compensation has been filed with the criminal injuries compensation commission, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate. [L 1967, c 226, pt of § 1]

§ 351-68 *Rulemaking powers.* In the performance of its functions, the criminal injuries compensation commission may adopt, amend, and repeal rules and regulations, not inconsistent with this chapter, prescribing the procedures to be followed in the filing of applications and the proceedings under this chapter and such other matters as the commission deems appropriate. [L 1967, c 226, pt of § 1]

#### CROSS REFERENCES

Rulemaking, see chapter 91.

§ 351-69 *Commission staff.* Supervisory, administrative, and clerical personnel necessary for the efficient functioning of the criminal injuries compensation commission shall be appointed as provided in section 26-35. [L 1967, c 226, pt of § 1]

§ 351-70 *Annual report.* The criminal injuries compensation commission shall transmit annually to the governor and to the director of finance, at least thirty days prior to the convening of the legislature a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded. The director of finance shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount of compensation awarded, to the Committee on Ways and Means of the Senate and the Committee on Appropriations of the House of Representatives (or any successor committee). The funds necessary to pay the compensation awarded shall be appropriated in the same manner as payment of other claims for legislative relief sought pursuant to section 37-6. Compliance with this section shall be deemed compliance with section 37-6. [L 1967, c 226, pt of § 1]

#### HAWAII REVISED STATUTES—1974 SUPPLEMENT

VOLUME 4—TITLES 16-21, CHAPTERS 281-400

For Use With the Corresponding Volume in the Main Set

Published by authority

#### PREFACE

This Supplement was prepared in compliance with HRS §§ 2-5 and 2-6. It supersedes the 1973 Supplement which should be removed from the main volumes.

This Supplement contains all the laws of a general and permanent nature enacted subsequent to the adoption of the Hawaii Revised Statutes through the 1974 regular and special legislative sessions. The laws have been classified, arranged, and numbered in the same manner as in the Hawaii Revised Statutes; repealed sections carry appropriate references, new sections appear in appropriate places, amended sections generally appear in their amended form.

Where, however, only a portion of a section, easily identifiable, has been amended, the remainder of the section often has not been set out. In each such case, asterisks and a note call attention to that fact. Where the revisor has added to or changed the wording of a section, whether to conform to the style of the Hawaii Revised Statutes or to correct typographical errors or to remove ambiguity, brackets or notes have been inserted. Revisions obviously immaterial, such as deletion of "Hawaii Revised Statutes" following a section number, omission of figures repetitions of written words, changes in capitalization of titles of officers and agencies, have not always been noted. All changes are only those authorized by HRS. § 2-6.

The annotations have been brought up to date through 55 Hawaii Reports, page 463; 521 Pacific Reporter, Second Series, page 889; 405 United States Reports; 466 Federal Reporter, Second Series; 351 Federal Supplement; 74-11 Opinions of the Attorney General; 10 Hawaii Bar Journal, No. 3, Fall, 1973.

The index in this publication supplements the index in the main volume. It is not a complete index of the entire contents of the Supplement but only covers the new sections added to the Revised Statutes and the amended sections whose index entries are no longer appropriate. Thus it is generally necessary to consult the index in the main volume to determine the section number of amendatory provisions, and a search for a statutory provision should begin with the principal index. The general supplementary index is found in the pocket part to volume 8. In addition, there is a separate index in the Special Pamphlet covering Titles 37 and 38, as enacted or recodified by the Hawaii Penal Code (Act 9, SL 1972), effective January 1, 1973.

HIDEHIKO UYENOMYA  
*Revisor of Statutes.*

## CHAPTER 351—CRIMINAL INJURIES COMPENSATION

### PART I. INTRODUCTORY

351-2 Definitions

### PART II. ESTABLISHMENT OF COMMISSION

351-17 Reconsideration by commission; judicial review

### PART III. COMPENSATION TO VICTIMS OR DEPENDENTS

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### PART V. GENERAL PROVISIONS

351-61 Terms of order

351-62.5 Criminal injuries compensation fund; when payments authorized

351-63 Recovery from collateral source

351-70 Annual Report

NOTE.—This chapter is amended by changing "department of social services" to "department of social services and housing". L 1970, c 105, § 5.

### PART I. INTRODUCTORY

§ 351-2 *Definitions.* \* \* \*

"Child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child;

"Private citizen" means any natural person other than a policeman who is actively engaged in the performance of his official duties;

[HRS § 351-2; am L 1972, c 2, § 13 and c 61, § 1a]

### Revision Note

Only the definitions amended are included in this Supplement.

### PART II. ESTABLISHMENT OF COMMISSION

§ 351-14—*Hearings and evidence.*

## Case Notes

Applicability of the administrative procedure act. 54 H. 294, 506 P. 2d 444. § 351-17—*Reconsideration by commission; judicial review.* (a) The criminal injuries compensation commission may, at any time, on its own motion or on the application of any person aggrieved by an order or decision of the commission, reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the findings of the commission.

(b) Any person aggrieved by an order or decision of the criminal injuries compensation commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the supreme court, provided the appeal is filed within thirty days after service of an original or a certified copy of such order or decision. Except as otherwise provided in this section, orders and decisions of the commission shall be conclusive and not subject to judicial review. [L 1967, c 226, pt of § 1; HRS § 351-17; am L 1972, c 61, § 1b]

Decision must comply with requirements of § 91-12.54 H. 294, 506 P. 2d 444

## PART III. COMPENSATION TO VICTIMS OR DEPENDENTS

§ 351-31 *Eligibility for compensation.* (a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

(1) To or for the benefit of the victim; or

(2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death; or

(3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or

(4) To a parent of an adult deceased victim, or to an adult son or daughter of a deceased victim, where the parent, or adult son or daughter, has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the victim's injury and death.

(b) For the purposes of this chapter, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death and the commission shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a), provided an arrest has been made or such act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

(1) The act or omission did occur; and

(2) The injury or death of the victim resulted from the act or omission. Upon application from the prosecuting attorney of the appropriate county, the commission may suspend proceedings under this chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent. [L 1967, c 226, pt of § 1; HRS § 351-31; am L 1972, c 61, § c]

## Attorney General Opinions

Subsection (a) (3) cited in holding that dependents stand in shoes of victim and are entitled to no more than \$10,000 in aggregate amount. Att. Gen. Op. 60-22.

§ 351-32 *Violent crimes.* (a) The crimes to which part III of this chapter applies are the following offenses enumerated and all other offenses in which any enumerated offense is necessarily included:

sections 705-500, 705-501, 705-502, 707-701, 707-702, 707-703, 707-704, 707-710, 707-711, 707-713, 707-714, 707-715, 707-720, 707-721, 707-722, 707-724, 707-730, 707-731, 707-732, 707-733, 707-734, 707-735, 707-736, 707-737, 708-820, and 708-821.

(b) For the purposes of this part, the operation of a motor vehicle, boat, or aircraft that results in an injury or death shall not constitute a crime, unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft. [L 1967, c 226, pt. of § 1; HRS § 351-32; am L 1973, c 85, § 1]

#### PART V. GENERAL PROVISIONS

§ 351-62 *Terms of order.* Except as otherwise provided in this chapter, any order for the payment of compensation under this chapter may be made on such terms as the criminal injuries compensation commission deems appropriate. Without limiting the generality of the preceding sentence, the order may provide for apportionment of the compensation, for the holding of the compensation or any part thereof in trust, for the payment of the compensation in a lump sum or periodic installments, and for the payment of compensation for hospital, medical, funeral, or burial expenses directly to the person who has provided such services. All such orders shall contain words clearly informing the claimant that all awards and orders for payments under this chapter are subject to the making of an appropriation by the legislature to pay the claim, except as otherwise provided in section 351-62.5 (Emergency payment funds: when payments authorized). [L 1967, c 226, pt. of § 1; HRS § 351-61; am L 1972, c 61, § 1d]

§ 351-62 *Limitations upon award of compensation.*

#### Attorney General Opinions

\$10,000 is maximum award for particular victim and compensation to dependents of deceased victim may not in aggregate exceed that sum. Att. Gen. Op. 60-22.

§ 351-62.5 *Criminal injuries compensation fund; when payments authorized.*

(a) There is established a criminal injuries compensation fund from which the criminal injuries compensation commission may make payments as provided in subsection (b). The director of finance shall be custodian of the fund, and all payments therefrom shall be paid by him upon orders by the commission.

(b) Where the criminal injuries compensation commission has made an award pursuant to this chapter, the commission shall make such payments to or on behalf of the victim, or to or for the benefit of one or more of the dependents of a deceased victim, or to or for the benefit of other persons who have suffered pecuniary loss or incurred expenses on account of hospital, medical, funeral, or burial expenses as a result of the victim's injury or death. Payments made pursuant to this section shall not exceed the total amount of the award.

(c) The amount appropriated under section 351-70 shall be redeposited into the criminal injuries compensation fund established by this section, to be applied to making other payments as authorized by the criminal injuries compensation commission. [L 1972, c 61, § 1f; am L 1974, c 204, § 1]

§ 351-63 *Recovery from collateral source.* (a) In determining the amount of compensation to be awarded under this chapter, the criminal injuries compensation commission shall deduct amounts or benefits received or to be received from any other source, whether from the offender or from any person on behalf of the offender, or from public or private funds, and which amounts or benefits result from or are in any manner, directly or indirectly, attributable to the injury or death which gave rise to the award; provided that no deduction shall be made for death benefits received or to be received under any insurance policy covering the life of a deceased victim.

(b) Where compensation is awarded under this chapter and the person receiving same also receives any sum required to be, and that has not been deducted under subsection (a), he shall refund to the State the lesser of the sum or the amount of the compensation paid to him under this chapter. [L 1967, c 226, pt. of § 1; HRS § 351-63; am L 1972, c 61, § 1e]

Amount of welfare payments made to victim for food and necessities during disability is not deductible from compensation awarded. Att. Gen. Op. 69-27.

§ 351-70 *Annual report.* The criminal injuries compensation commission shall transmit annually to the governor and to the director of finance, at least thirty days prior to the convening of the legislature a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded. The director of finance shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount of compensation awarded, and a legislative bill appropriating funds necessary to replenish the criminal injuries compensation fund for the compensation awarded. [L 1967, c 226, pt of § 1; HRS § 351-70; am L 1973, c 178, § 2; am L 1974, c 204, § 2]

SESSION LAWS OF HAWAII

PASSED BY THE EIGHTH STATE LEGISLATURE

REGULAR SESSION—1975

Convened on Wednesday, January 15 and Adjourned Sine Die on  
Friday, April 11

Published by Authority of the Revisor of Statutes, Honolulu, Hawaii

A bill for an Act Relating to the Criminal Injuries Compensation Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 351-13, Hawaii Revised Statutes, is amended to read:

*"Sec. 351-13 Powers and procedures of commission.* Upon an application made to the criminal injuries compensation commission under this chapter, the commission shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant. The commission may hold such hearings, sit and act at such times and places, and take such testimony as the commission may deem advisable. Any two members shall constitute a quorum; but in such case the concurring vote of the two members shall be necessary to take any action. Any member of the commission may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have such powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as are conferred upon a circuit court. Subpoenas shall be issued under the signature of the chairman. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required may, upon the application of the commission, enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts, and shall be payable from funds appropriated for expenses of administration."

SECTION 2. Section 351-31, Hawaii Revised Statutes, is amended to read:

*"Sec. 351-31 Eligibility for compensation.* (a) In the event any person is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

(1) To or for the benefit of the victim; or

(2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death; or

(3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or

(4) To a parent of an adult deceased victim, or to an adult son or daughter of a deceased victim, where the parent, or adult son or daughter, has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the victim's injury and death.

(b) For the purposes of this chapter, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death and the commission shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a), provided an arrest has been made or such act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

(1) The act or omission did occur; and

(2) The injury or death of the victim resulted from the act or omission. Upon application from either the prosecuting attorney or the chief of police of the appropriate county, the commission may suspend proceedings under this chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent, or that release of the investigation report would be detrimental to the public interest.

**SECTION 3.** Section 351-32, Hawaii Revised Statutes, is amended to read:

"Sec. 351-32. Violent crimes. (a) The crimes to which part 111 of this chapter applies are the following and no other:

(1) Murder (Hawaii Penal Code, sec. 707-701).

(2) Manslaughter (Hawaii Penal Code, sec. 707-702).

(3) Assault in the first degree (Hawaii Penal Code, sec. 707-710).

(4) Assault in the second degree (Hawaii Penal Code, sec. 707-711).

(5) Assault in the third degree (Hawaii Penal Code, sec. 707-712).

(6) Kidnapping (Hawaii Penal Code, sec. 707-720).

(7) Rape in the first degree (Hawaii Penal Code, sec. 707-730).

(8) Rape in the second degree (Hawaii Penal Code, sec. 707-731).

(9) Rape in the third degree (Hawaii Penal Code, sec. 707-732).

(10) Sodomy in the first degree (Hawaii Penal Code, sec. 707-733).

(11) Sodomy in the second degree (Hawaii Penal Code, sec. 707-734).

(12) Sodomy in the third degree (Hawaii Penal Code, sec. 707-735).

(13) Sexual abuse in the first degree (Hawaii Penal Code, sec. 707-736), and

(14) Sexual abuse in the second degree (Hawaii Penal Code, sec. 707-737).

(b) For the purposes of this part, the operation of a motor vehicle, boat, or aircraft that results in an injury or death shall not constitute a crime, unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft."

**SECTION 4.** Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the bracket, the bracketed material, or the underlining.

**SECTION 5.** This Act shall take effect upon its approval.

(Approved May 27, 1975.)

A bill for an Act Relating to Motor Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii*

**SECTION 1.** Section 286-128, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established a point system for the evaluation of the operating records of all persons operating motor vehicles and for the determination of the continuing qualifications of such persons to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations of the traffic laws of the State and of traffic ordinances of its counties to be imposed by the district judge in accordance with the following schedule of minimum and maximum points:

(1) Driving while under influence of intoxicating liquor.....	4 to 8
(2) Heedless and careless driving.....	3 to 6
(3) Driving while license suspended or revoked (includes court conviction as well as safety responsibility violations).....	3 to 6
(4) Fraudulent use of license.....	3 to 6
(5) Excessive speeding (fifteen miles or more over the established speed limit).....	3 to 6
(6) Leaving scene of accident.....	3 to 6
(7) Speeding (ten miles or more over the established speed limit).....	1 to 4
(8) Failure to report accident immediately.....	1 to 4
(9) Driving on left side of roadway.....	0 to 4
(10) Inattention to driving: negligent driving.....	1 to 4
(11) Permitting unlicensed driver to drive.....	1 to 4
(12) Following too closely.....	1 to 3
(13) Disregarding stop signs.....	1 to 3
(14) Right of way violations.....	0 to 3
(15) Disregarding traffic control signals.....	1 to 3
(16) Unlawful passing.....	0 to 3
(17) Unsafe changing of lanes.....	0 to 3
(18) Crossing solid or double lines.....	0 to 3
(19) Impeding traffic.....	0 to 2
(20) Improper turning.....	0 to 2

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ILLINOIS

SMITH-HURD ILLINOIS ANNOTATED STATUTES

CHAPTERS 68-72—HUSBAND AND WIFE—INSOLVENT DEBTORS

CUMULATIVE ANNUAL POCKET PART, FOR USE IN 1975-1976

Replacing prior Pocket Part in back of volume

Under same classification as Illinois Revised Statutes, State Bar Association Edition

EXPLANATION

This Cumulative Pocket Part for use in 1975-1976 brings to date the text of the Statutes through laws enacted at the 1973 Regular and the First through Fifth Special Sessions of the 78th General Assembly to time of adjournment on December 1, 1973, and laws enacted at the 1974 Regular Session of the 78th General Assembly which adjourned on January 8, 1975, together with annotations covering constructions and interpretations by the State and Federal Courts.

The laws are classified to Smith-Hurd Illinois Annotated Statutes. The classification is identical with the classification used in Illinois Revised Statutes, State Bar Association Edition.

The annotations close with cases reported in:

Illinois Reports, Second Series.....	59 Ill.2d (part).
Illinois Appellate Reports, Third Series.....	24 Ill.App.3d (part).
North Eastern Reporter, Second Series.....	322 N.E.2d 96.
Illinois Court of Claims.....	26 Ill.Ct.Cl.
Supreme Court Reporter.....	95 S.Ct. 766
United States Reports.....	418 U.S.
Lawyer's Edition, Second Series.....	42 L.Ed.2d (part).
Federal Reporter, Second Series.....	507 F.2d 864.
Federal Supplement.....	385 F.Supp. 896
Federal Rules Decisions.....	64 F.R.D. 732.
Other Standard Reports.....	

For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

A practice feature of particular interest consists of Library References which provide a quick and convenient means of access to pertinent sections in the volumes of Illinois Law and Practice and Corpus Juris Secundum, and to the Key Numbers of Digests in the American Digest System.

Also included, as a further aid to research, are references to informative articles in various Illinois legal periodicals.

Later laws and annotations will be cumulated in subsequent pamphlets and annual pocket parts.

#### CRIME VICTIMS COMPENSATION ACT [NEW]

##### Law Review Commentaries

Government compensation of victims of crime. LeRoy L. Lamborn, 1973 Law Forum 21.

##### § 71. *Short title*

This Act shall be known and may be cited as the "Crime Victims Compensation Act".

P.A. 78-359, § 1, eff. Oct. 1, 1973.

Title of Act: An Act in relation to the compensation of victims of crimes of violence or of the dependents of such victims and to expand the jurisdiction of the Court of Claims to handle such matters. P.A. 78-359, eff. Oct. 1, 1973.

##### § 72. *Definitions*

As used in this Act, unless the context otherwise requires:

(a) "Applicant" means any victim of a crime of violence who applies to the Court of Claims for compensation under this Act. It includes any person who was a dependent of a deceased victim of a crime of violence for his support at the time of the death of that victim.

(b) "Court of Claims" means the Court of Claims created by "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named", filed July 17, 1945.<sup>1</sup>

(c) "Crime of Violence" means and includes any offense defined in Sections 9-1, 9-2, 10-1, 10-2, 11-1, 11-3, 11-4, 12-1, 12-2, 12-3, 12-4, 12-5 or 20-1 of the "Criminal Code of 1961"<sup>2</sup> if none of the said offenses occurred during a civil riot, insurrection or rebellion.

(d) "Victim" means and includes a person (1) killed or injured in this State as a result of a crime of violence perpetrated or attempted against him. (2) killed or injured in this State while attempting to assist a person against whom a crime of violence is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable man under the circumstances or (3) killed or injured in this State while assisting a law enforcement official to apprehend a person who has perpetrated a crime of violence or to prevent the perpetration of any such crime if that assistance was in response to the express request of the law enforcement official.

P.A. 78-359, § 2, eff. Oct. 1973. Amended by P.A. 78-1197, § 1, eff. Sept. 5, 1974.

P.A. 78-1197<sup>3</sup> substituted the words "civil riot, insurrection or rebellion" for "mob action under Sections 25-1 or 25-2 of said Act" in par. (c).

Section 2 of P.A. 78-1197, approved Sept. 5, 1974, provided:

"This amendatory Act takes effect immediately upon becoming law, and the provisions of this Act shall apply to any claim not finally adjudicated prior to the effective date of this amendatory Act."

Library References: Words and Phrases (Perm. Ed.)

##### § 73. *Right to compensation—Conditions—Limitations—Notice*

A person is entitled to compensation under this Act if:

(a) he is a victim as defined in Section 2 of this Act,<sup>3</sup> or is a person who was dependent on a deceased victim of a crime of violence for his support at the time of the death of that victim. Any person related to the victim, even though not dependent on that victim for his support, is eligible for compensation but only for reasonable funeral and medical expenses for the victim, provided that such expenses were paid by him;

<sup>1</sup> Chapter 37, § 439.1 et seq.

<sup>2</sup> Chapter 28, §§ 9-1, 9-2, 10-1, 10-2, 11-3, 11-4, 12-1 to 12-5, 20-1.

<sup>3</sup> Chapter 70, § 72.

(b) his pecuniary loss resulting from the injury or death to the victim is \$200 or more, as determined under Section 4;<sup>4</sup>

(c) the appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim as soon after its perpetration as was reasonably practicable under the circumstances;

(d) the applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant;

(e) the victim and his assailant were not related, and sharing the same household;

(f) the injury to or the death of the victim was not substantially attributable to his wrongful act or substantial provocation of his assailant; and

(g) his application for compensation under this Act is filed with the Court of Claims within 2 years of the date of the injury to the victim or within such further extension of time as the Court of Claims for good cause shown, allows provided, that, notice of intent to file a claim is filed in the Office of the Attorney General within 6 months of the date of injury, or within such further extension as the Court of Claims, for good cause shown, allows.

P.A. 78-359, § 3, eff. Oct. 1, 1973. Amended by P.A. 78-1197, § 1, eff. Sept. 5, 1974.

P.A. 78-1197 inserted the second sentence in par. (a), substituted "\$200" for "\$500" in par. (b), substituted "6" for "12" in par. (g), and added the words "or within such further extension as the Court of Claims, for good cause shown, allows" to par. (g).

#### § 74. *Pecuniary loss defined—Exclusions*

Pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes, in the case of injury, appropriate medical expenses or hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury, and other expenses for treatment by Christian Science practitioners and nursing care appropriate thereto, and, in addition in the case of death, funeral and burial expenses and loss of support to the dependents of the victim. Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the 6 months immediately preceding the date of the injury or on \$500 per month, whichever is less. Nothing in this Section authorizes the making of child support payments for the benefit of a child conceived as a result of the rape of its mother. Pain and suffering shall not be considered in determining pecuniary loss. Pecuniary loss does not include property damage.

P.A. 78-359, § 4, eff. Oct. 1, 1973.

#### § 75. *Application for compensation—Contents—Additional items of information or materials—Amendment of application*

An applicant for compensation under this Act must file with the Court of Claims an application, under oath, on a form prescribed and furnished by the Clerk of the Court of Claims, setting out:

(a) the name and address of the victim;

(b) if the victim is deceased, the name and address of the applicant and his relationship to the victim, the names and addresses of other persons dependent on the victim for their support and the extent to which each is so dependent;

(c) the date and nature of the crime or attempted crime of violence on which the application for compensation is based;

(d) the date and place where and the law enforcement officials to whom notification of the crime was given;

(e) the nature and extent of the injuries sustained by the victim, the names and addresses of those giving medical and hospitalization treatment to the victim and whether death resulted;

(f) the pecuniary loss to the applicant and to such other persons as are specified under paragraph (b) resulting from the injury or death;

(g) the amount of benefits, payments or awards, if any, payable under the "Workmen's Compensation Act"<sup>5</sup> or from local governmental, State or federal funds, which the applicant or other person listed under paragraph (b)

<sup>4</sup> Chapter 70, § 74.

<sup>5</sup> Chapter 48, § 138.1 et seq.

has received or to which he is entitled as a result of the injury or death, or from any other source;

(h) releases authorizing the surrender to the Court of Claims of reports, documents and other information relating to the matters specified under this Section; and

(i) such other information as the Court of Claims reasonably requires.

The Court of Claims may require that materials substantiating the facts stated in the application be submitted with that application.

If the Court of Claims finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the applicant in writing of the specific additional items of information or materials required and that he has 30 days in which to furnish those items to the Court of Claims. The Court of Claims shall reject the application of an applicant who although notified fails to file the requested information or substantiating materials within the time specified unless he requests, and the Court of Claims grants, an extension of time in which to furnish that information. An applicant, on his own motion, may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the original application has been disposed of by the Court of Claims. In either case, the filing of additional information or of an amended application shall be considered for the purpose of this Act to have been filed at the same time as the original application.

P.A. 78-359, § 5, eff. Oct. 1, 1973.

**§ 76. Hearings to be public—Exceptions—Transcript required**

Hearings shall be open to the public unless the Court of Claims determines that a closed hearing should be held because:

(a) the alleged assailant has not been brought to trial and a public hearing would adversely affect either his apprehension or his trial;

(b) the offense allegedly perpetrated against the victim is one defined in Section 11-1, 11-3 or 11-4 of the "Criminal Code of 1961"<sup>6</sup> and the interests of the victim or of persons dependent on his support require that the public be excluded from the hearing;

(c) the victim or the alleged assailant is a minor; or

(d) the interests of justice would be frustrated, rather than furthered, if the hearing were open to the public.

A transcript shall be kept of the proceedings of hearings held before the Court of Claims and shall include the Court of Claims' findings of fact and conclusions of the amount of compensation, if any, to which the applicant and persons dependent on a deceased victim are entitled. No part of the transcript of any hearing before the Court of Claims may be used for any purpose in a criminal proceeding except in the prosecution of a person alleged to have perjured himself in his testimony before the Court of Claims. A copy of the transcript may be furnished to the applicant upon his written request accompanied by payment of 75¢ per page of that transcript to cover costs of duplication. Where the interests of Justice require, the Court of Claims may refuse to disclose the names of victims or other material in the transcript by which the identity of the victim could be discovered.

Amended by P.A. 78-359, § 6, eff. Oct. 1973.

**§ 77. Matters considered in determining amount of compensation—Maximum compensation**

In determining the amount of compensation to which an applicant is entitled, the Court of Claims shall consider the facts stated on the application of the applicant and:

(a) need not consider whether or not the alleged assailant has been apprehended or brought to trial nor the result of any criminal proceedings against that person;

(b) shall determine the amount of the pecuniary loss to the applicant and, in the case of a deceased victim, of other persons dependent on the victim for their support, basing this determination on the definition in Section 6;<sup>7</sup>

<sup>6</sup> Chapter 38, §§ 11-1, 11-3, 11-4.  
<sup>7</sup> Chapter 70, § 76.

(c) shall determine the degree or extent to which the victim's acts or conduct provoked or contributed to his injuries or death and reduce or deny the award of compensation accordingly;

(d) shall deduct \$200 plus the amount of benefits, payments or awards, payable under the "Workmen's Compensation Act",<sup>8</sup> from local governmental, State or federal funds or from any other source, except annuities, pension plans, federal social security benefits and the net proceeds of the first (\$25,000) Twenty-five Thousand Dollars of life insurance that would inure to the benefit of the applicant, which the applicant or other person dependent for his support on a deceased victim, as the case may be, has received or to which he is entitled as a result of the injury to or death of the victim; and

(e) shall offer or award, as the case may be, the resultant amount or \$10,000, which ever is less, to the applicant or, if the victim is deceased, to be apportioned among the persons who were dependent on him for their support at the time of the perpetration of the crime or attempted crime on which the application is based. An award to persons other than the victim shall be based on the Court of Claims' findings and order under paragraph (b) of Section 8;<sup>9</sup> an offer of an award of compensation to such persons shall be based on like determinations made by the Court of Claims on the basis of facts stated in the application for compensation.

P.A. 78-359, § 7, eff. Oct. 1, 1973. Amended by P.A. 78-1197, § 1, eff. Sept. 5, 1974.

§ 78. *Order—Contents—Awards where victim deceased*

(a) At the conclusion of a hearing held under this Act, the Court of Claims shall enter an order stating (1) its findings of fact, (2) its decision as to whether or not compensation is due under this Act, (3) the amount of compensation, if any, which is due under this Act, determined as provided in Section 7<sup>10</sup> (4) whether disbursement of the compensation awarded is to be made in a lump sum or in periodic payments, and (5) the person or persons to whom the compensation should be paid. The Court of Claims may order temporary payments to be made pending its determination of the total amount of compensation due under this Act.

(b) If the Court of Claims finds, in the case of an application made by a person dependent for his support on a deceased victim, that persons other than the applicant were also dependent on that victim for their support, it shall also (1) name those persons in its order; (2) state the percentage share of the total compensation award and the dollar amount to which each is entitled, and (3) order that those amounts be paid to those persons directly or, in the case of a minor or incompetent, to his guardian or conservator, as the case may be.

P.A. 78-359, § 8, eff. Oct. 1, 1973.

§ 79. *Modification of awards—Hearings*

The Court of Claims may on its motion and shall upon the written request of an applicant or other person to whom compensation has been awarded set for hearing the question whether and to what extent an award of compensation made under this Act should be modified. No hearing need be held, however, unless the written request states facts which were not known to or by the exercise of reasonable diligence could not have been ascertained by the applicant or other person, as the case may be, at the time of the entry of the order sought to be modified and which would have directly affected the determination of whether or not compensation should be awarded and, if so, the amount of that compensation.

P.A. 78-359, § 9, eff. Oct. 1, 1973.

§ 80. *Awards conditioned on subrogation—Actions by Attorney General—Actions by victims—Charge on compensation paid—Charge on compensation under Public Aid Code*

(a) The Court of Claims may offer or may award compensation on the condition that the applicant or other recipient subrogate to the State his rights to collect damages from the assailant. In such a case the Attorney General may, on behalf of the State, bring suit against an assailant for money damages, but must

<sup>8</sup> Chapter 48, § 138.1 et seq.

<sup>9</sup> Chapter 70, § 78.

P.A. 78X1197 inserted "\$200 plus" and "or from any other source, except annuities, pension plans, federal social security benefits and the net proceeds of the first (\$25,000), Twenty-five Thousand Dollars of life insurance that would inure to the benefit of the applicant" in par. (d).

<sup>10</sup> Chapter 70, § 77.

first notify the applicant or other recipient of compensation, as the case may be, and give him an opportunity to participate in the prosecution of the suit. The excess of the amount recovered in any such suit over the amount of the compensation offered and accepted or awarded under this Act plus costs of suit and attorneys fees actually incurred shall be paid to the applicant or recipient of compensation, as the case may be.

(b) If there has been no subrogation under paragraph (a), nothing in this act affects the right of the applicant or other recipient of compensation to seek civil damages from the assailant but that applicant or other recipient must give written notice to the Court of Claims of the making of a claim or demand or the filing of a suit for such damages.

(c) The State has a charge for the amount of compensation paid under this Act upon all claims, demands or causes of action against an assailant to recover for the injuries or death of a victim which were the basis for that payment of compensation. At the time compensation is paid under this Act, whether as a result of the acceptance of an offer from or of an award by the Court of Claims, the Court of Claims shall give written notice of this charge to the applicant or other recipient of compensation. The charge attaches to any verdict, judgment or degree entered and to any money or property which is recovered on account of the claim, demand, cause of action or suit against the assailant after the notice is given. On petition filed by the Attorney General on behalf of the State or by the applicant or other recipient of compensation, the circuit court, on written notice to all interested parties, shall adjudicate the rights of the parties and enforce the charge. This paragraph does not affect the priority of a lien under "An Act creating attorney's lien and for enforcement of same", filed June 16, 1909, as amended.<sup>11</sup>

(d) An award under this Act made to an applicant for or recipient of assistance under the "Illinois Public Aid Code"<sup>12</sup> is subject to the charge imposed by that Act on claims, demands and causes of actions for injuries.

P.A. 78-359, § 10, eff. Oct. 1, 1973.

**§ 81. Waiver, release or commutation of rights by victim**

Any agreement by an individual to waive, release or commute his rights under this Act is void. Compensation due under this Act may not be assigned, pledged, encumbered, released or commuted. Compensation under this Act is exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, and this exemption may not be waived.

P.A. 78-359, § 11, eff. Oct. 1, 1973.

**§ 82. Fees—Counsel's or agents' fees**

No fee may be charged to the applicant in any proceeding under this Act except as provided in this Act. If the applicant is represented by counsel or some other duly authorized agent in making application under this Act or in any further proceedings provided for in this Act, that counsel or agent may receive no payment for his services in preparing or presenting the application before the Court of Claims. He may, however, charge fees to the applicant for representing him at a hearing provided for in this Act but only in such an amount as the Court of Claims determines to be reasonable.

P.A. 78-359, § 12, eff. Oct. 1, 1973.

**§ 83. Wilful misstatement or omission of facts—Punishment—Bar to compensation**

In addition to any other civil liability or criminal penalties provided by law, a person who is convicted of having wilfully misstated or omitted facts relevant to the determination of whether compensation is due under this Act or of the amount of that compensation, whether in making application for compensation or in the further proceedings provided for in this Act, shall be guilty of a Class A misdemeanor. No compensation under this Act may be paid to an applicant who violates this Section or knowingly acquiesces in a violation of this Section.

P.A. 78-359, § 13, eff. Oct. 1, 1973.

**§ 84. Application of Act**

This Act applies only to injuries, including those resulting in death, which are inflicted after the effective date of this Act.

P.A. 78-359, § 14, eff. Oct. 1, 1973.

<sup>11</sup> Chapter 13, § 14.

<sup>12</sup> Chapter 23, § 1-1 et seq.

Section

- 346.010. Purpose.
- 346.020. Definitions.
- 346.030. Crime victims compensation board.
- 346.040. Powers and duties of board.
- 346.050. Eligibility for benefits.
- 346.060. Application for award.
- 346.070. Limitation on awards.
- 346.080. Filing of claim—Investigation—Examination—Hearing—Decision.
- 346.090. Review by full board—Notice of decision.
- 346.100. Failure to perfect claim—Denial.
- 346.110. Judicial review.
- 346.120. Emergency payment.
- 346.130. Awards—Findings—Amounts.
- 346.140. Reduction of award—Determination of victim's contribution—Basis for denial of claim.
- 346.150. Manner of payment—Annual reconsideration.
- 346.160. Records of proceedings are public—Confidentiality protected.
- 346.170. Subrogation.
- 346.180. Award constitutes debt owed state—Manner of payment.

*346.010. Purpose.*—The general assembly hereby declares that it serves a public purpose and is of benefit to the state to indemnify those needy residents of the commonwealth of Kentucky who are innocent victims of criminal acts and who suffer bodily injury or death as a consequence thereof. Such persons or their dependents may thereby suffer disability, incur financial hardships and become dependent upon public assistance. To that end, it is the general assembly's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime. (Enact. Acts 1976, ch. 263, § 1.)

*346.020. Definitions.*—As used in this chapter, unless the context otherwise requires:

- (1) "Board" means the crime victims compensation board.
- (2) "Claimant" means any of the following claiming compensation under this chapter: 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.
- (3) "Criminally injurious conduct" means conduct that occurs or is attempted in this jurisdiction; poses a substantial threat of personal injury or death, and is punishable by fine, imprisonment or death. Act which, but for the insanity or mental irresponsibility or lack of capacity of the perpetrator, would constitute criminal conduct shall be deemed to be criminally injurious conduct. The operation of a motor vehicle, motorcycle, train, boat, aircraft or other vehicle in violation of law does not constitute a criminally injurious conduct unless the injury or death was intentionally inflicted or the operation thereof was part of the commission of another criminal act.
- (4) "Family," when used with reference to a person, shall mean:
  - (a) Any person related to such person within the third degree of consanguinity or affinity;
  - (b) Any person maintaining a sexual relationship with such person; or
  - (c) Any person residing in the same household with such person.
- (5) "Victim" means a resident of this state, who suffers personal injury or death as a result of:
  - (a) Criminally injurious conduct;
  - (b) A good faith effort to prevent criminally injurious conduct; or
  - (c) A good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct. (Enact. Acts 1976, ch. 263, § 2.)

*346.030. Crime victims compensation board.*—(1) There is hereby created a board, to be known as the crime victims compensation board. Such board shall consist of five (5) members not all of whom shall be engaged in the same occupation or profession and the said board shall be appointed by the governor.

(2) The term of office of each such member shall be four (4) years, except that of the members first appointed two (2) shall serve for terms of four (4) years, two (2) shall serve for terms of three (3) years and one (1) shall serve for a term of two (2) years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(3) The governor shall designate one (1) member of the board as chairman thereof, to serve as such at the pleasure of the governor.

(4) The governor shall establish the compensation of the members of the board pursuant to the provisions of KRS 64.640. (Enact. Acts 1976, ch. 263, § 3.)

**346.040. Powers and duties of board.**—The board shall have the following powers and duties:

(1) To establish and maintain necessary offices within this state, appoint employes and agents as necessary and prescribe their duties and compensation.

(2) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter, including rules for the approval of attorney's fees for representation before the board or upon judicial review as provided for in KRS 346.110.

(3) To hear and determine all matters relating to claims for compensation, and the power to reinvestigate or reopen claims without regard to statutes of limitations.

(4) 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 claimant qualifies for compensation. The statute providing confidentiality for juvenile court records does not apply to proceedings under this chapter.

(5) To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member or employe thereof. If necessary to carry out any of its powers and duties, the board may petition any circuit court for an order.

(6) To take or cause to be taken affidavits or depositions within or without the state.

(7) To make available for public inspection all board decisions and opinions, rules, written statements of policy and interpretations formulated, adopted, or used by it in discharging its functions.

(8) To publicize widely the availability of reparations and information regarding the claims therefor. (Enact. Acts 1976, ch. 263, § 4.)

**346.050. Eligibility for benefits.**—(1) Except as provided in subsections (2) and (3) of this section, the following persons shall be eligible for awards pursuant to this chapter:

(a) A victim of criminally injurious conduct;

(b) A surviving spouse, parent or child of a victim of criminally injurious conduct who died as a direct result of such conduct;

(c) Any other person dependent for his principal support upon a victim of criminally injurious conduct who died as a direct result of such crime.

(2) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

(3) No compensation of any kind shall be awarded when injury occurred while the victim was confined in any state, county, urban county, or city jail, prison or other correctional facility, or any state institution maintained and operated by the department for human resources. (Enact. Acts 1976, ch. 263, § 5.)

**346.060. Application for award.**—(1) A claim may be filed by a person eligible to receive an award, as provided in KRS 346.050, or, if such person is a minor, by his parent or guardian.

(2) A claim must be filed by the claimant not later than ninety (90) days after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than ninety (90) days after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing for a period not exceeding one (1) year after such occurrence.

(3) Claims shall be filed in the office of the board in person or by mail. The board shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the board.

(4) Upon filing of a claim pursuant to this chapter, the board shall promptly notify the commonwealth attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such commonwealth attorney or county attorney advises the board that a criminal

prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded and shall so notify such commonwealth or county attorney and the claimant. When such criminal prosecution has been concluded such commonwealth or county attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to KRS 346.120. (Enact. Acts 1976, ch. 263, § 6.)

**346.070. Limitation on awards.**—No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars (\$100) or has lost at least two (2) continuous weeks earning or support. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. (Enact. Acts 1976, ch. 263, § 7.)

**346.080. Filing of claim—Investigation—Examination—Hearing Decision.**—(1) A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a crime shall be considered together by a single board member.

(2) The board member to whom such claim is assigned shall examine the papers filed in support of such claim. The board member shall thereupon cause an investigation to be conducted into the validity of such claim. Such investigation shall include, but not be limited to, an examination of police, court, and official records and reports concerning the crime.

(3) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the board member may order the victim or claimant to submit to a mental or physical examination by a physician or psychiatrist, and may order an autopsy of a deceased victim. A report upon such examination shall be filed with the board member setting out findings, including results of all tests made, diagnosis, prognosis and other conclusions.

(4) For purposes of this chapter 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 chapter in which that condition is an element.

(5) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.

(6) The board member to whom a claim is assigned may decide such claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of such papers and such report, he shall order a hearing. At such hearing any relevant evidence, not legally privileged, shall be admissible.

(7) After examining the papers filed in support of such claim and the report of investigation, and after a hearing, if any, the board member to whom such claim was assigned shall make a decision either granting an award pursuant to KRS 346.130 or deny the claim.

(8) The board member making a decision shall file a written report setting forth such decision and his reasons therefor and shall thereupon cause the claimant to be notified and furnish him a copy of such report. (Enact. Acts 1976, ch. 263, § 8.)

**346.090. Review by full board—Notice of decision.**—(1) The claimant may, within thirty (30) days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the board for consideration of such decision by the full board.

(2) Any member of the board may, within thirty (30) days after the filing of such report, make an application in writing to the board for consideration of such decision by the full board.

(3) Upon receipt of an application pursuant to subsections (1) or (2), the board shall review the record and affirm or modify the decision of the board member to whom the claim was assigned. The action of the board in affirming or modifying such decision shall be final. The board shall file with the secretary of the board a written report setting forth its decision, and if such decision varies in any respect from the report of the board member to whom the claim

was assigned setting forth its reasons for such decision. If the board receives no application pursuant to subsections (1) and (2) of this section the decision of the board member to whom the claim was assigned shall become the final decision of the board.

(4) The board shall promptly notify the claimant and the attorney general of the final decision of the board and furnish each with a copy of the report setting forth such decision. (Enact. Acts 1976, ch. 263, § 9.)

**346.100. Failure to perfect claim—Denial.**—Following the initial filing of a claim, if a claimant or victim does not take such further steps as may be necessary to support or perfect claim as may be required by the board within thirty (30) days after such requirement is made by the board, the claimant or victim shall be deemed in default. In such case the board shall summarily deny the claim and the claimant or victim shall be forever barred from reasserting the claim. The board may remit such proceedings on good cause shown that the failure to take the steps required by the board was totally and completely beyond the control of the claimant or victim. (Enact. Acts 1976, ch. 263, § 10.)

**346.110. Judicial review.**—(1) Within thirty (30) days after receipt of the copy of the report containing the final decision of the board, the attorney general or claimant may commence a proceeding in the Franklin Circuit Court to review the decision of the board. Such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court.

(2) Any such proceeding shall be commenced by the service of notice thereof upon the claimant or attorney general and the board in person or by mail. (Enact. Acts 1976, ch. 263, § 11.)

**346.120. Emergency payment.**—(1) Notwithstanding the provisions of KRS 346.080, if it appears to the board member to whom a claim is assigned, prior to taking action upon such claim that:

(a) Such claim is one with respect to which an award probably will be made; and

(b) Undue hardship will result to the claimant if immediate payment is not made. Emergency payment under subsection (2) of this section may be made.

(2) Upon such findings under subsection (1) of this section the board member may make an emergency award to the claimant pending a final decision in the case provided that:

(a) The amount of such emergency award shall not exceed five hundred dollars (\$500);

(b) The amount of such emergency award shall be deducted from any final award made to the claimant; and

(c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the board. (Enact. Acts 1976, ch. 263, § 12.)

**346.130. Awards.—Findings—Amounts.**—(1) No award shall be made unless the board or board member, as the case may be, finds that:

(a) Criminally injurious conduct occurred;

(b) Such criminally injurious conduct resulted in personal physical injury to or death of, the victim; and

(c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board for good cause shown, finds the delay to have been justified.

(2) The board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.

(3) Any award made pursuant to this chapter shall exclude therefrom the initial one hundred dollars (\$100) of losses incurred and shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury.

(4) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter be in an amount equal to the actual loss sustained; Provided, however, That no such award shall exceed one hundred fifty dollars (\$150) for each week of lost earnings or support. If there

are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct the award shall be apportioned by the board among the claimants.

(5) Any award made under this chapter shall not exceed fifteen thousand dollars (\$15,000). (Enact. Acts 1976, ch. 263, § 13.)

*346.140. Reduction of award—Determination of victim's contribution—Basis for denial of claim.*—(1) Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury from the following sources:

- (a) From or on behalf of the person who committed the crime;
- (b) Under insurance programs mandated by law;
- (c) From public funds;
- (d) Under any contract of insurance wherein the claimant is the insured or beneficiary; and
- (e) As an emergency award pursuant to KRS 346.120.

(2) In determining the amount of an award, the board or board member, as the case may be shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; Provided, however, That the board or board member, as the case may be, may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurrence in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

(3) If the board or board member, as the case may be, finds that the claimant will not suffer serious financial hardships, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this chapter to meet such loss of earnings, support or out-of-pocket expenses, the board or board member shall deny an award. In determining such serious financial hardship, the board or board member shall consider all of the financial resources of the claimant. The board shall establish specific standards by rule for determining such serious financial hardships. (Enact. Acts 1976, ch. 263, § 14.)

*346.150. Manner of payment—Annual reconsideration.*—(1) The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

(2) The board shall reconsider at least annually every award being paid in installments. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud. (Enact. Acts 1976, ch. 263, § 15.)

*346.160. Records of proceedings are public—Confidentiality protected.*—The record of a proceeding before the board or a board member shall be a public record; Provided, however, That any record or report obtained by the board, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation. (Enact. Acts 1976, ch. 263, § 16.)

*346.170. Subrogation.*—(1) No right of action at law against a person who has committed a criminal act for damages as a consequence of such act shall be lost as a consequence of receiving benefits under the provisions of this chapter. In the event any person receiving benefits under this chapter additionally seeks a remedy for damages from the person or persons who have committed the criminal act resulting in damages, then and in that event the board shall be subrogated to and have a lien upon any recovery so made to the extent of the payments made by the state to or on behalf of such person under this chapter.

(2) If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which aid to the extent only that compensation is awarded from a source which is, or, if readily available to the victim or claimant would be, a collateral source. (Enact. Acts 1976, ch. 263, § 17.)

*346.180. Award constitutes debt owed state—Manner of payment.*—(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt

due and owing to the state by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party.

(2) The court when placing any convicted person, who owes a debt to the state as a consequence of a criminal act, on probation and conditional discharge as provided in KRS 533.020 may set as a condition of the probation or conditional discharge the payment of the debt to the state. The court also may set the schedule or amounts of payments to be made subject to modification based on change of circumstances.

(3) The parole board shall also have the right to make payment of the debt to the state a condition of parole under the provisions of KRS chapter 439 subject to modification based on change of circumstances. (Enact. Acts 1976, ch. 263, § 18.)

## LOUISIANA

### WEST'S LOUISIANA STATUTES ANNOTATED

#### REVISED STATUTES

Official Classification—Sections 43:1 to 46:End

VOLUME 24—CUMULATIVE ANNUAL POCKET PART, FOR USE IN 1975

Replacing prior pocket part in back of volume

#### EXPLANATION

The Pockets Parts for use in 1975 for WEST'S LOUISIANA REVISED STATUTES ANNOTATED cover all general and permanent laws in force enacted to January 1, 1975, including the Acts of the Forty-Second Extraordinary Session (1973), the Thirty-Seventh Regular Session (1974), and the Forty-Third Extraordinary Session (1974).

Acts 1974, No. 60, enacted a new Mineral Code which became effective January 1, 1975. The text of this Act, including Official Comments, is set forth in a Special Pamphlet which should be retained with West's Louisiana Statutes Annotated Pocket Parts for use in 1975.

Under Constitution 1921, Art. 3, § 27, par. 1, all laws enacted by the Legislature become effective "at twelve o'clock, noon, on the twentieth day after the Legislature shall have adjourned", except the general appropriation act or the act appropriating money for the expenses of the Legislature, or those acts certified as emergency measures.

The general effective date of laws enacted from 1951 to the present is shown in the specially prepared Table, post. Special effective dates varying from the general effective dates are included in the credits at the end of the laws affected.

The arrangement and classification of the laws conform in every respect to the official allocations within the framework of the Louisiana Revised Statutes, supplied through the courtesy and cooperation of the Louisiana State Law Institute. This uniformity of arrangement and classification simplifies research and enables the Bench and Bar to use the Revised Statutes and Louisiana Statutes Annotated as a single publication.

The current Law Reviews are covered by references under sections to which they are pertinent.

The annotations from the decisions of the State and Federal Courts in Louisiana construing the laws close with the cases reported in:

Louisiana Reports.....	263 La. (part).
Southern Reporter, Second Series.....	301 So.2d 440.
Supreme Court Reporter.....	95 S.Ct. 163.
United States Reports.....	416 U.S. (part).
Lawyers' Edition, Second Series.....	42 L.Ed.2d (part).
Federal Reporter, Second Series.....	502 F.2d 1168.
Federal Supplement.....	380 F. Supp. 1407.
Federal Rules Decisions.....	63 F.R.D. 705.
Other Standard Reports	

CHAPTER 21. COMPENSATION FOR PERSONAL INJURY OR DEATH FROM CRIMINAL ACTS  
[NEW]

Sec.

- 1801. Review of claims.
- 1802. Definitions.
- 1803. Duties and powers.
- 1804. Administrative provisions.
- 1805. Procedures of the board.
- 1806. Authorization of payment.
- 1807. Crimes to which act applies.
- 1808. Persons eligible for recovery.
- 1809. Application for payment of compensation.
- 1810. Attorney's fees.
- 1811. Character of compensation.
- 1812. Finality of decision.
- 1813. Limitations upon payment of compensation.
- 1814. Terms and payment of the order of compensation.
- 1815. Emergency awards.
- 1816. Recovery from the criminal.
- 1817. Effect on civil actions.
- 1818. Indemnity fund.
- 1819. Duty to inform victims.
- 1820. Report to legislature.
- 1821. Fine imposed for criminal victim indemnity fund.

§ 1801. *Review of claims*

The board of review of the Department of Employment Security hereinafter referred to as the board, shall, among its other duties, serve as a board of review for claims made under this chapter. Acts 1972, No. 721, § 1.

Purpose of Act: Acts 1972, No. 721 by preamble declares:

"WHEREAS, the Legislature of Louisiana finds that there is an increase of crimes of violence not only in urban but also in suburban and rural areas; the increase of crimes of violence is disproportionate to the increase in population; the increase in crimes of violence increases the chances of a person becoming a victim of such a crime; on an increasing basis crimes of violence are being directed at public safety officers, including policemen, firemen, and correctional guards; law enforcement identification, apprehension, and conviction of perpetrators of crimes of violence is decreasing; the perpetrators of crimes of violence, when identified, apprehended, and convicted, are often not financially responsible; and the victims of crimes of violence, their families and dependents, are often themselves unable to bear the consequent pecuniary losses without undue hardship. It is, therefore, the purpose of this Act to commit the state of Louisiana to meet its moral obligation to assist the innocent victims of violent crime; their families and dependents in financial need; now therefore."

Title of Act: An Act to provide for the compensation of innocent victims of violent crime in need; to authorize the State of Louisiana to accept any federal funds or grants made available for such purpose; and to further provide with respect to all of the above. Acts 1972, No. 721.

Library references: States ⇔ 111, 173. C.J.S. States §§ 128, 201 et seq.

§ 1802. *Definitions*

As used in this chapter:

(1) "board" means board of review of the Department of Employment Security;

(2) "chairman" means the chairman of the board of review of the Department of Employment Security;

(3) "child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child, and illegitimate child, and a student over eighteen years of age, and a child conceived prior to but born after the personal injury or death of the victim;

(4) "dependent" means a relative or other person who was wholly or partially dependent upon the income of the victim at the time of the personal injury or death of the victim;

(5) "legal representative" means a person who is entitled by law or legal appointment to care for and manage the person or property or both of a child or incompetent;

(6) "incompetent" means a person who is incapable of managing his own affairs, whether adjudicated or not;

(7) "personal injury" means actual bodily harm and includes pregnancy, mental distress, and nervous shock;

(8) "pecuniary loss" includes:

(a) for personal injury—

(1) medical expenses (including psychiatric care);

(2) hospital expenses;

(3) loss of past earnings; and

(4) loss of future earnings because of a disability resulting from the personal injury; and

(b) for death—

(1) funeral and burial expenses; and

(2) loss of support to the dependents of the victim.

Pecuniary loss includes any other expenses actually and necessarily incurred as a result of a personal injury or death, but it does not include property damage.

(9) "relative" includes a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, siblings of the whole or half blood, a spouse's parents, a niece or nephew;

(10) "student" means a person who is a "student" enrolled in an accredited educational institution in Louisiana; and

(11) "victim" includes any person who is killed or injured where such death or injury is proximately caused by a criminal act committed or attempted against him enumerated in R.S. 46:1807(A), or where such death or injury occurs while assisting a law enforcement officer to apprehend a person who has committed a crime or to prevent the commission of a crime. Acts 1972, No. 721, § 2.

Library references: States ⇔ 173, C.J.S. States § 201 et seq.

#### § 1803. *Duties and powers*

The duties and powers conferred upon the board of review of the Department of Employment Security by this chapter are to receive and process applications under the provisions of this chapter for compensation for personal injury or death resulting from criminal acts enumerated in 46:1807(A); hold such hearings, sit and act at such times and places and take such testimony as the board or any member thereof may deem advisable; order the payment or compensation to victims and other beneficiaries in accordance with the provisions of this chapter; accept funds from public or private sources including any monies made available by the government of the United States, and take such other action as it deems necessary and appropriate to carry out the purposes of this chapter.

Acts 1972, No. 721, § 3.

Library references: States ⇔ 173, C.J.S. States § 201 et seq.

#### § 1804. *Administrative provisions*

A. In carrying out its functions under this chapter the board is authorized to promulgate such rules and regulations as may be required to carry out the provisions of this chapter; appoint such advisory committees as the board may determine to be desirable to carry out the provisions of this chapter; designate representatives to serve or assist on such advisory committees as the board may determine to be necessary to maintain effective liaison with federal agencies and with state and local agencies developing or carrying out policies or programs related to the provisions of this chapter; use the services, personnel, facilities, and information (including suggestions, estimates, and statistics) of federal agencies and those of state and local public agencies and private institutions, with or without reimbursement therefor; request such information, data, and reports from any federal agency as the board may from time to time require and as may be produced consistent with other law.

B. Upon request made by the board, each state agency or institution is authorized and directed to make its services, equipment, personnel, facilities, and information (including suggestions, estimates, and statistics) available to the greatest practicable extent to the board in the performance of its functions.

Acts 1972, No. 721, § 4.

Library references: States ⇔ 173 et seq. C.J.S. States § 201 et seq.

#### § 1805. *Procedures of the board*

To implement the provisions of this chapter the board of review of the Department of Employment Security may administer oaths, or affirmations to witnesses appearing before the board, receive in evidence any statement, docu-

ment, information, or matter that may, in the opinion of the board, contribute to its functions under this chapter, whether or not such statement, document, information, or matter would be admissible in a court of law; shall conduct hearings open to the public unless in a particular case the board determines that the hearing, or a portion thereof, should be held in private, having regard to the fact that the criminal has not been convicted or to the interest of the victim of an alleged crime; and may appoint an impartial licensed physician to examine any person making application under this chapter and order the payment of reasonable fees for such examination. The board shall permit every person appearing before it to have the right to produce evidence and to cross examine such witnesses as may appear. Where a person has been convicted of a crime giving rise to an application under this chapter, proof of the conviction shall be conclusive evidence that the crime was committed, unless an appeal of the conviction or a petition for a rehearing or certiorari is pending or a new trial or rehearing has been ordered.

*Acts 1972, No. 721, § 5.*

Library references: States ⇨ 173 et seq. C.J.S. States § 201 et seq.

**§ 1806. Authorization of payment**

A. In any case in which a person is injured or killed by any criminal act, or omission of any other person, enumerated in R.S. 46:1807(A), the board may, in its discretion, upon an application, order the payment of, and pay, compensation in accordance with the provisions of this chapter, if such act or omission occurs within the jurisdiction of the State of Louisiana.

B. The board may order the payment of compensation to or on behalf of the victim; or in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered as a result of that personal injury by any person, to that person; or in the case of the death of the victim, to or for the benefit of the dependent of the deceased victim, or any one or more of such dependents, or to any person who has suffered pecuniary loss as a result of that death.

C. In determining whether to order payment under this section, the board may consider any circumstances it determines to be relevant including financial need, and the board shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death and the board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.

D. No order may be made under this section unless the board, with or without hearings, supported by substantial evidence, finds that such an act or omission did occur, and the injury or death was proximately caused by such act or omission.

E. An order may be made under this section whether or not any person is prosecuted or convicted of any crime arising out of such act or omission or if such act or omission is the subject of any other legal action. The board may suspend proceedings in the interest of justice if a civil action arising from such act or omission is pending or imminent.

*Acts 1972, No. 721, § 6.*

Library references: States ⇨ 111. C.J.S. States § 128.

**§ 1807. Crimes to which act applies**

A. The board may order the payment of, and pay, compensation for pecuniary loss in accordance with the provisions of this chapter for personal injury or death which resulted from crimes in the following categories: aggravated assault; arson; assault; burglary; crime against nature; kidnapping; manslaughter; murder; negligent homicide; rape; robbery; riot; unlawful use of firearms; unlawful sale or exchange of drugs; unlawful use of explosives; any other crime involving the use of force, including poisoning, to the person; or attempts to commit any of the foregoing.

B. For the purposes of this chapter, the operation of a motor vehicle, boat, or aircraft that results in an injury or death shall not constitute a crime unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft.

C. For the purposes of this chapter, a person shall be deemed to have committed a criminal act or omission notwithstanding that, by reason of age, insanity, drunkenness, or otherwise he was legally incapable of committing a crime.

*Acts 1972, No. 721, § 7.*

Library references: States ⇨ 111. C.J.S. States § 128.

**§ 1808. Persons eligible for recovery**

A person is entitled to make application for an order of compensation under this chapter if he is a victim, or he was a person who was dependent on a victim at the time of the personal injury or death of the victim, or he suffered pecuniary loss as a result of the personal injury or death of the victim.

*Acts 1972, No. 721, § 8.*

Library references: States ⇨ 111. C.J.S. States § 128.

**§ 1809. Application for payment of compensation**

A. In any case in which the person entitled to make an application is a child, or incompetent, the application may be made on his behalf by any person acting as his legal representative.

B. Where any application is made to the board under this chapter the applicant, or his attorney or his legal representative, and any attorney of the board, shall be entitled to appear and be heard.

C. Any other person may appear and be heard who satisfies the board that he has a substantial interest in the proceedings.

*Acts 1972, No. 721, § 9.*

Library references: States ⇨ 175. C.J.S. States § 208.

**§ 1810. Attorney's fees**

A. The board shall publish regulations providing that an attorney, may, at the conclusion of proceedings under this chapter, file with the board an appropriate statement for a fee in connection with services rendered in such proceedings.

B. After the fee statement is filed by an attorney under Subsection A of this section, the board shall award a fee to such attorney as it deems reasonable and proper, and such fee shall be his sole compensation in connection therewith.

*Acts 1972, No. 721, § 10.*

Library references: States ⇨ 184.33. C.J.S. States § 208(C).

**§ 1811. Character of compensation**

The board may order the payment of compensation under this chapter for any pecuniary loss actually and necessarily incurred as a result of the personal injury or death of the victim.

*Acts 1972, No. 721, § 11.*

Library references: States ⇨ 111. C.J.S. States § 128.

**§ 1812. Finality of decision**

The orders and decisions of the board shall be reviewable in the appropriate court as in any other civil action.

*Acts 1972, No. 721, § 12.*

Library references: States ⇨ 184.34. C.J.S. States § 208(7) et seq.

**§ 1813. Limitations upon payment of compensation**

A. No order for the payment of compensation shall be made under this chapter unless the board finds that the applicant will suffer undue financial hardship from pecuniary loss incurred as a result of the injury or death of the victim if the order for the payment of compensation is not made. In determining undue financial hardship for the purposes of this subsection, the board shall consider all of the financial resources of the applicant. The board shall establish standards by rule for determining such undue financial hardship.

B. No order for the payment of compensation shall be made under this chapter unless the application has been made within one year after the date of the personal injury or death.

C. No order for the payment of compensation shall be made under this chapter unless the applicant has incurred a minimum pecuniary loss of one hundred dollars or has lost two continuous weeks' earnings or support.

D. The criminal or an accomplice of a criminal, a member of the family of the criminal, a person living in the household of the criminal, or a person

maintaining sexual relations with the criminal shall not be eligible to receive compensation with respect to a crime committed by the criminal.

E. No order for the payment of compensation under this chapter shall be made unless the act resulting in the personal injury or death for which the compensation is to be paid was reported to the law enforcement officials within seventy-two hours after its occurrence, unless the board finds that the failure to report was justified by good cause.

F. The aggregate of orders for the payment of compensation under this chapter as the result of any one criminal act, omission, or occurrence shall not be in excess of fifty thousand dollars.

G. The board, upon finding that any applicant or beneficiary of any payment of compensation has not fully cooperated with all law enforcement agencies, may deny or withdraw any order of payment of compensation.

*Acts 1972, No. 721, § 13.*

Library references: States ⇨111. C.J.S. States § 128.

**§ 1814. Terms and payments of the order of compensation**

A. Except as otherwise provided in this section, any order for the payment of compensation under this chapter may be made on such terms and conditions as the board deems necessary and appropriate to carry out the purposes of this chapter.

B. The board shall deduct from any payments ordered under R.S. 46:1806 of this chapter any payments received by applicant from the criminal or from any person on behalf of the criminal; from the United States, this state, or any of their agencies for a personal injury or death otherwise compensable under this chapter; and under contract of insurance wherein the applicant is the insured or beneficiary, but only to the extent that the sum of such payments plus any payment ordered under this chapter would be in excess of the total compensable injuries suffered by the applicant as determined by the board.

C. The board shall pay to the person named in the order of payment of compensation the amount named therein in accordance with the provisions of such order.

D. No order for the payment of compensation made under this chapter shall be subject to execution or attachment other than for expenses resulting from the injury or death which is the basis for the application.

E. In the case of a payment for the benefit of a child or incompetent, the board shall order the payee to file an accounting with the board no later than January 31 of each year for the previous calendar year and to take such other action as the board shall determine to be necessary and appropriate for the benefit of the child or incompetent.

*Acts 1972, No. 721, § 14.*

Library references: States ⇨184.32. C.J.S. States § 208(6).

**§ 1815. Emergency awards**

A. Whenever the board determines, prior to taking action upon an application that such application is one with respect to which an order of payment will probably be made, and undue hardship may result to the applicant if immediate payment is not made, the board may order emergency payments to the applicant pending a final decision on the application.

B. The amount of any emergency payment ordered under Subsection A of this section shall be deducted from the amount of any final order for the payment of compensation made to the applicant.

C. Where the amount of any emergency payment ordered under Subsection A of this section exceeds the amount of the final order for the payment of compensation, or if there is not order for the payment of compensation made, the recipient of such amount in accordance with rules and regulations prescribed by the board. The board may waive all or part of such repayment where in its judgment such repayment would involve severe financial hardship.

*Acts 1972, No. 721, § 15.*

Library references: States ⇨184.32. C.J.S. States § 208(6)

**§ 1816. Recovery from the criminal**

A. Whenever any person is convicted of a crime and an order for the payment of compensation is or has been made under this chapter for a personal injury

or death resulting from the act or omission constituting such crime, the attorney general may, within one year from the date on which the judgment of conviction became final, institute a civil action against such person for the recovery of the whole or any specified part of such compensation in the district court for any judicial district, and in the parish of Orleans, the civil district court, in which such person resides or is found. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. Any amount recovered under this subsection shall be deposited in the criminal victim indemnity fund. If an amount greater than that paid pursuant to the order for payment of compensation is recovered and collected in any such action, the board shall pay the balance to the applicant.

B. The board shall provide to the attorney general such information, data, and reports as the attorney general may require to institute actions in accordance with this section.

*Acts 1972, No. 721, § 16*

Library references: States ⇐111. C.J.S. States § 128.

§ 1817. *Effect on civil actions*

An order for the payment of compensation under this chapter shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

*Acts 1972, No. 721, § 17*

Library references: Action ⇐35. C.J.S. Actions § 6.

§ 1818. *Indemnity fund*

There is hereby created, in the office of the state treasurer, a fund to be known as the criminal victim indemnity fund (hereinafter referred to as the "fund"). The fund shall consist of such amounts as may be deposited in, or appropriated to such fund, as provided by law, or as may be contributed to such fund by public or private agencies or organizations or individuals, including grants from the government of the United States.

*Acts 1972, No. 721, § 18.*

Library references: States ⇐127, C.J.S. States § 158.

§ 1819. *Duty to inform victims*

A. Each state, parochial or municipal law enforcement agency investigating a crime to which this chapter applies shall inform victims of their eligibility to make an application for an order of compensation under this chapter. Such agency shall provide forms (as prescribed by the board) to each person who is eligible to file a claim pursuant to this chapter.

B. If a victim of a crime does not cooperate with a law enforcement agency in the identification, apprehension, and conviction of the perpetrator of the crime, any law enforcement agency involved shall immediately notify board of such lack of cooperation.

*Acts 1972, No. 721, § 19.*

Library references: States ⇐111. C.J.S. States § 128.

§ 1820. *Report to legislature*

The board shall transmit to the legislature an annual report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case and the amount, if any of compensation awarded.

*Acts 1972, No. 721, § 20.*

§ 1821. *Fine imposed for criminal victim indemnity fund*

In any Louisiana court of competent jurisdiction upon conviction of a person of a crime resulting in the personal injury or death of another person, the court shall take into consideration the financial conditions of such person, and may, in addition to any other penalty, order such person to pay a fine commensurate in amount with the personal injury or death of such other person, and such fine shall be deposited into the criminal victim indemnity fund.

*Acts 1972, No. 721, § 21.*

Library references: Fines ⇐20. C.J.S. Fines § 19.

## MARYLAND

## THE ANNOTATED CODE OF THE PUBLIC GENERAL LAWS OF MARYLAND—1957

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## CRIMINAL INJURIES COMPENSATION ACT.

Sec.

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**§ 1. Declaration of policy and legislative intent.**

The legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disability, incur financial hardships or become dependent upon public assistance. The legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the legislature's intent that aid, care and support be provided by the State, as a matter of moral responsibility, for such victims of crime. (1968, ch. 455, § 1.)

Editor's note.—Section 2, ch. 455, Acts 1968, provides that "there shall be an amount appropriated to cover the administration of this act."

Maryland Law Review.—For article, "Criminal Victim Compensation," see 30 Md. L. Rev. 296 (1970).

**§ 2. Definitions.**

For the purpose of this article:

- (a) "Board" shall mean the Criminal Injuries Compensation Board.
- (b) "Claimant" shall mean the person filing a claim pursuant to this article.
- (c) "Crime" shall mean an act committed by any person in the State of Maryland which would constitute a crime as defined in Article 27 of the Annotated Code of Maryland (1967 Replacement Volume) or at common law, provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this article unless the injuries were intentionally inflicted through the use of a vehicle.
- (d) "Family" when used with reference to a person, shall mean (1) any person related to such person within the third degree of consanguinity or affinity, (2) any person maintaining a sexual relationship with such person, or (3) any person residing in the same household with such person.

(e) "Victim" shall mean a person who suffers personal physical injury or death as a direct result of a crime. (1968, ch. 455, § 1.)

Cross reference.—See Editor's note to § 1 of this article.

This article provides for financial assistance to the innocent victims of crime. *Frazier v. Unsatisfied Claim & Judgment Fund Bd.*, 262 Md. 115, 277 A.2d 57 (1971).

"Family".—The court of Appeals views the broad definition of "family" found in the "Criminal Injuries Compensation Act" as limited to the purposes of that act. *Hicks v. Hatem*, 265 Md. 260, 289 A.2d 325 (1972).

**§ 3. Criminal Injuries Compensation Board—Creation; composition; appointment, qualifications and terms of members; chairman; salaries.**

(a) There is hereby created in the Department of Public Safety and Correctional Services a Board, to be known as the Criminal Injuries Compensation Board, to consist of three members, no more than two of whom shall belong to the same political party. The members of the Board shall be appointed by the Secretary of Public Safety and Correctional Services, with the approval of the Governor, and with the advice and consent of the Senate. One member of the Board shall have been admitted to practice law in the State of Maryland for not less than five years next preceding his appointment.

(b) The term of office of each such member shall be five years, except that the members first appointed shall serve for terms of five years, four years and three years respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired terms.

(c) The Secretary, with the approval of the Governor, shall designate one member of the Board as chairman, to serve at the pleasure of the Secretary.

(d) The members of the Board shall devote such time as is necessary to perform the duties imposed upon them. They shall receive an annual salary as may be provided in the annual budget. (1968, ch. 455, § 1; 1970, ch. 401, § 3.)

Cross reference.—See Editor's note to § 1 of this article.

**§ 4. Same—Powers and duties.**

The Board, subject to the authority of the Secretary of Public Safety and Correctional Services as set forth in Article 41 of this Code, shall have the following powers and duties:

(a) To establish and maintain an office and appoint a secretary, clerks and such other employees and agents as may be necessary, such employees to be subject to the provisions of Article 64A, title Merit System, and prescribe their duties.

(b) 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 court upon judicial review as hereinafter provided.

(c) To request from the State's attorney, State Police, county or municipal police departments such investigation and data as will enable the Board to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury.

(d) To hear and determine all claims for awards filed with the Board pursuant to this article, and to reinvestigate or reopen cases as the Board deems necessary.

(e) To direct medical examination of victims.

(f) To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summons requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Board to any member or employee thereof. A summons issued under this subsection shall be regulated by the Maryland Rules of Procedure.

(g) To take or cause to be taken affidavits or depositions within or without the State.

(h) To render each year to the Governor, to the Secretary of Public Safety and Correctional Services, and to the legislative council a written report of its activities. (1968, ch. 455, § 1; 1970, ch. 401, § 3.)

Cross reference.—See Editor's note to § 1 of this article.

**§ 5. Eligibility for awards.**

(a) Except as provided in subsection (b) of this section, the following persons shall be eligible for awards pursuant to this article.

(1) A victim of a crime ;  
 (2) A surviving spouse or child of a victim of a crime who died as a direct result of such crime ; and

(3) Any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime.

(4) Any person who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(5) A surviving spouse or child of any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(6) Any other person dependent for his principal support upon any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(b) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim. (1968, ch. 455, § 1.)

Cross reference.—See Editor's note to § 1 of this article.

#### § 6. *Filing of claims.*

(a) A claim may be filed by a person eligible to receive an award, as provided in § 5 of this article, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is mentally incompetent, the claim may be filed on his behalf by his guardian or such other individual authorized to administer his estate.

(b) A claim must be filed by the claimant not later than one hundred and eighty days after the occurrence of the crime upon which such claim is based, or not later than one hundred and eighty days after the death of the victim, provided, however, that upon good cause shown, the Board may extend that time for filing for a period not exceeding two years after such occurrence.

(c) Claims shall be filed in the office of the secretary of the Board in person or by mail. The secretary shall accept for filing all claims submitted by persons eligible under subsection (a) of this section and alleging the jurisdictional requirements set forth in this article and meeting the requirements as to form in the rules and regulations of the Board.

(d) Upon filing of a claim pursuant to this article, the Board shall promptly notify the State's attorney of the county, or Baltimore City, as the case may be, wherein the crime is alleged to have occurred. If, within ten days after such notification, the State's attorney so notified advises the Board that a criminal prosecution is pending upon the same alleged crime, the Board shall defer all proceedings under this article until such time as such criminal prosecution has been concluded and shall so notify such State's attorney and the claimant. When such criminal prosecution has been concluded, the State's attorney shall promptly so notify the Board. Nothing in this section shall limit the authority of the Board to grant emergency awards as hereinafter provided. (1968, ch. 455, § 1 ; 1970, ch. 553.)

Cross reference.—See Editor's Note to § 1 of this article.

#### § 7. *Minimum allowable claim.*

No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars or has lost at least two continuous weeks' earnings or support. Out-of-pocket loss shall mean reimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. (1968, ch. 455, § 1.)

Cross reference.—See Editor's Note to § 1 of this article.

#### § 8. *Decisions on claims—By single Board member.*

(a) A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the Board. All claims arising from the death of an individual as a direct result of a crime, shall be considered together by a single Board member.

(b) The Board member to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(c) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal responsibility or other legal exemption.

(d) The Board member to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the Board member is unable to decide the claim upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible.

(e) After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the Board member to whom the claim was assigned shall make a decision either granting an award pursuant to § 12 of this article or deny the claim.

(f) The Board member making a decision shall file with the secretary a written report setting forth such decision and his reasons therefor. The secretary shall thereupon notify the claimant and furnish him a copy of such report, upon request. (1968, ch. 455, § 1.)

Cross reference.—See Editor's note to § 1 of this article.

#### § 9. *Same—By full Board.*

(a) The claimant may, within thirty days after receipt of the report of the Board member to whom his claim was assigned, make an application in writing to the Board for consideration of the decision by the full Board.

(b) Upon receipt of an application pursuant to subsection (a) of this section or upon its own motion, the Board shall review the record and affirm or modify the decision of the Board member to whom the claim was assigned. The action of the Board in affirming or modifying such decision shall be final. If the Board receives no application pursuant to subsection (a) of this section or takes no action upon its own motion the decision of the Board member to whom the claim was assigned shall become the final decision of the Board.

(c) The secretary of the Board shall promptly notify the claimant, the Secretary of Public Safety and Correctional Services, the Attorney General and the Comptroller of the final decision of the Board and furnish each with a copy of the report setting forth the decision. (1968, ch. 455, § 1; 1970, ch. 401, § 3.)

Cross reference.—See Editor's note to § 1 of this article.

#### § 10. *Same—Judicial review.*

(a) Within thirty days after receipt of the copy of the report containing the final decision of the Board, the Attorney General may, if in his judgment or in the judgment of the Secretary of Public Safety and Correctional Services the award is improper, commence a proceeding in the circuit court of the county or the Supreme Bench of Baltimore City, as the case may be, to review the decision of the Board. Any such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The court may, however, take additional testimony, if it so desires. There shall be no other judicial review of any decision made or action taken by the Board, by a member of the Board or by the secretary of the Board with respect to any claim.

(b) Any such proceeding shall be commenced by the service of notice thereof upon the claimant and the Board in person or by mail. (1968, ch. 455, § 1; 1970, ch. 401, § 3.)

Cross reference.—See Editor's note to § 1 of this article.

#### § 11. *Emergency awards.*

Notwithstanding the provisions of §§ 6 and 8 of this article, if it appears to the Board member to whom a claim is assigned, prior to taking action upon such claim, that (a) such claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, the Board member may make an emergency award to the

claimant pending a final decision in the case, provided, however, that (1) the amount of such emergency award shall not exceed five hundred dollars, (2) the amount of such emergency award shall be deducted from any final award made to the claimant, and (3) the excess of the amount of such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the Board. (1968, ch. 455, § 1.)

*Cross reference.*—See Editor's note to § 1 of this article.

**§ 12. Prerequisites to award; amount; apportionment; reduction or denial.**

(a) No award shall be made unless the Board or Board members, as the case may be, finds that (1) a crime was committed, (2) such crime directly resulted in personal physical injury to, or death of the victim, and (3) police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime unless the Board, for good cause shown, finds the delay to have been justified. The Board, upon finding that any claimant or award recipient has not fully cooperated with all law enforcement agencies, may deny or withdraw any award, as the case may be.

(b) Any award made pursuant to this article shall be made in accordance with the schedule of benefits and degree of disability as specified in § 36 of Article 101 of the Code, excluding § 66 entitled "Subsequent Injury Fund." If a claimant does not have "average weekly wages" so as to qualify under the formula in § 36 of Article 101, the award shall be in an amount equal to the arithmetic average between the maximum and minimum awards listed in the applicable portion of that section.

(c) If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

(d) Any award made pursuant to this article shall be reduced by the amount of any payment received or to be received as a result of the injury (1) from or on behalf of the person who committed the crime, (2) from any other public or private source, including an award of the Workmen's Compensation Commission under Article 101, (3) as an emergency award pursuant to § 11 of this article.

(e) In determining the amount of an award, the Board or Board members, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the Board or Board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Board or Board member, as the case may be, may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(f) If the Board or Board member, as the case may be, finds that the claimant will not suffer serious financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this article to meet such loss of earnings, support or out-of-pocket expenses, the Board or Board members shall deny an award. In determining such serious financial hardship, the Board or Board member shall consider all of the financial resources of the claimant. (1968, ch. 455, § 1; 1971, ch. 208, § 1.)

*Cross reference.*—See Editor's note to § 1 of this article.

*Effect of amendment.*—The 1971 amendment added the second sentence in subsection (b).

*Editor's note.*—Section 2, ch. 208, Acts 1971, provides that the act shall be retrospective in its operation to the date of July 1, 1968, as well as prospective in its operation.

**§ 13. Manner of payment of award; execution or attachment.**

Any award made under this article shall be paid in accordance with the provisions of § 36 and other applicable sections of Article 101 of this Code, excluding § 66 of that article entitled "Subsequent Injury Fund." No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. (1968, ch. 455, § 1.)

*Cross reference.*—See Editor's note to § 1 of this article.

**§ 14. Confidentiality of records.**

The record of a proceeding before the Board or a Board member shall be a public record; provided, however, that any record or report obtained by the Board, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation. (1968, ch. 455, § 1.)

*Cross reference.*—See Editor's note to § 1 of this article.

**§ 15. Subrogation.**

Acceptance of an award made pursuant to this article shall subrogate the State, to the extent of such award, to any right or right of action occurring to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. (1968, ch. 455, § 1.)

*Cross reference.*—See Editor's note to § 1 of this article.

**§ 16. Penalty.**

Any person who asserts a false claim under the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than \$500 or one year imprisonment or both, and shall further forfeit any benefit received and shall reimburse and repay the State for payments received or paid on his behalf pursuant to any of the provisions hereunder. (1968, ch. 455, § 1.)

*Cross reference.*—See Editor's note to § 1 of this article.

**§ 17. Additional cost to be imposed in criminal cases.**

Where any person is convicted after July 1, 1968, of any crime by any judge with criminal jurisdiction, there shall be imposed as additional cost, in the case, in addition to any other costs required to be imposed by law, the sum of five dollars (\$5). All such sums shall be paid over to the Comptroller of the State to be deposited in the general funds of the State. Under no condition shall a political subdivision be held liable for the payment of this sum of five dollars (\$5). Crime as used in this section does not include violations of Articles 66½ (Motor Vehicles) or 66C (Natural Resources) of this Code. (1968, ch. 455, § 1; 1969, ch. 286; 1972, ch. 181, § 27.)

*Cross reference.*—See Editor's note to § 1 of this article.

*Effect of amendment.*—The 1972 amendment eliminated "or trial magistrate" following "any judge" in the first sentence.

THE ANNOTATED CODE OF THE PUBLIC GENERAL LAWS OF MARYLAND—1957

1976 CUMULATIVE SUPPLEMENT

Prepared by the Editorial Staff of the Publishers, Under the Supervision of W. M. Willson, J. H. Vanghan and A. D. Kowalsky, Consultant Carl N. Everstine, Director, State Department of Legislative Reference

VOLUME 2B

Place in Pocket of Corresponding Volume of Main Set. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes

Effective Date of Statutes, See Md. Const., Article XVI, § 2

CRIMINAL INJURIES COMPENSATION ACT.

Sec.

4. Criminal Injuries Compensation Board—Powers and duties.
5. Eligibility for awards.
6. Filing of claims.
10. Decisions on claims—Judicial review.
12. Prerequisites to award; amount; apportionment; reduction or denial.
13. Manner of payment of award; execution or attachment.
17. Additional costs to be imposed in criminal cases.

**§ 1. Declaration of policy and legislative intent.**

Cited in *Watson v. State*, 17 Md. App. 263, 301 A.2d 26 (1973).

**§ 4. Same—Powers and duties.**

The Board, subject to the authority of the Secretary of Public Safety and Correctional Services as set forth in Article 41 of this Code, shall have the following powers and duties:

(h) To render each year to the Governor, to the Secretary of Public Safety and Correctional Services, and to the General Assembly a written report of its activities. (1976, ch. 362, § 3.)

*Effect of amendment.*—The 1976 amendment, approved May 4, 1976, and effective from date of passage, substituted "General Assembly" for "legislative council" in paragraph (h).

As the remainder of the section was not affected by the amendment, only the introductory paragraph and paragraph (h) are set forth above.

#### § 5. Eligibility for awards.

(a) Except as provided in subsection (b) of this section, the following persons shall be eligible for awards pursuant to this article.

(1) A victim of a crime;

(2) A surviving spouse or child of a victim of a crime who died as a direct result of such crime; and

(3) Any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime.

(4) Any person who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(5) A surviving spouse or child of any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(6) Any person dependent for his principal support upon any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(7) Any person who is injured or killed while giving aid and assistance to a law-enforcement officer in the performance of his lawful duties or to a member of a fire department who is being obstructed from performing his lawful duties.

(b) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim. (1968, ch. 455, § 1; 1974, ch. 331.)

*Effect of amendment.*—The 1974 amendment, effective July 1, 1974, added paragraph (7) in subsection (a).

Once a claimant met the statutory qualifications set forth in this section, he possessed a sufficient personal right and eligibility to the benefits provided in § 12 of this article, and as an aggrieved party was entitled to seek judicial examination of the action of the Board, by reason of the fact that the General Assembly, in recognition of a "moral responsibility," created a scheme of benefits upon a "welfare-theory" of compensation for such victims of crime. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

#### § 6. Filing of claims.

(a) A claim may be filed by a person eligible to receive an award, as provided in § 5 of this article, or if such person is under eighteen years of age, by his parent or guardian. In any case in which the person entitled to make a claim is mentally incompetent, the claim may be filed on his behalf by his guardian or such other individual authorized to administer his estate. (1973, ch. 651, § 11.)

*Effect of amendment.*—The 1973 amendment, effective July 1, 1973, substituted "under eighteen years of age" for "a minor" in the first sentence in subsection (a).

As the other subsections were not affected by the amendment, they are not set forth above.

#### § 8. Decisions on claims—By single Board member.

Applied in *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

#### § 10. Same—Judicial review.

(c) Within 30 days of the final decision of the Board, any claimant aggrieved by the final decision may appeal the decision under the applicable provisions of the Administrative Procedure Act, Article 41, §§ 255 and 256 of the Code. (1975, ch. 204.)

**Effect of amendment.**—The 1975 amendment, effective July 1, 1975, added subsection (c).

As the other subsections were not affected by the amendment, they are not set forth above.

**Maryland Law Review.**—For article, "Constitutional Limits on the Decisional Powers of Courts and Administrative Agencies in Maryland," see 35 Md. L. Rev. 414 (1976).

**Legislature intended to preclude regular judicial review.**—The legislature intended by the enactment of this section, so far as it might be within the legislative power to do so, to preclude any regular judicial review. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

But did not intend to preclude review of improper exercises of administrative powers.—The legislature, in enacting this section, did so with full cognizance of the long line of decisions recognizing that in the absence of any statutory right to appeal, the courts are vested with the inherent residual right to review and restrain improper exercises of administrative powers by agencies alleged to have acted arbitrarily, illegally, capriciously and unreasonably, and did not intend by this section to preclude such type of judicial examination. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

**Decisions permitting review in pension disability cases analogous.**—Since the provisions of article 26A establishing a program for compensating the victims of crime by state funds, where disability and financial dependency have resulted, is similarly "remedial in nature," decisions permitting judicial review in pension disability cases appear to be analogous. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

#### § 11. *Emergency awards.*

Cited in *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

#### § 12. *Prerequisites to award; amount; apportionment; reduction or denial.*

(b) Any award made pursuant to this article shall be made in accordance with the schedule of benefits and degree of disability as specified in § 36 of Article 101 of the Code, as that section exists on July 1, 1974, excluding § 66 entitled "Subsequent Injury Fund." If a claimant does not have "average weekly wages" so as to qualify under the formula in § 36 of Article 101, the award shall be in an amount equal to the arithmetic average between the maximum and minimum awards listed in the applicable portion of that section.

(f) (1) If the Board or Board member, as the case may be, finds that the claimant will not suffer serious financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this article to meet the loss of earnings, support, or out-of-pocket expenses, the Board or Board members shall deny an award. In determining the serious financial hardship, the Board or Board member shall consider all of the financial resources of the claimant. Unless total dependency is established, a family is considered to be partially dependent on a mother with whom they reside without regard to actual earnings.

(2) The conditions of paragraph (1) of this subsection shall not apply in determining an award under paragraphs (4), (5), and (6) of § 5(a) of this article. (1975), chs. 210, 688.)

#### *Effect of amendments.*

Chapter 210, Acts 1975, effective July 1, 1975, added "as that section exists on July 1, 1974," in the first sentence in subsection (b).

Chapter 688, Acts 1975, effective July 1, 1975, designated the former provisions of subsection (f) as paragraph (1), added the last sentence therein, substituted "the" for "such" twice in the first sentence and added paragraph (2).

As the other subsections were not affected by the amendments, they are not set forth above.

**Maryland Law Review.**—For article, "Constitutional Limits on the Decisional Powers of Courts and Administrative Agencies in Maryland," see 35 Md. L. Rev. 414 (1976).

Once a claimant met the statutory qualifications set forth in § 5 of this article, he possessed a sufficient personal right and eligibility to the benefits provided in this section. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975)

Meaning of term "law enforcement agency".—In the context in which the term "law enforcement agency" is used in this section, following immediately upon the provision concerning the time within which reports of any such crime are to be filed, it is clear that the term is intended to mean a showing of cooperation on the part of the claimant with those who are charged with the investigation of crime, the apprehension of the criminal and his prosecution under the law. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

Board not included in "law enforcement agency".—Since the term "law enforcement agency" was obviously intended to include the police, prosecutors, and arguably, the courts and even the grand jury, the Board in applying the term to itself as the agency empowered to administer this article clearly made an erroneous interpretation of law. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

When the Board undertook to reject an appellant's claim because of a deliberate lack of cooperation on his part, it undertook to bring itself, as an administrative agency, within the concept of a "law enforcement agency" and overstrained the clear statutory language in this section. *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

**§ 13. Manner of payment of award; execution or attachment.**

Any award made under this article shall be paid in accordance with the discretion and decision of the Board as to the manner of payment. No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. In every case providing for compensation to an employee or his dependent under this article, the Board may, if in its opinion the facts and circumstances of the case warrant it, convert the compensation to be paid in a partial or total lump sum, without discount. (1968, ch. 455, § 1; 1973, ch. 563.)

*Effect of amendment.*—The 1973 amendment, effective July 1, 1973, rewrote the first sentence and added the third sentence.

**§ 17. Additional costs to be imposed in criminal cases.**

Where any person is convicted after July 1, 1968, of any crime by any judge with criminal jurisdiction, there shall be imposed as additional cost, in the case, in addition to any other costs required to be imposed by law, the sum of five dollars (\$5). All such sums shall be paid over to the Comptroller of the State to be deposited in the general funds of the State. Under no condition shall a political subdivision be held liable for the payment of this sum of five dollars (\$5). Crime as used in this section does not include violations of Article 66½ (Motor Vehicles), or the Agriculture or Natural Resources articles of this Code, or violations of State or local building, health and sanitation codes. (1968, ch. 455, § 1; 1969, ch. 286; 1972, ch. 181, § 27; 1974, ch. 178, § 2; ch. 319.)

*Effect of amendments.*

Chapter 319, Acts 1974, effective July 1, 1974, substituted the present last sentence (not including the reference to the Agriculture Article) for one which provided "Crime as used in this section does not include violations of Articles 66½ (Motor Vehicles) or 66C (Natural Resources) of this Code." Chapter 178, Acts 1974, effective July 1, 1974, substituted "the Agriculture or Natural Resources articles of the Code" for "66C (Natural Resources) of this Code" in the former last sentence. Both amendments are given effect by adding "Agriculture or" and substituting "articles" for "Article" in the present last sentence.

Cited in *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

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MASSACHUSETTS GENERAL LAWS ANNOTATED

UNDER ARRANGEMENT OF THE OFFICIAL GENERAL LAWS OF MASSACHUSETTS

VOLUME 42—CHAPTERS 248 TO 258

EXPLANATION

These Cumulative Pocket Parts bring to date the text of the General Laws of Massachusetts through the 1974 Regular Session of the General Court which prorogued August 3, 1974, together with the annotations covering the judicial

constructions and interpretations by the State and Federal Courts, Opinions of the Attorney General and Law Review Commentaries. Included in these Pocket Parts are Chapters 1 to 858 of the 1974 General Court.

Chapter 1114 of the 1973 General Court which affects various sections of the Massachusetts General Laws Annotated, and the 1974 amendments, relating to civil trials and appeals, is published as a special pamphlet and will not be executed into the Pocket Parts this year.

The general and permanent legislation enacted by the General Court is set out under the arrangement of the Official General Laws.

The portions or units of the text of a section not affected by the current legislative amendment are indicated by asterisks. Such unaffected portions or units will be found in the permanent volumes.

The annotations close with:

North Eastern Reporter, Second Series.....	316 N.E. 2d 632.
Massachusetts Reports.....	359 Mass.
Massachusetts Appellate Decisions.....	50 Mass. App. Dec. 364.
Supreme Court Reporter.....	94 S. Ct.
United States Reports.....	415 U.S. (part).
Lawyers' Edition, Second Series.....	41 L. Ed. 2d (part).
Federal Reporter, Second Series.....	501 F. 2d 384.
Federal Supplement.....	379 F. Supp. 384.
Federal Rules Decisions.....	63 F.R.D. 452.
American Bar Ass'n Journal.....	55 A.B.A.J. 794.
Ann. Survey of Mass. Law.....	17 Ann. Survey 824.
Boston Bar J.....	18 Boston B.J. 44.
Boston College Industrial and Com- mercial Law Review.....	14 Boston College Law Rev. S12.
Boston U. L.Rev.....	54 Boston U.L. Rev. 872.
Harvard Law Review.....	87 Harvard L. Rev. 1408.
Journal of American Trial Lawyers' Ass'n.....	33 ATLA L.J. 424.
Massachusetts Law Quarterly.....	56 Mass. L.Q. 95.
New England Law Review.....	9 New England L. Rev. 393.
Suffolk University Law Review.....	8 Suffolk U.L. Rev. 1370.
Other Standard Reports	

For subsequent judicial constructions, pending the publication of the next supplementary service, see Table of Statutes Construed in the later permanent volumes and weekly Advance Sheets of the Reporters listed above.

Library References to pertinent Key Numbers of Digests in the American Digest System and to sections in Corpus Juris Secundum are included in the pocket parts as an additional and convenient aid to research.

#### INDEX TO NOTES

##### Interest 1

##### Review 2

Library references: Eminent Domain ⇔ 159 et seq. C.J.S. Eminent Domain § 191.

##### 1. Interest

Commonwealth was required to pay interest from date of judgment for condemnments to date of actual payment. *Woodworth v. Com.* (1967) 230 N.E.2d 814, 353 Mass. 229.

##### 2. Review

Finding that landowners in condemnation proceeding were not entitled to recover interest from date of judgment to time of payment was in effect an order for judgment, from which an appeal lies. *Woodworth v. Com.* (1967) 230 N.E.2d 814, 353 Mass. 229.

#### CHAPTER 258A. COMPENSATION OF VICTIMS OF VIOLENT CRIMES [NEW]

##### Sec.

1. Definitions.
2. Jurisdiction; disqualification of judge; failure of claimant to prosecute.
3. Eligibility for compensation.
4. Filing and proof of claims.
5. Compensation; restrictions.

Sec.

6. Determination of amount of compensation; decisions.
7. Subrogation.

*Chapter 258A was added by St. 1967, c. 852, § 1, effective July 1, 1968*

Law Review Commentaries: Compensation of victims of violent crimes. 15 Annual Survey of Mass. Law, Boston College, p. 117 (1968).

Massachusetts Compensation of Victims of Violent Crime Law. Samuel A. Vitali (1970) 4 Suffolk U.L.Rev. 237.

Massachusetts' plan to aid victims of crime. Glenn Eldon Floyd (1968) 48 Boston U.L.Rev. 360.

### § 1. Definitions

The following words as used in this chapter shall have the following meanings, unless the context requires otherwise:

"Crime", an act committed in the commonwealth which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime; provided that such act involves the application of force or violence or the threat of force or violence by the offender upon the victim; and provided, further, that no act involving the operation of a motor vehicle which results in injury to another shall constitute a crime for the purpose of this chapter unless such injury was intentionally inflicted through the use of a motor vehicle.

"Dependent", mother, father, spouse, spouse's mother, spouse's father, child, grandchild, adopted child, illegitimate child niece or nephew who is wholly or partially dependent for support upon and living with the victim at the time of his injury or death due to a crime alleged in a claim pursuant to this chapter.

"Family" the spouse, parent, grandparent, step-mother, step-father, child, grandchild, brother, sister, half-brother, half-sister adopted children of parent, or spouse's parents of the offender.

"Offender", a person who commits a crime.

"Victim", a person who suffers personal injury or death as a direct result of a crime.

Added St.1967, c. 852, § 1, effective July 1, 1968.

1967 Enactment. St.1967, c. 852, was approved Jan. 2, 1968. Section 4 provided that chapter 258A should take effect July 1, 1968, and be applicable only to victims of crimes committed on or after said date.

### Law Review Commentaries

Victim compensation plans. (Feb. 1969) 55 A.B.A.J. 159.

Library references: Criminal Law ⇌ 1220. C.J.S. Criminal Law § 2007.

#### 1. In general

This chapter providing for compensation of victims of violent crimes clearly covers the loss of future support when a victim of a violent crime is injured, and there is no logical reason for treating the victim's death other than as a permanent loss of support to be computed on the basis of life expectancy evidence and actuarial tables in determining the victim's future loss of earning capacity. *Gurley v. Com.* (1973) 296 N.E.2d 477, 1973 Mass.Adv.Sh. 769.

Both trial and reviewing courts must follow the specific procedures established by this chapter relating to compensation of victims of violent crimes, and their decisions cannot be based on or affected by judicial speculation as to whether the legislature will appropriate sufficient funds to meet the obligations it has voluntarily undertaken by enacting the statute. *Id.*

Rights of recovery established by the Commonwealth cannot be extended beyond those expressly conferred by this chapter relating to compensation of victims of violent crimes. *Id.*

Where the widow of the victim of a violent crime has received an excess of \$10,000 from insurance she cannot recover any compensation from the Commonwealth under M.G.L.A. c. 258A. *Gurley v. Commonwealth of Massachusetts* (1972) 49 Mass. App.Dec. 78.

#### § 2. Jurisdiction; disqualification of judge; failure of claimant to prosecute

The district courts of the commonwealth shall, pursuant to the provisions of this chapter, have jurisdiction to determine and award compensation to victims of crimes.

Such claims shall be brought in a district court within the territorial jurisdiction in which the claimant lives. A judge who has heard a criminal case in which the crime alleged as the basis of such claim shall not sit in determination of such claim. A judge who has heard such a claim shall not sit in a criminal case arising from a crime alleged in such claim. Failure to prosecute, or to prosecute successfully an offender in a criminal case, shall not in any way prejudice the claim of an eligible claimant unless such failure is due to the provocation of the offender by the victim.

Added St.1967, c. 852, § 1, effective July 1, 1968.

Library references: Criminal Law ⇐ 1220. C.J.S. Criminal Law § 2007.

### § 3. Eligibility for compensation

Except as hereinafter provided, the following persons shall be eligible for compensation pursuant to this chapter:

(a) a victim of a crime;

(b) in the case of the death of the victim as a direct result of the crime, a dependent of the victim.

An offender or an accomplice of an offender, a member of the family of the offender, a person living with the offender or a person maintaining sexual relations with the offender shall in no case be eligible to receive compensation with respect to a crime committed by the offender.

Added St.1967, c. 852, § 1, effective July 1, 1968.

Library references: Criminal Law ⇐ 1220. C.J.S. Criminal Law § 2007.

### § 4. Filing and proof of claims

A claim for compensation may be filed by a person eligible for compensation or if he is a minor or is incompetent by his parent or guardian.

A claim shall be filed not later than one year after the occurrence of the crime upon which it is based, or not later than ninety days after the death of the victim whichever is earlier; provided, however, that upon good cause, the court may either before or after the expiration of said filing period extend the time for filing such claim.

Each claim shall be filed in the office of the clerk of the district court in person or by mail, and shall be accompanied by an entry fee of five dollars. Said clerk shall immediately notify the attorney general of the claim. Such notification shall be in writing, with copies of such material as is included in the claim or in support thereof. The attorney general shall investigate such claim, prior to the opening of formal court proceedings. Said clerk of court shall notify the claimant and the attorney general of the date and time of any hearing on such claim.

The attorney general shall present any information he may have in support of or in opposition to the claim. The claimant may present evidence and testimony on his own behalf or may retain counsel. The court may, as part of any order entered under this chapter, determine and allow reasonable attorney's fees, which shall not exceed fifteen per cent of the amount awarded as compensation under this chapter, which fee shall be paid out of, but not in addition to, the amount of compensation, to the attorney representing the claimant. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.

The person filing a claim shall, prior to any hearing thereon, submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the court, an examination of the injured victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the court may appoint a duly qualified impartial physician to make such examination and report.

Added St. 1967, c. 852, § 1, effective July 1, 1968.

Library references: Criminal Law ⇐ 1220. C.J.S. Criminal Law § 2007.

### § 5. Compensation; restrictions

No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least one hundred dollars or has lost two continuous weeks of earnings or support. Out-of-pocket loss shall mean unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based.

One hundred dollars shall be deducted from any award granted under this chapter.

No compensation shall be paid unless the court finds that a crime was committed, that such crime directly resulted in personal physical injury to, or the death of, the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the court finds said report to the police to have been delayed for good cause.

Any compensation paid under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury.

Any compensation for loss of earnings or support shall be in an amount equal to the actual loss sustained; provided, however, that no award under this chapter shall exceed ten thousand dollars. If two or more persons are entitled to compensation as a result of a death of a person which is the direct result of a crime, the compensation shall be apportioned by the court among the claimants in proportion to their loss.

Added St. 1967, c. 852, § 1, effective July 1, 1968.

#### INDEX TO NOTES

In general 1  
Maximum recovery 2

##### 1. *In general*

This chapter providing for compensation of victims of violent crimes clearly covers the loss of future support when a victim of a violent crime is injured, and there is no logical reason for treating the victim's death other than as a permanent loss of support to be computed on the basis of life expectancy evidence and actuarial tables in determining the victim's future loss of earning capacity. *Gurley v. Com.* (1973) 296 N.E.2d 477, 1973 Mass.Adv.Sh. 769.

Both trial and reviewing courts must follow the specific procedures established by this chapter relating to compensation of victims of violent crimes, and their decisions cannot be based on or affected by judicial speculation as to whether the legislature will appropriate sufficient funds to meet the obligations it has voluntarily undertaken by enacting the statute. *Id.*

##### 2. *Maximum recovery*

Unambiguous reference in this section relating to compensation of victims of violent crimes to "no award under this chapter" indicates that the \$10,000 figure set forth was intended to be the maximum recovery permitted. *Gurley v. Com.* (1973) 296 N.E.2d 477, 1973 Mass.Adv.Sh. 769.

The "actual loss sustained," under this section relating to compensation of victims of violent crimes, is determined by deducting the benefits received as a result of the injury from the total loss sustained, and where the actual loss sustained exceeded the maximum award recoverable under the chapter, petitioners were entitled to an award of \$10,000 minus the statutory deduction of \$100. *Id.*

Rights of recovery established by the Commonwealth cannot be extended beyond those expressly conferred by this chapter relating to compensation of victims of violent crimes. *Id.*

Where the widow of the victim of a violent crime has received an excess of \$10,000 from insurance she cannot recover any compensation from the Commonwealth under M.G.L.A. c. 258A. *Gurley v. Commonwealth of Massachusetts* (1972) 49 Mass.App.Dec. 78.

##### § 6. *Determination of amount of compensation; decisions*

For the purpose of determining the amount of compensation payable pursuant to this chapter, the chief justice of the district court and the chief justice of the municipal court of the city of Boston shall, insofar as practicable, formulate standards for the uniform application of this chapter. The court shall take into consideration the provisions of this chapter, the rates and amounts of compensation payable for injuries and death under other laws of the commonwealth and of the United States, excluding pain and suffering, and the availability of funds appropriated for the purpose of this chapter. All decisions of the court on claims heard under this chapter shall be in writing, setting forth the name of the

claimant, the amount of compensation and the reasons for the decision. The clerk of the court shall immediately notify the claimant in writing of the decision and shall forward to the state treasurer a certified copy of the decision. The state treasurer without further authorization shall, subject to appropriation, pay the claimant the amount determined by the court.

Any compensation paid pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the offender, (b) under insurance programs, or (c) from public funds.

In determining the amount of compensation payable, the court shall determine whether because of his conduct the victim contributed to the infliction of his injury; and the court shall reduce the amount of the compensation or deny the claim altogether, in accordance with such determination; provided, however, that the court may disregard the responsibility of the victim for his own injury where such responsibility was attributable to efforts by the victim to aid a victim, or to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

Added St.1967, c. 852, § 1, effective July 1, 1968.

### *Cross References*

Rules adopted under this section, see Rules of the District Courts, Rules 80 and 81.

Uniform rules for determination of claims, see c. 218, § 43D.

Library references: Criminal Law ⇌ 1220. C.J.S. Criminal Law § 2007.

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#### *1. In general*

This chapter providing for compensation of victims of violent crimes clearly covers the loss of future support when a victim of a violent crime is injured, and there is no logical reason for treating the victim's death other than as a permanent loss of support to be computed on the basis of life expectancy evidence and actuarial tables in determining the victim's future loss of earning capacity. *Gurley v. Com.* (1973) 296 N.E.2d 477, 1973 Mass.Adv.Sh. 769.

Both trial and reviewing courts must follow the specific procedures established by this chapter relating to compensation of victims of violent crimes, and their decisions cannot be based on or affected by judicial speculation as to whether the legislature will appropriate sufficient funds to meet the obligations it has voluntarily undertaken by enacting the statute. *Id.*

Rights of recovery established by the Commonwealth cannot be extended beyond those expressly conferred by this chapter relating to compensation of victims of violent crimes. *Id.*

Where the widow of the victim of a violent crime has received an excess of \$10,000 from insurance she cannot recover any compensation from the Commonwealth under M.G.L.A. c. 258A. *Gurley v. Commonwealth of Massachusetts* (1972) 49 Mass. App.Dec. 78.

#### *2. Insurance proceeds*

Life insurance proceeds constituted benefits from an insurance program which were received by petitioners as a result of victim's injury, and such proceeds would be deducted from amount of payments received under this section relating to compensation of victims of violent crimes. *Gurley v. Com.* (1973) 296 N.E.2d 477, 1973 Mass.Adv.Sh. 769.

#### *3. Welfare payments*

Welfare payments were deductible from compensation due under this section relating to compensation of victims of violent crimes, where welfare payments were clearly "public funds" which petitioners were receiving as a result of the victim's death. *Gurley v. Com.* (1973) 296 N.E.2d 477, 1973 Mass.Adv.Sh. 769.

#### *4. Interest payments*

Silence of this section relating to compensation of victims of violent crimes on the question of interest payments indicates a legislative intent not to grant them. *Gurley v. Com.* (1973) 296 N.E.2d 477, 1973 Mass.Adv.Sh. 769.

### § 7. Subrogation

Acceptance of any compensation under this chapter shall subrogate the commonwealth, to the extent of such compensation paid, to any right or right of action accruing to the claimant or to the victim to recover payments on account of losses resulting from the crime with respect to which the compensation has been paid. The attorney general may enforce the subrogation, and he shall bring suit to recover from any person to whom compensation is paid, to the extent of the compensation actually paid under this chapter, any amount received by the claimant from any source exceeding the actual loss to the victim.

Added St.1967, c. 852, § 1, effective July 1, 1968.

Library references: Subrogation ⇔ 26. C.J.S. Subrogation § 9.

## MINNESOTA STATUTES ANNOTATED

### OFFICIAL CLASSIFICATION

#### VOLUME 19A—SECTIONS 291 TO 299

#### PUBLIC SAFETY

Chap.

299B. Crime Victims Reparations [New].

#### CHAPTER 299B. CRIME VICTIMS REPARATIONS [NEW]

Sec.

- 299B.01 Title.
- 299B.02 Definitions.
- 299B.03 Eligibility for reparations.
- 299B.04 Amount of reparations.
- 299B.05 Crime victims reparations board.
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- 299B.07 Determination of claims.
- 299B.08 Consideration of decisions by full board.
- 299B.09 Reparations; how paid.
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- 299B.11 Medical privilege.
- 299B.12 Enforcement of board's orders.
- 299B.13 Department of corrections; restitution.
- 299B.14 Use of record claim; evidence
- 299B.15 Law enforcement agencies; duty to inform victims of right to file claim.
- 299B.16 Fraudulent claims; penalty.

#### Law Review Commentaries

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 *Hennepin Lawyer* 4.

#### 299B.01 Title

Sections 299B.01 to 299B.16 shall be known as the Minnesota crime victims reparations act.

Laws 1974, c. 463, § 1.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

#### Title of Act:

An Act relating to crimes and criminals; indemnification of victims of violent crimes for expenses; providing a penalty for fraudulent claims; appropriating money. Laws 1974, c. 463.

Library References: Pilots ⇔ 111.

#### 299B.02 Definitions

For the purposes of sections 299B.01 to 299B.16 the following terms shall have the meanings given them:

(1) "Accomplice" means any person who would be held criminally liable for the crime of another pursuant to Minnesota Statutes, Section 609.05.

(2) "Board" means the crime victims reparation board established by section 299B.05.

(3) "Claimant" means a person entitled to apply for reparations pursuant to sections 299B.01 to 299B.16.

(4) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under sections 299B.01 to 299B.16 which the victim or claimant has received, or which is readily available to him, from:

- (a) the offender;
- (b) 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 sections 299B.01 to 299B.16;
- (c) social security, medicare, and medicaid;
- (d) state required temporary non-occupational disability insurance;
- (e) workmen's compensation;
- (f) wage continuation programs of any employer;
- (g) proceeds of a contract of insurance payable to the victim for economic loss which he sustained because of the crime;
- (h) a contract providing prepaid hospital and other health care services, or benefits for disability; or
- (i) any private source as a voluntary donation or gift.

The term does not include a life insurance contract.

(5) (a) "Crime" means conduct that

- (i) occurs or is attempted in this state,
- (ii) poses a substantial threat of personal injury or death, and
- (iii) is included within the definition of "crime" in Minnesota Statutes 1971, Section 609.02, Subdivision 1, or would be included within that definition but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.

(b) A crime occurs whether or not any person is prosecuted or convicted but the conviction of a person whose acts give rise to the claim is conclusive evidence that a crime was committed unless an application for rehearing, appeal, or petition for certiorari is pending or a new trial or rehearing has been ordered.

(c) "Crime" does not include conduct arising out of the use of a motor vehicle, as defined in Minnesota Statutes, Section 169.01, Subdivision 2, an aircraft or watercraft unless

- (i) the conduct was intended to cause personal injury or death, or
- (ii) the use of the motor vehicle, aircraft or watercraft in the commission of a felony was a proximate cause of the victim's injury or death.

(6) "Dependent" means any person who was dependent upon a deceased victim for support at the time of the crime.

(7) "Economic loss" means actual economic detriment incurred as a direct result of injury or death.

(a) In the case of injury the term is limited to:

(i) reasonable expenses incurred in necessary medical, chiropractic, hospital, rehabilitative, and dental products, services, or accommodations, including ambulance services, drugs, appliances and prosthetic devices;

(ii) reasonable expenses incurred for psychological or psychiatric products, services or accommodations where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim;

(iii) loss of income the victim would have earned had he not been injured; and

(iv) reasonable expenses incurred for substitute child care or household services to replace those the victim would have performed had he not been injured.

(b) In the case of death the term is limited to:

(i) reasonable expenses incurred for funeral, burial or cremation;

(ii) reasonable expenses for medical, chiropractic, hospital, rehabilitative, psychological and psychiatric services, products or accommodations which were incurred prior to the victim's death and for which the victim's survivors or estate are liable;

(iii) loss of support, including contributions of money, products or goods, but excluding services which the victim would have supplied to his dependents if he had lived; and

(iv) reasonable expenses incurred for substitute child care and household services to replace those which the victim would have performed for the benefit of his dependents if he had lived.

(8) "Injury" means actual bodily harm including pregnancy and mental or nervous shock.

(9) "Victim" means a person who suffers personal injury or death as a direct result of

- (a) a crime;
- (b) the good faith effort of any person to prevent a crime; or
- (c) the good faith effort of any person to apprehend a person suspected of engaging in a crime.

Laws 1974, c. 463, § 2.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

Law Review Commentaries Crime Victim's Reparations Act of 1974; An overview. Douglas A. Hedin. Oct.-Nov. 1974. 44 Hennepin Lawyer 4.

Library references: Criminal Law ⇔ 1220. C.J.S. Criminal Law § 1642.

#### 299B.03 Eligibility for reparations

Subdivision 1. Except as provided in subdivision 2, the following persons shall be entitled to reparations upon a showing by a preponderance of the evidence that the requirements for reparations have been met;

- (a) a victim who has incurred economic loss;
- (b) a dependent who has incurred economic loss;
- (c) the estate of a deceased victim if the estate has incurred economic loss;
- (d) any other person who has incurred economic loss by purchasing any of the products, services, and accommodations described in section 299B.02, clauses (a) (i) and (a) (ii) for the victim;
- (e) the guardian, guardian ad litem, conservator or authorized agent of any of these persons.

Subd. 2. No reparations shall be awarded to a claimant otherwise eligible if

(a) the crime was not reported to the police within five days of its occurrence or, if it could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made;

(b) the victim or claimant failed or refused to cooperate fully with the police and other law enforcement officials;

(c) the victim is the spouse of or a person living in the same household with the offender or his accomplice or the parent, child, brother or sister of the offender or his accomplice unless the board determined that the interests of justice otherwise require in a particular case;

(d) the claimant was the offender or an accomplice of the offender or an award to the claimant would unjustly benefit the offender or an accomplice; or

(e) no claim was filed with the board within one year of victim's injury or death;

(f) the claim is less than \$100.

Laws 1974, c. 463, § 3.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

#### Law Review Commentaries

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

#### 299B.04 Amount of reparations

Reparations shall equal economic loss except that:

(1) reparations shall be reduced to the extent that economic loss is recouped from a collateral source;

(2) reparations shall be reduced to the extent, if any, that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims and by the first \$100 of economic loss; and

(3) reparations paid to all claimants suffering economic loss as the result of the injury or death of any one victim shall not exceed \$10,000.

Laws 1974, c. 463, § 4.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

#### Law Review Commentaries

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

**299B.05 Crime victims reparations board**

**Subdivision 1.** There is created in the department of public safety, for budgetary and administrative purposes, the crime victims reparations board, which shall consist of three members appointed by the governor with the advice and consent of the senate. One of the members shall be designated as chairman by the governor and serve as such at his pleasure. At least one member shall be a person who is admitted to the bar of this state, and at least one member shall be a medical or osteopathic physician licensed to practice in this state.

**Subd. 2.** The term of office of each board member shall be six years except that of the members first appointed one each shall serve for terms of six, four, and two years. Any person appointed to fill a vacancy shall be appointed for the remainder of the unexpired term.

**Subd. 3.** Members of the board shall serve part time and receive \$35 per diem and be reimbursed for reasonable and necessary expenses incurred in performance of their duties in the same manner and amount as state employees.

Laws 1974, c. 463, § 5.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**Law Review Commentaries**

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974. 44 *Hennepin Lawyer* 4.

Library references: States ⇐173. C.J.S. States § 201 et seq.

**299B.06 Powers and duties of the board**

**Subdivision 1. Duties.** In addition to carrying out any duties specified elsewhere in sections 299B.01 to 299B.16 or in other law, the board shall:

(a) provide all claimants with an opportunity for hearing pursuant to Minnesota Statutes, Chapter 15;

(b) establish and maintain a principal office and other necessary offices and appoint employees and agents as necessary and fix their duties;

(c) promulgate within 90 days following the effective date of Laws 1974, Chapter 463 rules to implement sections 299B.01 to 299B.16, including rules governing the method of practice and procedure before the board, prescribing the manner in which applications for reparations shall be made, and providing for discovery proceedings;

(d) publicize widely the availability of reparations and the method of making claims; and

(e) prepare and transmit annually to the governor and the legislature a report of its activities including the name of each claimant, a brief description of the facts in each case, the amount of reparation awarded, and a statistical summary of claims and awards made and denied.

**Subd. 2. Powers.** In addition to exercising any powers specified elsewhere in sections 299B.01 to 299B.16 or other law, the board upon its own motion or the motion of a claimant or the attorney general may:

(a) issue subpoenas for the appearance of witnesses and the production of books, records, and other documents;

(b) administer oaths and affirmations and cause to be taken affidavits and depositions within and without of this state;

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge;

(d) order a mental or physical examination of a victim or an autopsy of a deceased victim provided that notice is given to the person to be examined and that the claimant and the attorney general receive copies of any resulting report;

(e) suspend or postpone the proceedings on a claim if a criminal prosecution arising out of the incident which is the basis of the claim has been commenced or is imminent;

(f) request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to perform its duties under sections 299B.01 to 299B.16;

(g) grant emergency reparations pending the final determination of a claim if it is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made; and

(h) reconsider any decision granting or denying reparations or determining their amount.

Laws 1974, c. 463, § 6.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**Law Review Commentaries**

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedlin. Oct.-Nov., 1974, 44 Hennepin Lawyer 4.

Library References: States ⇐184.29. C.J.S. States § 208(5).

**299B.07 Determination of claims**

Subdivision 1. A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board.

Subd. 2. The board member to whom the claim is assigned shall examine the papers filed in support of the claim and cause an investigation to be conducted into the validity of the claim.

Subd. 3. The board member to whom a claim is assigned may decide the claim in favor of a claimant in the amount claimed on the basis of the papers filed in support of it and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of the papers and report, he shall order a hearing.

Subd. 4. After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the board member to whom the claim was assigned shall make a decision either granting an award or deny the claim.

Subd. 5. The board member making a decision shall file with the board a written report setting forth such decision and his reasons therefor. The board shall notify the claimant and furnish him a copy of the report.

Laws 1974, c. 463, § 7.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**Law Review Commentaries**

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedlin. Oct.-Nov., 1974, 44 Hennepin Lawyer 4.

**299B.08 Consideration of decisions by full board**

Subdivision 1. The claimant may, within 30 days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the board for consideration of the decision by the full board.

Subd. 2. Any member of the board may, within 30 days after the filing of the report, make an application in writing to the board for consideration of the decision by the full board.

Subd. 3. The board shall treat all claims considered pursuant to this section as contested cases within the meaning of Minnesota Statutes, Chapter 15.

Laws 1974, c. 463, § 8.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**Law Review Commentaries**

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedlin. Oct.-Nov., 1974, 44 Hennepin Lawyer 4.

**299B.09 Reparations; how paid**

Reparations may be awarded in a lump sum or in installments in the discretion of the board. The amount of any emergency award shall be deducted from the final award, if a lump sum, or prorated over a period of time if the final award is made in installments. Reparations are exempt from execution or attachment except by persons who have supplied services, products or accommodations to the victim as a result of the injury or death which is the basis of the claim. The board, in its discretion may order that all or part of the reparations awarded be paid directly to these suppliers.

Laws 1974, c. 463, § 9.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

Library References: States ⇐187. C.J.S. States § 212.

**299B.10 Subrogation**

The state shall be subrogated, to the extent of reparations awarded, to all the claimant's rights to recover benefits or advantages for economic loss from a source which is or, if readily available to the victim or claimant would be a collateral source.

Laws 1974, c. 463, § 10.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**Law Review Commentaries**

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov., 1974, 44 Hennepin Lawyer 4.

Library References: States ⇔ 11. C.J.S. States § 14.

**299B.11 Medical privilege**

There is no privilege as to communication or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under sections 299B.01 to 299B.16 in which that condition is an issue. Nothing contained in this section shall be interpreted to abridge the attorney-client privilege.

Laws 1974, c. 463, § 11.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

Library References: Witnesses ⇔ 208(2). C.J.S. Witnesses § 301.

**299B.12 Enforcement of board's orders**

If a person refuses to comply with an order of the board or asserts a privilege to withhold or suppress evidence relevant to a claim, the board may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the board may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a mental or physical examination.

Laws 1974, c. 463, § 12.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**299B.13 Department of corrections; restitution**

The department of corrections may, as a means of assisting in the rehabilitation of persons committed to their care, establish programs and procedures whereby such persons may contribute toward restitution of those persons injured as a consequence of their criminal acts.

Laws 1974, c. 463, § 13.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**Law Review Commentaries**

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

Library References: Criminal Law ⇔ 1220. C.J.S. Criminal Law § 1642.

**299B.14 Use of record of claim; evidence**

Neither a record of the proceedings on a claim, a decision of the board, nor the fact that an award has been made or denied shall be admissible as evidence in any criminal or civil action against the alleged offender, including an action by the state on its subrogation claim.

Laws 1974, c. 463, § 14.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**Law Review Commentaries**

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

**299B.15 Law enforcement agencies; duty to inform victims of right to file claim**

All law enforcement agencies investigating crimes shall provide forms to each person who may be eligible to file a claim pursuant to sections 299B.01 to 299B.16 and to inform them of their rights hereunder. All law enforcement agencies shall obtain from the board and maintain a supply of all forms necessary for the preparation and presentation of claims.

Laws 1974, c. 463, § 15.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**299B.16 Fraudulent claims; penalty**

Any person who knowingly makes a false claim under sections 299B.01 to 299B.16 shall be guilty of a gross misdemeanor.

Laws 1974, c. 463, § 16.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

**MINNESOTA SESSION LAW SERVICE—1975**

**LAWS OF THE 69TH LEGISLATURE, FIRST REGULAR SESSION—CHAPTERS 203 TO 347**

**CRIME VICTIMS REPARATIONS—ATTORNEYS FEES**

**CHAPTER 246**

**H.F. No. 986**

[Coded in Part]

An Act relating to crime victims reparations; authorizing the crime victims reparations board to limit the fees charged by an attorney representing a claimant before the board; amending Minnesota Statutes 1974, Section 299B.03, Subdivision 1; and Chapter 299B, by adding a section.

*Be it enacted by the Legislature of the State of Minnesota:*

Section 1. Minnesota Statutes 1974, Section 299B.03, Subdivision 1, is amended to read:

**299B.03 Eligibility for reparations**

Subdivision 1. Except as provided in subdivision 2, the following persons shall be entitled to reparations upon a showing by a preponderance of the evidence that the requirements for reparations have been met:

- (a) a victim who has incurred economic loss;
- (b) a dependent who has incurred economic loss;
- (c) the estate of a deceased victim if the estate has incurred economic loss;
- (d) any other person who has incurred economic loss by purchasing any of the products, services, and accommodations described in section 299B.02, clause (7), for a victim;
- (e) the guardian, guardian ad litem, conservator or authorized agent of any of these persons.

Sec. 2. Minnesota Statutes 1974, Chapter 299B, is amended by adding a section to read:

**299B.071 Attorneys fees; limitation for representation before board**

The board may limit the fee charged by any attorney for representing a claimant before the board.

Approved June 2, 1975.

**MEDICAL ASSISTANCE—PRIVATE COVERAGE**

**CHAPTER 247**

**H.F. No. 1074**

[Coded in Part]

An Act relating to public welfare; establishing a lien on certain causes of action accruing to recipients of medical assistance; authorizing the assignment of insurance proceeds and the subrogation to the commissioner of public welfare of the rights of any recipient of medical assistance having private health care coverage; amending Minnesota Statutes 1974, Chapters 62A, by adding a section; 62C, by adding a section; 64A, by adding a section; 256B, by adding sections; and Sections 64A.23; 256B.02, by adding a subdivision; 256B.06, Subdivision 1; and 393.10, Subdivision 2.

*Be it enacted by the Legislature of the State of Minnesota:*

Section 1. Minnesota Statutes 1974, Chapter 62A, is amended by adding a section to read:

**62A.045 Payments to welfare recipients**

No policy of accident and sickness insurance issued or renewed after August 1, 1975, shall contain any provision denying or reducing benefits because services are rendered to an insured or dependent who is eligible for or receiving medical assistance pursuant to chapter 256B.

Sec. 2. Minnesota Statutes 1974, Chapter 620, is amended by adding a section to read:

**62C.141 Payments to welfare recipients**

After August 1, 1975, no service plan corporation shall deliver, issue for delivery, or renew any subscriber's contract which contains any provision denying or reducing benefits because services are rendered to a subscriber or dependent who is eligible for or receiving medical assistance pursuant to chapter 256B.

Sec. 3. Minnesota Statutes 1974, Chapter 64A, is amended by adding a section to read:

**64A.221 Payment to welfare recipients**

After August 1, 1975, no association authorized to do business in this state which provides or pays for any health care benefits shall issue any certificate which contains any provision denying or reducing benefits because services are rendered to a certificate holder or beneficiary who is eligible for or receiving medical assistance pursuant to chapter 256B.

## MINNESOTA SESSION LAW SERVICE—1976

LAWS OF THE 69TH LEGISLATURE, 1976 SESSION—CHAPTERS 173 TO 348 (END)

## CRIME VICTIMS REPARATIONS—TIME OF CLAIM

## CHAPTER 193

## S.F. No. 2251

An Act relating to crime victims reparations; authorizing a claim to be filed within one year of the time when it could have been reasonably made; amending Minnesota Statutes 1974, Section 299B.03, Subdivision 2.

*Be it enacted by the Legislature of the State of Minnesota:*

Section 1. Minnesota Statutes 1974, Section 299B.03, Subdivision 2, is amended to read:

Subd. 2. No reparations shall be awarded to a claimant otherwise eligible if (a) the crime was not reported to the police within five days of its occurrence or, if it could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made;

(b) the victim or claimant failed or refused to cooperate fully with the police and other law enforcement officials;

(c) the victim is the spouse of or a person living in the same household with the offender or his accomplice or the parent, child, brother or sister of the offender or his accomplice unless the board determined that the interests of justice otherwise require in a particular case;

(d) the claimant was the offender or an accomplice of the offender or an award to the claimant would unjustly benefit the offender or an accomplice; or

(e) no claim was filed with the board within one year of victim's injury or death but if it could not have been made within that period, then the claim can be made within one year of the time when a claim could have been made;

(f) the claim is less than \$100.

Approved April 8, 1976.

## NEVADA REVISED STATUTES

## VOLUME 7

By the Legislative Counsel, State of Nevada

## CHAPTER 217—PAYMENTS FOR VICTIMS OF CRIMES

## COMPENSATION FOR VICTIMS OF CRIMINAL ACTS

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217.020 Definitions.

- 217.030 "Board" defined.
- 217.035 "Crime" defined.
- 217.040 "Dependents" defined.
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- 217.060 "Relative" defined.
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- 217.340 Psychological treatment, counseling of victim, spouse : Time limitations.
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#### COMPENSATION FOR VICTIMS OF CRIMINAL ACTS

*217.010 Policy of state.* It is the policy of this state to encourage the cooperation and assistance of the public in law enforcement and to promote the public welfare.

(Added to NRS by 1969, 1151 ; A 1975, 1292, 1788)

*217.020—Definitions.* As used in NRS 217.010 to 217.270, inclusive, unless the context otherwise requires, the words and terms defined in NRS 217.030 to 217.070, inclusive, have the meanings ascribed to them in such sections.

(Added to NRS by 1969, 1151 ; A 1975, 1292, 1788)

*217.030—"Board" defined.* "Board" means the state board of examiners.

(Added to NRS by 1969, 1151)

*217.035 "Crime" defined.* "Crime" means an act or omission committed within this state which is forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline.

(Added to NRS by 1975, 1788)

*217.040 "Dependents" defined.* "Dependents" means the relatives of a deceased victim who were wholly or partially dependent upon his income at the time of his death and includes the child of such victim born after his death.

(Added to NRS by 1969, 1151)

*217.050 "Personal injury" defined.* "Personal injury" means actual bodily harm.

(Added to NRS by 1969, 1151)

*217.060 "Relative" defined.* "Relative" of any person includes a spouse, parent, grandparent, stepparent, natural born, step or adopted child, grandchild, brother, sister, half brother, half sister or parents of the spouse.

(Added to NRS by 1969, 1151)

**217.070 "Victim" defined.** "Victim" means a person who is physically injured or killed:

1. While attempting to prevent the commission of a crime not initially involving:

- (a) Self-defense of the life, limb or property of the victim;
- (b) Defense of the life, limb or property of a relative of the victim;
- (c) Defense of the life, limb or property of a person or institution based upon a preexisting legal obligation on the part of the victim to so defend; or
- (d) An attempt to arrest a suspected criminal for any offense under circumstances covered by paragraphs (a), (b) or (c) of this subsection.

2. While attempting to aid a police officer to arrest a suspected criminal for any offense under circumstances other than those covered by paragraphs (a), (b) or (c) of subsection 1.

(Added to NRS by 1969, 1151; A 1975, 1789)

**217.080 Expenses of board members.** Members of the board shall serve without additional compensation, but are entitled to subsistence allowances and travel expenses pursuant to the provisions of NRS 281.160 while engaged in the performance of official duties under NRS 217.010 to 217.270, inclusive.

(Added to NRS by 1969, 1151; A 1975, 1292)

**217.090 Hearing officers: Appointment; qualifications; duties.** The board may appoint one or more hearing officers, who must be licensed to practice law in this state, to conduct investigations and hearings and to take testimony in any proceeding pursuant to NRS 217.010 and 217.270, inclusive, but final determinations of any matter shall be only by the board. A hearing officer acting pursuant to this section shall report his findings of fact and conclusions of law to the board, together with the reasons therefor. The board shall act only after consideration of the report and such other evidence as it deems appropriate.

(Added to NRS by 1969, 1151; A 1975, 1292, 1789)

**217.100 Application for compensation; medical reports.**

1. Any person eligible for compensation under the provisions of NRS 217.010 to 217.270, inclusive, may apply to the board for such compensation. Where the person entitled to make application is:

(a) A minor, the application may be made on his behalf by a parent or guardian.

(b) Mentally incompetent, the application may be made on his behalf by a parent, guardian or other person authorized to administer his estate.

2. Prior to a hearing on any application, the applicant shall submit reports, if reasonably available, from all physicians or surgeons who, at the time of or subsequent to the victim's injury or death, treated or examined the victim in relation to the injury for which compensation is claimed. If, in the opinion of the board, reports on the previous medical history of the victim or an examination of the victim and report thereon or a report on the cause of death of the victim by an impartial medical expert would aid the board in its determination, the board may order such reports.

(Added to NRS by 1969, 1151; A 1975, 1292)

**217.110 Investigations; hearings.**

1. Upon receipt of an application for compensation, the board shall conduct an investigation and may fix a time and place for a hearing. If a hearing is to be held, the board shall give notice thereof to the applicant. Such hearing shall be held within 30 days of the board's receipt of such application unless:

(a) The time limitation is waived in writing by the applicant; or

(b) There is a conflict with the hearing calendar of the hearing officer. In the case of a conflict in the hearing calendar, the hearing shall be scheduled at the earliest possible date.

2. The board or its hearing officer may hold such hearings, sit and act at such times and places, and take such testimony as it or he may deem advisable. The board or its hearing officer may administer oaths or affirmations to witnesses. The board has full powers of subpoena and compulsion of attendance of witnesses and production of documents; but no subpoena may be issued except under the signature of a member of the board. Application to any court for aid in enforcing such subpoena may be made in the name of the board only by a member thereof. Subpenas may be served by any person designated by the board.

3. The application and any other person having a substantial interest in the outcome of a proceeding may appear and be heard, produce evidence and cross-

examine witnesses in person or by his attorney. The board or its hearing officer also may hear other persons who may have relevant evidence to submit.

4. Any statement, document, information or matter may be received in evidence if, in the opinion of the board or its hearing officer, it contributes to a determination of the claim, whether or not such evidence would be admissible in a court of law.

5. Orders and decisions of the board are final and not subject to judicial review.

(Added to NRS by 1969, 1152; A 1975, 1789)

**217.120 Proof of conviction conclusive evidence of commission of offense.** If any person has been convicted of any offense with respect to an act on which a claim under NRS 217.010 to 217.270, inclusive, is based, proof of that conviction is conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

(Added to NRS by 1969, 1152; A 1975, 1293)

**217.130 Rules and regulations.** In the performance of its functions, the board may adopt, rescind and amend rules and regulations prescribing the procedures to be followed in the filing of applications and proceedings under NRS 217.010 to 217.270, inclusive, and for such other matters as the board deems appropriate.

(Added to NRS by 1969, 1152; A 1975, 1293)

**217.140 Attorney's fees.** The board may, as part of any order entered pursuant to the provisions of NRS 217.010 to 217.270, inclusive, allow reasonable attorney fees, but such fees shall not exceed 10 percent of the amount awarded as compensation and shall be paid to the attorney representing the applicant out of, not in addition to, the amount of such compensation. It is unlawful for any attorney to ask for, contract for or receive any larger sum than the amount so allowed.

(Added to NRS by 1969, 1152; A 1975, 1293)

**217.150 Standards for compensation.** In determining the amount of any compensation payable under the provisions of NRS 217.010 to 217.270, inclusive, the board shall so far as practicable, formulate standards for uniform application of NRS 217.010 to 217.270, inclusive, and shall take into consideration rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States.

(Added to NRS by 1969, 1152; A 1975, 1293)

**217.160 Awarding compensation.** The board may order the payment of compensation:

1. To or for the benefit of the injured person;
2. Where the victim has suffered personal injury, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of such injury; or
3. Where the victim dies, to or for the benefit of any one or more of the dependents of the victim.

(Added to NRS by 1969, 1153)

**217.170 Suspension of proceedings.** Upon application made by an appropriate prosecuting authority, the board may suspend any proceedings being conducted pursuant to NRS 217.010 to 217.270, inclusive, for such period as it deems appropriate on the ground that a prosecution for an offense arising from the act or omission to act on which the claim for compensation is based has been commenced or is imminent.

(Added to NRS by 1969, 1153; A 1975, 1293)

**217.180 Order for compensation: Considerations.**

1. In determining whether to make an order for compensation, the board shall consider the provocation, consent or any other behavior of the victim which directly or indirectly contributed to his injury or death, the prior case or social history, if any, of the victim, need of the victim or his dependents for financial aid and other relevant matters.

2. In determining the amount of compensation to be allowed by order, the board shall consider amounts received or receivable from any other source by the victim or his dependents as a result of the incident or offense giving rise to the application.

3. An order for compensation may be made whether or not any person is prosecuted or convicted of any offense arising from the act on which the claim for compensation is based.

(Added to NRS by 1969, 1153)

**217.190 Incidents to which NRS 217.010 to 217.270, inclusive, apply; affidavits of police officers.** The board may order the payment of compensation in accordance with the provisions of NRS 217.010 to 217.270, inclusive, for physical injury to or death of the victim which resulted from an attempt to prevent the commission of crime or to arrest a suspected criminal or aiding or attempting to aid a police officer to do so. If physical injury to or death of a person results from aiding or attempting to aid a police officer as provided in this section, no compensation may be allowed by the board unless such police officer files with the board an affidavit in support of any claim which may be made.

(Added to NRS by 1969, 1153; A 1975, 1294)

**217.200 Nature of compensation; certificate for meritorious citizen's service.**

1. The board may order the payment of compensation and the award of a governor's certificate for meritorious citizen's service to a victim as defined in subsections 1 and 2 of NRS 217.070 for:

(a) Medical expenses, and nonmedical remedial care and treatment rendered in accordance with a religious method of healing, actually and reasonably incurred as a result of the personal injury or death of the victim;

(b) Loss of earning power, actually and reasonably incurred as a result of the total or partial incapacity of the victim;

(c) Pecuniary loss to the dependents of a deceased victim;

(d) Funeral expenses, not in excess of \$1,000, which are actually and reasonably incurred as a result of the death of the victim; and

(e) Any other loss which results from the personal injury or death of the victim and which the board determines to be reasonable.

2. An award of compensation may be made subject to such terms and conditions as the board considers necessary or advisable with respect to payment, disposition, allotment or apportionment of the award.

(Added to NRS by 1969, 1153; A 1975, 1790)

**217.260 Payments from emergency fund account.** Funds for payment of compensation as ordered by the board shall be paid from the emergency fund account.

(Added to NRS by 1969, 1154)

**217.270 Unlawful acts; penalty.** Any person who knowingly obtains or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is entitled, with the intent to defeat the purposes of NRS 217.010 to 217.260, inclusive, is guilty of a gross misdemeanor.

(Added to NRS by 1975, 1788)

#### ASSISTANCE TO RAPE VICTIMS

**217.280 "Rape victim" defined.** As used in NRS 217.290 to 217.350, inclusive, "rape victim" means a person who has been raped as defined by NRS 200.363.

(Added to NRS by 1975, 1291)

**217.290 County may provide for counseling, medical treatment of rape victims.** The board of county commissioner of any county may provide by ordinance for the counseling and medical treatment of rape victims in accordance with the provisions of NRS 217.280 to 217.350, inclusive.

(Added to NRS by 1975, 1291)

**217.300 Emergency medical care: Payment of costs by county; limitations and conditions.**

1. Any rape victim may request and receive initial emergency medical care at a hospital for any physical injuries which resulted from the rape.

2. Any costs incurred for such treatment, not exceeding \$1,000, shall be charged to and paid by the county in whose jurisdiction the offense was committed if the victim will execute an affidavit declaring that she is a rape victim and if the county has an ordinance providing for the payment of such costs.

(Added to NRS by 1975, 1291)

**217.310 Psychological treatment, counseling of victim, spouse: Application; prerequisites to approval.**

1. Any rape victim or spouse of a rape victim who suffers emotional trauma as a result of the rape may, upon submitting an affidavit as required by subsection 2, apply to the board of county commissioners in the county where the rape occurred for treatment at county expense.

2. The board may approve such application for treatment upon receiving an affidavit from the applicant declaring that:

(a) Such applicant is a rape victim or spouse of a rape victim ;

(b) The rape occurred in the county ; and

(c) He or she has suffered emotional trauma as a result of the rape.

3. The filing of a criminal complaint against the alleged offender is a prerequisite to qualify for treatment under the provisions of this section.

(Added to NRS by 1975, 1291)

**217.210 Time limitations on awarding compensation.** No order for the payment of compensation may be made unless the application is made within 2 years after the date of the personal injury or death on which the claim is based, and the personal injury or death was the result of an incident or offense which was reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made.

(Added to NRS by 1969, 1153)

**217.220 When compensation not to be awarded; limitation on money award.**

1. Compensation shall not be awarded if the victim :

(a) Is a relative of the offender ;

(b) Was, at the time of the personal injury or death of the victim, living with the offender as a member of his family or household or maintaining a sexual relationship, whether illicit or not, with such person or with any member of the family of such person ;

(c) Violated a penal law of this state, which caused or contributed to his injuries or death ;

(d) Was injured or killed as a result of the operation of a motor vehicle, boat or airplane unless such vehicle, boat or airplane was used as a weapon in a deliberate attempt to harm the victim ; or

(e) Was not a resident of the State of Nevada at the time the incident upon which the claim is based occurred.

2. No compensation may be awarded in an amount in excess of \$5,000.

(Added to NRS by 1969, 1153 ; A 1975, 1294, 1790)

**217.240 Recovery from offender.** Whenever an order for the payment of compensation for personal injury or death is made pursuant to NRS 217.010 to 217.270, inclusive, the board is, upon payment of the order, subrogated to the cause of action of the applicant against the person or persons responsible for such injury or death and may bring an action against such person or persons for the amount of the damages sustained by the applicant. If an amount greater than that paid pursuant to the order is recovered and collected in any such action, the board shall pay the balance to the applicant.

(Added to NRS by 1969, 1154 ; A 1975, 1294)

**217.250 Reports.** The board shall prepare and transmit biennially to the governor and legislature a report of its activities under NRS 217.010 to 217.270, inclusive, including the name of each applicant, a brief description of the facts in each case and the amount of any compensation awarded.

(Added to NRS by 1969, 1154 ; A 1971, 156 ; 1975, 1294)

**217.320 Psychological treatment, counseling of victim, spouse: Availability; cost limitation.**

1. Upon approval by the board of county commissioners as provided in NRS 217.310, treatment in the form of psychological, psychiatric and marital counseling shall be made available to the rape victim and spouse at a county hospital or such other facility as the board may contract with for the purpose of providing such treatment.

2. Any costs for treatment provided pursuant to this section, not exceeding \$1,000, shall be paid by the county which authorized the treatment.

(Added to NRS by 1975, 1291)

**217.330 Psychological treatment, counseling of victim, spouse: Certification by person providing treatment required.**

1. The board of county commissioners shall require the psychologist, psychiatrist or counselor treating a rape victim or spouse of a rape victim to certify from time to time that the counseling relates to the rape and that the rape victim or spouse of a rape victim still suffers from the effects of the emotional trauma which resulted from the rape.

2. If the person providing the treatment fails to make such certification upon request by the board, the board may order the treatment terminated.

(Added to NRS by 1975, 1291)

**217.340 Psychological treatment, counseling of victim, spouse: Time limitations.** No order for treatment pursuant to NRS 217.310 and 217.320 may be made by the board of county commissioners unless:

1. The application for treatment is made within 60 days after the date of the rape; and
2. The rape offense was reported to the police within 3 days after its occurrence, or if the offense could not reasonably have been reported within such period, within 3 days after the time when a report could reasonably have been made.

(Added to NRS by 1975, 1292)

**217.350 Regulations prescribing procedures.** In the performance of its functions under NRS 217.280 to 217.350, inclusive, the board of county commissioners may adopt, rescind and amend regulations prescribing the procedures to be followed in the filing of applications and for such other matters as the board deems appropriate.

(Added to NRS by 1975, 1292)

## NEW JERSEY STATUTES ANNOTATED

### TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS—§§ 52:1 TO 52:19

#### CHAPTER 4B. COMPENSATION FOR VICTIMS OF CRIME [NEW]

Sec.

- 52:4B-1. Short title.
  - 52:4B-2. Definitions.
  - 52:4B-3. Violent crimes compensation board; members; appointment; allocation to department of law and public safety.
  - 52:4B-4. Term of office; reappointment; removal; compensation.
  - 52:4B-5. Employment of experts, assistants and employees.
  - 52:4B-6. Principal office; place of conduct of affairs.
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  - 52:4B-8. Attorney fees.
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  - 52:4B-10. Persons entitled to compensation; order.
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  - 52:4B-20. Subrogation of board to cause of action of victim against person responsible for personal injury or death.
  - 52:4B-21. Severability.
- 52:4B-1. Short title**

This act shall be known and may be cited as the "Criminal Injuries Compensation Act of 1971."

L.1971, c. 317, § 1, *eff. Oct. 4, 1971.*

Section 22 of L.1971, c. 317, provided: "Orders for payment of compensation pursuant to this Act may be made only as to injuries or death resulting from offenses occurring on and after November 1, 1971."

**Title of Act:**

An Act authorizing and providing for compensation for the innocent victims of crime in certain cases and making an appropriation. L.1971, c. 317.

**52:4B-2. Definitions**

As used in this act:

"Child" means an unmarried person who is under 21 years of age and includes a stepchild or an adopted child;

"Board" means the Violent Crimes Compensation Board established by this act;

"Dependents" means such relatives of a deceased victim as were wholly or partially dependent upon his income at the time of his death and shall include the child of such victim born after his death;

"Personal injury" means actual bodily harm and includes pregnancy and mental or nervous shock;

"Relative" of any person means his spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents;

"Family relationship group" of any person means:

(1) any person related to such person within the third degree of consanguinity or affinity,

(2) any person living in the same household as such person, or

(3) any person maintaining a sexual relationship, whether illicit or not, with such person or with any member of the family of such person;

"Victim" means a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in section 11 of this act.<sup>1</sup>

L. 1971, c. 317, § 2, eff. Oct. 4, 1971.

Library references: Criminal Law ⇔1270.

Social Security and Public Welfare CS221.

States ⇔111.

C.J.S. Criminal Law § 2007.

C.J.S. Social Security and Public Welfare § 67.

C.J.S. States § 128 et seq.

**52:4B-3. Violent crimes compensation board; members; appointment; allocation to department of law and public safety**

There is hereby established in the Executive Branch of the State Government a Violent Crimes Compensation Board which shall be composed of 3 citizens, one to be appointed by the Governor, with the advice and consent of the Senate, of whom shall be designated chairman by, and serve as such at the pleasure of, the Governor. Not more than two of the members of the board shall be members of the same political party. At least two members of the board shall be attorneys admitted to the practice of law in the State of New Jersey. For the purposes of complying with the Constitution (Article V, Section IV, paragraph 1) the board is allocated to the Department of Law and Public Safety but, notwithstanding said allocation, the board shall be independent of any supervision or control by the department or the Attorney General or any other officer of the department.

L. 1971, c. 317, § 3, eff. Oct. 4, 1971.

Library references: States ⇔45. C.J.S. States §§ 52, 66.

**52:4B-4. Term of office; reappointment; removal; compensation**

The term of office of each member of the board shall be 5 years and until his successor is appointed and qualifies, except that of the members first appointed one shall be appointed for a term of 5 years, one for a term of 4 years and one for a term of 3 years. All vacancies, except through the expiration of term, shall be filled for the unexpired term only.

Each member of the board shall be eligible for reappointment and any member of the board may be removed by the Governor for inefficiency, neglect of duty or malfeasance in office.

Each member of the board shall receive the same annual compensation as that payable to judges of compensation and shall devote his full time and capacity to his duties, and shall not engage in any other occupation, profession or employment.

L. 1971, c. 317, § 4, eff. Oct. 4, 1971.

Library references: States ⇔51. C.J.S. States §§49, 72, 77.

**52:4B-5. Employment of experts, assistants and employees**

The board is authorized to appoint and fix the duties and compensation of such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this act, and the board may, subject to Title II of the

<sup>1</sup> Section 52:4B-11.

Revised Statutes, "Civil Service," appoint and fix the duties and compensation of such other assistants and employees as are necessary.

L. 1971, c. 317, § 5, Oct. 4, 1971.

Library references: States ⇔ 67. J.C.S. States §§ 58, 66.

**52:4B-6. Principal office; place of conduct of affairs**

The principal office of the board shall be in Trenton, New Jersey, but the board may sit and conduct its affairs in any place.

L. 1971, c. 317, § 6, eff. Oct. 4, 1971.

**52:4B-7. Hearings**

Hearings upon applications for compensation under this act shall be conducted in the following manner:

a. Upon an application made to the board under the provisions of this act, the board shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant;

b. For the purpose of carrying out the provisions of this act, the board, or any member thereof, may hold such hearings, sit and act at such times and places, and take such testimony as the board or such member may deem advisable. Any member of the board may administer oaths or affirmations to witnesses. The board shall have full powers of subpoena and compulsion of attendance of witnesses and production of documents, except that no subpoena shall be issued except under the signature of a member of the board, and application to any court for aid in enforcing such subpoena may be made in the name of the board by any member thereof. Subpoenas shall be served by any person designated by the board;

c. In any case in which the person entitled to make an application is a child, the application may be made on his behalf by his parent or guardian. In any case in which the person entitled to make an application is mentally incompetent, the application may be made on his behalf by his guardian or such other individual authorized to administer his estate;

d. Any person having a substantial interest in a proceeding may appear, produce evidence and cross-examine witnesses in person or by his attorney.

e. The board may receive in evidence any statement, document, information, or matter that may in the opinion of the board contribute to its functions under this act, but the board shall not be bound by the rules of evidence.

f. If any person has been convicted of any offense with respect to an act or omission on which a claim under this act is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

L. 1971, c. 317, § 7, eff. Oct. 4, 1971.

Library references: States ⇔ 184.5. C.J.S. States § 208(1).

**52:4B-8. Attorney fees**

The board may, as a part of any order entered under this act, determine and allow reasonable attorney fees, which shall not exceed 15% of the amount awarded as compensation under section 10 of this act,<sup>1</sup> to be paid in addition to the amount of such compensation, to the attorney representing the applicant, and it shall be unlawful for any such attorney to ask for, contract for or receive any larger sum than the amount so allowed.

L. 1971, c. 317, § 8, eff. Oct. 4, 1971.

Library references: States ⇔ 111. C.J.S. States § 128 et seq.

**1. In general**

Counsel should be paid in full for his service performed for claimant to date of award under the Criminal Injuries Compensation Act, and it was error to order that fee be paid in two installments. In re Hollywood, 124 N.J. Super. 50, 304 A.2d 747 (1973).

**52:4B-9. Rules and regulations; determination of compensation**

In the performance of its functions, the board is authorized to make rules and regulations prescribing the procedures to be followed in the filing of applications and the proceedings under this act, and such other matters as the board deems appropriate.

<sup>1</sup> Section 52:4B-10.

In determining the amounts of compensation payable pursuant to this act the board shall insofar as practicable formulate standards for uniform application of this act and shall take into consideration rates and amounts of compensation payable for injuries and death under other laws of this State and of the United States and the availability of funds appropriated for the purposes of this act.

L.1971, c. 317, § 9, eff. Oct. 4, 1971.

Date of occurrence of offense for entitlement to order for payment of compensation, see § 52:4B-1 note.

Library references: States ⇐111. C.J.S. States § 128 et seq.

#### 1. In general

Within statutes providing that all payments of compensation to victims of violent crimes shall be in lump sum "except that in the case of death or protracted disability the award may provide for periodic payments to compensate for loss of earnings or support," and that board in determining amounts payable is to consider availability of funds appropriated for such purpose, provision for periodic payments was not unenforceable on theory that there were insufficient standards to guide the board. In re Hollywood, 124 N.J.Super. 50, 304 A.2d 747 (1973).

#### 52:4B-10. *Persons entitled to compensation; order*

In any case in which a person is injured or killed by any act or omission of any other person which is within the description of the offenses listed in section 11 of this act,<sup>1</sup> the board may, upon application and the concurrence of a majority of the members thereof, order the payment of compensation in accordance with the provisions of this act:

- a. to or on behalf of the victim,
- b. in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person, or
- c. in the case of the death of the victim, to or for the benefit of the dependents of the deceased victim, or any one or more of such dependents.

In determining whether to make an order under this section, the board may consider any circumstances it determines to be relevant, including provocation, consent or the behavior of the victim which directly or indirectly contributed to his injury or death, the prior case history, if any, of the victim and any other relevant matters.

An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act or omission. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this act for such period as it deems appropriate on the ground that a prosecution for an offense arising out of such act or omission has been commenced or is imminent.

For the purposes of this act, a person shall be deemed to have intended an act or omission notwithstanding that by reason of age, insanity or otherwise, he was legally incapable of forming a criminal intent.

L.1971, c. 317, § 10, eff. Oct. 4, 1971.

Date of occurrence of offense for entitlement to order for payment of compensation, see § 52:4B-1 note.

Library references: States ⇐111. C.J.S. States § 128 et seq.

#### 52:4B-11. *Causes of personal injury or death*

The board may order the payment of compensation in accordance with the provisions of this act for personal injury or death which resulted from:

- (a) an attempt to prevent the commission of crime or to arrest a suspected criminal or in aiding or attempting to aid a police officer so to do, or
- (b) the commission or attempt to commit any of the following offenses:
  1. assault constituting a high misdemeanor;
  2. mayhem;
  3. threats to do bodily harm;
  4. lewd, indecent, or obscene acts;
  5. indecent act with children;

<sup>1</sup> Section 52:4B-11.

6. kidnapping;
7. murder;
8. manslaughter;
9. rape;
10. any other crime involving violence.

*L.1971, c. 317, § 11, eff. Oct. 4, 1971.*

Date of occurrence of offense for entitlement to order for payment of compensation, see § 52:4B-1 note.

Library references: States ⇐111. C.J.S. States § 123 et seq.

**52:4B-12. Losses or expenses reimbursable**

The board may order the payment of compensation under this act for:

- a. expenses actually and reasonably incurred as a result of the personal injury or death of the victim,
- b. loss of earning power as a result of total or partial incapacity of such victim.
- c. pecuniary loss to the dependents of the deceased victim, and
- d. any other pecuniary loss resulting from the personal injury or death of the victim which the board determines to be reasonable.

*L.1971, c. 317, § 12, eff. Oct. 4, 1971.*

Date of occurrence of offense for entitlement to order for payment of compensation, see § 52:4B-1 note.

Library references: States ⇐111. C.J.S. States § 128 et seq.

**52:4B-13. Panel of impartial medical experts**

To assist the board in determining the nature, extent or cause of personal injury or cause of death compensable under this act, the board shall maintain a panel of impartial medical experts. The specialties to be represented on the panel and the number of experts in each specialty shall be determined jointly by the Medical Society of New Jersey and the Board. The experts to serve on the panel in the several specialties shall be designated by the Medical Society of New Jersey.

*L.1971, c. 317, § 13, eff. Oct. 4, 1971.*

Library references: States ⇐67. C.J.S. States §§ 58.66.

**52:4B-14. Reports of treatment or examination of injured person or decedent**

Prior to a hearing on any application pursuant to this act, the applicant or his attorney shall submit reports from all physicians or surgeons or duly accredited religious practitioners who have treated or examined the injured party or the decedent. If in the opinion of the board an examination of the injured person and a report thereon or a report on the cause of death by an impartial medical expert would be of material aid to the just determination of the action, the board may order such an examination, where appropriate, and report by an expert or experts chosen from the panel of impartial medical experts.

*L.1971, c. 317, § 14, eff. Oct. 4, 1971.*

Library references: States ⇐184.12. C.J.S. States § 208(4).

**52:4B-15. Order for appointment of impartial medical experts; direction of examination; report**

The order for the appointment of impartial medical experts and directing an examination of an injured party and report thereon or a report on the cause of death of a decedent shall, to the extent applicable and with due regard to the religious tenets of an applicant:

- a. Designate the name of the impartial medical expert and his specialty;
- b. Specify the conditions and scope of the examination to be conducted and the report to be made;
- c. Direct the injured party to submit to a physical examination as specified in the order;
- d. Direct all parties and their counsel to deliver to the board for the use of the designated expert all medical reports, X-rays, X-ray reports and records and reports of pathological or neurological examinations or tests of the injured party or of the decedent which are in their possession or under their control;
- e. Direct the injured party or his counsel to prepare a list of the names and

addresses of any physicians or hospitals which may have any relevant medical records and to deliver the same to the board, for the use of the designated expert, together with a written and signed consent for the examination by the designated expert of any hospital records or other medical records or reports which are not in the possession or under the control of the injured party or his counsel;

f. Direct the injured party to be examined to disclose to the designated expert at his request, and not otherwise, any fact necessary and relevant to his examination and report;

g. Authorize the designated expert to make or to have made by others of his selection such supplementary diagnostic procedures or tests as shall be necessary and relevant to his examination and report and direct the party to be examined to submit thereto; and

h. Fix the date by which the examination is to be made and the date by which the report of the designated expert is to be delivered to the board.

*L.1971, c. 317, § 15, eff. Oct. 4, 1971.*

Library references: States ⇄184.12. C.J.S. States § 208(4).

*52:4B-16. Notice of examination; time of report; expert as witness at hearing*

The designated expert, upon receipt of all the reports, records and other pertinent medical information, shall fix the time and place of examination and give notice thereof to the applicant or his attorney who may be present with applicant at said examination. The report of said expert shall be filed with the board prior to the date set for the hearing of the matter. If, in the discretion of the board, the testimony of said expert is required at the hearing, he shall be called as a witness and he may be cross-examined.

*L.1971, c. 317, § 16, eff. Oct. 4, 1971.*

Library references: States ⇄184.12. C.J.S. States § 208(4).

*52:4B-17. Fees of designated expert*

The fees of the designated expert, both for his examination and report and for his appearance in court, when necessary, together with the fees for any supplemental diagnostic procedures or tests ordered by him in connection with such examination and report, shall be approved by the board for payment out of funds appropriated for the administration of this act.

*L.1971, c. 317, § 17, eff. Oct. 4, 1971.*

Library references: States ⇄111. C.J.S. States § 128 et seq.

*52:4B-18. Limitation of action; reduction of award for contributing to injury; grounds for denial*

No order for the payment of compensation shall be made under section 10 of this act<sup>1</sup> unless the application has been made within 1 year after the date of the personal injury or death, and the personal injury or death was the result of an offense listed in section 11 of this act<sup>2</sup> which had been reported to the police within 3 months after its occurrence.

In determining the amount of an award, the board shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board shall reduce the amount of the award or reject the application altogether, in accordance with such determination; provided, however, that the board shall not consider any conduct of the victim contributory toward his injury, if the record indicates such conduct occurred during efforts by the victim to prevent a crime or apprehend a person who had committed a crime in his presence or had in fact committed a misdemeanor.

No compensation shall be awarded if the victim

a. is a relative of the offender,

b. was at the time of the personal injury or death of the victim living with the offender as a member of his family relationship group,

c. was guilty of a violation of subtitle 10<sup>3</sup> or 12 of Title 2A of the New Jersey Statutes,<sup>4</sup> which caused or contributed to his injuries,

<sup>1</sup> Section 52:4B-10.

<sup>2</sup> Section 52:4B-11.

<sup>3</sup> Sections 2A:85-1 to 2A:151-63.

<sup>4</sup> Sections 2A:169-1 to 2A:171-12.

d. was injured as a result of the operation of a motor vehicle, boat or airplane unless the same was used as a weapon in a deliberate attempt to run the victim down.

No award shall be made on an application unless the applicant has incurred a minimum out-of-pocket loss of \$100.00 or has lost at least 2 continuous weeks earnings or support. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such application is based.

No compensation shall be awarded under this act in an amount in excess of \$10,000.00, and all payments shall be made in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this act shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis of the claim. L. 1971, c. 317, §18, eff. Oct. 4, 1971.

Library references: States  $\Leftarrow$ 111, 184.12. C.J.S. States §§ 128 et seq., 208(4).

### 1. Periodic payments

Under statutes providing that all payments of compensation to victims of violent crimes shall be in lump sum "except that in case of death or protracted disability the award may provide for periodic payments to compensate for loss of earnings or support," failure of board, within one year of its creation, to promulgate standards or establish or adopt criteria with regard to periodic payments did not vitiate portion of order providing for a 10½-year payout to claimant; it would be appropriate to adopt regulations based on studied consideration and experience. In re Hollywood, 124 N.J. Super. 50, 304 A.2d 747 (1973).

Where 73-year-old woman who was dependent on murdered son to supplement her support claimed compensation for his murder, decision of the violent crimes compensation board was not arbitrary, capricious or unreasonable in providing for support of \$75 per month continuing until entire maximum of \$10,000 was used up or until claimant's death, rather than making lump-sum award of the \$10,000. Id.

Within statutes providing that all payments of compensation to victims of violent crimes shall be in lump sum "except that in the case of death or protracted disability the award may provide for periodic payments to compensate for loss of earnings or support," and that board in determining amounts payable is to consider availability of funds appropriated for such purpose, provision for periodic payments was not unenforceable on theory that there were insufficient standards to guide the board. Id.

### 52:4B-19. Amounts receivable from other sources; filing of order for compensation; authorization for payment

In determining the amount of compensation to be allowed by order, the board shall take into consideration amounts received or receivable from any other source or sources by the victim or his dependents as a result of the offense or occurrence giving rise to the application.

Each order for compensation made by the board shall be filed with the Director of the Division of Budget and Accounting and shall constitute authority for payment by the State Treasurer to the person or persons named therein of the amounts specified in such order.

L.1971, c. 317, § 19, eff. Oct. 4, 1971.

Library references: States  $\Leftarrow$ 111, 121. C.J.S. States §§ 128 et seq., 132.

### 52:4B-20. Subrogation of board to cause of action of victim against person responsible for personal injury or death

Whenever an order for the payment of compensation is or has been made for personal injury or death resulting from an act or omission constituting an offense under this act, the board shall, upon payment of the amount of the order, be subrogated to the cause of action of the applicant against the person or persons responsible for such personal injury or death and shall be entitled to bring an action against such person or persons for the amount of the damage sustained by the applicant and in the event that more is recovered and collected in any such action than the amount paid by reason of the order for payment of compensation, the board shall pay the balance to the applicant.

L.1971, c. 317, § 20, eff. Oct. 4, 1971.

Library references: Subrogation ⇔ 11. C.J.S. Subrogation § 16.

**52:4B-21. Severability**

If any section or sections of this act or any provision thereof shall be declared to be unconstitutional, invalid or inoperative in whole or in part, such section or provision shall, to the extent that it is not unconstitutional, invalid or inoperative be enforced and effectuated and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the sections of this act.

L.1971, c. 317, § 21, eff. Oct 4, 1971.

Library references: Statutes ⇔ 64(2). C.J.S. Statutes § 96 et seq.

NEW YORK

McKINNEY'S CONSOLIDATED LAWS OF NEW YORK—ANNOTATED

BOOK 18 EXECUTIVE LAW

§ 621.<sup>1</sup> *Definitions*

For the purposes of this article:

1. "Board" shall mean the crime victims compensation board.
2. "Claimant" shall mean the person filing a claim pursuant to this article.
3. "Crime" shall mean an act committed in New York state which would, if committed by a mentally competent criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by the penal law, provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purposes of this article unless the injuries were intentionally inflicted through the use of a vehicle.
4. "Family", when used with reference to a person, shall mean (a) any person related to such person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such person, or (c) any person residing in the same household with such person.
5. "Victim" shall mean a person who suffers personal physical injury as a direct result of a crime.

Added L. 1966, c. 894, § 1.

Historical Note

*Effective Date:* Application. See note preceding section 620 in this article.

§ 622.<sup>2</sup> *Crime victims compensation board*

1. There is hereby created in the executive department a board, to be known as the crime victims compensation board. Such board shall consist of three members, no more than two of whom shall belong to the same political party, who shall be appointed by the governor by and with the advice and consent of the senate. The members of the board shall have been admitted to practice law in the state of New York for not less than ten years next preceding their appointment.
2. The term of office of each such member shall be seven years, except that the members first appointed shall serve for terms of seven years, five years and three years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.
3. The governor shall designate one member of the board as chairman thereof, to serve as such at the pleasure of the governor.
4. The members of the board shall devote their whole time and capacity to their duties, and shall not engage in any other occupation, profession or employment, and shall receive an annual salary to be fixed by the governor within the amount made available therefor by appropriation.

Added L.1966, c. 894, § 1.

<sup>1</sup> Another section 621 is set out in another article 22, ante.

<sup>2</sup> Another section 622 is set out in another article 22, ante.

## Historical Note

*Effective Date; Application.* See note preceding section 620 in this article.

§ 623<sup>3</sup> *Powers and duties of the board*

The board shall have the following powers and duties:

1. To establish and maintain a principal office and such other offices within the state as it may deem necessary.

2. To appoint a secretary, counsel, clerks and such other employee and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

3. 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.

4. To request from the division of state police, from county or municipal police departments and agencies and from any other state or municipal department or agency, or public authority, and the same are hereby authorized to provide, such assistance and data as will enable the board to carry out its functions and duties.

5. To hear and determine all claims for awards filed with the board pursuant to this article, and to reinvestigate or reopen cases as the board deems necessary.

6. To direct medical examination of victims.

7. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member or employee thereof. A subpoena issued under this subdivision shall be regulated by the civil practice law and rules.

8. To take or cause to be taken affidavits or depositions within or without the state.

9. To render each year to the governor and to the legislature a written report of its activities.

Added L.196, c. 894, § 1.

## Historical Note

*Effective Date; Application.* See note preceding section 620 in this article.

§ 624<sup>4</sup> *Eligibility*

1. Except as provided in subdivision two of this section, the following persons shall be eligible for awards pursuant to this article:

(a) a victim of a crime;

(b) a surviving spouse, parent or child of a victim of a crime who died as a direct result of such crime; and

(c) any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime.

2. A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

Added L.1966, c. 894, § 1; amended L.1968, c. 661.

## Historical Note

*1968 Amendment.* Subd. 1. L.1968, c. 661, eff. June 16, 1968, in par. (b), inserted "parent."

*Effective Date; Application.* See note preceding section 620 in this article.

§ 625<sup>5</sup> *Filing of claims*

1. A claim may be filed by a person eligible to receive an award, as provided in section six hundred twenty-four of this article, or, if such person is a minor, by his parent or guardian.

<sup>3</sup> Another section 623 is set out in another article 22, ante.

<sup>4</sup> Another section 624 is set out in another article 22, ante.

<sup>5</sup> Another section 625 is set out in another article 22, ante.

2. A claim must be filed by the claimant not later than *ninety days* after the occurrence of the crime upon which such claim is based, or not later than ninety days after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing for a period not exceeding one year after such occurrence.

3. Claims shall be filed in the office of the secretary of the board in person or by mail. The secretary of the board shall accept for filing all claims submitted by persons eligible under subdivision one of this section and alleging the jurisdictional requirements set forth in this article and meeting the requirements as to form in the rules and regulations of the board.

4. Upon filing of a claim pursuant to this article, the board shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within ten days after such notification, such district attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this article until such time as such criminal prosecution has been concluded and shall so notify such district attorney and the claimant. When such criminal prosecution has been concluded, such district attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to section six hundred thirty of this article.

Added L.1966, c. 894, § 1; amended L.1969, c. 726.

#### Historical Note

1969 Amendment. Subd. 4. L.1969, c. 726, eff. May 22, 1969, in sentence beginning "Nothing in this", substituted "six hundred thirty" for "six hundred twenty-nine."

Effective Date; Application. See note preceding section 620 in this article.

#### § 626\* *Minimum allowable claim*

No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars or has lost at least two continuous weeks earnings or support. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based.

Added L.1966, c. 894, § 1.

#### Historical Note

Effective Date; Application. See note preceding section 620 in this article.

#### § 627. *Determination of claims*

1. A claim when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a crime, shall be considered together by a single board member.

2. The board member to whom such claim is assigned shall examine the papers filed in support of such claim. The board member shall thereupon cause an investigation to be conducted into the validity of such claim. Such investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which such claim is based.

3. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.

4. The board member to whom a claim is assigned may decide such claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of such papers and such report, he shall order a hearing. At such hearing any relevant evidence, not legally privileged, shall be admissible.

\* Another section 626 is set out in another article 22, ante.

5. After examining the papers filed in support of such claim and the report of investigation, and after a hearing, if any, the board member to whom such claim was assigned shall make a decision either granting an award pursuant to section six hundred thirty-one of this article or deny the claim.

6. The board member making a decision shall file with the secretary a written report setting forth such decision and his reasons therefor. The secretary shall thereupon notify the claimant and furnish him a copy of such report.

Added L.1966, c. 894, § 1.

#### Historical Note

Effective Date; Application. See note preceding section 620 in this article.

#### § 628. *Consideration of decisions by full board*

1. The claimant may, within thirty days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the board for consideration of such decision by the full board.

2. Any member of the board may, within thirty days after the filing of such report, make an application in writing to the board for consideration of such decision by the full board.

3. Upon receipt of an application pursuant to subdivision one or two of this section, the board shall review the record and affirm or modify the decision of the board member to whom the claim was assigned. The action of the board in affirming or modifying such decision shall be final. The board shall file with the secretary of the board a written report setting forth its decision, and if such decision varies in any respect from the report of the board member to whom the claim was assigned setting forth its reasons for such decision. If the board receives no application pursuant to subdivision one or two of this section the decision of the board member to whom the claim was assigned shall become the final decision of the board.

4. The secretary of the board shall promptly notify the claimant, the attorney general and the comptroller of the final decision of the board and furnish each with a copy of the report setting forth such decision.

Added L.1966, c. 894, § 1.

#### Historical Note

Effective Date; Application. See note preceding section 620 in this article.

#### § 629. *Judicial review*

1. Within thirty days after receipt of the copy of the report containing the final decision of the board, the attorney general may, if in his judgment the award is improper or excessive, commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board. Within thirty days after receipt of the copy of such report, the comptroller may, if in his judgment the award is improper or excessive, request the attorney general to commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board in which event the attorney general shall commence such a proceeding. Such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court. There shall be no other judicial review of any decision made or action taken by the board, by a member of the board or by the secretary of the board with respect to any claim.

2. Any such proceeding shall be commenced by the service of notice thereof upon the claimant and the board in person or by mail.

Added L.1966, c. 894, § 1.

#### Historical Note

Effective Date: Application. See note preceding section 620 in this article.

#### § 630. *Emergency awards*

Notwithstanding the provisions of section six hundred twenty-seven of this article, if it appears to the board member to whom a claim is assigned, prior to taking action upon such claim, that (a) such claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, such board member may make an

emergency award to the claimant pending a final decision in the case, provided, however, that (a) the amount of such emergency award shall not exceed five hundred dollars, (b) the amount of such emergency award shall be deducted from any final award made to the claimant, and (c) the excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the board.

Added L.1966, c. 894, § 1.

#### Historical Note

*Effective Date; Application.* See note preceding section 620 in this article.

#### § 631. Awards

1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to, or death of, the victim, and (c) police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury.

3. Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this article, be in an amount equal to the actual loss sustained, provided, however, that no such award shall exceed one hundred dollars for each week of lost earnings or support, and provided further that the aggregate award for such loss shall not exceed fifteen thousand dollars. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the board among the claimants.

4. Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury (a) from or on behalf of the persons who committed the crime, (b) under insurance programs mandated by law, (c) from public funds, (d) under any contract of insurance wherein the claimant is the insured or beneficiary, (e) as an emergency award pursuant to section six hundred thirty of this article.

5. In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the board or board member, as the case may be, may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

6. If the board or board member, as the case may be, finds that the claimant will not suffer serious financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this article to meet such loss of earnings, support or out-of-pocket expenses, the board or board members shall deny an award. In determining such serious financial hardship, the board or board member shall consider all of the financial resources of the claimant. The board shall establish specific standards by rule for determining such serious financial hardship.

Added L.1966, c. 894, § 1; amended L.1970, c. 376.

#### Historical Note

*1970 Amendment.* Subd. 4. L.1970, c. 376, eff. May 1, 1970, inserted cl. (d) and redesignated former cl. (d) as (e).

*Effective Date; Application.* See note preceding section 620 in this article.

§ 632. *Manner of payment*

The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

Added L.1966, c. 894, § 1.

Historical Note

*Effective Date; Application.* See note preceding section 620 in this article.

§ 633. *Confidentiality of records*

The record of a proceeding before the board or a board member shall be a public record; provided, however, that any record or report obtained by the board, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

Added L.1966, c. 894, § 1.

Historical Note

*Effective Date; Application.* See note preceding section 620 in this article.

§ 634. *Subrogation*

Acceptance of an award made pursuant to this article shall subrogate the state, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made.

Added L.1966, c. 894, § 1.

Historical Note

*Effective Date; Application.* See note preceding section 620 in this article.

Library References

States ⇨192. C.J.S. States § 217 et seq.

§ 635. *Severability of provisions*

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby.

Added L.1966, c. 894, § 1.

Historical Note

*Effective Date; Application.* See note preceding section 620 in this article.

Library References

Statutes ⇨64(2). C.J.S. Statutes § 96.

McKINNEY'S CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

BOOK 18—EXECUTIVE LAW

CUMULATIVE ANNUAL POCKET PART, FOR USE IN 1976-1977

Replacing prior pocket part in back of volume

ARTICLE 22—CRIME VICTIMS COMPENSATION BOARD

Sec.

625-a. Information relative to claims; application forms [New].

§ 632. *Crime victims compensation board*

1. There is hereby created in the executive department a board, to be known as the crime victims compensation board. Such board shall consist of five members, no more than three of whom shall belong to the same political party, who shall be appointed by the governor by and with the advice and consist of the sen-

ate. Three of the members appointed by the governor shall have been admitted to practice law in the state of New York for not less than five years next preceding their appointment.

2. The term of office of each such member shall be seven years. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

[See main volume for text of 3 and 4]

As amended L.1973, c. 87, § 1.

*1973 Amendment.* Subd. 1. L.1973, c. 87, § 1, eff. Mar. 20, 1973, increased the membership from 3 to 5, and substituted provisions that 3 of the members shall have been admitted to practice law in New York for 5 years preceding their appointment, in lieu of requiring all members to have been admitted 10 years prior to appointment.

Subd. 2. L.1973, c. 87, § 1, eff. Mar. 20, 1973, deleted provisions relating to the staggered terms of the members who were first appointed.

*Initial Terms of Two Additional Members.* Section 2 of L.1973, c. 87, eff. Mar. 20, 1973, provided: "The two additional members of the crime victims compensation board to be appointed pursuant to subdivision one of section six hundred twenty-two of the executive law [this section] as amended by this act, shall, notwithstanding the provisions of subdivision two of section six hundred twenty-two of the executive law as amended by this act, be appointed for initial terms which shall expire as follows: one on February twenty-eight, nineteen hundred seventy-eight and one on February twenty-eight, nineteen hundred eighty."

#### § 623. Powers and duties of the board

The board shall have the following powers and duties:

[See main volume for text of 1 to 9]

10. To contract for counseling services and to make such services available without charge to eligible persons as defined in section six hundred twenty-four of this article who are suffering traumatic shock as the result of a crime.

As amended L.1976, c. 952, § 2.

*1976 Amendment.* Subd. 10. L.1976, c. 952, § 2, eff. Jan. 1, 1977, added subd. 10.

#### § 624. Eligibility

##### 1. FAMILY MEMBER OF PERPETRATOR

Under subd. 2 of this section rendering member of family of perpetrator or accomplice ineligible to receive financial assistance for criminal injury, husband could not receive award for injuries sustained when shot by his wife, who had been living separate and apart. *Welsing v. Vau Rensselaer*, 1974, 79 Misc.2d 1023, 362 N.Y.S.2d 126.

#### § 625. Filing of claims

1. A claim may be filed by a person eligible to receive an award, as provided in section six hundred twenty-four of this article, or, if such person is under the age of eighteen years or an incompetent, by his relative, guardian, committee, or attorney.

2. A claim must be filed by the claimant not later than one year after the occurrence of the crime upon which such claim is based, or not later than one year after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing for a period not exceeding two years after such occurrence.

[See main volume for text of 3 and 4]

As amended L.1972, c. 287, § 1; L.1974, c. 906, § 3; L.1976, c. 952, § 1.

*1976 Amendment.* L.1976, c. 952, § 1, eff. Jan. 1, 1977, substituted "one year" for "ninety days" in two instances, and "two years" for "one year."

*1974 Amendment.* Subd. 1. L.1974, c. 906, § 3, eff. Sept. 1, 1974, substituted "person is under the age of eighteen years or an incompetent" for "person is a minor or incompetent."

*1972 Amendment.* Subd. 1. L.1972, c. 287, § 1, eff. May 15, 1972, substituted "relative" for "parent or", and inserted "or incompetent" and "committee, or attorney."

#### 1. TIME OF FILING

Petitioner's claim for crime victim's compensation was barred from consideration by the Crime Victims Compensation Board where it was not made until some three and one-half years after the occurrence, *Johnsen v. Nissman*, 1972, 39 A.D. 2d 578, 331 N.Y.S.2d 796.

Crime victim's compensation awards are a matter of grace, petitioner has no enforceable legal right and no cause of action accrues; thus, the claim must be made within 90 days after the occurrence even if the victim is under the age of 21 years, insane or imprisoned on a criminal charge at the time of the occurrence. *Id.*

A "notice of claim" could not be filed by infant victim of crime with Crime Victims Compensation Board more than one year after occurrence of the crime, notwithstanding claimant's infancy. *Hayes v. Van Rensselaer*, 1972, 69 Misc.2d 315, 329 N.Y.S.2d 900.

#### § 625-a. Information relative to claims; application forms

1. Every police station, precinct house, any appropriate location where a crime may be reported and any location required by the rules and regulations of the board shall have available informative booklets, pamphlets and other pertinent written information, to be supplied by the board, relating to the availability of crime victims compensation including all necessary application blanks required to be filed with the board. Every victim who reports a crime in any manner whatsoever shall be supplied by the person receiving the report with information and application blanks, if the address of the victim and his name are supplied.

2. No cause of action of whatever nature or kind arising out of a failure to give or receive the notice required by this section shall accrue to any person against the state or any of its agencies or local subdivisions, or, any police officer or other agent, servant or employee thereof, nor shall any such failure be deemed or construed to affect or alter any time limitation or other requirement contained in this article for the filing or payment of a claim hereunder.

Added L.1976, c. 952, § 7.

*Effective Date.* Section effective Jan. 1, 1977, pursuant to L.1976, c. 952, § 8.

#### § 626. Out-of-pocket loss; definition

Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based.

As amended L.1976, c. 952, § 3.

*1976 Amendment.* L.1976, c. 952, § 3, eff. Jan. 1, 1977, deleted provisions relating to a minimum out-of-pocket loss of \$100 or at least 2 continuous weeks earnings or support.

#### § 627. Determination of claims

##### I. SUBROGATION

That motorist, whose vehicle was allegedly involved in hit-and-run automobile accident, was acquitted of assault in second degree and of reckless assault after state made payments to person injured in accident under this article, which prohibits payments to victims injured by motor vehicles unless injuries were intentionally inflicted, did not preclude state from any right of subrogation against motorist on ground that such acquittals indicated that injuries were not intentionally inflicted. *Utica Mut. Ins. Co. v. Zamenick*, 1973, 76 Misc. 2d 1, 350 N.Y.S.2d 329.

#### § 628. Consideration of decisions by board

1. The claimant may, within thirty days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the chairman of the board for consideration of such decision by the board.

2. Any member of the board may, within thirty days after the filing of such report, make an application in writing to the chairman of the board for consideration of such decision by the board.

3. Upon receipt of an application pursuant to subdivision one or two of this section, the chairman of the board shall designate three members of the board not including the board member who made the decision to review the record and affirm or modify the decision of the board member to whom the claim was assigned. For the purpose of such review the three members of the board so designated shall constitute the board. The action of the board in affirming or modifying such decision shall be the final decision of the board. The board shall file with the secretary of the board a written report setting forth its decision, and if such decision varies in any respect from the report of the board member to whom the claim was assigned setting forth its reasons for such decision. If the chairman of the board receives no application pursuant to subdivision one or two of this section, the decision of the board member to whom the claim was assigned shall become the final decision of the board.

4. The secretary of the board shall promptly notify the claimant, the attorney general and the comptroller of the final decision of the board and furnish each with a copy of the report setting forth such decision.

As amended L.1973, c. 491, § 1; L.1976, c. 952, § 4.

*1976 Amendment.* Subd. 3, L. 1976, c. 952, § 4, eff. Jan. 1, 1977, in sentence beginning "The action of," substituted "the final decision of the board" for "final."

*1973 Amendment.* L.1973, c. 491, § 1, eff. June 5, 1973, in the section catchline struck out "full" preceding "board," in subs. 1 and 2 substituted "chairman of the board for consideration of such decision by the board" for "board for consideration of such decision by the full board", and in subd. 3 authorized the chairman of the board to perform the enumerated functions in place of the board and set forth the provisions relating to designation of members of the board for review purposes.

#### § 629. *Judicial review*

1. Within thirty days after receipt of the copy of the report containing the final decision of the board, the attorney general may, if in his judgment the award is illegal or excessive, commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board. Within thirty days after receipt of the copy of such report, the comptroller may, if in his judgment the award is illegal or excessive, request the attorney general to commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board in which event the attorney general shall commence such a proceeding. Such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court. Any claimant aggrieved by a final decision of the board may commence a proceeding to review that decision pursuant to article seventy-eight of the civil practice law and rules.

2. Any such proceeding shall be commenced by the service of notice thereof upon the claimant and the board in person or by mail.

As amended L.1976, c. 952, § 5.

*1976 Amendment.* Subd. 1. L.1976, c. 952, § 5, eff. Jan. 1, 1977, substituted "illegal or excessive" for "improper or excessive" in two instances, and provisions authorizing further review by an article 78 proceeding, for provisions which proscribed further review.

#### *I. Appellants within section*

Alleged criminal has no standing on appeal from determination of Crime Victims Compensation Board. *Utica Mut. Ins. Co. v. Zamenick*, 1973, 76 Misc.2d 1, 320 N.Y.S.2d 329.

#### § 631. *Awards*

1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to, or death of, the victim, and (c) police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than one week after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury.

3. Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this article, be in an amount equal to the actual loss sustained, provided, however, that no such award shall exceed two hundred fifty dollars for each week of lost earnings or support, and provided further that the aggregate award for such loss shall not exceed twenty thousand dollars. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the board among the claimants.

4. Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury (a) from or on behalf of the person who committed the crime, (b) under insurance programs mandated by law, (c) from public funds, (d) under any contract of insurance wherein the claimant is the insured or beneficiary, (e) as an emergency award pursuant to section six hundred thirty of this article.

[See main volume for text of 5 and 6]

As amended L.1974, c. 392, § 1; L.1976, c. 952, § 6.

1976 Amendment. Subd. 1. L.1976, c. 952, § 6, eff. Jan. 1, 1977, substituted "one week" for "forty-eight hours."

Subd. 3. L.1976, c. 952, § 6, eff. Jan. 1, 1977, substituted "two hundred fifty" for "one hundred thirty-five" and "twenty thousand" for "fifteen thousand."

Subd. 4. L.1976, c. 952, § 6, eff. Jan. 1, 1977, purported to amend subdivision 4 but it effected no change.

1974 Amendment. Subd. 3. L.1974, c. 392, § 1, eff. Sept. 1, 1974, substituted "one hundred thirty-five dollars" for "one hundred dollars."

§ 632. *Manner of payment*

1. The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

2. Where a person entitled to receive an award is a person under the age of eighteen years or an incompetent, the award may be paid to a relative, guardian, committee, or attorney of such person on behalf of and for the benefit of such person. In such case the payee shall be required to file a periodic accounting of the award with the board and to take such other action as the board shall determine is necessary and appropriate for the benefit of the person under the age of eighteen years or the incompetent.

As amended L.1972, c. 287, § 2; L.1974, c. 906, § 4.

1974 Amendment. Subd. 2. L.1974, c. 906, § 4, eff. Sept. 1, 1974, substituted "a person under the age of eighteen years or an incompetent" for "a minor or incompetent", and "the person under the age of eighteen years or the incompetent" for "the minor or incompetent."

1972 Amendment. L.1972, c. 287, § 2, eff. May 15, 1972, numbered existing provisions as subd. 1, and added subd. 2.

NORTH DAKOTA

VOLUME II

LAWS PASSED AT THE FORTY-FOURTH SESSION OF THE LEGISLATIVE ASSEMBLY  
OF THE STATE OF NORTH DAKOTA

CHAPTER 587

Senate Bill No. 2289 (Thane, Naaden, Erdman, Reiten)

UNIFORM CRIME VICTIMS REPARATIONS ACT

An Act to establish a state-financed program of reparations to persons who suffer personal injury and to dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or apprehend criminals; providing a penalty; and providing an appropriation.

*Be it enacted by the legislative assembly of the State of North Dakota:*

Section 1. Short Title. This Act shall be known as the Uniform Crime Victims Reparations Act.

Section 2. Legislative Purpose and Intent. It is the intent of the legislative assembly of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislative assembly's intention to provide compensation in the amount of expenses actually suffered as a direct result of the criminal acts of other persons.

Section 3. Definitions. As used in this Act, the words and phrases in this section have the meanings indicated:

1. "Board" means the workmen's compensation bureau.
2. "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.
3. "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:
  - a. The offender;
  - b. 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 make them excess or secondary to benefits under this Act;
  - c. Social security, medicare, and medical;
  - d. State-required temporary nonoccupational disability insurance;
  - e. Workmen's compensation;
  - f. Wage continuation programs of any employer;
  - g. Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct; or
  - h. A contract providing prepaid hospital and other health care services, or benefits for disability.
4. "Criminally injurious conduct" means conduct that:
  - a. Occurs or is attempted in this state;
  - b. Poses a substantial threat of personal injury or death; and
  - c. 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 arising out of the ownership maintenance, or use of a motor vehicle except when intended to cause personal injury or death.
5. "Dependent" means a natural person wholly or partially dependent upon the victim for care or support and includes a child of the victim born after his death.
6. "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. Non-economic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.
  - a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of five hundred dollars 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 nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.
  - b. "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.

c. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

d. "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to his dependents, not including services they would have received from the decedent if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the decedent's death.

e. "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 dependents avoided by reason of decedent's death and not subtracted in calculating dependent's economic loss.

f. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.

g. "Victim" means a person who suffers personal injury or death as 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 apprehend a person suspected of engaging in criminally injurious conduct.

Section 4. Award of Reparations. The board shall award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

Section 5. Powers and Duties of the Board. In addition to the powers and duties specified elsewhere in this Act, the board has the following powers and duties:

1. The duty to establish and maintain a principal office and other necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation.
2. The duty to adopt by rule a description of the organization of the board stating the general method and course of operation of the board.
3. The duty to adopt rules to implement this Act, including rules for the allowance of attorney's fees for representation of claimants; and to adopt rules providing for discovery proceedings, including medical examination consistent with sections 10 and 11 of this Act. Rules shall be statements of general applicability which implement, interpret, or prescribe policy, or describe the procedure or practice requirements of the board.
4. The duty to prescribe forms for applications for reparations.
5. The duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.
6. 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 claimant qualifies for reparations. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this Act.
7. 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 receive relevant, nonprivileged evidence.
8. The power to take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge.
9. The duty to make available for public inspection all board decisions and opinions, rules, written statements of policy, and interpretations formulated, adopted, or used by the board in discharging its functions.
10. The duty to *publicize* widely the availability of reparations and information regarding the filing of claims therefor.

Section 6. Application for Reparations—Awards—Limitations on Awards.

1. An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the board.
2. 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.
3. 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 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.

4. Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the board finds there was good cause for the failure to report within that time.

5. 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.

6. Reparations otherwise payable to a claimant shall be reduced or denied:

a. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources; and

b. To the extent the board deems reasonable because of the contributory misconduct of the claimant or of a victim through which he claims.

7. Reparations may not be awarded if the economic loss is less than one hundred dollars.

8. Reparations for work loss, replacement services loss, dependent's replacement services loss may not exceed two hundred dollars per week.

9. 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 twenty-five thousand dollars in the aggregate.

**Section 7. Notice to Attorney General—Function of Attorney General.** Promptly upon a 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.

**Section 8. Informal Disposition—Contested Case.**—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.

**Section 9. Contested Cases—Notice—Hearing—Records.** In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

1. The notice of hearing shall include:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the the statutes and rules involved; and

d. 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.

2. 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 interest.

3. A record of the proceedings shall be made and shall include:

a. The application and supporting documents;

b. All pleadings, motions, and intermediate rulings;

c. Evidence offered, received, or considered;

d. A statement of matters officially noticed;

e. All staff memoranda or data submitted to the board in connection with its consideration of the case; and

f. Offers of proof, objections, and rulings.

4. 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.

5. 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 10. Evidence of Physical Condition.**

1. 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.

2. 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 examination 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 the person by whom it is to be made, and shall 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 examinations of the same conditions.

3. 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.

4. The board may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which reparations are claimed.

**Section 11. 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 the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the board may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a medical or physical examination.

**Section 12. Award and Payment of Reparations.**

1. An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.

2. The board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under section 16 of this Act.

**Section 13. Attorney's Fees.** As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

**Section 14. Subrogation—Actions—Allocation of Expenses.**

1. If reparations are awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is, or, if readily available to the victim or claimant, would be, a collateral source.

2. As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the board prior written notice, the board shall promptly:

a. Join in the action as a party plaintiff to recover reparations awarded;

b. Require the claimant to bring the action in his individual name, as a trustee in behalf of the state, to recover reparations awarded; or

c. Reserve its rights and do neither in the proposed action.

If, as requested by the board, the claimant brings the action as trustee and recovers reparations awarded by the board, he may deduct from the reparations recovered in behalf of the state the reasonable expenses, including attorney's fees, allocable by the court for that recovery.

3. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment shall be allocated between them

in proportion to the amounts indicated. In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

**Section 15. Manner of Payment—Nonassignability and Exemptions.**

1. The board may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection 2, the part of an award that may not be paid in a lump sum shall be paid in installments.

2. At the instance of the claimant, the board may commute future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the board that:

a. The award in a lump sum will promote the interests of the claimant; or

b. The present value of all future economic loss other than allowable expense, does not exceed one thousand dollars.

3. An award for future economic loss payable in installments may be made only for a period as to which the board can reasonably determine future economic loss. The board may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.

4. An award is not subject to execution, attachment, garnishment, or other process, except that an award for allowable 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.

5. An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable, except:

a. An assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or

b. An assignment of a right to reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

**Section 16. Tentative Awards.** If the board determines that the claimant will suffer financial hardship unless a tentative award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from, the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

**Section 17. Reconsideration and Review of Board Decisions.**

1. 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.

2. The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

3. A final decision of the board is subject to judicial review on appeal by the claimant, the attorney general, or the offender in the same manner and to the same extent as a decision of the district court.

**Section 18. Reports.** The Board shall prepare and transmit annually to the governor and the legislative assembly a report of its activities, including the name of the claimant, a brief description of the facts, and the amount of reparations awarded in each case, and a statistical summary of claims and awards made and denied.

**Section 19. Uniformity of Application and Construction.** 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 20. 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 21. Penalty.** Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor

and upon conviction shall, in addition to serving any punishment as provided by law, forfeit any compensation paid under this Act.

Section 22. Appropriation. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000.00, or so much thereof as may be necessary, to the workmen's compensation bureau for the purposes of carrying out the provisions of this Act for the biennium beginning July 1, 1975, and ending June 30, 1977.

Approved March 27, 1975.

OHIO

PAGE'S OHIO REVISED CODE, ANNOTATED

1974 SUPPLEMENT FOR USE IN 1975

TITLE 25: COURTS—APPELLATE

TITLE 27: COURTS—GENERAL PROVISIONS—SPECIAL REMEDIES

[PERSON INJURED OR KILLED WHILE ASSISTING CRIME VICTIM]

§ 2743.31 [Definitions.]

As used in sections 2743.31 to 2743.35 of the Revised Code:

(A) "Private citizen" means any natural person other than a law enforcement officer while on active duty or person while on active duty whose employment includes the duty to enforce the criminal laws of this state acting within the course and scope of such employment.

(B) "Personal injury" means actual bodily harm.

(C) "Dependents" means such relatives of a person as were wholly or partially dependent upon his income at the time of his death and includes any child of such person born after his death.

*History: 135 v H 185. Eff 1-1-75.*

The effective date of H 185 is set by section 2 of the act.

Referendum deadline, 9-30-74.

§ 2743.32 [Determine and award compensation.]

The court of claims established in section 2743.03 of the Revised Code has jurisdiction to determine and award compensation under section 2743.31 to 2743.35 of the Revised Code for personal injury or death of a private citizen incurred in preventing or attempting to prevent the commission of crime against the person or property of another, in apprehending a suspected criminal, or in assisting a police officer in preventing a crime or apprehending a suspected criminal. No such jurisdiction exists where a private citizen is himself one of the victims of the crime against the person he is assisting.

*History: 135 v H 185. Eff 1-1-75.*

The effective date of H 185 is set by section 2 of the act.

Referendum deadline, 9-30-74.

§ 2743.33 [Order payment of compensation]

(A) In any case in which a private citizen is injured or killed by an incident specified in section 2743.32 of the Revised Code, the court of claims may order the payment of compensation:

(1) To or for the benefit of such injured person;

(2) In the case of personal injury to such person, to any other person responsible for his maintenance who has suffered pecuniary loss or incurred expenses as a result of such injury;

(3) In the case of death of such person, to or for the benefit of any one or more of the dependents of such deceased person.

(B) The court of claims may order subject to the limitation of section 2743.34 of the Revised Code, the payment of compensation under sections 2743.31 to 2743.35 of the Revised Code, having determined:

(1) The actual and reasonable expenses incurred by or on behalf of a private citizen injured or killed by an incident specified in section 2743.32 of the Revised Code;

(2) Earnings actually lost by such person.

In determining the amount of compensation to be allowed by order, the court shall take into consideration amounts received or receivable from any source or

sources by the applicant or his dependents as a result of the incident giving rise to the application. No compensation ordered shall result in such person or his dependents receiving a total amount, including payments from any insurance program, from the veterans administration, or pursuant to the "Social Security Act." 49 Stat. 620 (1935), 42 U.S.C. 301 as amended, in excess of totals established by the court of claims pursuant to divisions (B) (1) and (2) of this section.

*History: 135 v H 185. Eff. 1-1-75.*

The effective date of H 185 is set by section 2 of the act.  
Referendum deadline, 9-30-74.

§ 2743.34 [Time of report after injury or death]

No order for the payment of compensation shall be made under section 2743.33 of the Revised Code unless the application has been made within two years after the date of the personal injury or death, and the personal injury or death was reported to the police within five days of its occurrence or, if it could not reasonably have been reported within such period, within five days of the time when a report could reasonably have been made.

No compensation shall be awarded in an amount in excess of ten thousand dollars and all payments shall be made pursuant to Chapter 2743. of the Revised Code.

*History: 135 v H 185. Eff. 1-1-75.*

The effective date of H 185 is set by section 2 of the act.  
Referendum deadline, 9-30-74.

§ 2743.35 [State subrogated to cause of action]

Whenever an order for the payment of compensation for personal injury or death is or has been made under sections 2743.31 to 2743.35 of the Revised Code, the state shall, upon payment of the amount of the order, be subrogated to the cause of action of the applicant against the person or persons for the amount of the damages sustained by the applicant and paid by order of the court of claims.

*History: 135 v H 185. Eff. 1-1-75.*

The effective date of H 185 is set by section 2 of the act.  
Referendum deadline, 9-30-74.

PENNSYLVANIA

PURDON'S PENNSYLVANIA LEGISLATIVE SERVICE

SESSION OF 1976, 160TH REGULAR SESSION, CONVENED JANUARY 6, 1976

CRIME VICTIM'S COMPENSATION BOARD

ACT NO. 139

S.B.N.O. 153

An Act amending the act of April 9, 1929 (P.L. 177, No. 175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," creating the Crime Victim's Compensation Board, prescribing its powers and duties, providing for

filing, consideration and payments of claims to persons who are victims of crimes, their dependents and survivors, providing for appeals.

*The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:*

**Section 1.**

As much as applies to the Department of Justice in section 202, act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929," amended July 31, 1968 (P.L. 754, No. 235), is amended to read:

**Section 202. Departmental Administrative Boards, Commissions, and Offices**

The following boards, commissions, and offices are hereby placed and made departmental administrative boards, commissions, or offices, as the case may be, in the respective administrative departments mentioned in the preceding section, as follows:

\* \* \*

In the Department of Justice.

Board of Pardons,  
 Crime Victim's Compensation Board,  
 Board of Commissioners on Uniform State Laws,  
 Pennsylvania Crime Commission,  
 Board of Trustees of State Correctional Institution at Philadelphia,  
 Board of Trustees of State Correctional Institution at Pittsburgh,  
 Board of Trustees of State Correctional Institution at Rockview,  
 Board of Trustees of State Correctional Institution at Graterford,  
 Board of Trustees of State Correctional Institution at Huntingdon,  
 Board of Trustees of State Correctional Institution at Camp Hill,  
 Board of Trustees of State Correctional Institution at Muncy.

\* \* \*

All of the foregoing departmental administrative boards and commissions shall be organized or reorganized as provided in this act.

**Section 2.**

The act is amended by adding sections to read:

**Section 477. Definitions**

So far as it relates to the crime victim's compensation provisions, the following terms shall be defined as:

"Board" means the Crime Victim's Compensation Board.

"Claimant" means the person filing a claim pursuant to this act.

"Crime" means an act committed in Pennsylvania which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime as defined in and proscribed by Title 18 of the "Pennsylvania Consolidated Statutes," (relating to crimes and offenses) or other penal law of the Commonwealth: Provided, however, That no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this act unless such injury was intentionally inflicted through the use of a motor vehicle.

"Family," when used in reference to a person, shall mean (i) anyone related to such person within the third degree of consanguinity or affinity, (ii) anyone maintaining a common-law relationship with such person, or (iii) anyone residing in the same household with such person.

"Intervenor" shall mean a person who goes to the aid of another and suffers bodily injury or death as a direct result of acting not recklessly to prevent the commission of a crime, or to lawfully apprehend a person reasonably suspected of having committed such crime, or to aid the victim of such crime.

"Out-of-pocket loss" means the unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care and treatment rendered in accordance with a religious method of healing as approved by the board, or other services reasonably necessary as a result of the injury upon which the claim is based and for which the claimant either has paid or is liable. In no case shall property damages or compensation for pain and suffering be included.

"Victim" shall mean a person, other than the alleged offender, who suffers bodily injury or death as a direct result of a crime.

**Section 477.1. Crime Victim's Compensation Board**

(a) There is hereby created a departmental administrative board for the administration of this act, which shall be known as the Crime Victim's Compensa-

tion Board. Such board shall consist of three members no more than two of whom shall belong to the same political party, who shall be appointed by the Governor by and with the consent of a majority of the Senate.

(b) The term of office of each member shall be six years, except that the members first appointed shall serve for terms of six years, four years and two years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(c) Each member of the board shall be eligible for reappointment and any member of the board may be removed by the Governor for inefficiency, neglect of duty, or malfeasance in office.

(d) The Governor shall designate one member of the board as chairman thereof, to serve as such at the pleasure of the Governor.

(e) The members of the board shall devote their full time and capacity to their duties. The members of the board shall receive an annual starting salary of twenty-five thousand dollars (\$25,000). Thereafter they shall receive an annual salary to be fixed by the Executive Board of the Commonwealth within the amount made available by appropriation. The chairman shall receive five hundred dollars (\$500) additional compensation per annum.

#### *Section 477.2. Powers and Duties of Board*

The board shall have the following powers and duties:

(a) To establish and maintain a principal office in or near Harrisburg and such other offices within the Commonwealth as it may deem necessary.

(b) To appoint a secretary, counsel, clerks and such other employees and agents as it may deem necessary, fix their compensation within the limits provided by law, and prescribe their duties.

(c) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this act, including rules for the approval of attorney's fees for representation before the board or before the Commonwealth Court upon judicial review as provided for in section 477.7 of this act. Awards of the attorney's fees shall be in addition to awards made to victims. Awards of attorney's fees shall in no case exceed fifteen per centum of the award to the victim or victims. It shall be unlawful for an attorney to contract for or receive any sum larger than the amount allowed.

(d) To request from the Pennsylvania State Police, from any county, municipal or township police departments and agencies and from any other State, municipal or township department or agency, or public authority, and the same are hereby authorized to provide such assistance and data as will enable the board to carry out its function and duties.

(e) To hear and determine all claims for awards filed with the board pursuant to this act, and to reinvestigate or reopen cases as the board deems necessary.

(f) To direct medical examinations of victims.

(g) To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this section may be delegated by the board to any member thereof.

(h) To take or cause to be taken affidavits or depositions within or without the State.

(i) To render each year to the Governor and to the General Assembly a written report of its activities. In its third annual report and in every third annual report thereafter, the board, upon investigation and study, shall include its findings and recommendations with respect to the limits on compensation. The investigation and study shall include but not be limited to an audit by the Auditor General or an independent accounting firm of the amounts paid to each person compensated so as to avoid duplications, other possible errors, or fraud.

(j) To arrange with the heads of other State agencies for the performance of any of its functions under this act with or without reimbursement and, with the approval of the Governor, delegate and authorize the redelegation of any of its powers under this act.

(k) To establish a program to assure extensive and continuing publicity for the provisions relating to compensation under this act, including information on the right to file a claim, the scope of coverage, and procedures to be utilized incident thereto.

#### *Section 477.3. Persons Eligible for Compensation*

(a) Except as provided in subsection (b) of this section, the following persons shall be eligible for compensation:

(1) A victim.

- (2) An intervenor.
- (3) A surviving spouse, parent or child of a deceased victim or intervenor.
- (4) Any other person dependent for his principal support upon a deceased victim or intervenor.

(b) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive compensation with respect to such claim. A member of the family of the person who allegedly committed the crime shall not be eligible under any circumstances.

(c) A person who is not a resident of Pennsylvania at the time of occurrence of the crime upon which the claim is based, shall be eligible for compensation only if the law of the state of which he is a resident at the time of the occurrence of the crime upon which the claim is based provides for compensation to Pennsylvania residents who are victims of crime in such state.

(d) If the victim's state of residence provides payments to its residents injured in Pennsylvania, primary responsibility for payment to the victim shall rest with the victim's state of residence.

#### *Section 477.4. Filing of Claims for Compensation*

(a) A claim for compensation may be filed by a person eligible for compensation, as provided in section 477.3 of this act, or, if such person is a minor, by his parent or guardian, or if the person entitled to make a claim is mentally incompetent, by his guardian or such other individual authorized to administer his estate.

(b) A claim must be filed not later than one year after the occurrence of the crime upon which the claim is based, or not later than one year after the death of the victim or intervenor: Provided, however, That for good cause the board may extend the time for filing for a period not exceeding two years after such occurrence.

(c) Claims shall be filed in the office of the secretary of the board or by mail.

(d) Upon filing of a claim pursuant to this act, the board shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within ten days after such notification, such district attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this act until such time as a trial verdict has been rendered, and shall so notify such district attorney and claimant. When a trial verdict has been rendered, such district attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to section 477.8 of this act.

#### *Section 477.5. Minimum Allowable Claim*

No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars (\$100) or has lost at least two continuous weeks' earnings or support.

#### *Section 477.6. Determination of Claims*

(a) A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a single crime, shall be considered together by a single board member.

(b) The board member to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(c) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal responsibility or other legal exemption or defense.

(d) The board member to whom a claim is assigned may make his recommendation regarding the claim on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the board member is unable to decide his recommendation upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible.

(e) After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the board member to whom the claim was assigned shall make a recommendation to the entire board either granting an award or denying the claim.

(f) The entire board shall not upon the recommendation of the board member. The board, by majority vote, may affirm, increase, decrease or deny the award. No decision shall be valid unless at least two members are in agreement on the decision.

(g) The secretary of the board shall promptly notify the claimant, the Attorney General and the State Treasurer of the final decision of the board and furnish each with a copy of the report setting forth the decision.

#### *Section 477.7. Judicial Review*

Within thirty days after receipt of a copy of such report containing a final decision of the board, the claimant or the Attorney General may appeal the final decision of the board in the manner provided for appeals from administrative agencies as provided in the act of June 4, 1945 (P.L. 1388, No. 442), known as the "Administrative Agency Law."

#### *Section 477.8. Emergency Awards*

(a) Notwithstanding the provisions of sections 477.6 and 477.9 of this act if it appears to the board member to whom a claim is assigned, that such claim is one with respect to which an award probably will be made, and undue hardship will result to the claimant or claimants if immediate payment is not made, such board member may make an emergency award to the claimant or claimants pending a final decision in the case: *Provided, however,* That the total amount of such emergency award shall not exceed one thousand dollars (\$1,000) per claim, the amount of such emergency award shall be deducted from any final award made to the claimant or claimants, and the excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant or claimants to the board.

(b) The board member to whom a claim was originally assigned may reconsider an emergency award at any time prior to the final decision in the case and increase previous orders for emergency compensation up to the overall limit of one thousand dollars (\$1,000) per claim.

#### *Section 477.9. Awards*

(a) No award shall be made unless the board or board member, as the case may be, finds by a preponderance of the evidence that:

(1) A crime was committed.

(2) The person injured or killed was a victim or intervenor as defined in section 477.

(3) Such crime was promptly reported to the proper authorities; and in no case may an award be made where the record shows that such report was made more than seventy-two hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified. The board, upon finding that any claimant, victim or intervenor has not fully cooperated with all law enforcement agencies, may deny or withdraw any award, as the case may be.

(b) Any award made pursuant to sections 477 to 477.15 shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from such injury. In no case shall the total amount of an award exceed twenty-five thousand dollars (\$25,000).

(c) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this act, be in an amount equal to the actual loss sustained: *Provided, however,* That no such award shall exceed two hundred dollars (\$200) for each week of lost earnings or support: *And, provided further,* That the aggregate award for such loss shall not exceed ten thousand dollars (\$10,000) except that in the case of death of a victim or intervenor, the aggregate award shall not exceed fifteen thousand dollars (\$15,000).

(d) If there are two or more persons entitled to an award as a result of the death of a victim or intervenor, the award shall be apportioned among the claimants.

(e) Any award made pursuant to this act shall be reduced by the amount of any payments received or to be received by the claimant as a result of the

injury (i) from or on behalf of the person who committed the crime, (ii) under any insurance program including those mandated by law, (iii) under any contract of insurance wherein the claimant is the insured beneficiary, (iv) from public funds, or (v) as an emergency award pursuant to section 477.8 of this act.

(f) In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim or intervenor contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or deny the claim altogether in accordance with such determination: Provided, however, That the board or board member, as the case may be, may disregard for this purpose the contribution of the intervenor to his own injury where the record shows that such contribution was attributed to efforts by an intervenor as set forth in section 477.

*Section 477.10. Manner of Payment*

The award shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. No award made pursuant to this act shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. All awards shall be paid by the State Treasurer. An award shall not be considered as compensation taxable as income under Article III, Personal Income Tax, of the act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," added August 31, 1971 (P.L. 362, No. 93) The board shall reconsider, at least annually, every award being paid in installments. The board may reconsider a claim at any time and modify or rescind previous orders for compensation based upon a change in financial circumstances of a victim or one or more of his surviving dependents.

*Section 477.11. Confidentiality of Records*

The record of a proceeding before the board or board member shall be a public record: Provided, however, That any record or report obtained by the board or board member, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

*Section 477.12. Subrogation.*

Payment of an award made pursuant to this act shall subrogate the Commonwealth, to the extent of such payment, to any right of action accruing to the claimant or the victim the intervenor to recover losses resulting from the crime with respect to which the award is made. In such case, the Commonwealth shall be entitled to bring an action against the person or persons causing the personal injuries or death for which said payment was made.

If an amount greater than that paid pursuant to these provisions is recovered and collected in such action, the Commonwealth shall pay the balance to the claimant. The Attorney General shall enforce any subrogation.

*Section 477.13. Restitution*

To the extent that restitution is ordered pursuant to any other existing law, either prior to or subsequent to the making of an award by his board, such restitution shall be paid to the Commonwealth to the extent of the award by the board.

*Section 477.14. Penalty*

Any person who asserts a false claim under the provisions of this act shall be guilty of a misdemeanor of the third degree, and shall forfeit any benefit received, and shall reimburse and repay the Commonwealth for payments received or paid on his behalf pursuant to any of the provisions hereof.

*Section 477.15. Additional Costs*

Where any person after the effective date of this act pleads guilty or nolo contendere to or is convicted of any crime as herein defined, there shall be imposed as additional costs, the sum of ten dollars (\$10). Such sum shall be paid over to the State Treasurer to be deposited in the General Fund. Under no condition shall a political subdivision be held liable for the payment of this sum of ten dollars (\$10).

*Section 3.*

It is the declared purpose of the General Assembly in this act to promote the public welfare by establishing a means of providing for the financial losses of the innocent victims of crime or their surviving dependents and intervenors

acting to prevent the commission of crime or to assist in the apprehension of suspected criminals.

*Section 4.*

This act shall take effect in 120 days, but in no event sooner than July 1, 1976. No claims shall be accepted for crimes which have occurred prior to the effective date of this act.

Approved the 9th day of July A.D. 1976.

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RHODE ISLAND  
1974 POCKET SUPPLEMENT  
GENERAL LAWS  
OF  
RHODE ISLAND, 1956  
Reenactment of 1969—Volume 3  
PUBLISHER'S NOTE

This supplement contains all enactments of a permanent and general nature enacted by the Rhode Island general assembly at the January, 1969 session and through the January, 1974 session. Amendments to laws and new laws to which section numbers of the General Laws have been assigned in the published law have been placed under the section numbers so amended or assigned. In the case of laws to which no numbers have been assigned in the law, the publisher has assigned section numbers to bring such laws within the framework of the General Laws of 1956 (Reenactment of 1969).

Where there have been amendments to or addition of numbered or lettered subsections, paragraphs or clauses, unchanged portions of the section have in some instances been omitted herein. In each such case, omissions are indicated by asterisks, and the unchanged portions may be found in the parent volume hereto.

Where the publisher has changed the wording of any section, either for clarity or to correct an apparent typographical error, the change is indicated in the text by brackets and is explained in a compiler's note. Compiler's notes are also used where any part of a section has been omitted as temporary or for any other reason.

References within laws to other sections of specific laws have been changed to references to sections or chapters of the General Laws.

This supplement contains notes to decisions through Volume 323, second series, of the *Atlantic Reporter*.

*12-24-4. Other agencies.*—Any governmental agency, not falling within the description of those required to submit the quarterly uniform crime report set forth in § 12-24-2, which desires to submit such a report, shall be furnished with the proper forms by the division of state police. When a report is received by the division of state police from a governmental police agency not required to make such report, the information contained therein shall be included within the monthly compilation provided for in § 12-24-3.

*History of Section*

As assigned, P. L. 1969, ch. 39, § 1.

CHAPTER 25—CRIMINAL INJURIES COMPENSATION

Sec.

- 12-25- 1. Title.
- 12-25- 2. Definitions as used in this chapter.
- 12-25- 3. Awarding compensation.
- 12-25- 4. Offenses to which this chapter applies.
- 12-25- 5. Nature of the compensation.
- 12-25- 6. Limitations upon awarding compensation.
- 12-25- 7. Terms of the order.
- 12-25- 8. Attorneys' fees.
- 12-25- 9. Finality of decision.
- 12-25-10. Recovery from offender.

12-25-11. Reports to the senate.

12-25-12. Special indemnity fund for criminal injuries compensation act of 1972.

12-25-1. *Title.*—This chapter may be cited as the “Criminal injuries compensation act of 1972.”

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

*Compiler's Notes.*

This act was assigned as chapter 24 of the general laws, however, since there is already a chapter 24, it is renumbered as chapter 25.

Sections §§ 12-25-1 to 12-25-11 are to take effect 120 days following the enactment of federal legislation entitled “The victims of crime act of 1972” according to P. L. 1972, ch. 254, § 8.

12-25-2. *Definitions as used in this chapter.*—(1) The term “Child” means an unmarried person who is under eighteen (18) years of age and includes a stepchild or an adopted child;

(2) The term “Court” means a special session of the superior court called at least once a year, after the enactment of this chapter, by the presiding justice of the superior court.

(3) The term “Dependent” means a person wholly or partially dependent upon the income of the victim at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and shall include a child of such victim born after the death of such victim.

(4) The term “Personal injury” means actual bodily harm, mental or nervous shock, and a pregnancy resulting from a sexual attack.

(5) The term “Relative” means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, and a spouse's parents;

(6) The term “Victim” means a person who is injured or killed by any act of a person or persons which is within the description of any of the offenses specified in § 12-25-4.

(7) The term “Pecuniary loss” includes:

(A) for personal injury—

(1) medical expenses (including psychiatric care);

(2) hospital expenses;

(3) loss of past earnings; and

(4) loss of future earnings because of a disability resulting from the personal injury; and

(B) for death—

(1) funeral and burial expenses; and

(2) loss of support to the dependents of the victim.

Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage.

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

12-25-3.—*Awarding compensation.*—(a) In any case in which a person is injured or killed by any act of a person or persons which is within the description of the offenses listed in § 12-25-4 the court may upon application by the victim, his guardian, or in the case of his death, by a dependent relative or a legal representative, and after notice to the attorney general and the person or persons accused of committing said offense, order the payment of compensation in accordance with the provisions of this chapter, if such act occurs:

(1) within the physical confines of the state of Rhode Island; or

(2) within the maritime jurisdiction of the state of Rhode Island.

(b) The court may order the payment of compensation:

(1) to or on behalf of the injured person, or his guardian; or

(2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person; or

(3) in the case of the death of the victim, to or for the benefit of the dependents or closest relative of the deceased victim, or any one or more of such dependents or to the legal representative of the victim.

(c) For the purposes of this chapter, a person shall be deemed to have intended an act notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(d) In determining whether to make an order under this section, or the amount of any award, the court may consider any circumstances it determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(e) No order may be made under this section unless the court, supported by substantial evidence, finds that—

- (1) such an act did occur; and
- (2) the injury or death resulted from such act.

(f) An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act, or if such act is the subject of any other legal action. Upon application from the attorney general or the person or persons alleged to have caused the injury or death, the court shall suspend proceedings under this chapter until such application is withdrawn or until a prosecution for an offense arising out of such act is no longer pending or imminent. The court may suspend proceedings in the interest of justice if a civil action arising from such act is pending or imminent.

(g) Upon certification by court, the treasurer of the state of Rhode Island shall pay to the person named in such order the amount specified therein and said payments shall be made from the violent crimes indemnity fund and from any federal [moneys] available.

#### *History of Section.*

As assigned, P.L. 1972, ch. 254, § 1.

#### *Compiler's Note.*

The bracketed word was substituted for the word "monies."

12-25-4. *Offenses to which this chapter applies.*—The court may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death which resulted from offenses in the following categories:

- (1) assault with intent to commit murder, robbery or rape;
- (2) assault with a dangerous weapon;
- (3) assault and battery;
- (4) mayhem;
- (5) indecent assault and battery on a child under thirteen (13) years of age;
- (6) arson, or statutory burning;
- (7) kidnapping;
- (8) robbery, or larceny from the person;
- (9) murder;
- (10) manslaughter;
- (11) rape;
- (12) the abominable and detestable crime against nature, or assault with intent to commit the same;
- (13) and any other crime, excluding motor vehicle offenses, which results in personal injury or death.

#### *History of Section.*

As assigned, P.L. 1972, ch. 254, § 1.

12-25-5. *Nature of the compensation.*—The court may order the payment of compensation under this chapter for—

- (a) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;
- (b) pecuniary loss to the dependents of the deceased victim;
- (c) pain and suffering of the victim; and
- (d) any other pecuniary loss resulting from the personal injury or death of the victim, the amount of which the court finds upon the evidence to be reasonable and necessary.

#### *History of Section.*

As assigned, P.L. 1972, ch. 254, § 1.

12-25-6. *Limitations upon awarding compensation.*—(a) No order for the payment of compensation shall be made under § 12-25-3 unless the application has been made within two (2) years after the date of the personal injury or death.

(b) No compensation shall be awarded under this chapter to the victim, or in the case of death to dependent relatives or to the legal representative, in a total amount in excess of twenty-five thousand dollars (\$25,000).

(c) No compensation shall be awarded if the victim was at the time of the personal injury or death of the victim living with the offender as his wife or her husband or in the situations when the court at its discretion feels unjust enrichment to or on behalf of the offender would result. Compensation under this chapter shall not be awarded to any victim or dependent relative or legal representative if such an award would directly or indirectly inure to the benefit of the offender.

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

12-25-7. *Terms of the order.*—(a) Except as otherwise provided in this section, any order for the payment of compensation under this chapter may be made on such terms as the court deems appropriate.

(b) The court shall deduct from any payments awarded under § 12-25-3 any payments received by the victim or by any of his dependents from the offender or from any person on behalf of the offender, or from the United States (except those received under this chapter), the state of Rhode Island or any state or any of its subdivisions, for personal injury or death compensable under this chapter, but only to the extent that the sum of such payments and any award under this chapter are in excess of the total compensable injuries suffered by the victim as determined by the court.

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

12-25-8. *Attorneys' fees.*—(a) The court shall publish regulations providing for the compensation of attorneys for appearances and efforts connected with application, etc., and shall use the minimum fee schedule of the state of Rhode Island as a guide. At the conclusion of proceedings under this chapter, the attorney representing the applicant shall file a statement with the court setting forth the amount of fee charged in connection with his efforts and services rendered in such proceedings.

(b) After the fee information is filed by an attorney under (a) above, the court may determine, in accordance with such published rules or regulations as it may provide, that such fee charged is excessive. If, after notice to the attorney of this determination, the court and the attorney fail to agree upon a fee, the court may within ninety (90) days after the receipt of the information required by (a) above, petition the bar association of the state of Rhode Island, and the bar association shall determine a reasonable fee for the services rendered by the attorney.

(c) Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be subject to disciplinary action and other appropriate action to be taken by the Bar Association of the state of Rhode Island.

(d) Upon certification by the court to the effect that the fee has been established, the treasurer of the state of Rhode Island shall pay to the attorney named in the certification the amount of the counsel fee which shall be paid from the violent crimes indemnity fund.

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

12-25-9. *Finality of decision.*—The orders and decisions of the court shall be final. However, the court may at any time, on its own motion or on the application of the attorney general, or of the victim or his dependents, or of the offender, vary any order for the payment of compensation made under this chapter in such manner as the court thinks fit, whether as to terms of the order or by increasing or decreasing the amount of the award or otherwise.

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

12-25-10. *Recovery from offender.*—(a) Whenever any person is convicted of an offense and an order for the payment of compensation is or has been made under this chapter for a personal injury or death resulting from the act constituting such offense, the state of Rhode Island may institute an action against such person for the recovery of the whole or any specified part of the compensation in the superior court of the state of Rhode Island in any county, or in the state or federal court of any other state or district in which such person resides or is found.

(b) Process of the superior court for any county in any action under this section may be served by the sheriff of the county thereof. Whenever it appears to the court in which any action under this section is pending that other parties should be brought before the court in such action, the court may cause such other parties to be summoned.

(c) An order for the payment of compensation under this chapter shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

12-25-11. *Reports to the senate.*—The administrator of the superior court shall transmit to the governor and to the legislature annually a report of the activities of the court under this chapter including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded.

*History of Section.*

As assigned, P. L. 1972, ch. 254, § 1.

12-25-12. *Special indemnity fund for criminal injuries compensation act of 1972.*—It is hereby provided that twenty per cent (20%) of all fines and penalties from all criminal charges recovered after the effective date of this section in the district or superior courts of the state of Rhode Island shall be paid into a fund, which shall be called the "Violent crimes indemnity fund," for the purpose of paying the awards decreed by the court (as defined in the "Criminal injuries compensation act of 1972"). It is further provided that all [moneys] in said fund not immediately required for the payment of such awards shall be invested in accordance with chapter 35-10 of the general laws.

*History of Section.*

As assigned, P. L. 1972, ch. 257, § 1.

*Compiler's Notes.*

This section was assigned as § 12-24-12, however, it is renumbered as § 12-25-12. See compiler's note to § 12-25-1.

This section is to take effect 30 days following the enactment of federal legislation entitled "The victims of crime act" according to P. L. 1972, ch. 257, § 2.

The bracketed word was substituted for the word "monies."

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TENNESSEE

HOUSE BILL NO. 518

BY COBB, MILLER (KNOX), BISSELL, BONEB

SUBSTITUTED FOR: SENATE BILL NO. 1339 BY HENRY

AN ACT to provide for monetary compensation to victims of criminal acts committed within the State of Tennessee, to the families and to the dependents of such victims.

*Be it enacted by the General Assembly of the State of Tennessee:*

*Section 1. Short Title*

This Act shall be known and may be cited as the "Criminal Injuries Compensation Act of 1976."

*Section 2. Definitions*

For the purposes of this Act:

(a) "Child" shall mean an unmarried person who is under eighteen (18) years of age, and includes a stepchild or an adopted child.

(b) "Claimant" shall mean any person or persons filing a claim for compensation under this Act on his or their own behalf, the guardian of a victim if the victim is a child, the legal representative of the estate of a deceased victim, or the dependents of the victim.

(c) "Court" shall mean the circuit courts of the State of Tennessee.

(d) "Dependents" shall mean such relatives of a deceased victim as were receiving substantial support or needed services from the victim at the time of the victim's death, and shall include the child of such victim born after his death.

(e) "Family," when used with reference to a person, shall include:

- (1) any person related to such person within the third degree of consanguinity or affinity, or
- (2) any person living in the same household as such person.

(f) "Offender" shall mean a person who has or is alleged to have committed a crime.

(g) "Out of pocket expenses" shall mean unreimbursed or unreimbursable expenditures or indebtedness reasonably incurred for medical care or other services reasonably necessary as a result of the personal injury or death upon which a claim is based.

(h) "Relative" shall mean a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister and a spouse's parents or stepparents.

(i) "Victim" shall mean a person who suffers personal injury or death as a direct and proximate result of any act of a person which is within the description of any of the offenses specified in section 4 of this Act.

### *Section 3. Jurisdiction of Circuit Courts*

(a) The circuit courts of the various circuits of the state of Tennessee shall, pursuant to the provisions of this act, have jurisdiction to determine and award compensation to a claimant.

(b) Such claims shall be brought in the circuit court which has territorial jurisdiction of the county in which the claimant lives. A judge who has, at any time as a criminal court judge, heard a criminal case arising from a crime alleged as the basis of such claim shall not sit in the determination of such claim. A judge who has heard such a claim shall not, at any time as a criminal court judge sit in a criminal case arising from a crime alleged in such claim.

### *Section 4. Offenses to Which This Act Applies*

The court shall order the payment of compensation to the claimant in accordance with the provisions of this Act for personal injury to or death of the victim which resulted from:

(a) An act committed in this state, which, if committed by a mentally competent, criminally responsible adult, would constitute a crime, provided that no act involving the use of a motor vehicle which results in injury to or death of another shall constitute a crime for the purposes of this Act, unless such injury or death was intentionally inflicted through the use of a motor vehicle, or

(b) An attempt to prevent or the actual prevention of a crime or an attempted crime in this state which the victim reasonably believed had occurred or was about to occur, or (c) The apprehending of an individual who had committed a felony in the presence of the victim, if, under the circumstances, the victim could have reasonably believed that a felony had occurred.

### *Section 5. Persons Eligible for Compensation*

(a) Except as otherwise provided, the following person or persons shall be eligible for compensation pursuant to this Act:

(1) a victim of a crime,

(2) in the case of the death of the victim, a dependent of the victim,

(3) in the case of the death of the victim, where the compensation is for unreimbursed or unreimbursable funeral or burial expenses, to the legal representative of the estate of the victim, or

(4) in the case of the personal injury of the victim, where the compensation is for expenses incurred by any person responsible for the maintenance of that victim, to that person.

(b) A person who is criminally responsible for the crime upon which a claim is based, or an accomplice of such person, or anyone who has contributed to the crime in any respect, shall not be eligible to receive an award with respect to a claim under this Act.

(c) No compensation shall be awarded a victim who was, at the time of the personal injury or death, a member of the offender's family, if the court, at its discretion, determines that any benefit would accrue, either directly or indirectly, to the offender.

### *Section 6. Losses or Expenses Reimbursable*

(a) The court shall order the payment of compensation under this Act for:

- (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim, including, but not limited to, actual expendi-

tures of moneys for or indebtedness resulting from medical services, hospital services, funeral and burial expenses;

(2) Loss of past earnings;

(3) Loss of future earnings as a result of partial or total disability of such victim, not to exceed five hundred dollars (\$500.00) per month;

(4) Pecuniary loss to the dependents of a deceased victim; and

(5) Any other pecuniary loss resulting from the personal injury or death of the victim which the court determines to be reasonable, including the filing fee required by Section 8(b).

(b) In no case will any compensation be awarded for any damage to real or personal property. For the purposes of this section, eyeglasses, contact lenses, hearing aids, or artificial prosthetic devices shall not be considered personal property.

(c) No compensation shall be awarded for any personal injury or loss alleged to have been incurred as a result of pain and suffering, except for victims of the crime of rape and victims of crime involving sexual deviancy.

(d) No award shall be made unless the claimant has incurred a minimum out of pocket loss of one hundred dollars (\$100.00) or has lost at least two continuous weeks earnings or support, unless the court determines that the interest of justice would not be served by such a limitation.

(e) No compensation shall be awarded to the victim, or in the case of death, to dependents, in an amount in excess of ten thousand dollars (\$10,000.00). All awards granted under subsections (a) (1) through (5) of this section shall be aggregated in determining this amount.

(f) Any award shall be reduced by the amounts of payment already received or any amounts which claimant is legally entitled to receive as a result of the injury.

(1) from or on behalf of the offender,

(2) from any other public or private source, or

(3) as an emergency award pursuant to section 14 of this Act.

It is the intent of this subsection to prohibit double recoveries by criminal victims but it shall not be construed to prohibit recovery of compensation under this act if the recovery from the sources set forth in Items 1 and 2 of this subsection is insufficient to reimburse the victim for his total compensable injuries as set forth in this act. Recoveries under Items 1 and 2 of this subsection shall be considered as primary indemnification, and recoveries under subsection (a) of this section shall be limited to compensating for injuries over and above any recoveries under Items 1 and 2 of this subsection.

(g) If two or more persons are entitled to compensation as a result of the death of the victim, the court shall apportion the amounts among claimants in proportion the amounts among claimants in proportion to their loss.

#### *Section 7. Standards of compensation*

For the purposes of determining the amount of compensation as provided in section 6 of this Act, the state board of claims, shall formulate standards for the uniform application of this Act. The board of claims shall take into consideration the provisions of this Act, the rates and amounts of compensation payable for injuries and death under other laws of the state of Tennessee and the United States, the median or average income of a family of the size involved in the relevant geographical area, the availability of funds for the purposes of this Act, and other factors related to standards of compensation.

#### *Section 8. Filing claims for compensation*

(a) A claim for compensation shall be filed not later than one (1) year after the occurrence of the crime upon which the claim is based or one (1) year after the death of the victim; provided, however, that upon good cause, the court may, either before or after the expiration of the filing period, extend the time for filing such claim.

(b) Each claim shall be filed in the office of the clerk of the court, in person or by mail, and shall be accompanied by a filing fee of five dollars (\$5.00). Such fee shall be refunded from the Criminal Injuries Compensation Fund as a reimbursement expense under Section 6(a) when the court awards compensation under Section 9. The claim shall set forth the name of the victim and that of the claimant, if different than that of the victim, the address of the victim and/or claimant, the county wherein the crime is alleged to have occurred, the name, if known, of the alleged offender, a brief statement of the alleged crime, the date

and time the alleged crime was reported to the police, and the nature of compensation claimed.

(c) Within five days after receipt of the claim, the clerk shall notify the district attorney and the alleged offender or offenders, if described in the claim. Such notification shall be in writing, with copies of such material as is included in the claim or in support thereof. The clerk shall, at least ten (10) days prior to the date set for the hearing, by certified mail, notify the claimant of the date and time of any hearing on such claim.

(d) Upon application of the district attorney or of the alleged offender or offenders, the court shall suspend proceedings under this Act until such claim is withdrawn or until a prosecution for an offense arising out of such act is no longer pending or imminent. The court may suspend proceedings in the interest of justice if a civil action arising from such act is pending or imminent.

(e) No claim shall be filed until the crime upon which the claim is based shall have been reported by the victim, a relative of the victim, or a member of his family to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the court, for good cause shown, finds the delay to have been justified. Failure by the victim to report the crime due to physical inability to do so shall constitute good cause.

### *Section 9. Judicial Determination of the Claim*

(a) The district attorney shall investigate the claim prior to the opening of formal court proceedings, and shall present any information he may have in support of or in opposition to the claim. The claimant may present evidence and testimony on his own behalf, or he may retain counsel.

(b) No order may be made under this section unless the claimant shall have shown to the court, supported by a preponderance of the evidence, that

(1) such an act did occur; and

(2) the injury or death proximately resulted from such act.

(c) An order may be made under this section whether or not any person is prosecuted or convicted or acquitted of any offense arising out of such act, or if such act is the subject of any other legal action. Furthermore, the apprehension of an offender is not a condition of award. However, no award shall be made unless the claimant fully cooperates with the police and District Attorney in any prosecution of the offender, which prosecution occurs either before or after the payment of such compensation. The court may amend its orders under the provision of Section 9(e) in furtherance of this policy.

(d) Except as otherwise provided, any order for the payment of compensation may be made on such terms as the court deems appropriate.

(e) The orders and decisions of the court shall be final. However, the court may, at anytime, on its own motion or on the application of the claimant, vary any order for the payment of compensation made under this Act in such manner as the court thinks fit, whether as to the terms of the order or by increasing the amount of the award, or otherwise.

(f) All decisions of the court under this Act shall be in writing, setting forth the name of the claimant, the name of the victim if different than that of the claimant, the amount of compensation and manner of payment, and the reasons for the decision. The clerk of the court shall, within five (5) days of receipt of the order, notify the claimant in writing of the decision, and shall forward to the board of claims a certified copy of the decision within five (5) days after the receipt of the order. The board of claims shall, without further authorization, subject to available funds, pay the claimant the amount, and in the manner determined by the court. Such payment shall be made from the fund as set forth in section 16 of this Act.

(g) In determining whether to make an order under this section, or the amount of the award, the court may consider any circumstances reasonably relevant to the criminal act, including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's attempt to prevent the commission of a crime or an attempted crime or to apprehend or the apprehension of an offender, as set forth in section 4(b) and 4(c) of this Act.

(h) For the purposes of this Act, a person shall be deemed to have intended an act, notwithstanding that by reason of age, insanity, drunkenness, or otherwise, he was legally incapable of forming a criminal intent.

### **Section 10. Medical reports**

The claimant shall, prior to any hearing thereon, submit reports, if known to be available, from all hospitals, medical institutions, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the court, an examination of the victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the court may appoint a duly qualified impartial physician to make such an examination and report, with due regard for the religious tenets of the claimant.

### **Section 11. Manner of payment**

(a) All payments shall be made in a lump sum, except for those claims involving death or protracted disability, for which the court may order periodic payment of compensation for the loss of earnings or support.

(b) If the claimant is a child, or is incompetent, the court shall order payment to a relative, guardian, or the claimant's attorney. In such situations, the payee shall make a periodic accounting of all funds to the court which directed the payment, such accounting to be at least once every six (6) months.

(c) No award pursuant to this Act shall be subject to execution or attachment other than for expenses resulting from the injury or death which is the basis of the claim.

### **Section 12. Attorney's fees**

The court may, as a part of any order entered under this act, determine and allow reasonable attorney's fees, which shall not exceed fifteen percent (15%) of the amount awarded as compensation, to be paid in addition to the amount of such compensation, to the attorney representing the claimant. However, there shall be no compensation to an attorney whose fees are paid for under any federally funded legal services program, or any such program funded by the state of Tennessee. It shall be unlawful for any attorney to ask for, contract for or receive any larger sum than the amount so allowed under this section.

### **Section 13. Subrogation**

(a) Whenever any person is convicted of an offense and an order for the payment of compensation is or has been made under this Act for a personal injury or death resulting from the act constituting such offense, the state of Tennessee may institute an action against such person for the recovery of the whole or any specified part of the compensation in the circuit courts of the state of Tennessee in any county, in a state, or in a federal court of any other state or district in which such person resides.

(b) An order for the payment of compensation under this Act shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

### **Section 14. Emergency award**

If it appears to the court, prior to any hearing on a claim, that (a) such claim that (a) such claim is one with respect to which an award will probably be made, and (b) undue hardship will result to the claimant if immediate payment is not made, the court may make an emergency award to the claimant pending a final decision in the case. However, the amount of such emergency award shall not exceed five hundred dollars (\$500.00). Furthermore, the amount of such emergency award shall be deducted from any final award made to the claimant. The excess of the amount of the such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the state.

### **Section 15. Penalty**

Any person who asserts a false claim under this Act, knowing such claim to be false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine not exceeding five hundred dollars (\$500.00), nor more than six months imprisonment, or both, and shall forfeit any benefit received and shall reimburse and repay the state for payments received or paid on his behalf pursuant to any of the provisions of this Act.

### **Section 16. Criminal injuries compensation fund**

(a) When any person is convicted of a crime against person or property after the effective date of this Act by any criminal court, there shall be imposed as

additional cost, in addition to other costs required to be imposed by law, the sum of twenty-one dollars (\$21.00). All such funds shall be paid over to the comptroller of the treasury to be deposited in the fund established by this section, with the exception of one dollar (\$1.00) of each twenty-one dollars (\$21.00) imposed cost, which shall be retained by the Clerk of the Court to defray the expenses of processing such funds. Crime, as used in this section, does not include violations of section 59-1000, et seq. of the Tennessee Code.

(h) If an offender ordered to pay the twenty-one dollars (\$21.00) cost provided in subsection (a) of Section 16 is unable to pay such cost at the time of sentencing, the Clerk of the Court shall so certify to the Commissioner of Correction who shall then cause all or a proportional part of such sum to be deducted from one or more of the first twelve (12) payments made to the offender as compensation for work performed while in the custody of the Department of Correction. The total sum so deducted shall be twenty-one dollars (\$21.00). One dollar (\$1.00) of the twenty-one dollars (\$21.00) shall be forwarded to the Clerk of the Court and twenty dollars (\$20.00) shall be deposited in the fund established in Section 16, and

(c) The Adult Probation and Parole Board shall make an investigation of the financial and other circumstances of each offender who is to be released on probation, parole, or other community-based program. The board shall order payment of a percentage of the offender's income, not to exceed ten percent (10%), into the Criminal Injuries Compensation Fund established in this section, unless the interests of justice would not be served by such payments or such payments would not be possible for financial reasons. Such payments shall be in addition to the twenty-one dollars (\$21.00) cost assessed in Section 16(a). The board may modify such orders as it from time to time deems necessary. A summary report of the board's decision under this section shall be forwarded to the Clerk of the Court in which the offender was tried and to the board of claims for the purpose of the implementation of Section 17, and

(d) Monies retained in the Criminal Injuries Compensation Fund shall be invested by the Treasurer of the state of Tennessee under appropriate rules and regulations to the end that adequate funds will be available for purposes of this act.

(e) No state funds shall be expended to effectuate the provisions of this act other than the fees and charges set forth in this section. This subsection shall not be construed to prohibit the use of available federal funding.

#### *Section 17. Statistical Reports*

The state Board of Claims shall compile, from records available to it and from those maintained by the circuit courts, all relevant statistics and other information which reflect the extent of compensation and other activities generated by operation of this act. Within the first four weeks of each legislative session, the board shall furnish to the judiciary committee of each house of the General Assembly a report conveying such information compiled, to facilitate the continuing evaluation of the program established by the act.

#### *Section 18. Severability*

If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 19. For the purpose of establishing and funding the Criminal Injuries Compensation Fund as set forth in Section 16, this act shall take effect July 1, 1976. For all other purposes, it shall take effect July 1, 1977. No compensation may be paid to victims of crimes occurring before July 1, 1977.

HOUSE BILL No. 518

PASSED: MARCH 18, 1976

NED R. McWHIRTER,  
*Speaker of the House of Representatives.*  
JOHN WILDER,  
*Speaker of the Senate.*

Approved this 29th day of March 1976.

RAY BLANTON,  
*Governor.*

## VIRGINIA

## CODE OF VIRGINIA—1950

## 1976 SUPPLEMENT, ANNOTATED, VOLUME 4A

## CHAPTER 21.1

## COMPENSATING VICTIMS OF CRIME

## Sec.

- 19.2-368.1. Findings; legislative intent.
- 19.2-368.2. Definitions.
- 19.2-368.3. Powers and duties of Commission.
- 19.2-368.4. Persons eligible for awards.
- 19.2-368.5. Filing of claims; deferral of proceedings.
- 19.2-368.6. Assignment of claims; investigation; hearing; confidentiality of records; decisions.
- 19.2-368.7. Review by Commission.
- 19.2-368.8. Reinvestigation of decisions; reconsideration of award; judicial review.
- 19.2-368.9. Emergency awards.
- 19.2-368.10. When awards to be made.
- 19.2-368.11. Amount of award.
- 19.2-368.12. Awards not subject to execution or attachment; apportionment; reductions.
- 19.2-368.13. Denial of award.
- 19.2-368.14. Public record; exception.
- 19.2-368.15. Subrogation of Commonwealth to claimant's right of action.
- 19.2-368.16. Claims to be made under oath.
- 19.2-368.17. Public information program.
- 19.2-368.18. Criminal Injuries Compensation Fund.

§ 19.2-368.1. *Findings; legislative intent.*—The General Assembly finds that many innocent persons suffer personal physical injury or death as a result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disability, incur financial hardships or become dependent upon public assistance. The General Assembly finds and determines that there is a need for governmental financial assistance for such victims of crime. Therefore, it is the intent of the General Assembly that aid, care and support be provided by the Commonwealth as a matter of moral responsibility for such victims of crime. (1976, c. 605.)

§ 19.2-368.2. *Definitions.*—For the purpose of this chapter:

1. "Commission" shall mean the Industrial Commission of Virginia.
2. "Claimant" shall mean the person filing a claim pursuant to this chapter.
3. "Crime" shall mean an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law; provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries were intentionally inflicted through the use of such vehicle.
4. "Family," when used with reference to a person, shall mean (1) any person related to such person within the third degree of consanguinity or affinity, (2) any person residing in the same household with such person.
5. "Victim" shall mean a person who suffers personal physical injury or death as a direct result of a crime. (1976, c. 605.)

§ 19.2-368.3. *Powers and duties of Commission.*—The Commission shall have the following powers and duties in the administration of the provisions of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter.
2. To acquire from the Commonwealth's attorneys, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigation and information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury.

3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.

4. To require and direct medical examination of victims.

5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summons requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.

6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

7. To render each year to the Governor and to the General Assembly a written report of its activities. (1976, c. 605.)

§ 19.2-368.4. *Persons eligible for awards.*—A. Except as provided in subsection B of this section, the following persons shall be eligible for awards pursuant to this chapter:

1. A victim of a crime.

2. A surviving spouse or child, including posthumous children, of a victim of a crime who died as a direct result of such crime.

3. Any person, except a law-enforcement officer engaged in the performance of his duties, who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

4. A surviving spouse or child, including posthumous children, of any person who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

5. Any other person dependent for his principal support upon any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

B. A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

C. A claimant, to recover under this chapter, shall be at the time of the injury a resident of this Commonwealth. (1976, c. 605.)

§ 19.2-368.5. *Filing of claims; deferral of proceedings.*—A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is mentally incompetent, the claim may be filed on his behalf by his guardian or such other individual authorized to administer his estate.

B. A claim must be filed by the claimant not later than one hundred eighty days after the occurrence of the crime upon which such claim is based, or not later than one hundred eighty days after the death of the victim; *Provided, however,* That upon good cause shown, the Commission may extend the time for filing for a period not exceeding, under any circumstances, two years after such occurrence.

C. Claims shall be filed in the office of the secretary of the Commission in person or by mail. The secretary shall accept for filing all claims submitted by persons eligible under subsection A of this section and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the Commonwealth's attorney of the jurisdiction wherein the crime is alleged to have occurred. If, within ten days after such notification, the Commonwealth's attorney so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court. When such criminal prosecution has been concluded in the circuit court the Commonwealth's attorney shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided. (1976, c. 605.)

**§ 19.2-368.6. Assignment of claims; investigation; hearing; confidentiality of records; decisions.**—A. A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the Commission. All claims arising from the death of an individual, as a direct result of a crime, shall be considered together by a single Commission member.

B. The Commission member to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based.

C. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for, or convicted of, any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to a lack of criminal responsibility or other legal exemption.

D. The Commission member to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the Commission member is unable to decide the claim, upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible.

E. Confidentiality provided for by law applicable to a claimant's or victim's juvenile court records is not applicable in proceedings under this chapter.

F. After examining the papers filed in support of the claim, and the report of investigation, and after a hearing, if any, the Commission member to whom the claim was assigned shall make a decision either granting an award pursuant to § 19.2-368.11 of this chapter or deny the claim.

G. The Commission member making a decision shall file with the secretary of the Commission a written report setting forth such decision and his reasons therefor. The secretary thereupon notify the claimant and furnish him a copy of such report, upon request. (1976, c. 605.)

**§ 19.2-368.7. Review by Commission.**—A. The claimant may, within thirty days after receipt of the report of the Commission member to whom his claim was assigned, make an application, in writing, to the Commission for consideration of the decision by the full Commission.

B. Upon receipt of an application pursuant to subsection A of this section, or upon its own motion, the Commission shall review the record and affirm or modify the decision of the Commission member to whom the claim was assigned. The action of the Commission in affirming or modifying such decision shall be final. If the Commission receives no application pursuant to subsection A of this section, or takes no action upon its own motion, the decision of the Commission member to whom the claim was assigned shall become the final decision of the Commission.

C. The secretary of the Commission shall promptly notify the claimant and the Comptroller of the final decision of the Commission and furnish each with a copy of the report setting forth the decision. (1976, c. 605.)

**§ 19.2-368.8. Reinvestigation of decision; reconsideration of awards; judicial review.**—A. The Commission, on its own motion, or upon request of the claimant, may reinvestigate or reopen a decision making or denying an award. Under no circumstances shall the Commission reopen or reinvestigate a case after the expiration of two years from the date of occurrence of the crime upon which the claim is based.

B. The Commission shall reconsider, at least annually, every award upon which periodic payments are being made. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a Commission decision for the purposes of judicial review.

C. Within thirty days after receipt of the copy of the report containing the final decision of the Commission, the claimant may, if in his judgment the award is improper, commence a proceeding in the circuit court of the county or city where the crime was committed, to review the decision of the Commission. Any such proceeding shall be heard in a manner pursuant to § 9-6.14:16 of the Code of Virginia and shall have precedence over all other civil cases in such court. The Attorney General may appear in such proceedings as counsel for the Commission. There shall be no other judicial review of any decision made or action taken by the Commission. (1976, c. 605.)

**§ 19.2-368.9. Emergency awards.**—Notwithstanding any other provisions of this chapter, if it appears to the Commission member to whom a claim is assigned, prior to taking action upon such claim, that (1) such claim is one with respect to which an award probably will be made, and (2) undue hardship will result to the claimant if immediate payment is not made, the Commission member may make an emergency award to the claimant, pending a final decision in the case, provided, however, that (1) the amount of such emergency award shall not exceed one thousand dollars, (ii) the amount of such emergency award shall be deducted from any final award made to the claimant, and (iii) the excess of the amount of such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the Commission. (1976, c. 605.)

**§ 19.2-368.10. When awards to be made.**—No award shall be made unless the Commission or Commission member, as the case may be, finds that (1) a crime was committed, (2) such crime directly resulted in personal physical injury to, or death of the victim, and (3) police records show that such crime was promptly reported to the proper authorities, and in no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the Commission, for good cause shown, finds the delay to have been justified. The Commission, upon finding that any claimant or award recipient has not fully cooperated with all law-enforcement agencies, may deny, reduce or withdraw any award, as the case may be. (1976, c. 605.)

**§ 19.2-368.11. Amount of award.**—A. Any award made pursuant to this chapter for loss of earnings shall be made in accordance with the schedule of benefits and degree of disability as specified in §§ 65.1-54 through 65.1-56 of the Code of Virginia. If a claimant does not have "average weekly wages," the award shall be in an amount equal to the arithmetic average between the maximum and minimum awards listed in the applicable portion of these sections.

B. Awards may also be made on claims, or portions of claims, for (1) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (2) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income but for the benefit of himself and his family, if he had not been a victim of crime; (3) expenses in any way related to funeral or burial, not to exceed five hundred dollars; (4) expenses attributable to pregnancy resulting from forcible rape; (5) any other reasonable and necessary expenses or indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically covered herein, based on the claimant's actual out-of-pocket loss for such expenses, which in the discretion of the Commission are appropriate. Such award shall be subject to a deduction of one hundred dollars from any and all losses, and such award shall not exceed ten thousand dollars in the aggregate. (1976, c. 605.)

**§ 19.2-368.12. Awards not subject to execution or attachment; apportionment; reductions.**—A. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

B. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

C. Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury (1) from or on behalf of the person who committed the crime, (2) from any other public or private source, including an award of the Commission as an emergency award pursuant to § 19.2-368.9 of this chapter.

D. In determining the amount of an award, the Commission or Commission member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the Commission or Commission member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Commission or Commission member, as the case may be, may disregard for his purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his

presence, or to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony. (1976, c. 605.)

§ 19.2-368.13. *Denial of award.*—If the Commission or Commission member, as the case may be, finds that the claimant will not suffer undue financial hardship, if not granted financial assistance pursuant to this chapter, the Commission or Commission member shall deny an award. A claimant suffers undue financial hardship only if he cannot maintain his customary level of health, safety and education for himself and his dependents. In making such a finding of undue financial hardship, the Commission or Commission member shall consider all relevant factors, including but not limited to, (1) the number of claimant's dependents, (2) the usual and ordinary living expenses of the claimant and his family, (3) any special needs of the claimant and his dependents, (4) the claimant's income and potential earning capacity, and (5) the claimant's resources. (1976, c. 605.)

§ 19.2-368.14. *Public record; exception.*—The record of any proceedings under this chapter shall be a public record; provided, however, that any record or report obtained by the Commission, the confidentiality of which is protected by any other law or regulation, shall remain confidential, subject to such law or regulation. (1976, c. 605.)

§ 19.2-368.15. *Subrogation of Commonwealth to claimant's right of action.*—Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the extent of such award, to any right or right of action occurring to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made; provided, however, the Commonwealth shall not institute any proceedings in connection with its right of subrogation under this section within one year from the date of commission of the crime, unless any claimant or victim's right or action shall have been previously terminated. (1976, c. 605.)

§ 19.2-368.16. *Claims to be made under oath.*—All claims shall be made under oath. Any person who asserts a false claim under the provisions of this chapter shall be guilty of perjury and, in addition, shall be subject to prosecution under the provisions of article 3 (§ 18.2-95 et seq.) of chapter 5 of Title 18.2 of the Code of Virginia, and shall further forfeit any benefit received and shall reimburse and repay the Commonwealth for payments received or paid on his behalf pursuant to any of the provisions hereunder. (1976, c. 605.)

§ 19.2-368.17. *Public information program.*—The Commission shall establish and conduct a public information program to assure extensive and continuing publicity and public awareness of the provisions of this chapter, and the right to compensation for innocent victims of crime, including information on the right to file a claim, the scope of coverage, and the procedures to be utilized incident thereto. (1976, c. 605.)

§ 19.2-368.18. *Criminal Injuries Compensation Fund.*—A. There is hereby created a special fund to be administered by the Comptroller, known as the Criminal Injuries Compensation Fund.

B. Where any person is convicted, after July one, nineteen hundred seventy-six, of any crime of treason, felony, or of any offense punishable as a Class 1 or Class 2 misdemeanor under Title 18.2, except a violation of article 2 (§ 18.2-266 et seq.), chapter 7, of Title 18.2 or drunkenness or disorderly conduct, by any court with criminal jurisdiction, there shall be imposed an additional cost, in the case, in addition to any other costs required to be imposed by law, of the sum of ten dollars. Such additional sum shall be paid over to the Comptroller to be deposited into the Criminal Injuries Compensation Fund. Under no condition shall a political subdivision be held liable for the payment of this sum.

C. No claim shall be accepted under the provisions of this chapter when the crime which gave rise to such claim occurred prior to July one, nineteen hundred seventy-seven.

D. Sums available in the Criminal Injuries Compensation Fund shall be used for the purpose of payment of the costs and expenses necessary for the administration of this chapter and for the payment of claims pursuant to this chapter.

E. No claim shall be accepted by the Commission under this chapter until July one, nineteen hundred seventy-seven. Payment of claims under this chapter shall be limited to the funds available in the Criminal Injuries Compensation Fund as collected during the preceding fiscal year. (1976, c. 605.)

*Crimes reference.*—As to punishment for Class 1 and 2 misdemeanors, see § 18.2-11.

## WASHINGTON

## 1975 POCKET PART TO REVISED CODE OF WASHINGTON ANNOTATED

## Title 7, Chapters 7.36 to End, Title 8

## CHAPTER 7.68—VICTIMS OF CRIMES—COMPENSATION

Sec.

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22 ALR Fed 903 (Liability of United States under Federal Tort Claims Act for injuries resulting from failure to provide police protection).

*7.68.010 Intent*

It is the intent of the legislature of the state of Washington to provide a method of compensating and assisting those residents of the state who are innocent victims of criminal acts and who suffer bodily injury or death as a consequence thereof. To that end, it is the intention of the legislature to make certain of the benefits and services which are now or hereafter available to injured workmen under Title 51 RCW also available to innocent victims of crime as defined and provided for in this chapter. [Enacted Laws 1st Ex Sess 1973 ch 122 § 1, effective July 1, 1974.]

CJS Criminal Law § 2007.

9 Gonzaga LR 228 (compensation for victims of crimes under Washington law).

49 Wn LR 551 (crime compensation).

Key Number Digests: Criminal Law ⇌ 1220.

*7.68.020 Definitions*

The following words and phrases as used in this chapter shall have the following meanings unless the context otherwise requires:

- (1) "Department" means the department of labor and industries.
- (2) "Criminal act" means an act committed or attempted in this state which is punishable as a felony or gross misdemeanor under the laws of this state: *Provided*, That the operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law does not constitute a "criminal act" unless the injury or death was intentionally inflicted or the operation thereof was part of the commission of another criminal act as defined in this section: *Provided further*: (a) That neither an acquittal in a criminal prosecution nor the absence of any such prosecution shall be admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding; (b) that evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter shall be admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; (c) that acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct shall be deemed to be criminal conduct within the meaning of this chapter.
- (3) "Victim" means a resident of the state who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's

own good faith and reasonable effort to prevent a criminal act, or his good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" shall be interchangeable with "employee" or "workman" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child", "accredited school", "dependent", "beneficiary", "average monthly wage", "director", "invalid", "permanent partial disability", and "permanent total disability" shall have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

(5) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(6) "Resident", for the purpose of eligibility for benefits under this chapter, means a person who has been in this state for thirty days or has clearly signified an intent to remain in this state for at least thirty days. [Enacted Laws 1st Ex Sess 1973 ch 122 § 2, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975 ch 176 § 1, effective June 4, 1975.]

49 Wn LR 560 (compensation of victims of crime; entitlement to compensation).

#### *7.68.030 Duties of department—General provisions*

It shall be the duty of the director to establish and administer a program of benefits to victims of criminal acts within the terms and limitations of this chapter. In so doing, the director shall, in accordance with chapter 34.04 RCW, adopt rules and regulations necessary to the administration of this chapter, and the provisions contained in chapter 51.04 RCW, including but not limited to RCW 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or hereafter amended, shall apply where appropriate in keeping with the intent of this chapter. [Enacted Laws 1st Ex Sess 1973 ch 122 § 3, effective July 1, 1974.]

#### *7.68.040 Civil actions against state and jurisdiction of courts abolished*

In keeping with the intent of the legislature as set forth in RCW 7.68.010 all civil actions and civil causes of action against the state for injury or death as a consequence of a criminal act, and all jurisdiction of the courts of the state over such causes, are hereby abolished except as in this chapter provided. [Enacted Laws 1st Ex Sess 1973 ch 122 § 4, effective July 1, 1974.]

#### *7.68.050 Right of action against perpetrator*

No right of action at law against a person who has committed a criminal act, for damages as a consequence of such act, shall be lost as a consequence of receiving benefits under the provisions of this chapter. In the event any person receiving benefits under this chapter additionally seeks a remedy for damages from the person or persons who have committed the criminal act resulting in damages, then and in that event the department shall be subrogated to and have a lien upon any recovery so made to the extent of the payments made by the department to or on behalf of such person under this chapter. [Enacted Laws 1st Ex Sess 1973 ch 122 § 5, effective July 1, 1974.]

#### *7.68.060 Applications for benefits*

For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 as now or hereafter amended shall apply: *Provided*, That no compensation of any kind shall be available under this chapter if:

(1) An application for benefits is not received by the department within one hundred eighty days after the date of the criminal act or one hundred twenty days after the date of death of the victim, or the rights of dependents or beneficiaries accrued, if such is the case, or

(2) The criminal act is not reported by the victim or someone on his behalf to a local police department or sheriff's office within seventy-two hours of its occurrence or, if it could not reasonably have been reported within that period, within seventy-two hours of the time when a report could reasonably have been made. [Enacted Laws 1st Ex Sess 1973 ch 122 § 6, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975 ch 176 § 2, effective June 4, 1975.]

#### *7.68.070 Benefits—Right to and amount—Limitations*

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW as now or hereafter amended except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.070, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 as now or hereafter amended are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, or his family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, and the rights, duties, responsibilities, limitations and procedures applicable to a workman as contained in RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 as now or hereafter amended are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person shall be entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation or incitement by the victim;

(b) The result of an act or acts committed by a person living in the same household with the victim;

(c) The result of an act or acts committed by a person who is at the time of the criminal act the spouse, child, parent, or sibling of the victim by the half or whole blood, adoption or marriage, or the parent of the spouse of or sibling of the spouse of the victim by the half or whole blood, adoption, or marriage;

(d) The result of the victim assisting, attempting, or committing a criminal act; or

(e) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services.

(4) The benefits established upon the death of a workman and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: *Provided*, That in the event the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived him or where such spouse has legal custody of all of his children, shall be limited to burial expenses as provided in RCW 51.32.050 as now or hereafter amended and a lump sum payment of seven thousand five hundred dollars without reference to number of children if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits shall be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section shall apply under this chapter: *Provided*, That in the event a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, such victim shall receive monthly during the period of such disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 as now or hereafter amended:

(a) If married at the time of the criminal act, twenty-nine percent of such average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of such average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of such average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of such average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of such average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of such average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of such average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of such average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of such average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of such average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of such average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of such average monthly wage.

(6) The benefits established in RCW 51.32.080 as now or hereafter amended for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section shall equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section shall apply under this chapter: *Provided*, That no person shall be eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 as now or hereafter amended for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section shall apply under this chapter.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 as now or hereafter amended shall apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workmen contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160 and 51.32.210 as now or hereafter amended shall be applicable to payment of benefits to, for or on behalf of victims under this chapter. [Enacted Laws 1st Ex Sess 1973 ch 122, § 7, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975 ch 176 § 3, effective June 4, 1975.]

Reviser's Note: RCW "51.32.070" was repealed by 1975 1st ex.s. c 224 § 19. 49 Wn LR 560 (compensation of victims of crime; entitlement to compensation).

#### *7.68.075 Marital status—Payment for or on account of children*

Notwithstanding the provisions of any of the sections, as now or hereafter amended, of Title 51 RCW which are made applicable to this chapter, the marital status of all victims shall be deemed to be fixed as of the date of the criminal act. All references to the child or children living or conceived of the victim in this chapter shall be deemed to refer to such child or children as of the date of the criminal act unless the context clearly indicates the contrary.

Payments for or on account of any such child or children shall cease when such child is no longer a "child" as defined in RCW 51.32.005, as now or hereafter amended, or on the death of any such child whichever occurs first.

Payments to the victim or surviving spouse for or on account of any such child or children shall be made only when the victim or surviving spouse has legal custody of any such child or children. Where the victim or surviving spouse does not have such legal custody any payments for or on account of any such child or children shall be made to the person having legal custody of such child or children and the amount of payments shall be subtracted from the payments

which would have been due the victim or surviving spouse had legal custody not been transferred to another person. [Added by Laws 1st Ex Sess 1975 ch 176 § 9, effective June 4, 1975.]

Reviser's Note: "RCW 51.32.005" was repealed by 1975 1st ex.s. c 224 § 19, CJS Criminal Law § 2007.

Key Number Digests: Criminal Law 1220.

#### 7.68.080 Medical aid

The provisions of chapter 51.36 RCW as now or hereafter amended shall govern the provision of medical aid under this chapter except that:

(1) The provisions contained in RCW 51.36.030 and 51.36.040 as now or hereafter amended shall not apply to this chapter;

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation shall not apply: *Provided*, That when the injury to any victim is so serious as to require his being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed from the fund established pursuant to RCW 7.68.090. [Enacted Laws 1st Ex Sess 1973 ch 122 § 8, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975 ch 176 § 4, effective June 4, 1975.]

#### 7.68.090 Establishment of funds

The director shall establish such fund or funds, separate from existing funds, necessary to administer this chapter, and payment to these funds shall be from legislative appropriation, reimbursement and subrogation as provided in this chapter, and from any contributions or grants specifically so directed. [Enacted Laws 1st Ex Sess 1973 ch 122 § 9, effective July 1, 1974.]

#### 7.68.100 Physicians' reporting

The requirements relating to physicians' reporting contained in RCW 51.36.060 and 51.48.060 as now or hereafter amended shall apply under this chapter. Any funds collected pursuant to RCW 51.48.060 as now or hereafter amended shall be paid into the fund established pursuant to RCW 7.68.090. [Enacted Laws 1st Ex Sess 1973 ch 122 § 10, effective July 1, 1974.]

#### 7.68.110 Appeals

The provisions contained in chapter 51.52 RCW as now or hereafter amended relating to appeals shall govern appeals under this chapter: *Provided*, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal or other action shall apply to this chapter: *Provided further*, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.04.130 and 34.04.140 as now or hereafter amended. [Enacted Laws 1st Ex Sess 1973 ch 122 § 11, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975 ch 176 § 5, effective June 4, 1975.]

#### 7.68.120 Reimbursement

Any person who has committed a criminal act which resulted in injury compensated under this chapter may be required to make reimbursement to the department as hereinafter provided.

(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party: *Provided*, That where there has been a superior or district court order, or an order of the board of prison terms and paroles or the department of social and health services, as hereinafter provided, the debt shall be limited to the amount provided for in said order. A court order shall prevail over any other order.

(2) Upon being placed on work release pursuant to chapter 72.65 RCW, or upon release from custody of a state correctional facility on parole, any convicted person who owes a debt to the department as a consequence of a criminal act may have the schedule or amount of payments therefor set as a condition of work release or parole by the department of social and health services or board of prison terms and paroles respectively, subject to modification based on change of circumstances. Such action shall be binding on the department.

(3) Any requirement for payment due and owing the department by a convicted person under this chapter may be waived, modified downward or other-

wise adjusted by the department in the interest of justice and the rehabilitation of the individual. [Enacted Laws 1st Ex Sess 1973 ch 122 § 12, effective July 1, 1974.]

**7.68.125 Erroneous or fraudulent payment—Repayment, when—Penalty**

(1) Whenever any payment under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: *Provided*, That the department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived: *Provided further*, That the department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim.

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom has been made and the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: *Provided*, That the department may exercise its discretion to waive, in whole or in part, the amount thereof.

(3) Whenever any payment under this chapter has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient under this chapter and the amount of the penalty shall be placed in the fund or funds established pursuant to RCW 7.68.090 as now or hereafter amended. [Added by Laws 1st Ex Sess 1975 ch 176 § 8, effective June 4, 1975.]

CJS Criminal Law § 2007.

Key Number Digests: Criminal Law ⇌ 1220.

**7.68.130 Collateral resources**

Benefits paid pursuant to this chapter shall be reduced by the amount of any other public or private insurance, industrial insurance, or medical health or disability benefits available. Payment by the department under this chapter shall be secondary to such other insurance or benefits, notwithstanding the provision of any contract or coverage to the contrary. [Enacted Laws 1st Ex Sess 1973 ch 122 § 13, effective July 1, 1974.]

**7.68.140 Confidentiality**

Information contained in the claim files and records of victims, under the provisions of this chapter, shall be deemed confidential and shall not be open to public inspection: *Provided*, That, except as limited by state or federal statutes or regulations, such information may be provided to public employees in the performance of their official duties: *Provided further*, That except as otherwise limited by state or federal statutes or regulations a representative of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant: *Provided further*, That physicians treating or examining victims claiming benefits under this chapter or physicians giving medical advice to the department regarding any claim may, at the discretion of the department and as not otherwise limited by state or federal statutes or regulations, inspect the claim files and records of such victims, and other persons may, when rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter, inspect the claim files and records of such victims at the discretion of the department and as not otherwise limited by state or federal statutes or regulations. [Enacted Laws 1st Ex Sess 1973 ch 122 § 14, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975, ch 176 § 6, effective June 4, 1975.]

CJS Records §§ 35 et seq.

Key Number Digests: Records ⇌ 14.

**7.68.145 Release of information in performance of official duties**

Notwithstanding any other provision of law, all law enforcement, criminal justice, or other governmental agencies, or hospital; any physician or other practitioner of the healing arts; or any other organization or person having possession or control of any investigative or other information pertaining to

any alleged criminal act or victim concerning which a claim for benefits has been filed under this chapter, shall, upon request, make available to and allow the reproduction of any such information by the section of the department administering this chapter or other public employees in their performance of their official duties under this chapter.

No person or organization, public or private, shall incur any legal liability by reason of releasing any such information to the director of labor and industries or the section of the department which administers this chapter or other public employees in the performance of their official duties under this chapter. [Added by Laws 1st Ex Sess 1975 ch 176 § 7, effective June 4, 1975.]

Key Number Digests: Reports ◀=14.

**7.68.150 Benefits, payments and costs to be funded and accounted for separately**

All benefits and payments made, and all administrative costs accrued, pursuant to this chapter shall be funded and accounted for separate from the other operations and responsibilities of the department. [Enacted Laws 1st Ex Sess 1973 ch 122 § 15, effective July 1, 1974.]

**7.68.160 Claims of persons injured prior to effective date**

Any person who has been injured as a result of a "criminal act" as herein defined on or after January 1, 1972 up to the effective date of this 1973 act, who would otherwise be eligible for benefits under this 1973 act, may for a period of ninety days from the effective date of this 1973 act, file a claim for benefits with the department on a form provided by the department. The department shall investigate and review such claims, and, within two hundred ten days of the effective date of this 1973 act, shall report to the legislative budget committee and the governor its findings and recommendations as to such claims, along with a statement as to what special legislative relief, if any, the department recommends should be provided. [Enacted Laws 1st Ex Sess 1973 ch 122 § 16, effective July 1, 1974.]

Effective date—1973 1st Ex. Sess ch 122: See RCW 7.68.900 and note following.

**7.68.165 Application of chapter to claims filed under RCW 7.68.160**

The rights, privileges, responsibilities, duties, limitations and procedures contained in this chapter shall apply to those claims filed pursuant to RCW 7.68.160. In respect to such claims, the department shall proceed in the same manner and with the same authority as provided in this chapter with respect to those claims filed pursuant to RCW 7.68.060 as now or hereafter amended. [Added by Laws 1st Ex Sess 1975 ch 176 § 10, effective June 4, 1975.]

CJS Criminal Law § 2007.

Key Number Digests: Criminal Law ◀=1220.

**7.68.900 Effective date**

This chapter shall take effect on July 1, 1974. [Enacted Laws 1st Ex Sess 1973 ch 122 § 17.]

Funding required: "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st Ex Sess ch 122 § 21.]

**7.68.910 Section captions**

Section captions as used in this act do not constitute any part of the law. [Enacted Laws 1st Ex Sess 1973 ch 122 § 20, effective July 1, 1974.]

WISCONSIN

WEST'S WISCONSIN LEGISLATIVE SERVICE, 1975-1976

Crime Reparations

Chapter 344, Laws of 1975

SENATE BILL 139

An Act to create 20.445(6), 71.01(3)(g), 72.76(1)(o) and chapter 949 of the statutes, relating to compensating victims of crimes, granting rule-making authority, making an appropriation and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

*Section 1. Legislative declaration.*—The policy of this state is to encourage the cooperation of the public in law enforcement and to promote the public welfare. The legislature finds that this policy will be furthered by the payment of awards to the victims or their dependents of certain serious crimes or to persons injured in attempting to prevent the commission of crimes or to apprehend suspected criminals.

*Section 2.*—20.445(6) of the statutes is created to read:  
20.445

(6) *Public services.*—(a) *Awards for the victims of crimes.* A sum sufficient for payment of compensation and funeral and burial expense awards to the victims of crimes under and the administration of ch. 949.

*Section 2g.*—71.01(3) (g) of the statutes is created to read:  
71.01

(3) (g) Awards received under ch. 949.

*Section 2r.*—72.76(1) (o) of the statutes is created to read:  
72.76

(1) (o) The transfer is payment of an award under ch. 949.

*Section 3.*—Chapter 949 of the statutes is created to read:

### *Chapter 949*

#### AWARDS FOR THE VICTIMS OF CRIMES

##### *949.01 Definitions*

In this chapter:

(1) "Crime" means an act committed in this state which would constitute a crime as defined in s. 939.12 if committed by a competent adult who has no legal defense for his act.

(2) "Dependent" means any spouse, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse of a deceased victim who was wholly or partially dependent upon his income at the time of his death and includes any child of the victim born after his death.

(3) "Law enforcement agency" has the meaning designated under s. 165.83(1) (b).

(4) "Personal injury" means actual bodily harm and includes pregnancy and mental or nervous shock.

(5) "Victim" means a person, other than an on-duty peace officer or fireman, who is injured or killed by an incident specified in s. 949.03(1) (a), or by any act or omission of any other person which is within the description of any of the offenses listed in s. 949.03(1) (b).

##### *949.02 Administration*

This chapter shall be administered by the department of industry, labor and human relations. The department shall make rules for the implementation and operation of this chapter.

##### *949.03 Compensable acts*

(1) The department may order the payment of an award for personal injury or death which results from:

(a) Preventing or attempting to prevent the commission of a crime; apprehending or attempting to apprehend a suspected criminal; aiding or attempting to aid a police officer to apprehend or arrest a suspected criminal; aiding or attempting to aid a victim of a crime specified in par. (b).

(b) The commission or the attempt to commit any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.20, 940.201, 940.206, 940.21, 940.22, 940.23, 940.24, 940.28, 940.29, 940.30, 940.31, 940.32, 943.10, 943.20, 943.32, 944.01, 944.02, 944.10, 944.11 or 944.12.

##### *949.04 Application for award*

(1) *Eligibility.*—Any person may apply for an award under this chapter.

(a) Application by a minor may be made on his behalf by his parent or guardian.

(b) Application by an incompetent may be made on his behalf by his guardian or other person authorized to administer his estate.

(2) *Forms.*—The department shall prescribe application forms for awards under this chapter and shall furnish law enforcement agencies with the forms. The law enforcement agency investigating a crime shall provide forms to each person who may be eligible to file a claim under this subchapter.

(3) *Medical records.*—The applicant shall submit to the department, prior to the hearing under s. 949.09, reports from all physicians who treated or examined the victim at the time of or subsequent to his injury or death. The department may also order such other examinations and reports of the victim's previous medical history, injury or death as it believes would be of material aid in its determination.

#### *949.05 Award; to whom payable*

(1) In any case in which a person, other than an on-duty peace officer or fireman, is injured or killed by an incident specified in s. 949.03(1) (a), or by any act or omission of any other person which is within the description of crimes under s. 949.03(1) (b) the department may order the payment of an award:

(a) To or for the benefit of the injured person;

(b) In the case of personal injury of the victim, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of such injury; or

(c) In the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim. If 2 or more dependents are entitled to an award, the award shall be apportioned by the department among the dependents.

#### *949.06 Computation of award*

(1) Compensation under this chapter shall be computed on the basis of the victim's salary at the time of his injury or death by using the computation formulas for workmen's compensation benefits described in ss. 102.11, 102.46, 102.47, 102.52, 102.53 and 102.55. Compensation shall also include reimbursement for the cost of medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the person, Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required to cure and relieve from the effect of the injury, and to attain efficient use of artificial members and appliances. A rape victim shall be compensated for all medical, surgical and hospital expenses incurred for any purposes related to a criminal prosecution.

(2) If the victim was not employed at the time of the injury or death, the department shall make its award on whichever of the following bases results in the higher award.

(a) On the basis of the highest salary earned by the victim within the preceding 5 years.

(b) On the basis of the lowest payment under the workmen's compensation schedule which could have been awarded if the victim had been employed.

(3) The department may not make a compensation award of more than \$10,000 nor less than \$200 for any one injury or death.

(4) In all cases of death of the victim, a reasonable award may be made for funeral and burial expenses, not exceeding \$2,000. This award may not be considered by the department under sub. (3), but such funeral and burial expense award may be limited under subs. (5) and (6).

(5) In determining the amount of an award, the examiner shall determine whether, because of his conduct, the victim of the crime contributed to the infliction of his injury or death, and may reduce the amount of the award or reject the claim altogether, in accordance with such determination. The examiner may disregard for this purpose the responsibility of the victim for his own injury or death where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence, or to apprehend a person who had committed a crime in his presence or to aid a peace officer upon request.

(6) If the examiner finds that the claimant will not suffer financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury. If not granted financial assistance under this subchapter, the examiner shall deny an award under subs. (3) and (4). In

determining such financial hardship, the examiner shall consider all of the financial resources of the claimant. The department shall adopt specific standards by rule for determining such financial hardship. Any award made under this section shall be reduced by the amount of any payments received or to be received as a result of the injury or death:

(a) From or on behalf of the person who committed the crime.

(b) From insurance payments or programs including workmen's and unemployment compensation.

(c) From public funds.

(d) As an emergency award under s. 949.10.

(7) (a) An award order may be made whether or not any person is prosecuted or convicted of any offense arising out of such act or omission.

(b) Upon application made by an appropriate prosecuting authority, the department may suspend proceedings under this chapter for such period as it deems appropriate on the ground that a prosecution for an offense arising out of such act or omission has been commenced or is imminent.

#### *949.07 Manner of payment*

The award, combining both the compensation award and the funeral and burial award, if applicable, shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. No award may be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. The department may, in its discretion, pay any portion of an award directly to the provider of any service which is the basis for that portion of the claim.

#### *949.08 Limitations on awards*

(1) No order for the payment of an award may be made unless the application was made within 2 years after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made.

(2) No award shall be ordered if the victim:

(a) Is the child, parent, brother, sister or spouse of the offender and resides in the same household as the offender;

(b) Was at the time of the personal injury or death of the victim maintaining a sexual relationship with such person or with any member of the family of such person; or

(c) Committed a crime which caused or contributed to his injuries or death.

(3) Orders for payment of awards may be made only as to injuries or deaths resulting from incidents or offenses occurring after 1976.

*Veto.*—The governor vetoed the words "on or" following "occurring" and "January 1" following "after" in subsec. 3.

#### *949.09. Effect of conviction*

If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

#### *949.10 Emergency awards*

(1) Notwithstanding s. 949.06, if an examiner to whom a claim is assigned determines, prior to the holding of a hearing, that an award will probably be made and that undue hardship will result to the claimant if immediate payment is not made, the examiner may order emergency awards as follows:

(a) An emergency compensation award may not exceed \$500.

(b) An emergency award for funeral and burial expenses may not exceed \$2,000.

(2) Any award under sub. (1) shall be deducted from the final award made to the claimant. The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the department.

#### *949.11 Hearings*

(2) Any interested party may appear and be heard, produce evidence and cross-examine witnesses in person or by an attorney licensed to practice law

in this state. The department may also hear such other persons as in its judgment may possess relevant information.

(3) The department may, by subpoena, compel the attendance of witnesses and the production of documents, records and any other materials.

(4) The rules of evidence for the conduct of judicial proceedings shall not apply to the hearings conducted by the department.

(5) The department shall authorize an examiner to make findings and orders on claims for awards under this chapter.

(6) Notwithstanding s. 227.07, all hearings shall be open to the public unless in a particular case the examiner determines that the hearing, or a portion thereof, shall be held in private having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

*Veto.*—The governor vetoed subsec. (1) in its entirety. It read as follows:

“(1) Upon receipt of an application under s. 949.04, the department shall fix a time and place for a hearing and shall give notice thereof to each interested party.”

#### *949.12 Appeal*

(1) Any party in interest who is dissatisfied with the findings or order of an examiner may file a written petition with the department for review of the findings or order.

(2) Such petition shall be filed within 20 days from the date that a copy of the findings or order of the examiner was mailed to the parties in interest.

(3) Upon receipt of an application under sub. (1) or upon its own motion, the department shall review the record and affirm or modify the decision of the examiner to whom the claim is assigned. The action of the department in affirming or modifying the decision shall be final. The department shall place on file a written report setting forth its decision, and if such decision varies in any respect from the report of the examiner to whom the claim is assigned, setting forth its reasons for the decision. If the department receives no application within the 30-day period or fails to act upon its own motion within the 30-day period, the decision of the examiner to whom the claim was assigned shall be final.

(4) The department promptly shall notify any party in interest of its final decision and furnish each with a copy of the report setting forth the decision.

#### *949.13 Judicial review*

Within 30 days after receipt of the copy of the report containing the final decision of the department a party may file a petition in a circuit court of Dane county for a review thereof as provided in s. 227.16. The court shall summarily hear the petition and may make any appropriate order or decree within the scope of s. 227.20.

#### *949.14 Attorney's fees*

(1) The department may determine and allow reasonable attorney's fees to be paid out of, but not in addition to, the amount of the award granted to the applicant. No attorney may ask for, contract for or receive any larger sum than the amount so allowed. In no case shall such fees exceed 20% of the award.

(2) The department shall provide for payment of such fee directly to the person entitled thereto.

(3) Whoever charges a fee in violation of sub. (1) shall forfeit double the amount retained by him. This forfeiture shall be collected by this state in an action in debt, upon complaint of the department. Out of the sum recovered, the court shall direct payment to the applicant in the amount of the overcharge.

#### *949.15 Recovery from offender*

Whenever an order for the payment of an award for personal injury or death is or has been made under this chapter, the department shall be subrogated to the cause of action of the applicant against the person responsible for such injury or death and shall be entitled to bring an action against such person for the amount of the damages sustained by the applicant. If an amount greater than that paid pursuant to the award order is recovered and collected in any such action, the department shall pay the balance to the applicant.

#### *949.16 Confidentiality of records*

The record of a proceeding before an examiner or the department under this chapter shall be a public record. Any record or report obtained by an examiner or the department, the confidentiality of which is protected by any other law or rule, shall remain confidential.

**949.17 Penalty**

Whoever asserts a fraudulent claim under this subchapter may be fined not more than \$500 or imprisoned not to exceed 6 months or both, and shall further forfeit any benefit received and shall reimburse the state for payments received or paid on his behalf under this subchapter.

**949.18 Reports by department**

The department shall annually prepare and transmit to the governor and legislature a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, and the amount of any award.

*Section 4. Program responsibility citation.*—In the list of program responsibility citations enumerated for the department of industry, labor and human relations under section 1.221 (intro.) of the statutes, reference to chapter "949" is inserted.

Effective June 9, 1976.

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**VIRGIN ISLANDS CODE**
**Annotated—Volume 5, Title 33 and Title 34, 1974**
**PREFACE**

These 1974 cumulative pocket supplements were prepared under authority of section 12 of Title 1 of the Virgin Islands Code.

The Virgin Islands Code was enacted into law by the Legislature at its Regular Session held in 1957, and became effective September 1, 1957. These supplements contain all laws of a general and permanent nature enacted at that Session and at all subsequent Sessions through the 1973 Sessions of the Tenth Legislature.

The supplements published in June 1973 should be removed from the set of Code volumes, but may be retained for historical purposes.

These supplements are for use during 1974 and thereafter until new cumulative supplements are published. They are made prima facie evidence of the general and permanent laws of the Virgin Islands for the period they cover by section 11 of Title 1 of the Code.

The annotations close with decisions appearing in:

	<i>Volume</i>
Federal Supplement.....	366, p. 44.
Federal Reporter, 2nd Series.....	477, p. 926.
Supreme Court Reporter.....	94.
Virgin Islands Reports.....	9.
Opinions of the Attorney General of the Virgin Islands.....	5.

The user of the Virgin Islands Code is urged to consult these pocket supplements for any legislative changes to the title and section in which he is interested.

In the interest of improving the service to users of this Code, criticisms and suggestions are sincerely solicited.

EQUITY PUBLISHING CORP.  
Orford, New Hampshire.

December 1974.

**Chapter 7. Criminal Victims Compensation Act****Section analysis****SUBCHAPTER I. SHORT TITLE; DECLARATION OF POLICY; DEFINITIONS**

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- 152. Statement of policy.
- 153. Definitions.

**SUBCHAPTER II. ADMINISTRATION AND PROCEDURE**

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- 157. Powers and duties of the Commission: final orders and decisions; finality.
- 158. Procedural powers and limitations; rights of parties; effect of criminal conviction; immunity of witnesses.

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## SUBCHAPTER I. SHORT TITLE; DECLARATION OF POLICY; DEFINITIONS

## § 151. Short title

This chapter shall be known as and may be cited as the "Virgin Islands Criminal Victims Compensation Act". It shall be liberally construed to effect its purposes.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 22.

Effective date. Section 5 of Act March 6, 1968, No. 2111, Sess. L. 1968, Pt. I, p. 34, provided: "The provisions of this Act [adding this chapter, section 375a of Title 3, and section 3030 of Title 33] shall become effective on July 1, 1968".

## § 152. Statement of policy

The purpose of the provisions of this chapter is to establish a program of public compensation to innocent victims of certain criminal offenses, to the persons injured or killed while attempting to prevent the commission of criminal offenses or to apprehend suspected offenders, and to families of such victims or persons for personal injuries or deaths resulting from the commission of such offenses. This purpose is a reflection of the recognition by the Legislature of the Virgin Islands that many criminal offenses result from social and economic diseases of the community, while many others result from the temporary and permanent mental and emotional aberrations of the offender, and still others are perpetrated by the asocial and the socially immature and immoral, all of which are beyond the control of most victims of crimes. The Legislature is further cognizant of the social need to enlist and encourage the cooperation of the public in preventing crimes and in capturing criminals and to compensate any person who is injured while attempting to prevent a crime or apprehend a criminal. With this recognition as a base, the Legislature determines and declares, as a matter of public policy, that no innocent victim of any criminal offense covered by this chapter, no person injured while fulfilling his public duty in attempting to prevent a crime or to apprehend a criminal, and no family of any such victim or person shall be constrained to bear the financial burden of resulting personal injury or death, and that the Government of the people of the Virgin Islands shall compensate any such victim or person or family for the loss resulting from such injury or death.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 22.

## § 153. Definitions

Unless the context clearly requires otherwise, as used in this chapter—

- (1) The term "applicant" means any person who applies for compensation under the provisions of this chapter.
- (2) The term "child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child.
- (3) The term "Commission" means the Virgin Islands Criminal Victims Compensation Commission created and established by Section 375a of Title 3 of this Code.

(4) The term "dependents" means such relatives of a deceased victim as were substantially dependent upon his income at the time of his death, or would have been so dependent but for the incapacity due to the injury from which death resulted, and shall include the child of such victim born after his death.

(5) The term "Executive Secretary" means the Executive Secretary of the Commission.

(6) The term "offender" means any person accused, indicted, or convicted of the criminal offense which was the alleged cause of the injury or death for which compensation is sought under the provisions of this chapter.

(7) The terms "personal injury" and "injury" mean actual bodily harm, and include pregnancy and mental or nervous shock.

(8) The term "victim" means any person who is injured or killed—

(A) by an act or omission of any other person which is within the scope of the criminal offenses covered by subsection (a) of section 162 of this chapter, or

(B) while attempting to prevent the commission of a criminal offense under the provisions of Title 14 of this code, or to apprehend a person suspected of such an offense.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 23.

#### SUBCHAPTER II. ADMINISTRATION AND PROCEDURE

##### § 156. Powers and duties of the Executive Secretary: Preliminary hearings; reports with recommendations; submission to Commission

(a) Except as otherwise provided in this chapter, the Executive Secretary shall administer the provisions of this chapter.

(b) Upon an application made to the Commission under the provisions of this chapter, the Executive Secretary shall hold a prompt and fair hearing on each application filed under this chapter, and, on the basis of evidence received, shall prepare a written report with recommendation for action on such application by the Commission.

(c) The Executive Secretary, within five days after the preparation of the report with recommendations, shall submit copies to each member of the Commission, to the applicant, to the victim if he is not the applicant and is living, and to any offender, and he shall submit, upon request, copies to any other person who satisfies the Executive Secretary that he has a substantial interest in the proceedings. He shall further, within 30 days after the preparation of the report with recommendation, submit such report and recommendation to the Commission and call the Commission to formal meeting for the purposes of considering and acting upon the application and the report.

(d) The Executive Secretary shall notify the applicant, the victim if he is not the applicant and is living, any offender, and any other person who satisfies the Executive Secretary that he has a substantial interest in the proceedings of the time and place for the preliminary hearing before him and for the final consideration by the Commission.

(e) The Executive Secretary shall execute all orders of the Commission.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 24.

##### § 157. Powers and duties of the Commission: Final orders and decisions; finality

(a) When called to consider and to act upon an outstanding application and accompanying report submitted pursuant to section 156(c) of this chapter, the Commission shall make its determination and issue its order with due dispatch. Such determination and order of the Commission shall be final as provided by section 166 of this chapter.

(b) The Commission shall hold a fair hearing before making its determinations and before rendering a final order when such a hearing is requested by the Executive Secretary, by a majority of the members of the Commission, by the applicant, or by the offender.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 24.

##### § 158. Procedural powers and limitations; rights of parties; effect of criminal conviction; immunity of witnesses

(a) The Executive Secretary and the Commission, when conducting a proceeding under this chapter, shall have the authority and the power to administer oaths and affirmations, to issue subpoenas ad testificandum and subpoenas duces tecum which shall be enforceable pursuant to the pertinent provisions of chapter 29, Title 14, Virgin Islands Code, in any case of contumacious failure to comply with any such subpoena, to rule upon offers of proof and receive relevant evi-

dence, to take or cause depositions to be taken when it is determined that the prompt and fair disposition of the proceeding will be furthered thereby, to require reports or testimony from medical doctors or psychologists who have treated or examined the victim in relation to the injury or death for which compensation is sought, to direct the course of the proceeding, to dispose of procedural requests and motions, to make recommendations, determinations, and orders in conformity with sections 156 and 157 of this chapter, and to take any other action authorized by rules and regulations promulgated pursuant to the provisions of this chapter. No subpoena may be issued except under the signature of the Chairman of the Commission or of the Executive Secretary, and application to any court for the enforcement of such subpoena may be made only by the Chairman or Executive Secretary.

(b) The Commission shall adopt by regulation as the rules of evidence in connection with the preliminary hearing and in connection with the final consideration the provisions of section 10 of the Revised Model State Administrative Procedure Act promulgated in 1961 by the National Conference of Commissioners on Uniform State Laws.

(c) The applicant, any offender, and any other person who satisfies the Executive Secretary at the preliminary hearing or the Commission at the final consideration that he has a substantial interest in the proceedings shall have the right to appear and be heard, either in person or by attorney, and shall also have the right to produce evidence and to call, to examine, and to cross-examine witnesses.

(d) Any person who files an application under the provisions of subsection (c) of section 161 of this chapter on behalf of a victim or a dependent who is a child or who is non compos mentis shall have all of the procedural rights and privileges granted and guaranteed to applicants under this chapter.

(e) No person appearing as a witness before the Commission at final consideration may be excused from answering any question put to him by any member of the Commission on the ground that to answer might or would incriminate him; but no answers made by any witness to any such question shall be used or admitted in evidence in any proceeding against such witness, except in a criminal prosecution against the person for perjury or for contempt in respect to any answer to any such question. Refusal to answer any question determined by the Commission to be proper and pertinent shall be subject to punishment for contempt under the pertinent provisions of chapter 29, Title 14, Virgin Islands Code.

(f) In making a determination the Commission shall consider all circumstances which it determines to be relevant, including provocation, consent, or any other behavior of the victim which directly contributed to his injury or death.

(g) The Executive Secretary, in connection with the preliminary hearing, and the Commission, in connection with the final consideration, may not make public any information which might lead to the identification of the offender or of the victim if—

- (1) the offender has not been convicted, or
- (2) the Executive Secretary or the Commission is satisfied that privacy is necessary to protect the interests of the victim or any dependent of the victim.

(h) Every determination of the Commission shall be based on the evidence before it and shall be supported by substantial evidence. The applicant shall have the burden of proving every pertinent fact, which is brought into issue, to the satisfaction of the Commission.—Added March 6, 1968, No. 2111, § 2, Sess. I, 1968, Pt. I, p. 26.

### SURCHAPTER III. APPLICATION; AWARD AND PAYMENT OF COMPENSATION

#### § 161. *Application: Eligibility; Requirements; Limitations*

(a) Any victim, any person who is responsible for the maintenance or care of the victim and who has incurred expenses as a result of injury to or the death of the victim, and, in the case of the death of the victim, the estate or any dependents of the victim may apply for compensation under the provisions of this chapter; Provided, however, That no person who is not a citizen of the United States or who is not an immigrant alien admitted to the United States for permanent residence under the pertinent provisions of the Immigration and Nationality Act, as amended (8 U.S.C. §§ 1101 et. seq.) may apply for or receive compensation under the provisions of this chapter.

(b) Every application for compensation under this chapter shall be filed with the Executive Secretary in accordance with regulations prescribed by the Commission within two years after the personal injury or death occurs. Additionally, the Executive Secretary must be notified within thirty days after such injury or death occurs that an application for compensation under this chapter will be filed, and a report of the criminal offense which allegedly caused the injury or death for which compensation is sought under this chapter shall be filed by the victim with the police within twenty-four hours after the offense was committed. If the application, notification, or report is not filed or made within the time prescribed, the applicant shall have the burden of satisfying the Executive Secretary that the delay was justified by extraordinary circumstances.

(c) In any case in which the victim or a dependent of a victim is a child, the application may be filed on his behalf by his parent or guardian; and in any case in which the victim or a dependent of the victim is mentally incompetent the application may be filed on his behalf by his parent, guardian, or such other person authorized to administer his estate.

(d) No more than one application may be filed by or on behalf of any person eligible to file an application under the provisions of subsection (a) of this section; and where more than one application is filed on behalf of two or more dependents of the same victim the Executive Secretary and the Commission shall consolidate the claims and the proceedings thereunder.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 27; amended Aug. 11, 1972, No. 3285, § 3, Sess. L. 1972, p. 416.

1972—Subsection (b): In the first sentence substituted “within two years” for “within one year”.

1. Constitutionality. Classification made under this section, providing that persons not United States citizens or an immigrant alien admitted to the United States for permanent residence may not apply for or receive compensation, is constitutionally impermissible under the Equal Protection Clause inasmuch as the distinction is wholly unrelated to the central designs of the Act. *Sailor v. Tonkin*, D.C.V.I. 1973, 9 V.I. 421.

Visiting aliens could not be excluded from compensation under this section on the ground that the Government may regulate the dispersal of its public funds in favor of its citizens and permanent-resident aliens, who purportedly are taxpayers. Id.

#### § 162. Offenses and incidents covered

(a) The Commissioner may order the payment of compensation in accordance with the provisions of this chapter in any case in which—

(1) The victim was injured or killed by any act or omission that constitutes a criminal offense which is a felony or aggravated assault and battery under the laws of the Virgin Islands and which may be prosecuted under the laws of the Virgin Islands pursuant to the provisions of subchapter V, chapter 1, Title 14 of this code; or

(2) The victim was injured or killed while attempting to prevent the commission of a criminal offense which may be prosecuted under the laws of the Virgin Islands pursuant to the provisions of subchapter V, chapter 1, Title 14 of this code, or to apprehend a person suspected of such an offense.

(b) For the purposes of this chapter, the fact that the offender was legally incapable of forming a criminal intent by reason of age, insanity, drunkenness, or otherwise shall not preclude an award of compensation under this chapter.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 27.

#### § 163. Awards: General provisions; allowable compensation; standards for compensation; effect of prosecution or conviction

(a) The Commission, upon proper application and after the required preliminary hearing before the Executive Secretary and the required final consideration and if it determines that the applicant has satisfied the burden of proving all contested issues of fact, may order the payment of compensation in accordance with the provisions of this chapter from the Criminal Victims' Compensation Fund created and established as a special revolving fund in the Treasury of the Virgin Islands under section 3030 of Title 33 of this code.

(b) Subject to the limitations of subsection (a) of section 164 of this subchapter and to the deductions and limitations under section 165 of this subchapter, the Commission may order the payment of compensation—

(1) to, or for the benefit of, the victim or to his estate up to the amount of expenses actually and reasonably incurred or to be incurred as a result of the injury or death of the victim, including medical, burial, and other necessary expenses;

(2) to any person responsible for the maintenance or care of the victim who has incurred expenses as a result of the injury or death of the victim, including medical, burial, and other necessary expenses, up to the amount of such expenses;

(3) to or for the benefit of the victim for—

(A) the loss of earnings resulting from total or partial disability resulting from the injury equal to two-thirds ( $\frac{2}{3}$ ) of the difference between his earnings (or earning power, if the victim was not employed) at the time when the injury occurred, and the wages, if any, earned by the victim during his disability, but not to exceed four hundred dollars (\$400) in any one month; and

(B) pain and suffering, but not to exceed five hundred dollars (\$500);

(4) in the case of the death of the victim, to or for the benefit of any one or more of the dependents of the victim up to the amount of the pecuniary loss of such dependents, but not to exceed ten thousand dollars (\$10,000) to the spouse of the deceased victim and not to exceed one thousand dollars (\$1,000) to each dependent of the deceased victim other than the spouse.

(c) For the purpose of determining the amount of any compensation to be awarded under this chapter, the Commission shall, insofar as practicable and feasible, formulate standards for the uniform and consistent application of the provisions of this chapter, and shall take into consideration rates and amounts of compensation payable for injuries and death under other laws of the Virgin Islands and of the United States and the availability of funds in the Criminal Victims' Compensation Fund.

(d) An award may be granted under this chapter whether or not any person is prosecuted for or convicted of the crime which is the alleged cause of the injury or death. The Executive Secretary or the Commission may suspend the preliminary hearing or the final consideration, respectively, for such appropriate period during which a prosecution for the criminal offense, which is the alleged cause of the injury or death for which compensation is sought, has been commenced or is imminent.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 28.

#### § 164. *Same: Limitations*

(a) The total amount of compensation awarded or paid to any one applicant under the provisions of section 163 of this chapter may not exceed the sum of \$10,000.

(b) The Commission may not award compensation to an applicant under this chapter if, supported by substantial evidence, it determines that—

(1) The criminal offense, which allegedly caused the injury or death for which compensation is sought under this chapter, did not occur; but if any person has been convicted of the criminal offense, proof of that conviction unless an appeal against the conviction or a petition for a rehearing, retrial, or certiorari in respect of all charges is pending or a new trial or rehearing has been ordered, shall be *res judicata* as to the fact that the criminal offense has been committed; or

(2) The act or omission which constituted such criminal offense was not a proximate cause of the injury or death; or

(3) The requirements of section 161 of this chapter were not met or the provisions of section 162 of this subchapter were not satisfied; or

(4) The offender is the victim's spouse, parent, grandparent, stepparent, child, grandchild, stepchild, brother, sister, half brother, half sister, or spouse's parent, grandparent, stepparent, child, grandchild, stepchild, brother, or sister; or

(5) At the time when the personal injury or death was caused or at any time after the injury, either the victim was living with the offender as his wife or as her husband, or both the victim and the offender were members of the same household; or

(6) The victim provoked, consented to, or in any other direct manner contributed to his injury or death; or

(7) The victim and the offender, at the time when the injury or death was caused, were engaged in a common unlawful enterprise or activity; or

(8) The injury or death was caused by the operation of a motor vehicle, airplane, or boat, unless the vehicle, airplane, or boat was used as a weapon in a deliberate attempt to injure or kill the victim.

(e) Orders for payment of compensation pursuant to this chapter may be made only as to injuries or death caused by criminal offenses occurring after January 1, 1968, or caused during an attempt to prevent a criminal offense or to apprehend a person suspected of committing such an offense which attempt occurred after January 1, 1968.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 29; amended July 16, 1968, No. 2286, § 1, Sess. L. 1968, Pt. II, p. 236. 1968—Subsection (e): Substituted “January 1, 1968” for “June 30, 1968.”

**§ 165. Same: Terms of payment; deductions**

(a) Except as otherwise provided in this chapter, any order for the payment of compensation under this chapter may be made on such terms as the Commission determines to be appropriate.

(b) The Commission shall deduct from any payments awarded under this chapter the amount of any moneys actually received by the applicant from the offender, from any person on behalf of the offender, or from any payments under any insurance policy, other than a policy on the victim's life, but including workmen's compensation, for the personal injury or death for which compensation was awarded under this chapter.

(c) The payment of any compensation awarded under this chapter shall be subject to and limited by other outstanding awards under this chapter and the amount of money in the Criminal Victims' Compensation Fund.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 30.

**§ 166. Same: Finality and reconsideration; review**

(a) Every determination and order of the Commission shall be final, except that an applicant may obtain a reconsideration by the Commission of an order upon filing a written request for reconsideration with the Executive Secretary within one calendar year after the issuance of the order, and upon approval of the request by the Commission.

(b) In the case of an award to or for the benefit of the victim under subdivision (3) of subsection (b), section 163 of this subchapter which is to be paid periodically, depending on the continuing disability of and any wages earned by the victim, the Commission shall review the award at least every two years to determine such continuing disability and wages earned, if any, and to alter such award to accord with any pertinent change in circumstances. The victim shall inform the Commission of any pertinent change in his disability or in his income from wages. If the victim does not inform the Commission as required, his payments may be terminated at the discretion of the Commission.

(c) Neither the right of the applicant to reconsideration nor the obligation of the Commission to review shall affect the finality of a determination and order of the Commission.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 31.

**SUBCHAPTER IV. RECOVERY OF COMPENSATION**

**§ 169. Repayment by the applicant**

Any applicant who has received payments on an award made by the Commission under this chapter shall pay to the Commission all sums, not to exceed the amount of such payment, which, after the payment on the award, have been received by the applicant from the offender, from any person on behalf of the offender, or from any payments under any insurance policy, other than a life policy, for the personal injury or death for which the award was made under this chapter.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 13.

**§ 170. Recovery from the offender**

(a) In any case where a person is convicted of a crime which was the cause of the injury or death for which compensation has been awarded under this chapter, the Commission may institute an action against such person for the recovery of the whole or any specified part of such compensation actually paid to the applicant under this chapter in any court of competent jurisdiction in the Virgin Islands. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. Any amount recovered and collected which exceeds the amount paid pursuant to the award shall be paid to the applicant.

(b) In any case where payment is made to the Commission under section 169 of this subchapter, the Commission may recover under this section only the difference between such payment and the amount of the compensation awarded under this chapter. The balance of any amount recovered and collected shall

be paid to the applicant.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 31.

**§ 171. Criminal Victims Compensation Fund**

All payments made to the Commission under the provisions of section 169 of this subchapter and all payments made to the Commission on awards granted under the provisions of section 170 of this subchapter shall be covered by the Commission into the Criminal Victims Compensation Fund created and established as a special revolving fund in the Treasury of the Virgin Islands under section 3030 of Title 33 of the Code.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 32.

SUBCHAPTER V. MISCELLANEOUS

**§ 174. Rules and regulations**

The Commission, subject to the approval of the Governor and not inconsistent with law, may adopt, enforce, revise, amend, rescind, or repeal rules and regulations prescribing the administrative and procedural steps to be followed in the filing of applications and during the proceedings under this chapter, and governing other administrative functions and activities of the Commission of the Executive Secretary, and of any staff members.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 32.

**§ 175. Personnel; budget**

Subject to the provisions of chapter 35 of Title 3 of this code, the Commission may employ such personnel as it determines necessary for the effective and efficient administration of its functions and responsibility. Budget needs of the Commission shall be submitted annually to the Legislature as a part of the budget of the Department of Social Welfare.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 32; amended April 23, 1968, No. 2176, § 1(a), Sess. L. 1968, Pt. I, p. 457.

1968—Substituted "Department of Social Welfare" for "Department of Public Welfare."

**§ 176. Reports to the Governor and to the Legislature**

The Commission shall prepare and transmit to the Governor and to the Legislature annually a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, the amount, if any, of compensation awarded, recommendations for appropriate amendments to the law, and an accounting of revenues to and expenditures from the Criminal Victims Compensation Fund with estimates of needs during the next fiscal year.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 33.

**§ 177. Penalties**

The pertinent provisions of chapter 77 of Title 14 of this code shall apply to every application, statement and document and to all information presented to the Executive Secretary in the application or at the preliminary hearing, or presented to the Commission at the final consideration of an application for compensation under this chapter; and, in addition, whoever, in any matter during a preliminary hearing or a final consideration, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$1,000 or imprisoned for not more than 5 years, or both.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 32; amended April 23, 1968, No. 2176, § 1(a), Sess. L. 1968, Pt. I, p. 457.

1968—Substituted "chapter 77" for "chapter 75".

RESOLUTIONS ADOPTED

FORTY-FOURTH ANNUAL MEETING, UNITED STATES CONFERENCE OF MAYORS,  
MILWAUKEE, WISCONSIN, JULY 1, 1976

**57. National Strategy to Reduce Crime and Improve Justice**

Whereas, the President's Commission on Law Enforcement and the Administration of Justice in 1967 recommended a national strategy to control crime and improve justice; and

Whereas, the Commission report recommended a broad range of program initiatives for federal, state and local governments, as well as the private sector, as a means to accomplish its goals; and

Whereas, the report of this Commission led to the creation of the Law Enforcement Assistance Administration under the Omnibus Crime Control and Safe Streets Act of 1968; and

Whereas, the Law Enforcement Assistance Administration has expended \$4.5 billion during the last eight years in a national effort to reduce crime and improve justice; and

Whereas, the Law Enforcement Assistance Administration program has not fully accomplished its objective in generating an effective national strategy to reduce crime; and

Whereas, in spite of a massive federal program and numerous experiments in crime control, no consensus has developed among policymakers concerning the type of national program which should be established, now, therefore, be it

*Resolved*, That the United States Conference of Mayors commits itself to a role of leadership on the issues of crime and justice; and be it further

*Resolved*, That the U.S. Conference of Mayors calls for a new national commitment to crime control and justice reform, and urges the President and presidential candidates to begin to address the issues of crime and justice and to commit themselves to leadership on this issue; and that Congress enact legislation establishing a new Presidential commission to be appointed in 1977 to review progress during the ten years since 1967 in developing a national strategy to reduce and prevent crime and to improve the criminal justice system; and that this commission address the needs of cities as its first priority.

#### *58. Compensation for Victims of Crime*

Whereas, the current methods of compensating crime victims are inadequate for those victims who have received personal injury and increased loss of income; and

Whereas, many citizens are disillusioned with the entire criminal justice system because an accused criminal enjoys the protection of constitutional rights while the victim and witnesses of crimes are often victimized by the criminal justice system through harsh and neglectful treatment; and

Whereas, compensating victims of crime may provide an incentive for citizens to report crimes; and

Whereas, compensating victims of crime is the inherent responsibility of the state because of its basic responsibility to assure the safety of people in its jurisdiction, now, therefore be it

*Resolved*, That the United States Conference of Mayors urges that the Congress enact legislation to provide for a national victim compensation program to be administered at the state level, which shall include a publicly-financed advocate for victims' rights.

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#### HOUSE MEMORIAL 4134, RESOLUTION PASSED BY STATE OF FLORIDA HOUSE OF REPRESENTATIVES, REGULAR SESSION 1976

A memorial to the Congress of the United States, urging Congress to adopt legislation relating to the compensation of victims of crime.

Whereas, the Legislature of the State of Florida recognizes that many innocent persons suffer personal physical injury or death as a direct result of criminal acts or, secondarily, as a result of their efforts to prevent crimes or to apprehend persons committing or attempting to commit crimes, and

Whereas, the Legislature of the State of Florida believes that there is a need for government to provide financial assistance to such persons, or their dependents, who suffer disabilities, incur financial hardships, or become dependent upon public assistance, and

Whereas, a bill, HR 13157, presently before Congress, would assist the State of Florida and the other states in implementing legislation to provide compensation to such persons by providing matching grants to states which implement such legislation, now, therefore, be it

*Resolved by the Legislature of the State of Florida*, That the Florida Legislature respectfully petitions the Congress of the United States to adopt legislation which would provide matching grants to states with programs compensating victims of crime, be it further

*Resolved*, That copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE SUMMARY

Urges Congress to adopt legislation which would provide matching grants to states with programs compensating victims of crime.

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**STATE OF MINNESOTA**

**MINNESOTA CRIME VICTIMS**

**REPARATIONS BOARD**

**FIRST BIENNIAL REPORT**



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STATE OF MINNESOTA  
CRIME VICTIMS REPARATIONS BOARD  
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ST. PAUL, MINNESOTA 55101  
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JOE E. THOMPSON  
*Chairman*

SAMUEL L. SCHEINER  
*Executive Director  
Consultant*

WILLIAM KOSIAK, M.D.  
ROD BOYD  
*Board Members*

TO:

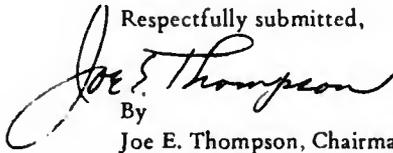
HONORABLE WENDELL R. ANDERSON  
*Governor of the State of Minnesota*

HONORABLE MEMBERS OF THE STATE LEGISLATURE  
State of Minnesota

Gentlemen:

I have the honor to submit a completed Biennial Report of the Crime Victims Reparations Board submitted pursuant to the provisions of M.S.A. 299B.06, Subdivision 1 (3) which covers the period July 1, 1974, through June 30, 1976.

Respectfully submitted,

  
By  
Joe E. Thompson, Chairman

St. Paul  
Dated: July 1, 1976

**FIRST BIENNIAL REPORT OF THE  
CRIME VICTIMS REPARATIONS BOARD  
STATE OF MINNESOTA**

TO:

Honorable Wendell R. Anderson  
Governor of the State of Minnesota

Edward Novak, Commissioner  
Department of Public Safety

Honorable Legislators  
State of Minnesota

**I. ADMINISTRATIVE BACKGROUND**

This report covers the period of July 1, 1974, through June 30, 1976, which was the first two years of the law's existence in the State of Minnesota.

The Minnesota Crime Victims Reparations Board was established by the 1974 Legislature to take effect on July 1, 1974. The purpose of the law was to indemnify the victims of violent crime in this state, and it applied to only those violent crimes which occurred after July 1, 1974.

Because the rules and regulations for the Board were not adopted until sometime in September, 1974, and an Executive Director and secretary were not employed until November 1, 1974, the initial report that was made of the work of the Board covered only the period November 1, 1974, to March 1, 1975, a five month period. It was, therefore, decided to make this report a biennial report to cover the entire two year period from July 1, 1974, to June 30, 1976, and then to submit annual reports as required by M.G.S. 299B.06 (e) to the Governor and the Legislature.

At the time of its adoption there was no other state or country that had passed a law identical to it, although some government indemnity programs for victims of crime were created in recent years in about one half dozen states and approximately three or four countries. It is a new form of needed social legislation that pays attention, at long last, to the plight of the victim rather than the criminal offender. The new law is administered by a three member Board whose staff consists only of a full-time "Executive Director" and a secretary.

The Act provides that at least one member of the Board shall be someone who is a licensed attorney and one member shall be a licensed medical or osteopathic physician. The present Board is composed of a Willmar attorney, a St. Paul physician, and a Dakota County Sheriff.

The initial effort of the Board was to formulate operating rules and regulations for the formal administration of the new law. It then hired the staff and drafted various claim forms which can be used by the claimants and the staff to expedite the orderly processing of claims in a quick and inexpensive manner to involve as little "red tape" as possible. With the present total annual budget of the Board set at \$300,000.00, we expect our total administrative costs to annually run less than fifteen percent of the budget. In other words, eighty-five percent of our budget will be spent on claims.

The duties of the Executive Director require managing the Board office, the review of all claims received, the verification of the documentation necessary to support the claim, the carrying out of any investigative work necessary to complete the submission of the claim to the Board for decision, publicizing of the law to create public awareness of its existence, and coordinating the efforts of various law enforcement agencies to provide the necessary information to the victims of violent crimes in this state.

Initially, the Legislature provided a budget of \$100,000.00, but it soon became apparent that it was insufficient to staff our office and to pay the number and amount of claims that began arriving shortly. The last legislative session set the budget at \$300,000.00. The Legislature also placed the Crime Victims Reparations Board under the administrative arm of the Minnesota Department of Public Safety, "for budgetary and administrative purposes." The members of the Board are appointed by the Governor with the advice and consent of the Senate and all serve at the pleasure of the Governor. The Board members serve part-time and receive \$35.00 per diem. The Executive Director is a licensed attorney and receives \$20,000.00 per year.

Individual members of the Board have the authority under the statute to make an award or to deny a claim. The Executive Director makes certain Findings and Recommendations to the individual Board member assigned to every claim and obtains any further information requested by the Board member assigned to make the decision. The statute also allows for emergency payments to victims of crime prior to their case being fully settled, and these emergency awards must be signed by all three members of the Board before payment can be made.

## II. PROCEDURES USED IN PROCESSING CLAIMS

After receipt of the Preliminary Claim Form, the Executive Director determines initially whether minimal eligibility has been met. The following statutory requirements must be in evidence on the claim form before the same is processed: (1) a crime as defined in M.S.A. 609.02, Subdivision 1, must have been committed, (2) the crime must have been reported to the proper law enforcement authorities within the time period designated in M.S.A. 299B.03, Subdivision 2 (a) (3), or within five days, unless the Board feels there are extenuating circumstances that allow extension of that time, (3) that the victim or claimant has fully cooperated with the police and other law enforcement officials, (4) that the victim is not the spouse of or a person living in the same household with the offender or his accomplice or the parent, child, brother or sister of the offender or his accomplice unless the Board determines that the interests of justice otherwise require in a particular case, (5) the claimant was not the offender or accomplice of the offender or an award to the claimant would unjustly benefit the offender or an accomplice, (6) that the claim does not arise from criminal negligence involving a motor vehicle, boat or aircraft vehicle, (7) is not a claim for personal property, (8) that the claimant or victim is an innocent victim of the crime having been committed against his or her person, and (9) must file a claim with the Board within one year of the happening of the event. (see Amendments)

If the claim then meets these standards for eligibility, the claimant is requested to submit a Supplementary Claim Form, duly executed and notarized, which indicates the loss sustained by the claimant and as to what part of the loss has been paid through collateral sources such as private hospitalization or medical plans, free health care, Social Security or other collateral source that comes from the county, city, state or federal government.

A certificate is then sent to the law enforcement agency involved in investigating the crime to determine whether the claimant has fulfilled the requirements of the statute. The law enforcement officers are asked to indicate when the crime was reported, if the claimant was fully cooperative with them, and whether or not the claimant is considered by them to be an "innocent victim of crime."

The Executive Director as part of his investigative responsibilities verifies: (1) the employment of the victim and/or claimant, (2) whether or not the claimant is/was employed, the income reported and its documentation, and (3) the hospital and medical bills possibly reimbursed by insurance or any other collateral sources.

When the Executive Director certifies a claim as complete, he drafts certain Findings and Recommendations for the review of the Board member assigned the claim, the Board member then makes a decision, and the claimant is notified of it. If the claimant is dissatisfied, he or she can apply within 30 days in writing for a review of the decision by the full Board in a hearing governed by the rules and regulations adopted by the Board.

As the attached table of statistics will indicate, the Board handled a total of 580 claims from July 1, 1974, through June 30, 1976. Most of these claims concern violent crimes originating in the Twin Cities' area. Criminal assaults constituted a predominantly large share of the individual claims and most of the claims were paid approximately three months from the date they were filed with the Board. There were 228 claims that were denied for various reasons as listed in the attached table.

### III. EMERGENCY AWARDS

Emergency awards are made in cases pending a final decision where undue hardship is evidenced. Since its inception, the Board has made 27 emergency awards.

### IV. ATTORNEYS

The claimant is entitled to representation by an attorney from the time the claim is filed. It has been our experience, thus far, that very few of the claimants are represented by attorneys. The Board has the power to limit the fee charged by an attorney for representing the claimant before the Board, but to this time the Board has not been compelled to do so on any case.

### V. PUBLIC AWARENESS

The Minnesota Crime Victims Reparations Law did not become effective until July 1, 1974, and since November 1, 1974, when the Executive Director was employed, a large effort has been expended by the Executive Director to acquaint Minnesota citizens that such a law was available to citizens of our state. In this regard, the general mass media, radio, television, newspapers, speeches, etc., have been most helpful. In spite of our great public relations efforts, it is quite apparent to us that there are many victims of crime in this state who are still not aware of our new law. M.S.A. 299B.15 provides:

"All law enforcement agencies investigating crimes shall provide forms to each person who may be eligible to file a claim pursuant to Sections 299B.01 to 299B.16, and to inform them of their rights hereunder. All law enforcement agencies shall obtain from the Board and maintain a supply of all forms necessary for the preparation and presentation of claims."

The most effective way to reach the victims of crime is through the law enforcement officers in charge of handling the investigations. In this regard, thousands of brochures have been distributed to law enforcement personnel throughout the state. In addition, the Executive Director has spoken before many of the law enforcement agencies and their personnel so that they would be informed of their obligations under the law. At the present time, plans are being made to print 10,000 plastic cards for law enforcement officers to carry in their wallets summarizing the law so that they will have available on their person the information necessary to give to the victims of violent crimes while receiving the report of the incident. It is the law enforcement officer who is the one who usually comes in contact with the victim of a violent crime. If he is knowledgeable about the law, and informs the victims of their rights, no amount of other mass media material can substitute for this personal contact. Also, it demonstrates to the victim that the state is concerned about him or her. Also, other agencies that may come in contact with victims of crime such as hospitals, mortuaries and other institutions, have been provided with quantities of informational brochures in order that they may be given to victims of violent crimes.

## **VI. AMENDMENTS TO THE MINNESOTA CRIME VICTIMS REPARATIONS LAW**

After working with the new law for a short period of time, we made some recommendations to the Legislature for some changes we felt would improve it. Accordingly, the 1975 Legislature changed M.S.A. 299B.03, Subdivision 1 (d), so that any person who had purchased services for a crime victim could be reimbursed. The 1975 Legislature also gave the Board the power to limit the fee charged by an attorney representing a claimant before the Board in order that the Board would have some control over the fees paid by claimants to counsel. Since the process and procedure in making a claim has been kept to a minimal amount of paper work and simplified to the largest extent possible, in most cases the victim has not felt required to hire counsel to represent him or her.

We recommended to the 1976 Legislature that they broaden the time limit for presenting a claim in order to make the law more just. Formerly, the law provided that no reparations could be awarded to a claimant, otherwise eligible, if no claim was filed with the Board within one year of the victim's injury or death. The Board was presented with a case where a babysitter had been abducted in August, 1974, and her decomposed body was not found until November, 1975. In that situation no claim could have been made until after a year had passed from the apparent date of death of the victim, and this would have prevented the victim's parents from collecting the funeral expenses. Therefore, the 1976 Legislature changed this part of the law to now read: "(e)...no claim was filed with the Board within one year of the victim's injury or death; but if it could not have been made within that period, then the claim can be made within one year of the time when the claim could have been made."

It is our hope that in future legislative sessions the law will be changed to increase the \$10,000.00 statutory maximum for a claim in order that the state may more justly indemnify victims of violent crimes who incur far greater loss than the maximum now provides.

## VII. PROJECTION

In 1976 violent crimes in this state, including homicide, rape, robbery and aggravated assault, have increased 17 percent over the previous year. As the number of victims of violent crimes increases in this state, and as the public becomes more aware of the law, we can expect that the number of claims and the amount paid to claimants will increase proportionately. To help lessen the burden to our state in providing reparations to victims of violent crimes, it is our hope that the Federal Government will provide sharing of funds for claims to states, such as Minnesota, which have passed Crime Victims Reparations Laws. At this time there is activity in this regard in Congress with some hope of passage by 1978.

## VIII. POLICY INTENT AND PHILOSOPHY

The reasons for compensating innocent victims of violent crimes are strictly humanitarian. The victim, without the benefits of this statute, is left with nothing except his bills, the worry of his family, as well as the disruption of his household. As a practical matter, now a victim in the State of Minnesota knows that his government is concerned with a victim and not just concerned with the offender. There has been some experience to indicate that victims of crime who formerly might be unwilling and uncooperative with law enforcement agencies to arrest the perpetrators now become willing and cooperative witnesses to the conclusion of a case. Since it costs the State of Minnesota approximately \$15,000,000 a year to operate our prison and reformatory, the sum of \$300,000.00 per year to compensate victims of violent crime in this state certainly seems miniscule by comparison, but it is a beginning.

The Board has continued to treat each claimant not as an adversary, but as people in need of assistance. We are dedicated to the principle of providing more than just a token of assistance to the needy innocent victims of crime. We are proud to be an arm of our state government extending a helping hand to the long neglected innocent victims of crime.

The Board gratefully acknowledges the excellent cooperation extended to it by Commissioner Edward Novak, Department of Public Safety, and his entire staff who have so efficiently and effectively assisted our agency in its infancy. The Board further gratefully acknowledges the excellent cooperation that has been extended to it by the law enforcement agencies throughout the state, the Attorney General's Office and the mass media in helping us to acquaint the public with this new law.

To give the reader an idea of the work of the Board, we have included a representative sample of case histories involving some of the claims we have decided. We have omitted the names of the victims included in this report, but we have indicated the reasons for denial of their claims or awards made to them.

In the Register of cases handled from July 1, 1974, through June 30, 1976, the names of the victims appear with the exception of rape victims who are referred to as "rape claimants," for we do not want to cause these claimants further embarrassment or bad publicity. The names of these claimants, however, are available to the Governor and the Legislature at their request as required by M.G.S. 299B.06 (e).

Respectfully submitted.

June 30, 1976

JOE E. THOMPSON, Chairman  
 WILLIAM KOSIAK, M.D., Board Member  
 ROD BOYD, Board Member  
 SAMUEL L. SCHEINER, Executive Director

The following is a list of representative cases finalized as taken from the files:

### ADDENDUM #1

#### Claim No. 248-AS-75

Victim, male, age 24, claimant. Claimant filed for reimbursement for medical and hospital expenses as a result of being jumped and assaulted which caused him to sustain a broken nose and an injured upper lip. Although the Board felt that the claimant was an innocent victim of a violent crime, they were unable to reimburse the claimant due to the fact that no report to a law enforcement agency could be found on this case.

Claim disallowed.

#### Claim No. 69-AS-75

Victim, male, age 29, claimant. Claimant filed for reimbursement of medical and hospital expenditures as well as loss of income as a result of being injured when he was stabbed in the left shoulder by a knife or a sharp object which pierced his lung. The assailant was a female who committed this act without warning and who claimed that the claimant had mistreated her daughter. Claimant was uncooperative with the police in pressing for the arrest and conviction of the woman who assaulted him, and, therefore, an important element of the statute was not fulfilled.

Claim disallowed.

#### Claim No. 38-M-75

Victim, female, age 21, claimant. Claimant was walking from a bus stop when the assailant jumped her and knocked her down from behind. Her arm was dragged by her purse strings across the ground, and he hit the claimant until her purse came loose and then the assailant fled. The claimant sustained a sprained back, bruises and cuts, loss of glasses, hearing aid and upper and lower retainers.

Awarded: \$185.14	Loss of wages	\$221.64
	Medical expenses	<u>63.50</u>
		\$285.14
	Deductible	<u>- 100.00</u>
		\$185.14

#### Claim No. 25-R-76

Victim, female, age 28, claimant. Claimant filed for loss of time, emotional strain and bruises, etc., because of the fact that a man gained entry to her house pretending to be a meterman, drew a gun on her and her two year old daughter and pushed her head over heels down the basement stairs. An accomplice entered the house, and they both raped her under the threat of death. Both assailants were found guilty of aggravated rape.

Awarded: \$1,326.11	Loss of wages	\$1,413.73
	Medical expenses	<u>95.48</u>
		\$1,509.21
	Collateral	<u>-183.10</u>
		\$1,326.11

**\*Claim No. 49-H-75**

Victim, male, age 53, claimant on behalf of deceased victim. The deceased victim was murdered as the result of an attempted robbery. Two men were apprehended and found guilty of murder.

Awarded: \$1,237.76	Funeral expenses	\$1,592.76
	Collateral	<u>-355.00</u>
		\$1,237.76

**Claim No. 21-M-75**

Victim, female, age 48, claimant. Claimant was knocked down and beaten, and her arm was broken as her purse was snatched.

Awarded: \$2,264.21	Loss of wages	\$1,604.49
	Medical expenses	<u>759.72</u>
		\$2,364.21
	Collateral	<u>-100.00</u>
		\$2,264.21

**Claim No. 44-AS-74**

Victim, male, age 21, claimant. Claimant was a customer in a record shop where a robbery took place, and he was shot by the robber in the spinal column leaving him a paraplegic.

Awarded: \$10,000 -- To be paid at the rate of \$500.00 per month commencing with March 1, 1975, and until the full \$10,000 was used up by the claimant. Entire amount of award was for loss of earnings as a result of permanent injuries. Nothing was paid to suppliers of services.

**Claim No. 50-AS-75**

Victim, male, age 20, claimant. Claimant suffered stab wounds in his chest and arm and a broken leg as the result of an assault in which he was determined to be an innocent victim of the crime.

Awarded: \$3,451.45	Loss of wages	\$3,849.45
	Medical expenses	<u>528.00</u>
		\$4,377.45
	Collateral	<u>-926.00</u>
		\$3,451.45

**Claim No. 47-H-75**

Victim, male, age 68, claimant on behalf of deceased victim. The deceased victim was shot and killed, and the claimant was seriously wounded by two assailants who were arrested and sent to prison for this offense. The claimant, the wife of the deceased victim, filed for reimbursement of funeral expenses and loss of monthly railroad retirement income, which she would have received from her husband had he lived.

Awarded: \$1523.42 for funeral expenses and a balance of \$8,476.58 in monthly payments of \$125.52 until the full sum of \$10,000 is reached. This represents 1/2 the monthly loss of railroad retirement funds she lost as a result of the death of her husband.

*\*The Board set a maximum amount of \$1,850 for funeral expenses. The statutory deductible of \$100 is subtracted as is all other collateral, i.e., Social Security payment of \$255.00 and veterans' benefit, etc.*

**Claim No. 158-AS-75**

Victim, female, age 60, claimant. Claimant was wounded as stated in the claim preceding this claim, which caused her to lose her eyesight and sustain other physical injuries due to her being hit by four bullets.

Awarded: \$3,892.65	Medical expenses	\$5,818.09
	Collateral	<u>-1,925.44</u>
		<u>\$3,892.65</u>

**Claim No. 96-AS-75**

Victim, male, age 29, claimant. Claimant was the victim of an aggravated assault and was injured as a result of the assailant shooting five times through the claimant's door at his home without provocation. He was hit in the chest and liver.

Awarded: \$1,110.14	Loss of wages	\$1,210.14
	Medical expenses	<u>2,854.98</u>
		<u>\$4,065.12</u>
	Collateral	<u>-2,954.98</u>
		<u>\$1,110.14</u>

**Claim No. 116-AS-75**

Victim, female, age 21, claimant. Claimant was a clerk in a record shop when it was held up, and she was shot and cut about her face, hands, etc., with a machete used by her assailant. This necessitated considerable medical attention and loss of wages. Emergency awards were made to the claimant in the sum of \$900.00, but, subsequently, worker's compensation made an award on this claim, which resulted in the Worker's Compensation Board returning to the Minnesota Crime Victims Reparations Board the sum of \$900.00. The award was made for loss of wages because of the injuries sustained.

**Claim No. 147-AS-75**

Victim, male, age 20, claimant. Claimant was shot by an unknown assailant while he was leaving on his motorcycle from a home of his friends. The attack was unprovoked, and the bullet lodged in his spinal column which resulted in his becoming a paraplegic.

Awarded: \$10,000 for loss of income for permanent injury.

**Claim No. 79-AS-75**

Victim, female, age 21, claimant. Claimant was assaulted by an assailant who made her suffer facial injuries and dental damage, plus loss of wages.

Awarded: \$346.84	Loss of wages	\$351.34
	Medical expenses	<u>297.95</u>
		<u>\$649.29</u>
	Collateral	<u>-302.45</u>
		<u>\$346.84</u>

The court in this matter made the defendant pay restitution for the loss sustained by the claimant, and, therefore, a check in restitution was returned to the Minnesota Crime Victims Reparations Board in the sum of \$346.84.

**Claim No. 37-AS-74**

Victim, male, age 61, claimant. Claimant was shot in an attempted robbery which caused him serious physical injuries and loss of wages for a considerable length of time.

Awarded: \$5,504.21	Loss of wages	\$2,250.00
	Medical expenses	3,861.71
		<u>\$6,111.71</u>
	Collateral	-607.50
		<u>\$5,504.21</u>

**Claim Nos. 1-AR-74 and 2-AR-74**

Victim, female, age 43, claimant. Claim was made by the mother of two children ages 9 and 6 who perished in a fire declared to be originated by arsonist activities.

Awarded: \$2,065.10	Funeral expenses	\$2,265.10
	Collateral	-200.00
		<u>\$2,065.10</u>

**Claim No. 280-AS-76**

Victim, female, age 59, claimant. Claimant was walking on the street when three boys rushed up to her, grabbed her purse and pulled her to the ground. This caused her to sustain a broken right shoulder, a sprained wrist and injuries to her knee and neck. A juvenile was arrested and committed to Red Wing School

Awarded: \$2,228.00	Homemaker services	\$2,328.00
	Collateral	-100.00
		<u>\$2,228.00</u>

The cases outlined herein are sample cases taken from the files of finalized claims.

However, for a complete Register of all cases finalized, active, inactive and denied, please see the attached Register which is completely inclusive of all cases handled by the Board since the inception of the law from July 1, 1974, up and through June 30, 1976.

The Register is for the Governor and the Legislature in accordance with M.G.S. 299B.06 (e).

TABLE I.—*Statistics*

The file numbers assigned to the cases found in the attached Register of cases handled from July 1, 1974, through June 30, 1976, are as follows:

AR Arson—This represents cases of arson where death or personal injuries have resulted from the crime of arson.

AS Assault—Aggravated assault by fists, weapons (knives, guns, lead pipes, etc.)

H&R Hit and run with motor vehicles which are automatically denied.

H Homicide committed in the performance of a criminal act.

M Mugging—Purse snatching involving simple assault on the person and causing personal injuries to the victim.

PP Personal property loss cases which are automatically denied.

R Rape—On April 30, 1976, the Board decided that in making this report that the names of the rape victims would not be included in the register, but we would merely refer to such claimants as "rape claimants". This does not fulfill the requirements of the state statute in naming all persons who recover reparations under our state law, but it was felt that we should, in good judgment, refrain from naming the "rape claimants" unless someone reading this report has a special interest in a particular case, and upon proper showing, we will make the name available.

TABLE II.—*Number of claims handled*

Arson .....	4
Assault .....	351
Hit and run .....	6
Homicide .....	99
Mugging .....	66
Personal property .....	18
Rape .....	36
<b>Total</b> .....	<b>580</b>

TABLE III.—*Average length of time required for finalizing claims*

	<i>Number of months</i>
Arson .....	6
Assault .....	3¼
Homicide .....	2¾
Mugging .....	2½
Rape .....	2½

TABLE IV.—*Denied claims*

(a) Below the \$100 deductible.....	47
(b) Occurred before July 1, 1974.....	19
(c) Lack of cooperation with the police.....	6
(d) No police report made.....	5
(e) Not an innocent victim of crime.....	12
(f) Claimant withdrew the claim.....	1
(g) Claim not filed within 1 year.....	1
(h) Occurred out of the State of Minnesota.....	1
(i) Worker's compensation covered the claim.....	6
(j) Hit and run.....	6
(k) Personal property loss.....	20
(l) Abandoned <sup>1</sup> .....	100
(m) Crime committed by a relative or someone living under the same roof with the assailant.....	4
<b>Total</b> .....	<b>228</b>

<sup>1</sup> Abandoned. Abandoned cases are those considered to be abandoned because information that was requested to process same has not been furnished for a long period of time.

TABLE V.—Amount budgeted and paid out from July 1, 1974 to June 30, 1976

Total amount paid out from July 1, 1974 to June 30, 1976.....	\$334, 365. 51
Refunds, restitution, overpayments to suppliers of services, worker's compensation, etc.....	-1, 939. 87
Net paid out on claims from July 1, 1974 to June 30, 1976.....	<u>332, 425. 64</u>
Average payment per claim (figured only on paid claims).....	1, 235. 78
Cost of administration from July 1, 1974 to June 30, 1976 (approximately).....	62, 566.51
Budgeted \$100,000 in 1975 (cases handled).....	<u>580</u>
Budgeted \$300,000 in 1976:	
Cases denied.....	228
Active cases.....	83
Total.....	<u>311</u>
Total cases paid.....	269

Claims in the Register that show no disposition are still pending.

The figures shown in the attached Register are taken from our files and should be accurate, but the payments for claims were made by the Department of Public Safety and the payment records are kept on computer. There may be a small difference in what we report as our totals and what the computer reports as its totals and this should be charged to human error.

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THE

SIXTH REPORT

of the

CRIMINAL INJURIES COMPENSATION BOARD

administering

THE COMPENSATION FOR VICTIMS OF CRIME ACT, 1971

for

the fiscal year

April 1, 1974 to March 31, 1975

**THE BOARD**

ERIC H. SILK, Q.C.,

*Chairman*

ROBERT C. RUTHERFORD, Q.C.,

SHAUN MacGRATH

*Vice-Chairmen*

A. ROY WILLMOTT, Q.C.,

ANNE AUSTIN,

S. D. CORK,

*Members*

\* \* \* \* \*

J. B. LIND

Registrar

C. O. HUGGARD

Chief of Investigation

\* \* \* \* \*

Copies of this report may be obtained from:

Criminal Injuries Compensation Board,  
3rd Floor, 505 University Avenue,  
Toronto, Ontario, M5G 1X4  
Telephone: 965-4755



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Criminal Injuries  
Compensation  
Board

416/965-4755

505 University Avenue  
3rd Floor  
Toronto Ontario  
M5G 1X4

September 30, 1975

Attorney General for Ontario,  
Parliament Buildings,  
Queen's Park,  
Toronto, Ontario.

Honourable Sir:

I have the honour to submit the sixth report of the Criminal Injuries Compensation Board which covers the period April 1, 1974 to March 31, 1975.

Yours respectfully,

Eric H. Silk,  
*Chairman*

**COMPARATIVE SUMMARY OF FISCAL YEARS  
APPLICATIONS AND DISPOSITION**

**FISCAL YEAR**

**APRIL 1, 1974 to MARCH 31, 1975**

**SUMMARY OF APPLICATIONS AND DISPOSITION,  
MONTHLY SUMMARY OF AWARDS ORDERED,  
CONSOLIDATED SUMMARY OF AWARDS,  
PERIODIC MONTHLY AND ANNUAL AWARDS,  
AND  
SUMMARY OF DECISIONS**

COMPARATIVE SUMMARY — FISCAL YEARS  
APPLICATIONS AND DISPOSITION

	April 1, 1969		April 1, 1970		April 1, 1971		April 1, 1972		April 1, 1973	
	to	March 31, 1970	to	March 31, 1971	to	March 31, 1972	to	March 31, 1973	to	March 31, 1974
Eligible Applications Received .....	103		318		472		486		510	
* Applications Heard .....	38		159		241		461		386	
Applications Heard and Dismissed .....	nil		13		18		51		22	
Applications Heard — Further Evidence Required .....	8		29		8		13		5	
Second Hearings .....	3		13		7		3		4	
Review of Awards .....	nil		3		5		4		1	
** Decisions Completed and Awards Ordered .....	23		153		234		433		402	
Interim Awards .....	2		6		3		6		3	
Supplementary Awards .....	nil		3		6		16		27	
Periodic Awards .....	nil		7		15		19		10	
Lump Sum Payments .....	\$36176.37		\$331654.14		\$372386.14		\$556831.44		\$591944.26	
Periodic Payments .....	nil		\$ 4213.00		\$ 32139.00		74339.00		\$130963.07	
Total of Awards Ordered .....	\$36176.37		\$335867.14		\$404525.14		\$631170.44		\$722637.33	
*** Average Award .....	\$ 1572.88		\$ 2167.67		\$ 1591.39		\$ 1285.98		\$ 1472.50	
Hearings Pending .....	66		220		415		393		426	

NOTE: \* Includes Heard and Dismissed and Heard and Further Evidence Required.  
 \*\* Includes Interim, Supplementary and Periodic Awards.  
 \*\*\* Periodic Payments not included when arriving at Average Award.

## SUMMARY OF APPLICATIONS AND DISPOSITION

April 1, 1974 to March 31, 1975

Eligible Applications Received .....	639
* Applications Heard .....	381
Applications Heard and Dismissed .....	40
Applications Heard — Further Evidence Required .....	
Second Hearings .....	8
Review of Awards .....	1
** Decisions Completed and Awards Ordered .....	349
Interim Awards .....	Nil
Supplementary Awards .....	12
Periodic Awards .....	16
Lump Sum Payments .....	\$561,114.03
Periodic Payments .....	\$165,814.00
Total of Awards Ordered .....	\$726,928.03
*** Average Award .....	\$ 1,607.77
Hearings Pending .....	599
Files Closed .....	87

NOTE: \* Includes Heard and Dismissed and Heard and Further Evidence Required but does not include files closed

\*\* Includes Interim, Supplementary and Periodic Awards

\*\*\* Periodic Payments not included when arriving at Average Award

*Applications by Area:*

Toronto .....	272	Waterloo .....	2	Yarmouth .....	Williamstown ..	1	
Hamilton .....	41	Downsview .....	2	Twsp. ....	1	Chelmsford .....	1
Windsor .....	34	Kapuskasing .....	2	Owen Sound ..	1	Kingsville .....	1
Ottawa .....	23	Cobden .....	2	Capreol .....	1	Brantford .....	1
Thunder Bay .....	18	Guelph .....	2	Harriston .....	1	Kirkfield .....	1
St. Catharines .....	14	Oakville .....	2	Etobicoke .....	1	Malahide Twsp. ..	1
Kitchener .....	13	Port Burwell .....	2	Morrisburg .....	1	Bright's Grove ..	1
London .....	12	Whitby .....	2	Tiny Twsp. ....	1	Willowdale .....	1
Niagara Falls .....	8	Minaki .....	2	Pittsburgh Twsp.	1	Thorold .....	1
Sault Ste. Marie .....	7	Midland .....	1	Vanier .....	1	Collingwood .....	1
Sarnia .....	7	Beardmore .....	1	Waubausheh ..	1	Alban .....	1
Sudbury .....	7	LaSalle .....	1	Frankford .....	1	Sultan .....	1
Oshawa .....	6	Avra .....	1	Acton .....	1	Preston .....	1
Kingston .....	5	Cambridge .....	1	Markham .....	1	Malton .....	1
Belleville .....	5	Kirkland Lake ..	1	Dutton .....	1	Cobalt .....	1
Burlington .....	5	Kenora .....	1	Tecumseh .....	1	Lake Simcoe .....	1
Cobourg .....	4	Madoc .....	1	Delhi .....	1	Renfrew .....	1
Weston .....	4	Beeton .....	1	Durham .....	1	Midland .....	1
Mississauga .....	3	Ajax .....	1	Lively .....	1	Welland .....	1
Orillia .....	3	Blenheim .....	1	Honey Harbour ..	1	Penetanguishene ..	1
Cornwall .....	3	Amherstburg .....	1	Colborne .....	1	Port Hope .....	1
Simcoe .....	3	Pickering .....	1	Jackson's Point ..	1	Milton .....	1
Blind River .....	3	Port Stanley .....	1	Aldborough .....	1	Harrow .....	1
Woodstock .....	3	Bath .....	1	Twsp. ....	1	Keene .....	1
Fort Erie .....	3	Gull Bay .....	1	Hope Twsp. ....	1	Glen Allen .....	1
North Bay .....	3	Niagara-on-the-Lake	1	Bonfield .....	1	Algoma District ..	1
Smiths Falls .....	3	Talbotville .....	1	Longlac .....	1	Wasaga Beach .....	1
Algonquin Park .....	2	Hastings .....	1	Red Lake .....	1	Pass Lake .....	1
Richmond Hill .....	2	Gananoque .....	1	Sutton West .....	1	Millhaven .....	1
Dundas .....	2	Barriefield .....	1	Bowmanville .....	1	Ridgeway .....	1
Lac Seul .....	2	Val Caron .....	1	Bryanston .....	1	Port Elgin .....	1
Nipissing .....	2	Maple .....	1	Peterborough .....	1	Confederation .....	1
West Hill .....	2	Carleton Place ..	1	Hornepayne .....	1	Lake .....	1
Timmins .....	2	Picton .....	1	Port Colborne ..	1		
Vaughan Twsp. ....	2			Buttonville .....	1		
Napanee .....	2			Oro Twsp. ....	1		

*Types of Crime:*

Assault Bodily Harm .....	235	Assault with Intent .....	3
Assault .....	178	Arson .....	2
Wounding .....	73	Attempted Rape .....	2
Attempted Murder .....	23	Robbery .....	2
N/C Murder .....	21	Assault with Weapon .....	2
Rape .....	20	Criminal Negligence .....	2
Robbery with Violence .....	18	Bomb Explosion .....	1
Assault Police .....	12	Mental Shock .....	1
Assault/Robbery .....	9	Bodily Harm with Intent .....	1
Manslaughter .....	8	Sabotage .....	1
Indecent Assault .....	8	Hit and Run .....	1
Murder .....	7		
Dang. use of a Firearm .....	6		
Assault by Motor Vehicle .....	3		

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MONTHLY SUMMARY  
AWARDS GRANTED

April 1, 1974 to March 31, 1975

Case Number	Application Received	Date of:	Crime	Award	Classification of Crime	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents of Deceased Victims	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Award
APRIL 1974													
100-525	May 25/71	Oct. 29/68		April 25/74	ABH	30.00			100.00		15.00	50.00	195.00
100-801	Feb. 16/71	Feb. 9/71		April 3/74	Assault	7.00	2569.68		750.00		196.19	150.00	3672.87
100-897	June 29/72	July 1/71		April 17/74	ABH	225.00	1100.40		1250.00		69.00	150.00	2794.40
100-969	Oct. 24/73	Mar. 19/71		April 10/74	ABH	117.90			500.00		70.00	100.00	787.90
200-198	Sept. 13/72	Sept. 10/72		April 8/74	ABH	14.40	604.29		250.00				868.69
200-216	Oct. 6/72	Nov. 23/71		April 17/74	Assault				2500.00		164.00	200.00	2864.00
200-287	Nov. 30/72	July 21/72		April 3/74	Crim. Neg.	175.00	50.00		200.00		67.00		317.00
200-304	Dec. 15/72	Jan. 1/72		April 23/74	Wounding	125.00							175.00
200-318	Dec. 27/72	May 22/72		April 23/74	Wounding								125.00
200-350	Jan. 22/73	Oct. 28/72		April 25/74	Assault		323.00		250.00		25.00	200.00	598.00
200-416	Mar. 12/73	Sept. 15/72		April 8/74	Robb./ Violence	5.00			2500.00		102.00		2807.00
200-430	Mar. 21/73	Feb. 15/73		April 23/74	Assault						115.00		115.00
200-511	May 22/73	April 13/73		April 17/74	Att. Murder				4500.00		5.60		4505.60
200-520	May 23/73	Feb. 11/73		April 17/74	Assault				200.00		87.75		287.75
200-544	Jan. 11/73	Sept. 10/72		April 25/74	Wounding	60.00			200.00				260.00
200-622	Aug. 13/73	Aug. 26/72		April 10/74	Wound/Rape	126.49			1500.00			150.00	1970.13
200-623	Aug. 14/73	April 26/73		April 8/74	Assault	10.00	1434.00		500.00		193.64		1944.00
200-641	Aug. 27/73	Aug. 26/72		April 10/74	Wound/Rape				1500.00		72.90		1722.90
200-642	Aug. 27/73	Aug. 26/72		April 10/74	Wounding				300.00		42.30		497.30
200-697	Oct. 9/73	Mar. 1/73		April 8/74	Assault	5.00			250.00				250.00
200-701	Oct. 9/73	Aug. 28/73		April 4/74	Assault				250.00				250.00
200-715	Oct. 19/73	Oct. 9/73		April 25/74	Assault	400.00							400.00
200-741	Nov. 5/73	Dec. 25/72		April 4/74	Att. Murder				2500.00		60.00	150.00	2710.00
200-753	Nov. 14/73	Jan. 8/73		April 23/74	Robb./ Violence				850.00		10.00		860.00

MONTHLY SUMMARY  
AWARDS GRANTED

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Case Number	Application Received	Date of:	Crime	Award	Classification of Crime	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents of Deceased Victims	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Award
APRIL 1974 (Continued)													
200-757	Nov. 15/73	Jan. 15/73		April 4/74	ABH	468.00	97.73		400.00		15.00		980.73
200-764	Nov. 21/73	Nov. 24/72		April 23/74	ABH	25.00			500.00	1310.22	154.28	125.00	804.28
200-767	Nov. 23/73	May 23/73		April 8/74	N/C Murder						12.00		1372.22
200-788	Dec. 13/73	April 7/73		April 4/74	ABH	273.32	1151.25		500.00		61.95	150.00	2136.52
200-794	Dec. 17/73	May 26/73		April 25/74	Assault	92.12	1767.75		400.00		32.50	175.00	2467.37
200-797	Dec. 18/73	Aug. 30/73		April 8/74	Robb./Violence				125.00		33.25		158.25
200-802	Feb. 14/72	Mar. 16/71		April 22/74	ABH	223.00			5000.00		30.00	200.00	7016.00
200-807	Dec. 31/73	Dec. 1/72		April 25/74	ABH	60.00	1726.00		250.00		17.50		267.50
200-822	Jan. 18/74	Sept. 8/73		April 8/74	Ass. Peace Off.		25.20		200.00				225.20
200-824	Jan. 22/74	Dec. 29/73		April 25/74	Assault	2442.23	10849.30		28225.00	1310.22	1651.86	2100.00	46578.61
MAY 1974													
100-567	June 29/71	Sept. 25/70		May 30/74	Wounding				1000.00			250.00	1000.00
100-758	Dec. 17/71	Jan. 29/71		May 21/74	Wounding				4000.00		172.50		4422.50
100-761	Dec. 29/71	Aug. 29/71		Mar. 27/74	Assault				2800.00				2800.00
200-210	Oct. 3/72	May 20/72		May 21/74	ABH	180.00			200.00		25.00	300.00	705.00*
200-232	Oct. 18/72	Mar. 22/72		May 21/74	ABH		835.50		500.00				1335.50
200-248	Oct. 30/72	Aug. 5/72		May 27/74	ABH		1188.33		750.00	1454.32	399.50	150.00	2487.83
200-258	Nov. 3/72	Sept. 2/72		May 15/74	Murder	500.00		5600.00	500.00		14.00	150.00	7204.32*
200-632	Aug. 22/73	Aug. 23/72		May 27/74	Assault	30.42	92.80		500.00		60.00	100.00	783.22
200-871	Feb. 21/74	Oct. 13/73		May 15/74	Assault	710.42	2116.63	5600.00	10250.00	1454.32	671.00	950.00	21752.37



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Date of:

Case Number	Application Received	Crime	Award	Classification of Crime	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Award
JULY 1974 (Continued)												
200-867	Feb. 19/74	Nov. 2/73	July 15/74	N/C Murder					1000.00	24.00		1024.00
200-933	Mar. 29/74	Jan. 1/74	July 12/74	Dang. use F/A		47.82		250.00		58.00	50.00	405.82
200-835	Jan. 28/74	Jan. 20/73	July 15/74	Assault				250.00		60.00	50.00	360.00
200-493	May 11/73	Apr. 5/73	July 10/74	ABH				400.00		116.00	200.00	316.00
200-679	Sept. 21/73	Sept. 13/73	July 5/74	ABH				500.00		50.00	100.00	400.00
200-907	Mar. 18/74	Dec. 9/73	July 5/74	Robb./Violence				7500.00		10.00	150.00	650.00
200-326	Jan. 4/72	June 26/74	July 26/74	Wounding				400.00		1045.71	250.00	160.00*
200-884	Mar. 1/74	Aug. 13/72	July 5/74	Assault		67.52		500.00		78.28	100.00	8795.71*
200-924	Mar. 22/74	Sept. 27/73	July 5/74	ABH				500.00		42.70	150.00	645.80
200-847	Feb. 4/74	Nov. 10/72	July 29/74	ABH	68.21	742.54		500.00		89.00	150.00	692.70
200-638	Aug. 23/73	Apr. 23/72	July 29/74	ABH				4500.00		55.00	75.00	1349.75
200-851	Feb. 7/74	Sept. 16/73	July 29/74	ABH				450.00				4630.00
200-864	Feb. 13/74	Mar. 21/73	July 29/74	ABH				2500.00		230.00	250.00	5755.66**
200-336	Feb. 10/73	Nov. 4/72	July 30/74	Wounding		2775.66		1250.00		127.40	250.00	2320.81**
200-855	Feb. 8/74	June 10/73	July 30/74	ABH	15.00	693.41						15.00
200-949	Apr. 5/74	Oct. 11/73	July 30/74	Assault				756.37		24.00	75.00	756.37
200-975	Apr. 23/74	Feb. 14/73	July 30/74	Crim. Neg.				250.00		43.28	75.00	274.00
200-1050	June 17/74	Oct. 6/73	July 30/74	Assault				250.00				368.28
200-184	Sept. 6/72	Sept. 9/71	July 30/74	Crim. Neg.	93.21	4576.95	20900.00	20900.00	2351.17	2160.87	2200.00	32282.20
AUGUST 1974												
200-399	Feb. 28/73	Apr. 27/72	Aug. 1/74	Manslaughter			3800.00			125.00	250.00	4175.00**
200-780	Dec. 5/73	June 21/73	Aug. 1/74	ABH	15.00	393.09		750.00		208.86	200.00	1566.95
200-928	Mar. 27/74	Sept. 11/73	Aug. 1/74	Assault	140.00					30.85		170.85

AUGUST 1974 (Continued)									
200-810	Feb. 24/72	May 1/71	Aug. 2/74	ABH	137.20	400.00	154.60	100.00	791.80
200-765	Nov. 22/73	Dec. 2/72	Aug. 2/74	ABH	21.14	1000.00	23.45	150.00	1405.71
200-809	Jan. 4/74	May 27/73	Aug. 2/74	Assault	7.50	400.00	242.50		650.00
200-988	May 3/74	Sept. 30/73	Aug. 2/74	Assault		150.00	90.00		240.00
200-713	Oct. 17/73	Mar. 10/73	Aug. 2/74	ABH	785.75		25.00		810.75**
200-707	Oct. 12/73	Mar. 8/73	Aug. 8/74	ABH		2500.00	228.00	250.00	6946.00
200-756	Nov. 15/73	Sept. 29/73	Aug. 8/74	ABH		150.00			250.00
200-804	Dec. 27/73	Aug. 24/73	Aug. 9/74	Assault	80.00				80.00
200-814	Jan. 8/74	June 28/73	Aug. 9/74	Wounding		250.00	36.00	150.00	250.00**
200-494	May 11/73	May 20/72	Aug. 13/74	Robb./Violence		1500.00	16.00	150.00	1686.00
200-581	July 12/73	July 31/72	Aug. 13/74	Robb./Violence			73.75	150.00	166.00**
200-692	Oct. 2/73	Mar. 18/72	Aug. 13/74	ABH		850.00			1073.75
200-900	Mar. 14/74	May 6/73	Aug. 15/74	ABH	78.75		76.00		320.75
200-1014	May 24/74	Feb. 7/74	Aug. 15/74	Robb./Violence		100.00	242.80	100.00	1043.68
200-535	June 7/73	Oct. 25/72	Aug. 21/74	ABH	316.00	600.00	81.50	250.00	6647.50
200-682	Sept. 25/73	Aug. 31/73	Aug. 21/74	ABH		1500.00			3100.00
200-821	Jan. 17/74	Aug. 26/72	Aug. 21/74	Wounding	52.50	2500.00		350.00	6542.04
200-913	Mar. 20/74	June 17/73	Aug. 21/74	Robb./Violence	93.75	1200.00		75.00	1368.75
200-985	May 2/74	Oct. 31/73	Aug. 21/74	Robb./Violence	6.65	1000.00			1106.65
200-894	Mar. 11/74	Oct. 25/73	Aug. 26/74	Robb./Violence		1000.00	150.00		1150.00
200-910	Mar. 20/74	Aug. 16/73	Aug. 23/74	ABH	580.00	150.00			730.00
200-960	Apr. 9/74	Oct. 7/73	Aug. 23/74	ABH	273.00				
200-547	June 13/72	Sept. 30/72	Aug. 27/74	Murder	27.50	3000.00	28.00	125.00	926.00
200-1007	May 23/74	Apr. 1/74	Aug. 28/74	Robb./Violence	8.00	250.00	13.00	150.00	5472.01
100-935	Nov. 13/72	Oct. 17/70	Aug. 29/74	Assault		500.00	75.00	100.00	1275.00
200-889	Mar. 4/74	Sept. 22/73	Aug. 29/74	ABH	2622.74	11969.14	2111.31	2550.00	51153.19
SEPTEMBER 1974									
200-740	Nov. 5/73	Oct. 23/73	Sept. 5/74	ABH		200.00	15.00	35.00	294.30
200-813	Jan. 7/74	July 5/73	Sept. 5/74	ABH		250.00	50.00	100.00	796.35
200-858	Feb. 12/74	May 19/73	Sept. 5/74	Att. Murder	307.03		10.00	250.00	567.03**
200-866	Feb. 15/74	May 18/73	Sept. 5/74	Robb./Violence		300.00	32.60	100.00	432.60
200-903	Mar. 27/74	Sept. 11/73	Sept. 5/74	ABH		250.00	60.75	125.00	435.75
200-935	Apr. 1/74	Sept. 1/73	Sept. 5/74	Manslaughter					1226.00
200-950	Apr. 5/74	Oct. 16/73	Sept. 4/74	ABH	14.00	150.00	26.00	200.00	164.00

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Case Number	Application Received	Date of:	Crime	Award	Classification of Crime	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents of Deceased Victims	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Award
SEPTEMBER 1974 (Continued)													
200-183	Sept. 5/72	Aug. 3/72		Sept. 11/74	ABH				1000.00				1000.00 <sup>b</sup>
200-916	Oct. 19/73	Aug. 29/73		Sept. 11/74	ABH		103.35		350.00		100.00		533.35
200-922	Mar. 25/74	Feb. 8/74		Sept. 11/74	Assault				750.00		14.00	50.00	814.00
200-842	Jan. 31/74	Feb. 3/74		Sept. 13/74	ABH	425.00			300.00		50.00	150.00	925.00
200-893	Mar. 8/74	Mar. 16/73		Sept. 17/74	Wounding		1529.87		5000.00		185.00	250.00	6964.87
200-908	Mar. 19/74	May 20/73		Sept. 17/74	ABH		1725.86		5000.00		204.64	200.00	2630.50
100-402	Feb. 19/71	Nov. 7/70		Sept. 18/74	Crim. Neg.						70.00	75.00	145.00 <sup>a</sup>
200-592	July 23/73	Dec. 2/72		Sept. 18/74	ABH	350.00			1500.00		69.00	150.00	2069.00
200-609	Aug. 2/73	Jan. 18/73		Sept. 19/74	ABH				500.00		156.20	150.00	806.20
200-993	May 8/74	Jan. 27/74		Sept. 18/74	ABH	32.99			1000.00		125.00	200.00	1357.99
200-1081	July 15/74	Apr. 19/74		Sept. 18/74	Indec. Assault		60.00		500.00		5.00		505.00
200-194	Feb. 23/73	Dec. 18/72		Sept. 20/74	Assault	130.00			200.00		25.00	50.00	465.00
200-981	May 1/74	Dec. 22/73		Sept. 20/74	Assault	77.00			200.00				277.00
200-509	May 18/73	Apr. 28/72		Sept. 25/74	ABH	48.50	421.07		300.00		20.25	125.00	914.82
200-570	July 9/73	July 9/72		Sept. 25/74	ABH	36.40			350.00		18.00	100.00	504.40
200-633	Aug. 23/73	Sept. 4/72		Sept. 26/74	ABH		400.00		250.00		107.00	50.00	985.00
200-659	Sept. 10/73	Sept. 20/72		Sept. 26/74	Wounding	178.00	2500.00		1000.00		176.87	250.00	3926.87 <sup>a</sup>
200-769	Nov. 26/73	Mar. 19/73		Sept. 25/74	Wounding	14.00	90.00		350.00		113.00	125.00	692.00
200-869	Feb. 20/74	May 10/73		Sept. 26/74	Dang. use Expl.				7500.00		5.00	250.00	7750.00
200-938	Apr. 1/74	Sept. 25/73		Sept. 26/74	ABH	30.00	1243.33		1500.00		5.00	200.00	2978.33
200-974	Apr. 18/74	Oct. 11/73		Sept. 26/74	Assault				300.00		50.00	100.00	450.00
200-1057	June 27/74	Oct. 2/73		Sept. 26/74	Assault	5.00		600.00	1000.00		223.25	100.00	1328.25
200-743	Nov. 7/73	Nov. 11/73		Sept. 26/74	N/C Murder					385.55	14.00	100.00	1099.55
200-1026	May 31/74	Mar. 16/74		Sept. 27/74	ABH		536.74		500.00		173.00	150.00	823.00
200-848	Feb. 4/74	May 3/73		Sept. 30/74	ABH	47.00	187.90		400.00		128.50	150.00	1215.24
200-882	Feb. 27/74	June 27/73		Sept. 30/74	ABH	17.30			500.00				734.90
200-1048	June 17/74	Aug. 1/73		Sept. 30/74	ABH	1712.22	923.77	600.00	27400.00	1385.55	179.00	175.00	871.30
										2406.06	3960.00	46702.60	

Case No.	Date	Offense	Amount	Amount	Amount	Amount	Amount
200-865	Feb. 14/74	Nov. 14/73	ABH	250.00	63.85	125.00	438.85
200-898	Mar. 14/74	Jan. 18/74	Wounding	5000.00	710.12	250.00	8404.41 <sup>m</sup>
200-528	June 1/73	June 2/72	ABH	350.00	5.50	125.00	480.50
200-603	July 28/73	July 30/72	Oct. 10/74	500.00	50.00	150.00	200.00
200-841	Jan. 30/74	Jan. 7/74	ABH	400.00	182.00	150.00	550.00
200-846	Feb. 4/74	Nov. 25/73	ABH	2000.00	163.00	150.00	824.66
200-857	Feb. 8/74	Apr. 10/73	ABH	400.00	125.00	125.00	2313.00 <sup>m</sup>
200-885	Mar. 1/74	Oct. 9/73	Assault	1000.00	139.20	150.00	700.00
200-917	Mar. 22/74	Aug. 10/73	ABH	1500.00	139.20	150.00	1289.20 <sup>m</sup>
200-918	Mar. 22/74	Aug. 10/73	ABH	250.00	35.80	150.00	1700.80
200-959	Apr. 8/74	Jan. 15/74	ABH	400.00	7.25	500.00	757.25
200-998	May 13/74	Oct. 1/73	ABH	200.00		400.00	400.00
200-1167	Sept. 13/74	June 12/74	ABH	400.00		205.00	205.00
200-199	Sept. 21/72	Feb. 14/72	ABH	5000.00	5.00	350.00	5648.46
200-341	Jan. 15/73	Feb. 20/72	ABH	500.00	65.00	200.00	1091.83
200-527	June 1/73	Sept. 28/72	Oct. 11/74	1000.00	1005.35	250.00	2573.47
200-584	July 16/73	May 8/72	Wounding	1000.00	135.00	200.00	1646.00
200-612	Aug. 2/73	July 31/73	Assault	500.00	255.00	125.00	880.00
100-743	Dec. 1/71	Dec. 15/70	ABH	2000.00	130.00	350.00	2480.00 <sup>m</sup>
200-28	Jan. 26/72	Nov. 7/71	Murder	1000.00	191.25	200.00	1743.72
200-597	July 25/73	Aug. 3/72	Wounding	1500.00	135.00	200.00	1893.00
200-689	Sept. 28/73	Sept. 3/73	Assault	1000.00	476.51	150.00	1908.91
200-724	Oct. 25/73	July 11/73	ABH	1000.00	406.22	150.00	1626.72
200-816	Jan. 9/74	Jan. 16/73	ABH	1500.00	521.10	150.00	2209.10
200-819	Jan. 14/74	Nov. 2/72	ABH	700.00	250.00	250.00	975.00
200-831	Jan. 25/74	Mar. 24/73	ABH	5000.00	83.00	250.00	6227.58
200-861	Feb. 13/74	Oct. 24/73	ABH	150.00	175.00	150.00	221.69
200-979	Apr. 26/74	Oct. 17/73	Assault	200.00	26.69	200.00	200.00
200-989	May 6/74	June 9/73	Assault	1250.00	293.00	125.00	1855.00
200-564	June 27/73	Dec. 16/72	ABH			25.00	25.00
200-586	July 18/73	Jan. 7/73	Wounding			70.00	70.00

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Case Number	Application Received	Date of: Crime	Award	Classification of Crime	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents of Deceased Victims	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Award
OCTOBER 1974 (Continued)												
200-602	July 28/73	July 30/72	Oct. 24/74	N/C Murder				500.00	745.90	35.00	150.00	895.90
200-706	Oct. 11/73	Sept. 25/73	Oct. 24/74	Asslt. w/Weapon	5.75			500.00		57.00	125.00	540.75
200-811	Jan. 7/74	Aug. 24/72	Oct. 24/74	ABH		600.00		200.00				1282.00
200-640	Aug. 27/73	Nov. 19/72	Oct. 31/74	ABH		270.00		200.00				470.00
200-663	Sept. 12/73	Nov. 19/72	Oct. 31/74	ABH	285.39			1200.00		71.50	175.00	1731.89
200-725	Oct. 25/73	Apr. 23/73	Oct. 31/74	ABH	260.00			150.00				410.00
200-858	Feb. 12/74	May 19/73	Oct. 31/74	Att. Murder	504.00							504.00
200-973	Apr. 16/74	Dec. 11/73	Oct. 31/74	ABH	82.00	178.76		750.00		25.00		1035.76
200-1112	Aug. 1/74	Dec. 21/73	Oct. 31/74	Robb./Violence		26.00		400.00		52.25	125.00	603.25
					2707.26	7316.61		37250.00	2745.90	4492.93	4500.00	59012.70
NOVEMBER 1974												
200-687	Sept. 27/73	Oct. 3/72	Nov. 6/74	Dang. use F/A	5.00			1000.00		166.00	150.00	1321.00
200-1035	June 7/74	Apr. 18/74	Nov. 6/74	ABH		8.53		300.00		25.00	100.00	433.53
200-631	Aug. 22/73	Sept. 9/72	Nov. 8/74	Wounding		1412.00		1500.00		87.75	150.00	3149.75
200-1063	July 2/74	Sept. 30/73	Nov. 7/74	Assault	60.75			250.00		13.50	50.00	374.25
200-1070	July 8/74	Oct. 23/73	Nov. 8/74	Wounding	129.75			1000.00		68.40	100.00	1298.15
200-963	Apr. 10/73	Mar. 18/74	Nov. 14/74	Indec. Assault				700.00		10.00		710.00
200-939	Apr. 1/74	Feb. 28/74	Nov. 14/74	ABH	59.00			750.000				809.00
100-964	July 19/73	June 26/71	Nov. 14/74	ABH				3560.00		90.00	350.00	4000.00
200-433	Mar. 23/73	Oct. 30/74	Nov. 14/74	ABH	330.00	150.00		850.00		146.00	125.00	1601.00
200-872	Feb. 21/74	Dec. 2/73	Nov. 14/74	Assault						88.15	50.00	138.15
200-844	Feb. 1/74	Apr. 7/73	Nov. 14/74	Wounding	19.53			7500.00		51.05	200.00	7770.58

NOVEMBER 1974 (Continued)										
200-810	Jan. 7/74	July 15/73	Nov. 21/74	Alt. Murder	168.78	134.94	5000.00	136.00	250.00	5386.00
200-1000	May 15/74	Jan. 4/74	Nov. 21/74	ABH	59.00		400.00		250.00	703.72
200-1088	July 16/74	May 17/74	Nov. 25/74	Assault			3500.00	35.00	250.00	3844.00
200-199	Sept. 21/72	Feb. 16/72	Nov. 27/74	Assault				45.00'		45.00'
200-687	Sept. 27/73	Oct. 3/72	Nov. 27/74	Dang. use F/A	573.78		500.00	104.50	100.00	104.50'
200-1084	July 15/74	Sept. 30/73	Nov. 26/74	ABH			1000.00	91.00	125.00	1264.78
200-1094	July 22/74	Oct. 17/73	Nov. 26/74	Indec. Assault	1405.59	1705.47	27810.00	145.00	2000.00	1270.00
								1302.35		34223.41
DECEMBER 1974										
200-473	May 2/73	May 5/72	Dec. 5/74	ABH	175.00					175.00'
200-644	Aug. 28/73	Apr. 14/73	Dec. 5/74	Assault		141.38	350.00	25.75	150.00	667.13
200-669	Sept. 18/73	Nov. 18/72	Dec. 3/74	Dang. use Weapon		63.85	250.00	37.00	50.00	400.85
200-754	Nov. 15/73	June 9/73	Dec. 5/74	ABH		709.18	1000.00	34.00	150.00	1893.18
200-911	Mar. 20/74	Sept. 27/73	Dec. 3/74	Assault			1000.00	80.00	150.00	1230.00
200-1075	July 11/74	Oct. 31/73	Dec. 5/74	Assault		1712.98	2000.00	256.00	250.00	4218.98
200-1179	Sept. 20/74	Sept. 19/73	Dec. 3/74	Assault	746.00		400.00	79.00		479.00
200-1135	Aug. 21/74	Apr. 30/74	Dec. 3/74	ABH			350.00	5.00		1101.00
200-1015	May 27/74	Oct. 8/73	Dec. 5/74	ABH	48.00	495.61	800.00		250.00	1295.61
200-1113	Aug. 7/74	Aug. 11/73	Dec. 5/74	ABH		560.00	2500.00	125.00	250.00	3483.00
200-1158	Sept. 10/74	Sept. 15/73	Dec. 5/74	ABH			500.00			500.00
200-1168	Sept. 16/74	Oct. 11/73	Dec. 4/74	Willful Damage			1000.00	4.00	150.00	1154.00
200-481	May 4/73	May 17/72	Dec. 6/74	ABH	23.75	980.00	750.00	75.00	150.00	1978.75
200-1058	June 28/74	Apr. 2/74	Dec. 6/74	Manlaughter				968.00		1118.00
200-549	June 14/74	Feb. 24/73	Dec. 16/74	ABH	78.00	287.44	350.00	55.00	75.00	845.44
200-782	Dec. 7/73	Sept. 7/73	Dec. 16/74	ABH			2500.00			2500.00
200-863	Feb. 13/74	Mar. 23/73	Dec. 16/74	Wounding	5.00	751.02	4500.00	64.00	250.00	5506.02
200-923	Mar. 25/74	May 29/73	Dec. 16/74	ABH	74.02		750.00	51.00	150.00	1038.02
200-1006	May 23/74	June 4/73	Dec. 16/74	ABH	115.00		500.00	51.00	150.00	816.00
200-1079	July 12/74	Jan. 29/74	Dec. 16/74	Assault		140.27	250.00			390.27
200-656	Sept. 7/73	Aug. 4/72	Dec. 5/74	ABH			300.00	15.00		315.00
200-1114	Aug. 7/74	Jan. 29/74	Dec. 18/74	Robb./Violence	125.00	30.00	500.00	20.00	100.00	775.00
200-1153	Sept. 9/74	Nov. 1/73	Dec. 18/74	Wounding	105.92		1500.00	29.00	150.00	1784.92
200-311	Dec. 18/72	Sept. 22/72	Dec. 20/74	Assault	30.00		500.00	27.00		557.00
200-768	Nov. 26/73	Mar. 30/73	Dec. 20/74	Assault	249.50		1000.00	270.24	250.00	1769.74
200-1091	July 18/74	July 18/73	Dec. 20/74	Assault Police			900.00	56.00	150.00	1106.00
100-247	Sept. 16/70	Oct. 16/69	Dec. 24/74	Wounding				25.00	100.00	125.00

MONTHLY SUMMARY  
AWARDS GRANTED

April 1, 1974 to March 31, 1975

Case Number	Application Received	Date of: Crime	Award	Classification of Crime	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents of Deceased Victims	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Award
DECEMBER 1974 (Continued)												
200-995	May 9/74	July 11/73	Dec. 23/74	ABH		572.22		2500.00		105.50	200.00	3377.72
200-1148	Sept. 6/74	Apr. 11/74	Dec. 23/74	ABH	5.00	509.28		1250.00		87.60	150.00	2001.88
200-1162	Sept. 11/74	Aug. 7/74	Dec. 23/74	ABH	3.40			2500.00		73.97	200.00	2777.37
200-1214	Oct. 4/74	Sept. 3/74	Dec. 23/74	Assault		75.00		400.00				475.00
200-726	Oct. 26/73	June 6/73	Dec. 30/74	Wounding	10.00	106.47		1500.00		188.14	200.00	2004.61
200-802	Dec. 24/73	Feb. 6/73	Dec. 31/74	Robb./Violence	5.00			750.00		65.00	150.00	970.00
200-815	Jan. 9/74	Feb. 21/73	Dec. 31/74	Wounding		755.44		400.00		89.25	150.00	1394.69
200-915	Mar. 21/74	Feb. 14/74	Dec. 31/74	Att. Murder	98.01	464.32		3000.00		204.00	200.00	3966.33
200-1042	June 13/74	Dec. 21/73	Dec. 30/74	Wounding	5.00	1500.00		1000.00	1000.00	52.00	200.00	2757.00 <sup>m</sup>
200-1174	Sept. 18/74	May 16/74	Dec. 30/74	Murder	1901.60	9834.46		37750.00	1968.00	2204.45	4475.00	58153.51
JANUARY 1975												
200-1045	Jan. 14/74	Feb. 1/74	Jan. 3/75	ABH	85.00			1000.00		41.00	150.00	1276.00
200-774	Nov. 30/73	Aug. 6/73	Jan. 9/75	ABH	11.00	1244.75		1500.00		65.00		2820.75
200-881	Feb. 26/74	Jan. 30/73	Jan. 7/75	ABH	283.00			2500.00		100.00	200.00	3083.00
200-1043	June 13/74	Sept. 23/73	Jan. 8/75	ABH	163.20	500.00		1000.00			55.06	1718.26
200-1181	Sept 23/74	Feb. 25/74	Jan. 7/75	Robb./Violence				500.00			50.00	550.00
200-1228	Oct. 11/74	Oct. 21/73	Jan. 7/75	Wounding	38.85			1000.00		290.00	200.00	1528.85
200-468	Apr. 27/73	Feb. 27/73	Jan. 9/75	ABH	6.88			500.00		135.00	150.00	791.88
200-1172	Sept. 16/74	Dec. 5/73	Jan. 10/75	ABH	10.00	56.02		300.00		30.00		396.02
200-491	May 10/73	Apr. 25/73	Jan. 16/75	ABH	11.00	30.80		300.00			100.00	341.80
200-1085	July 15/74	Nov. 1/73	Jan. 17/75	Crim. Neg.	5.00			2000.00				2105.00
200-1115	Aug. 9/74	Jan. 26/74	Jan. 17/75	ABH		20.00		500.00				520.00



100-1114 Sept. 13/74  
 100-1114 Sept. 13/74  
 100-1114 Sept. 13/74

Post-incident  
 expenses  
 of  
 witnesses  
 &  
 victims

Date of

Case Number	Apparatus Released	Crime	Date	Arrest	Special Agent in Charge	Victim's Expenses	Post-incident expenses of witnesses & victims	Post-incident expenses of witnesses & victims	Funeral and Burial Expenses	Other Pecuniary Loss	Connel Fees	Total Award
200-944	Apr. 16/74	Nov. 22/73	Feb. 19/75	ABH	22.26	196.90	500.00	75.75	150.00	125.00	150.00	897.75
200-971	Apr. 16/74	June 24/73	Feb. 19/75	ABH	51.26	432.64	1500.00	287.00	200.00	50.00	200.00	2477.64
200-978	Apr. 26/74	Sept. 19/73	Feb. 19/75	ABH	212.00		1000.00	25.00	150.00	125.00	150.00	1025.00
200-1254	Oct. 25/74	Mar. 16/74	Feb. 19/75	ABH			750.00	70.00	150.00	50.00	150.00	1185.00
200-336	Feb. 16/73	Nov. 18/72	Feb. 26/75	ABH				125.00	125.00	12500.55	125.00	12500.55
196-324	Feb. 23/71	Nov. 29/70	Feb. 26/75	ABH			750.00	58.00	125.00	50.00	125.00	933.00
200-969	Apr. 16/74	Sept. 2/73	Feb. 19/75	Assault			100.00	50.00	150.00	50.00	150.00	150.00
200-1018	May 28/74	May 11/74	Feb. 19/75	Pub. Mischief	23.50		5000.00	210.00	250.00	250.00	250.00	5483.50
200-1016	May 28/74	June 21/72	Feb. 24/75	Wounding	35.63	101.40	500.00	25.00	200.00	689.03	200.00	581.20
200-1132	Aug. 22/74	Aug. 20/74	Feb. 21/75	Assault	245.00	157.98	5000.00	341.20	200.00	150.00	150.00	1524.98
200-1069	July 8/74	Oct. 12/73	Feb. 25/75	Wounding	147.00		750.00	222.00	125.00	1278.00	125.00	1278.00
200-1231	Oct. 16/74	Mar. 19/74	Feb. 26/75	ABH	5.00	150.00	1000.00	6.00	125.00	655.00	125.00	655.00
200-618	Aug. 9/73	May 19/73	Feb. 27/75	Assault	6.80	94.01	500.00	30.00	125.00	514.81	400.00	514.81
200-859	Feb. 12/74	Jan. 23/74	Feb. 27/75	Wounding	50.80		400.00		125.00	400.00	400.00	400.00
200-1129	Aug. 20/74	June 28/73	Feb. 27/75	Assault			350.00		125.00			
200-1144	Sept. 3/74	July 6/74	Feb. 27/75	Indec. Assault	3106.90	20190.50	36700.00	2185.45	2360.00	6444.83	2360.00	6444.83

MARCH 1975

100-900	June 30/72	Aug. 31/71	Mar. 6/75	Robb./Violence			1000.00	16.00	240.00	1016.00		1016.00
200-526	May 31/73	June 3/72	Mar. 5/75	ABH			2000.00	164.00	240.00	2414.00		2414.00
200-1263	Oct. 29/74	Aug. 9/74	Mar. 6/75	ABH	74.00		250.00	60.00	100.00	384.00		384.00
200-792	Dec. 17/73	Sept. 18/73	Mar. 7/75	ABH			400.00	111.00	100.00	760.00		760.00
200-1055	June 26/74	July 22/73	Mar. 10/75	Robbery	5.00		900.00	156.00	150.00	1211.00		1211.00
200-1105	July 29/74	Sept. 30/73	Mar. 10/75	Wounding	5.00		2000.00	142.80	200.00	3183.80		3183.80
200-1128	Aug. 20/74	Apr. 18/74	Mar. 7/75	ABH		753.43	1500.00	62.00	240.00	2007.43		2007.43
200-1146	Sept. 5/74	Dec. 10/73	Mar. 10/75	Crim. Neg.	90.00		1500.00		240.00	2000.00		2000.00
200-1166	Sept. 13/74	Sept. 29/73	Mar. 10/75	ABH	95.75				240.00			240.00



MONTHLY SUMMARY  
AWARDS GRANTED

April 1, 1974 to March 31, 1975

Case Number	Application Received	Crime	Award	Classification of Crime	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents of Deceased Victims	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Award
FEBRUARY 1975 (Continued)												
200-968	Apr. 16/74	Nov. 23/73	Feb. 19/75	ABH	22.00	150.00		500.00		75.75	150.00	897.75
200-970	Apr. 16/74	June 24/73	Feb. 13/75	ABH	55.00	435.64		1500.00		287.00	200.00	2477.64
200-978	Apr. 26/74	Sept. 19/73	Feb. 13/75	Assault				1000.00		25.00		1025.00
200-1254	Oct. 25/74	Mar. 16/74	Feb. 13/75	Assault	215.00			750.00		70.00	150.00	1185.00
200-390	Feb. 16/73	Feb. 18/72	Feb. 18/75	ABH				50.00		50.00		50.00
100-324	Feb. 23/71	Nov. 29/70	Feb. 20/75	ABH		12375.55		125.00		125.00		12500.55*
200-969	Apr. 16/74	Sept. 2/73	Feb. 19/75	Assault				58.00		58.00	125.00	933.00
200-1018	May 28/74	May 11/74	Feb. 19/75	Pub. Mischief				100.00		50.00		150.00
200-1016	May 28/74	June 21/72	Feb. 24/75	Wounding	23.50			500.00		210.00	250.00	5483.50*
200-1132	Aug. 22/74	Aug. 20/74	Feb. 21/75	Assault	35.63	101.40		500.00		25.00		689.03
200-1069	July 8/74	Oct. 12/73	Feb. 25/75	Wounding				500.00		341.20	200.00	5541.20
200-1231	Oct. 16/74	Mar. 19/74	Feb. 26/75	ABH	245.00	157.98		750.00		222.00	150.00	1524.98
200-618	Aug. 9/73	May 19/73	Feb. 27/75	Assault	147.00			1000.00		6.00	125.00	1278.00
200-859	Feb. 12/74	Jan. 23/74	Feb. 27/75	Wounding	5.00	150.00		500.00		30.00		655.00
200-1129	Aug. 20/74	June 28/73	Feb. 27/75	Assault	6.80	98.01		400.00				534.81
200-1144	Sept. 3/74	July 6/74	Feb. 27/75	Indec. Assault	50.80			350.00				400.80
					3106.90	20190.50		36700.00		2185.45	2260.00	64442.85
MARCH 1975												
100-900	June 30/72	Aug. 31/71	Mar. 6/75	Robb./Violence				1000.00		16.00		1016.00
200-526	May 31/73	June 3/72	Mar. 5/75	ABH				2000.00		164.00	250.00	2414.00
200-1263	Oct. 29/74	Aug. 9/74	Mar. 6/75	ABH	74.00			250.00				324.00
200-792	Dec. 17/73	Sept. 18/73	Mar. 7/75	ABH						60.00		60.00
200-1055	June 26/74	July 22/73	Mar. 10/75	Robbery	5.00			500.00		151.00	100.00	756.00
200-1105	Aug. 29/74	Sept. 30/73	Mar. 10/75	Wounding	5.00			900.00		156.00	150.00	1211.00
200-1128	Aug. 20/74	Apr. 18/74	Mar. 7/75	ABH						55.00		55.00
200-1146	Sept. 5/74	Dec. 10/73	Mar. 10/75	Crim. Neg.	90.00	753.43		2000.00		142.50	200.00	3185.93
200-1166	Sept. 13/74	Sept. 29/73	Mar. 10/75	ABH	95.75			3500.00		62.00	250.00	3907.75



## NOTES 1974/1975

- 1 Supplementary award re further submission.
- 2 A total of \$505.00 is to be paid in a lump sum of \$705.00 and \$100.00 per month effective June 1/74 for 48 consecutive months.
- 3 To continue as a monthly award in the amount of \$280.00 effective May 1, 1974.
- 4 The total of \$2173.00 is to be paid in a lump sum of \$373.00 and \$150.00 per month effective July 1/74 for 12 consecutive months.
- 5 To continue as a monthly award in the amount of \$150.00 per month effective June 1/74 to Oct. 31/81, a total of 89 consecutive months.
- 6 The sum of \$7500.00 was paid to the Accountant of the Supreme Court in trust.
- 7 To continue as a monthly award in the amount of \$500.00 per month effective June 1/74.
- 8 The total of \$8752.50 is to be paid in a lump sum of \$1252.50 and \$250.00 per month effective July 1/74 for 30 consecutive months.
- 9 To continue as a monthly award in the amount of \$225.00 per month effective Aug. 1/74.
- 10 The sum of \$7500.00 was paid to the Accountant of the Supreme Court in trust.
- 11 To continue as a monthly award in the amount of \$50.00 per month effective July 1/74.
- 12 To continue as a monthly award in the amount of \$100.00 per month effective July 1/74.
- 13 To continue as a monthly award in the amount of \$200.00 per month effective Sept. 1/74.
- 14 The total of \$1560.75 is to be paid in a lump sum of \$810.75 and \$150.00 per month effective Aug. 1/74 for 5 consecutive months.
- 15 The total of \$2500.00 is to be paid in a lump sum of \$250.00 and \$75.00 per month effective Sept. 1/74 for 30 consecutive months.
- 16 The total of \$916.00 is to be paid in a lump sum of \$166.00 and \$50.00 per month effective Aug. 1/74 for 15 consecutive months.
- 17 To continue as a monthly award in the amount of \$350.00 per month effective Sept. 1/74.
- 18 Periodic award reduced from \$250.00 per month to \$150.00 per month effective Oct. 1/74 and costs allowed.
- 19 The total of \$8926.87 is to be paid in a lump sum of \$3926.87 and \$100.00 per month effective Oct. 1/74 for 50 consecutive months plus an additional monthly award in the amount of \$300.00 per month effective Oct. 1/74.
- 20 To continue as a monthly award in the amount of \$250.00 per month effective Oct. 1/74 for 12 consecutive months.
- 21 To continue as a monthly award in the amount of \$100.00 per month effective Oct. 1/74.
- 22 To continue as a monthly award in the amount of \$100.00 per month effective Oct. 1/74.
- 23 To continue as a limited periodic award for 98 months of \$225.00 per month effective Oct. 1/74, reducing to \$155.00 per month effective Sept. 1/75 and further reducing to \$70.00 per month effective Sept. 1/77.
- 24 The sum of \$1000.00 was paid to the Accountant of the Supreme Court in trust.
- 25 The sum of \$500.00 was paid to the Accountant of the Supreme Court in trust.
- 26 The sum of \$10,000.00 is to be paid in a lump sum of \$4000.00 and \$500.00 per month effective Nov. 1/74 for 12 consecutive months.
- 27 To continue as a monthly award in the amount of \$500.00 per month effective Nov. 1/74.
- 28 To continue as a monthly award in the amount of \$100.00 per month effective Jan. 1/75 for 12 consecutive months.

## NOTES 1974/1975 (Continued)

- 29 To continue as a monthly award in the amount of \$200.00 per month effective Jan. 1/75.
- 30 The sum of \$500.00 was paid to the Accountant of the Supreme Court in trust.
- 31 The total of \$1216.60 is to be paid in a lump sum of \$216.60 and \$100.00 per month effective Feb. 1/75 for 10 consecutive months.
- 32 The total of \$1327.20 is to be paid in a lump sum of \$327.20 and \$100.00 per month effective Feb. 1/75 for 10 consecutive months.
- 33 The sum of \$12091.92 was paid to the Public Trustee.
- 34 The lump sum payment of \$12500.55 covers arrears from Nov. 29/70 to Feb./75 inclusive; to continue as a monthly award in the amount of \$500.00 per month effective March 1/75.
- 35 To continue as a monthly award in the amount of \$35.00 per month effective Feb. 1/75.
- 36 The sum of \$5000.00 was paid to the Accountant of the Supreme Court in trust.

CONSOLIDATED SUMMARY OF AWARDS

April 1, 1974 to March 31, 1975

Month	Number of Awards	Medical Expenses	Loss of Earnings	Pecuniary Loss to Dependents of Deceased Victims	Pain and Suffering	Funeral and Burial Expenses	Other Pecuniary Loss	Counsel Fees	Total Awards
April	34	2,442.23	10,849.30		28,225.00	1,310.22	1,651.86	2,100.00	46,578.61
May	9	710.42	2,116.63	5,600.00	10,250.00	1,454.32	671.00	950.00	21,752.37
June	26	1,835.79	6,851.19		38,450.00	2,637.16	4,046.95	3,400.00	57,221.09
July	23	93.21	4,576.95		20,900.00	2,351.17	2,160.87	2,200.00	32,282.20
August	29	2,622.74	11,969.14	3,800.00	26,900.00	1,200.00	2,111.31	2,550.00	51,153.19
September	34	1,712.22	9,238.77	600.00	27,400.00	1,385.55	2,406.06	3,960.00	46,702.60
October	40	2,707.26	7,316.61		37,250.00	2,745.90	4,492.93	4,500.00	59,012.70
November	18	1,405.59	1,705.47		27,810.00		1,302.35	2,000.00	34,223.41
December	37	1,901.60	9,854.46		37,750.00	1,968.00	2,204.45	4,475.00	58,153.51
January	31	2,165.93	4,029.93		22,600.00		2,059.90	2,705.06	33,560.82
February	30	3,106.90	20,190.50		36,700.00		2,185.45	2,260.00	64,442.85
March	38	2,206.75	7,783.66		40,050.00	2,000.00	1,715.27	2,275.00	56,030.68
	349	22,910.64	96,482.61		354,285.00	17,052.32	27,008.40	33,375.06	561,114.03
		4.00%	17.20%	1.80%	63.20%	3.00%	4.80%	6.00%	= 100%

NOTE: In addition to the above total of awards ordered, Periodic Payments have amounted to \$165,814.00.







## SUMMARY OF DECISIONS

April 1, 1974 to March 31, 1975

*The number 100 preceding an application number denotes that the occurrence took place before September 1, 1971 and therefore the application was dealt with under the terms of The Law Enforcement Compensation Act, 1967.*

*Where the application number is preceded by the number 200, the occurrence took place after August 31, 1971, and the application was dealt with under the terms of The Compensation for Victims of Crime Act, 1971.*

## SUMMARY WHERE AWARDS ORDERED

100-247 The original decision in this case is contained in a previous annual report. The matter was reviewed and the Board ordered that the periodic monthly award should continue unaltered. However, witness and legal fees in the amount of \$125.00, in relation to the review, were paid.

100-324 The applicant, age 38, was viciously assaulted by a group of men while walking in downtown Toronto with his family. He suffered severe neurological injury. One offender was charged with and convicted of assault causing bodily harm and sentenced to two years less one day plus two years indefinite. The Board previously dealt with this application and ordered an interim award of \$5,871.82. That portion of this award is recorded in our Fourth Report. A further hearing was held resulting in a final award of \$500.00 per month, to be effective from the date of the assault. From the total of the retroactive portion was deducted benefits received from all sources, including this Board's interim award.

100-402 This application was recorded in a previous annual report of the Board. The applicant was in receipt of periodic monthly payments of \$250.00 on behalf of herself and her children. During the regular annual review of this periodic payment award, it was ascertained that the domestic situation of the applicant had changed for the better. The Board reviewed the award in the light of this new evidence and reduced the periodic monthly payments to \$150.00 per month on behalf of the children. An award of \$145.00 was also included for costs.

100-525 The applicant, age 38, a Toronto labourer, became involved in an altercation with his employer at his place of work. The employer felt that the applicant was not working satisfactorily and struck him. The applicant claimed extensive injuries to his head, back and right arm. However, medical evidence indicated minor bruises only. The alleged offender was convicted of assault causing bodily harm and was fined \$25.00 or five days in default.  
Award: \$195.00 (pain and suffering \$100.00).

100-567 This award was recorded in a previous annual report. It consisted of monthly payments of which ten instalments were still outstanding. The applicant requested and it was so ordered that the remainder of the award be paid to her forthwith.

100-743 The victim, 46, and his wife, 38, operated a gasoline service station in the community of Spanish. At a late hour one night, both husband and wife were brutally murdered on the service station premises. Although there has been no conviction, there is no doubt that they were killed in circumstances within the scope of Section 3 of The Law Enforcement Compensation Act, 1967. This application is made to the Board by the brother of the deceased, who has administered the estate, and looked after the four surviving children. Compensation was ordered for funeral and out-of-pocket expenses and maintenance on behalf of three minor children.

Award: Lump sum payment of \$2,480.00 and periodic monthly payments totalling \$225.00.

100-761 This lump sum award ordered to be paid in 50 equal monthly payments was recorded in the Fourth Annual Report of the Board. Following a review, the Board ordered the remaining outstanding amount of \$2,800.00 to be paid forthwith, in one payment.

100-801 The victim, age 56, was assaulted as he was playing billiards at the Mine Mill Hall in Sudbury. He sustained a fractured ankle. The offender, although known, was not charged.

Award: \$3,672.87 (pain and suffering \$750.00).

100-810 Bad feelings existed in North Bay between the victim, age 12, and another youth, age 14. The victim, on being challenged, willingly engaged in a fight with this other youth whom he had fought on other occasions and at which times he had been the victor. However, a 15 year old friend of the other youth joined the fight and the two of them assaulted the victim to the point that he sustained a fractured jaw. The two assailants were both charged under the Juvenile Delinquents Act. They pleaded guilty and were given suspended sentences with one year's probation.

Award: \$791.80 (pain and suffering \$400.00).

100-897 The applicant, age 40, an assembler employed by General Motors in Oshawa, was severely beaten by three strangers. He sustained contusions of his nose and lips plus a fracture of his left leg. Two of the offenders were convicted of assault causing bodily harm and each was sentenced to two years in penitentiary.

Award: \$2,794.40 (pain and suffering \$1,250.00).

100-900 An intruder entered the applicant's house in Scarborough and assaulted her from behind by grabbing her around the neck and hitting her on the head with an unidentified object. The applicant, age 49, sustained bruises to the left part of her throat and large bruises on the right temple, resulting in headaches and positional dizziness, as well as visual blurring and excessive fatigue. The offender was not identified.

Award: \$1,016.00 (pain and suffering \$1,000.00).

100-914 The applicant, a 58 year old Toronto industrial painter, was a patron in the beverage room of the Rondun Hotel on a week-end, as appears to have been his custom. He struck up an acquaintance with two younger patrons of the establishment. The trio consumed draft beer for a very lengthy period and then proceeded to the Lansdowne Hotel, where they had some whisky. On leaving this establishment in an inebriated

condition, he mentioned that he wanted to call a taxi-cab. His companions said that they would assist him and escorted him to the rear of the building where they attacked him in a vicious assault. The victim sustained facial bone fractures, multiple abrasions, contusions and lacerations covering most of his body. The offenders were never apprehended.  
Award: \$1,815.00 (pain and suffering \$1,500.00).

100-935 This 28 year old hoisting engineer was drinking in the Rosedale Tavern in Toronto with three females, two of whom were his sisters-in-law. One of the sisters-in-law had been going out with an employee of the hotel and it was at her suggestion that they had gone to this particular hotel. At closing time this female asked the applicant to have the employee come to their table as he had ignored them all evening. On complying, the applicant was punched twice in the face. He sustained a fractured jaw and nose. The offender was convicted of common assault and fined \$250.00 or 60 days.

Award: \$1,275.00 (pain and suffering \$500.00).

100-941 The applicant, age 43, and his wife, age 42, while lying in bed, were attacked and stabbed by the wife of their landlord, the owner of the house, in Toronto. The assailant, suffering from mental instability, was under the impression that her victims intended to harm her. The applicant received multiple stab wounds to the chest and arm. The offender pleaded guilty to a charge of assault causing bodily harm and was placed on probation for two years.

Award: \$3,635.70 (pain and suffering \$2,500.00). (Same occurrence as 100-942).

100-942 The applicant and victim in this application, age 42, is the wife of the Toronto victim in the immediately preceding application. The victim sustained stab wounds in her chest and upper right arm. The offender, pleading guilty to a charge of assault causing bodily harm, was placed on probation for two years.

Award: \$1,475.50 (pain and suffering \$1,000.00). Same occurrence as 100-941).

100-964 The applicant, age 45, residing in Cochrane, was severely beaten by two acquaintances during the course of a drinking session. The attack took place at the victim's residence when he refused to produce a bottle of liquor. He was beaten and kicked until he was unconscious, dragged outside and left in a shed where he was later discovered and taken to hospital. He sustained brain damage which resulted in paralysis of the right arm and leg. The two offenders, both of whom were 17 years of age, were charged with assault causing bodily harm, to which they pleaded guilty. One was assessed a fine of \$100.00 or 15 days in default. The other was sentenced to a six month jail term. The Board was unable to understand why the offenders were given such light sentences. The Board ordered the maximum award permissible of \$10,000.00, of which \$440.00 was to cover legal fees and disbursements and the remainder for pain and suffering; this latter amount to be paid by \$3,560.00 payable immediately, and the balance of \$6,000.00 to be paid in twelve equal monthly payments of \$500.00 each.

Award: \$10,000.00 (pain and suffering \$9,560.00).

100-969 The victim, age 25, was playing with his band at the Union Hall in Atikokan. During a break in the music, he was subject to an entirely unprovoked assault and sustained a fractured cheekbone. The offender was found guilty of assault causing bodily harm and was fined \$200.00 or forty days in jail.

Award: \$787.90 (pain and suffering \$500.00).

200-28 The applicant, a 25 year old resident of Timmins, observed two men attempting to steal an automobile that was parked in front of his residence. He attempted to prevent the theft and in the ensuing struggle the applicant was stabbed in the abdomen with a six inch hunting knife. The applicant suffered a wound in his right lower abdomen and a fracture of his right hand. The offender was convicted of wounding and attempted car theft and was sentenced to eighteen months imprisonment.

Award: \$1,743.72 (pain and suffering \$1,000.00).

200-183 The award granted to this applicant was included in the Board's Fifth Annual Report covering the fiscal year 1973/1974. The applicant continued to experience pain and x-rays revealed that fixation screws used in his fractured ankle had moved. Further surgery was required. The Board ordered a supplementary award for pain and suffering.

Award: \$1,000.00 (pain and suffering \$1,000.00).

200-184 The applicant, a 20 year old Sudbury college student, accompanied a boy-friend to a students' beach party. As they were driving home, they were suddenly ordered to stop by a man with a gun. Ignoring the order, they continued on and five shots were fired at them, one of which struck the driver of the car, and the same bullet entered this applicant's left forearm below the elbow and lodged immediately above the wrist. The offender was found guilty of causing bodily harm by criminal negligence and was sentenced to two weeks in jail and three years probation.

Award: \$368.28 (pain and suffering \$250.00). (Same occurrence as 200-6).

200-198 The victim, age 33, a motor mechanic was assaulted by a man who knocked at the door of his apartment in Toronto. He sustained lacerations to his face and dental damage. A charge of assault causing bodily harm against the offender was withdrawn as the applicant was not aware of the date of the trial and did not appear.

Award: \$868.69 (pain and suffering \$250.00).

200-199 The applicant, a 30 year old carpenter, was employed on a construction project in Ottawa. He and a fellow employee were fooling around in a playful manner when suddenly, without any warning, this person struck the applicant a severe blow on the head with a hammer. The applicant was left partially paralyzed so that he has been unable to work at his trade since. The Board was of the opinion that the offender used grossly excessive force against the applicant by striking him on the head with a hammer and that, although no charges were laid, an offence of assault causing bodily harm was occasioned.

Award: \$5,693.46 (pain and suffering \$5,000.00).

200-210 The applicant, a 37 year old office machine mechanic, resided in a Toronto rooming house. The victim was having a beer with several

other tenants when he was suddenly struck on the head with a hammer from behind. The reason for the attack is unknown and was completely unprovoked. The applicant sustained a depressed skull compound fracture and a cerebral contusion, leaving him with damage to the brain, and a possibility of seizures. The offender pleaded guilty to a charge of assault causing bodily harm and received six months imprisonment and two years probation.

Award: \$5,505.00 (pain and suffering \$5,000.00).

200-216 The applicant, age 50, a police officer in Welland, sustained severe damage to his knee while investigating a disturbance at the Dexter Hotel in Welland. The offenders were convicted of causing a disturbance and each was fined \$75.00.

Award: \$2,864.00 (pain and suffering \$2,500.00).

200-220 The applicant, a 42 year old Hamilton paint sprayer, was a patron in a tavern with two friends. On leaving the tavern and proceeding to their car in the parking lot, they were attacked by six youths. The applicant was rendered unconscious. He sustained a fractured jaw, a fractured ankle and numerous lacerations and abrasions. He was unable to work for two and a half months. The offenders were never identified.

Award: \$2,296.52 (pain and suffering \$1,500.00).

200-232 The applicant, a 31 year old Toronto upholsterer went to the aid of a bartender in the Ben Lamond Hotel, who was attempting to eject two unruly patrons. These patrons then directed their anger towards the applicant and assaulted him by kicks to the face, head and body. He received a dislocated forearm and a fractured mandible. The applicant was unable to work for a period of three months. Although charges were laid against two alleged offenders, they were dismissed through lack of proper identification.

Award: \$1,335.50 (pain and suffering \$500.00).

200-248 The applicant, a 40 year old labourer, was renovating a house in Mississauga, which he had recently purchased. Three unknown men attempted to enter the house and a fight ensued. The applicant was struck with a baseball bat, receiving severe head injuries and a crushed index finger. Two of the offenders pleaded guilty to common assault and were fined \$250.00 and \$150.00 respectively. The charge against the third was withdrawn.

Award: \$2,487.83 (pain and suffering \$750.00).

200-258 The 29 year old victim was attending a house party in the home of friends in Toronto. He assisted the host in ejecting some unwanted guests. Two of the persons ejected returned shortly after with a gun and shot the host of the party, his sister, and this victim. The host and this victim subsequently died from their injuries. The two offenders were both convicted of non-capital murder and sentenced to life imprisonment. This application was made by the widow of the victim and her infant son.

Award: \$7,204.32 immediate with continuing periodic payments of \$280.00 per month. (Same occurrence as 200-487 and 200-281).

200-287 The applicant, age 22 at the time of this assault, was attacked while on duty as a part-time security guard in Kingston. He sustained

severe lacerations to the region of his left eyelid. The two offenders fled immediately and were never apprehended.  
Award: \$317.00 (pain and suffering \$200.00).

200-304 In accordance with the Board's written Order, a further sum of \$175.00 was awarded upon completion of the fitting of the applicant's prosthesis. Details are in the Fifth Report.

200-311 The applicant, a 30 year old Kapuskasing bank employee, was knocked down and dragged on the sidewalk by her common-law husband. She sustained multiple bruises and abrasions and the loss of two teeth, as a result of this occurrence. The offender was convicted of common assault, given a conditional discharge, placed on probation for eighteen months and ordered to pay restitution of \$500.00.  
Award: \$557.00 (pain and suffering \$500.00).

200-318 A supplementary award of \$125.00 was ordered, to cover the cost of cosmetic surgery not completed at the time of the original hearing. Details of the occurrence are in the Fifth Report.

200-326 The applicant, a 49 year old self-employed painter, was found at the rear of a Toronto residence. Due to head injuries, the applicant has no recollection of the events which preceded the assault. He suffered a severe cranial cerebral injury and continues to have back and leg pain. He has been unemployed since the assault. As a result of police investigation, an offender was apprehended, convicted of wounding and sentenced to two years imprisonment.  
Award: Lump sum of \$160.00. Periodic payments of \$225.00 per month (pain and suffering \$225.00 per month).

200-336 This 22 year old resident of an Indian reserve on Manitoulin Island attempted to act as a peacemaker in a quarrel which had broken out between two brothers of his girl friend. One of the brothers left the scene and returned with a rifle and started shooting out of the window of his own home. The applicant attempted to take the gun away from the offender and was shot. He suffered damage to his right arm requiring extensive surgery and a skin graft. It is apparent that he sustained permanent disability to the injured arm. The offender was convicted of wounding and sentenced to fifteen months imprisonment.  
Award: \$5,755.66 (pain and suffering \$2,500.00).

200-341 The applicant, age 24, responded to a pounding on the door of his Thunder Bay apartment, and was assaulted for no apparent reason by an acquaintance who was intoxicated and in a rage. The applicant sustained a fractured nose, the loss of four teeth and multiple bruises. The offender was convicted of assault causing bodily harm and fined \$75.00, which the Board considered to be very light under the circumstances.  
Award: \$1,091.83 (pain and suffering \$500.00).

200-347 The applicant, a 51 year old union organizer, was shot at and hit in the fleshy part of the leg with a .22 slug in an apartment garage in Toronto. The offender was never apprehended.  
Award: \$750.00 (pain and suffering \$600.00).

200-350 This 39 year old self-employed Toronto taxi driver picked up

two passengers and proceeded towards their destination. A dispute arose and one of the passengers struck the applicant in the face with two heavy blows resulting in a fractured nose. The offender was convicted of common assault and sentenced to a \$200.00 fine or one month in jail.

Award: \$598.00 (pain and suffering \$250.00).

200-394 The applicant, a 41 year old salesman from Duparquet, Quebec, was assaulted in the Commercial Hotel in Kapuskasing and he sustained injury to two front teeth as a result. The offender was convicted of assault causing bodily harm and sentenced to 60 days in jail.

Award: \$465.00 (pain and suffering \$200.00).

200-397 The applicant, age 37, while a patron in the men's lounge of the Mansion House Hotel at Sutton, struck up a conversation with a young woman. Some time later, having left the hotel by himself, he was assaulted by two young men without provocation, one of whom stated that the woman in the hotel had been his girl friend. The applicant suffered a fractured right wrist. The offenders were never identified.

Award: \$770.00 (pain and suffering \$500.00).

200-399 The victim, a 45 year old unemployed Toronto truck driver, accepted an invitation to have a drink after dinner in the next-door apartment. Evidence indicated that considerable liquor was consumed and at some point an altercation arose and the victim was assaulted and beaten to death. Taking into consideration the income that the deceased was receiving from part-time employment, and not taking into consideration the illegal benefit that he was receiving from the Unemployment Insurance Commission, the Board assessed the widow's pecuniary loss in the amount of \$200.00 per month.

Award: Periodic monthly payments of \$200.00.

200-430 A supplementary award of \$115.00 was ordered to cover the cost of two medical reports. Details are in the Fifth Report.

200-433 The applicant, now aged 37, was attacked while leaving his place of employment, the Jamesway Hotel in Hamilton. He sustained a fractured jaw, chin lacerations and four damaged teeth. The offender was charged with assault, but the case was dismissed due to conflicting evidence.

Award: \$1,601.00 (pain and suffering \$850.00).

200-442 The applicant is a 56 year old Toronto woman whose marriage had been unsettled, resulting in violence on occasions. On this occasion, she had prepared dinner but her husband continued to drink. Unexpectedly, he approached her from behind and stabbed her twice in the left eye with a fork. The applicant lost the sight in that eye and now wears an artificial eye and is unable to perform her previous duties as a building manageress. Her husband was convicted of assault causing bodily harm and was given a suspended sentence plus one year probation. The applicant and the offender are now divorced.

Award: \$5,372.97 (pain and suffering \$3,000.000), plus \$150.00 per month for 90 months.

200-457 The applicant, age 60, and his wife were shopping in a Don Mills shopping centre. He left his wife in a grocery store so that he could

deposit packages in the trunk of his car in the parking area. As he was opening the trunk of the car, he was assaulted by two assailants. He received facial lacerations and a bruised right hip with sutures being required in the area of his right eyebrow and lower lip. The offenders were never apprehended.

Award: \$320.00 (pain and suffering \$200.00).

200-458 The applicant, a 27 year old letter carrier, was propelled against a steel pillar at the White Castle Inn in Toronto. He sustained a concussion and injuries of the left temple area. Severe headaches resulting from the occurrence persist. The offender pleaded guilty to common assault and was fined \$125.00 or ten days in jail.

Award: \$717.50 (pain and suffering \$500.00).

200-468 The applicant, age 41, a Toronto freight dock worker, returned to his former residence to collect some items of furniture that he had left behind after a recent move. He became engaged in an argument with the new tenant and her boyfriend and the applicant was assaulted in the course of it. Medical examination revealed scratches and lacerations to the left side of the face and a severe contusion and rotator cuff tear in the left shoulder, as well as damage to his teeth. The two offenders were charged with assault causing bodily harm with the man being fined \$150.00 or thirty days in default, and the charges against the female being dismissed. Award: \$791.88 (pain and suffering \$500.00).

200-470 The applicant, a 21 year old truck driver, was shot in the groin at a New Year's party in Whitechurch. The offender was convicted of assault causing bodily harm and sentenced to four years in prison.

Award: \$946.00 (pain and suffering \$750.00).

200-473 A supplementary award of \$175.00 was ordered to cover the cost of a new prosthesis. Details are in the Fifth Report.

Supplementary Award: \$175.00.

200-480 The applicant, a 45 year old housewife, was struck on both cheeks with a broken beer glass at the Lansdowne Tavern in Toronto. The offender was convicted of wounding and sentenced to two years in prison. Award: \$2,683.65 (pain and suffering \$2,500.00).

200-481 The applicant, a 27 year old self-employed carpenter, forced the offender's car into a ditch outside London. The offender punched the applicant in the left eye causing the frames of his glasses to shatter. The applicant was operated on for a laceration of the cornea. The offender was convicted of assault causing bodily harm and fined \$350.00 or thirty days in jail.

Award: \$1,978.75 (pain and suffering \$750.00).

200-486 The applicant, a 58 year old unemployed locksmith, was assaulted in his Toronto residence by his landlord following a drinking session. The applicant sustained two broken ribs, a left pneumothorax and surgical emphysema, two facial lacerations and a swelling of both eyes. The offender was convicted of assault causing bodily harm and sentenced to three months in jail. It was clear to the Board that the applicant and the offender had been friends and drinking companions for two years. The

Board was of the opinion that the large amount of alcohol which had been consumed had a direct influence on the behaviour of both of them. The Board, in arriving at its decision, had regard to Section 17(1) of the Act. Award: \$750.00 (pain and suffering \$750.00).

200-490 The 63 year old applicant, on returning to his room in a Toronto rooming house, found a man and a woman, also roomers in the house, arguing. Both had been drinking. On being asked to leave, the man struck the applicant in the face with a broken bottle. A total of 45 stitches were required to close the lacerations to the cheek and lower jaw. The offender was convicted of assault causing bodily harm and fined \$150.00 or sixty days and probation for twelve months. Award: \$742.00 (pain and suffering \$600.00).

200-491 The applicant, age 19, was the victim of an unprovoked knife attack after leaving the El Mocambo Tavern in Toronto. The applicant sustained superficial lacerations to the face and left arm, as well as bruises to the left leg. The offender was charged with possession of a dangerous weapon and wounding, but was convicted of the lesser charge of assault causing bodily harm. Award: \$341.80 (pain and suffering \$300.00).

200-494 This 26 year old office manager was proceeding on foot to an Ottawa bank to do his firm's banking. He was carrying two bags containing \$53,187.07 in cash and cheques. He was suddenly struck on the head from behind and relieved of the two money bags. Two citizens pursued the offender and retrieved the bags that had been discarded intact behind a building. The assailant was subsequently apprehended and sentenced to two years, less a day, on a plea of guilty to a charge of robbery with violence. The applicant suffered a total hearing loss, vertigo and loss of his sense of balance. Following recovery he has been left with a loss of hearing in his right ear. Award: \$1,686.00 (pain and suffering \$1,500.00).

200-509 The applicant, a 30 year old department store employee, was approached on a Toronto street by a man demanding \$500.00, alleging that the applicant had made his sister pregnant. This person, whom the applicant had never seen before, punched him in the face and butted him in the chest. He reported the occurrence to a police constable on patrol duty, but the assailant had disappeared. Later the same day, as he approached his apartment, he was set upon by the same assailant who once again punched him and butted him. A woman appeared and joined in the assault. He recognized this woman as a former girl friend. Subsequently, he was pushed through a plate glass door, resulting in loss of skin on the lateral side of his fifth left finger, requiring a skin graft. The offender was never apprehended. The Board, with some reluctance, found the applicant to be compensable. Award: \$914.82 (pain and suffering \$300.00).

200-511 The applicant, age 31, an electrical worker, was shot in the abdomen as he entered a drug store in Toronto. This incident was totally unprovoked. The victim sustained serious wounds to his colon and kidney. The offender was convicted of attempted murder and was sentenced to

five years consecutive to the term being served.

Award: \$4,505.60 (pain and suffering \$4,500.00).

200-520 The victim, age 37, was assaulted for no reason as she stood in line to purchase a ticket at the bus terminal in Toronto. She sustained facial bruises in addition to a 1½" cut over her right eyebrow. The offender has never been apprehended.

Award: \$287.75 (pain and suffering \$200.00).

200-526 The applicant, age 33, a physical education teacher in Preston, received serious injuries to his right ankle on endeavouring to ward off an assault at the Galt Country Club. The fracture and dislocation of various bones resulted in a long period of convalescence. No charges were laid in connection with this occurrence.

Award: \$2,414.00 (pain and suffering \$2,000.00).

200-528 This 13 year old youth attended a teen-age party in a private home in Toronto. Two other youths, objecting to his conduct and, in particular, his dancing with one of their girls, attacked him when he left the party. He sustained a fractured jaw. One offender pleaded not guilty in provincial court to a charge of assault, but was convicted and placed on probation for three years. The other offender pleaded guilty to assault and was placed on probation for one year.

Award: \$480.50 (pain and suffering \$350.00).

Recovery of \$240.25 has been made from the offender towards reimbursement of the above-noted award.

200-535 The applicant, age 49, is a stationary engineer employed by the Federal Department of Public Works. He was drinking at the Grad's Hotel in Ottawa, when two strangers came to his table, beat him into unconsciousness, and carried him into the hotel lobby to continue their assault. He suffered a puncture wound of the left eye, which has resulted in the loss of sight of that eye. His offenders have never been identified.

Award: \$6,647.50 (pain and suffering \$6,000.00).

200-544 The applicant, age 22, was walking towards his home in downtown Toronto in the early hours of the morning. He was struck in the right shoulder by a .22 calibre bullet. The Board did not find the applicant to be a credible witness due to the fact that he completely changed his version of what occurred at his hearing. However, he was found to have been a victim of a crime of violence and qualified for compensation within the terms of the Act. The offender was never identified.

Award: \$260.00 (pain and suffering \$200.00).

200-547 The applicant, a 31 year old Toronto automobile assembler, returned home to find his wife strangled to death and his infant son badly battered. Their assailant was still present and he shot at the applicant, hitting him on the left side of the face, causing severe injuries. The infant son died en route to hospital. The offender was convicted of non-capital murder and sentenced to life imprisonment. The charge of attempted murder of the applicant was not proceeded with.

Award: \$5,472.01 (pain and suffering \$3,000.00).

200-549 The applicant, a 42 year old factory worker, was assaulted at

the Scarborough House in Toronto. The applicant sustained a broken nose, several loosened teeth and two black eyes. The offender was never apprehended.

Award: 845.44 (pain and suffering \$350.00).

200-553 The applicant, a 59 year old barber, was attending a dance in St. Catharines. During the evening, a man became abusive and was escorted from the premises. He attempted to re-enter the club and attacked the applicant and two others with a knife. The applicant was stabbed in the stomach and continued to have pain for several weeks. The offender was convicted of wounding and sentenced to four months imprisonment.

Award: \$1,419.64 (pain and suffering \$750.00). (Same occurrence as 200-554 and 200-566).

Recovery of \$100.00 has been made from the offender towards reimbursement of the above noted award.

200-554 The applicant, a 27 year old factory worker, was attending a dance in St. Catharines. A guest became abusive and was escorted from the building. He attempted to return and while trying to restrain him, the applicant was stabbed in the lower abdomen. The offender was charged with assault causing bodily harm and with possession of a dangerous weapon and fined \$200.00 or fifteen days to run consecutively with another conviction.

Award: \$665.29 (pain and suffering \$300.00). (Same occurrence as 200-553 and 200-566).

Recovery of \$100.00 has been made from the offender towards reimbursement of the above-noted award.

200-560 The applicant, age 41, is a professor at Windsor University. As he was turning into his driveway, he heard something strike the side of his car and observed a man lying on the ground beside a motor cycle. As this man appeared to be injured, the applicant went to a nearby phone to call for an ambulance. Upon returning, he was attacked by a friend of the injured man. The applicant sustained damage to his left eye, resulting in double vision which is corrected by glasses. The offender was charged with assault causing bodily harm and fined \$200.00 or fourteen days.

Award: \$658.00 (pain and suffering \$400.00).

200-566 The applicant, a 32 year old St. Catharines labourer, was attending a dance and during the evening a guest became abusive and was escorted from the premises. This man attempted to return and, in the course of aiding in restraining him, the applicant was stabbed in the left chest above the heart. The offender was convicted of assault causing bodily harm and possession of a dangerous weapon. He was sentenced to four months imprisonment and fined \$200.00 or fifteen days to run consecutively.

Award: \$1,053.88 (pain and suffering \$300.00). (Same occurrence as 200-553 and 200-554).

Recovery of \$100.00 has been made from the offender towards reimbursement of the above-noted award.

200-570 The applicant, a 31 year old food container technologist from Waterdown, was attending a social function at the Avenue Road Club in

Toronto, where he was a member. During the course of the evening, he went to the assistance of three women who were being molested by a man. The offender turned upon the applicant, punched and kicked him unconscious. He sustained concussion and a laceration of the left side of his head. The unidentified assailant, in the confusion, ran out into the street and, although the police were immediately called, no arrest was made. Award: \$504.40 (pain and suffering \$350.00).

200-581 The applicant, a 47 year old Ottawa taxi driver, was beaten and robbed of \$40.00. He sustained a concussion and fractured jaw as a result of this occurrence. The offender pleaded guilty to robbery with violence, was given a two year suspended sentence, and was placed on probation. Award: \$916.00 (pain and suffering \$750.00).

200-584 The applicant, age 30, was employed by a firm of tree cutters in Sturgeon Falls. He was a patron in the Field Hotel in Field, when an argument developed, initiated by another patron. The applicant left the hotel, but was followed by the other person, who assaulted him with a blow to the head by a wheel wrench. The applicant suffered a skull depression in the right parietal area. The offender was convicted of a charge of common assault, and on a recommendation of mercy by the jury, was fined by the trial judge \$25.00 or five days. Award: \$1,646.00 (pain and suffering \$1,000.00).

200-592 The applicant, age 23, who had been drinking in the Claremont Hotel in Toronto, became involved in a fight with another man. He sustained facial lacerations, a broken nose and cheekbone, and lost several teeth. The offender was convicted of wounding and sentenced to three months in jail and two years probation. Award: \$2,069.00 (pain and suffering \$1,500.00).

200-597 The applicant, a 40 year old Windsor police constable, suffered a dislocation of his right knee in a scuffle while taking an offender into custody. The offender was convicted of assaulting a peace officer and received two months in jail. Award: \$1,893.00 (pain and suffering \$1,500.00).

200-602 This application was made by the father of the victim, aged 24, for funeral expenses resulting from the death of his daughter by violence at the hands of a neighbour in Scarborough. The offender was subsequently charged with non-capital murder and committed for an indefinite period to the mental institution in Penetanguishene. Award: \$895.90. (Same occurrence as 200-603).

200-608 The applicant, age 18, and a girl friend, accepted a ride from two youths on the outskirts of Oshawa. The driver proceeded in the opposite direction and refused to allow the girls to exit. Both girls jumped from the moving vehicle. The applicant sustained very severe head injuries requiring brain surgery. The two offenders were convicted of unlawful confining and sentenced to nine months imprisonment. Award: \$5,643.79 (pain and suffering \$5,000.00).

200-609 The applicant, a 32 year old housewife, was punched in the face by an acquaintance after consuming a few drinks at the Rainy Lake

Hotel in Fort Frances. The applicant sustained a broken jaw and dental damage. The offender, charged with assault causing bodily harm, received a suspended sentence and two years probation.

Award: \$806.20 (pain and suffering \$500.00).

200-612 The applicant, age 40, resides in Toronto and is at present unemployed. The applicant was sitting in his room when two other roomers entered and commenced to beat him. Investigation revealed that the offenders were intoxicated at the time of the occurrence and no logical reason can be established for the assault. They were convicted of assault causing bodily harm and fines were imposed, one offender being fined \$50.00 and the other \$25.00. The applicant suffered a fractured nose, a perforated ear drum and multiple bruises and abrasions over most of his body.

Award: \$880.00 (pain and suffering \$500.00).

200-618 The applicant, a 79 year old proprietor of a small store on Spadina Avenue in Toronto, was the victim of an unknown assailant, whose motive was robbery. The beating was brutal and the applicant sustained facial fractures.

Award: \$1,278.00 (pain and suffering \$1,000.00).

200-623 The applicant, age 54, a kitchen worker, was walking along a street in Toronto when she was assaulted by a man who tried to grab her purse. She sustained a severe injury to her right knee. The offender, who fled the scene, has not been apprehended.

Award: \$1,944.00 (pain and suffering \$500.00).

200-631 The applicant, a 35 year old cabinet-maker, was shot in the stomach at his home after drinking with the offender at the Jockey Club Tavern in Hamilton. The offender was convicted of wounding and sentenced to five years in penitentiary.

Award: \$3,149.75 (pain and suffering \$1,500.00). (Same occurrence as 200-630).

200-632 The victim, then age 15, was on his way home in Kitchener when he was accosted by an acquaintance. Following an argument, the assailant slapped the victim in the face a number of times, knocking him to the ground, resulting in the loss of two front teeth. The offender was convicted of assault causing bodily harm, placed on probation for two years and ordered to pay restitution in the amount of \$250.00 for the dental injuries.

Award: \$1,014.00 (pain and suffering \$500.00).

200-633 The applicant is a 52 year old automobile salesman and part-time professional baseball umpire. Having been engaged to umpire a game, he stepped outside the Thunder Bay arena and was hit by a pellet fired from a distance of thirty feet. A pellet lodged in the upper part of the applicant's nose just under the eye. The 11 year old offender was convicted of possession of a weapon dangerous to the public.

Award: \$985.00 (pain and suffering \$250.00).

200-638 The applicant, a 55 year old Toronto school teacher, was assaulted by four occupants of a car while he was directing traffic following

a minor motor vehicle accident. He sustained a fractured nose, vocal cord hemorrhage and loosened teeth. Charges were laid but dismissed due to lack of positive identification.

Award: \$1,549.75 (pain and suffering \$500.00).

200-640 The applicant, a 31 year old farmer, was attending a Saturday night barn dance at Myersburg. A number of Satan's Choice motor cycle gang from Peterborough created a disturbance during which he was hit over the head with an iron pipe, requiring eight stitches to his scalp. His nose was fractured, he was severely bruised and some teeth were loosened. Award: \$470.00 (pain and suffering \$200.00). (Same occurrence as 200-663 and 200-698).

200-644 The applicant, a 25 year old lathing contractor, was assaulted while attending a soccer game in London by certain players on the visiting team. The applicant sustained facial lacerations. The offenders are unknown and no charges were laid.

Award: \$667.13 (pain and suffering \$350.00).

200-645 The applicant, a 41 year old lead hand, was assaulted outside the New Commercial Hotel in Woodstock after he had stepped outside for some air, after consuming several drinks. An argument developed, in the course of which the applicant was pushed off a wall, causing him to fall ten feet to the cement below. He sustained a fractured spine and skull, impairment of smelling and hearing and is now a paraplegic. No charges were laid due to insufficient evidence since the witnesses refused to testify. Award: \$8,366.57 (pain and suffering \$7,500.00), with continuing periodic payments of \$500.00 per month.

200-656 The applicant, a 50 year old certified engineer technician, was assaulted and robbed by two youths while walking to his home in Toronto. The applicant sustained contusions of the back and neck and bruises to the abdomen. The offenders are unknown and no charges were laid.

Award: \$315.00 (pain and suffering \$300.00).

200-659 A 33 year old resident of Whiteduck Indian Reserve received a shotgun blast in the right leg while he was preparing to harvest wild rice after he had refused to take an acquaintance to a bootlegger. The injury resulted in bone and tissue damage, and the applicant's right leg is now 2¼" shorter than the other. The offender was found guilty of wounding with intent and sentenced to one year in jail.

Award: \$8,926.87 (pain and suffering \$6,000.00).

200-663 The applicant, age 65, operates a gasoline service station at Myersburg. A group of Satan's Choice motor cycle club members attended at a dance held by the applicant and created a disturbance. The applicant, when investigating the commotion, was violently assaulted by one of the members of this motor cycle group with a metal pipe. He suffered multiple minor lacerations and bruising to the left side of his skull and face, and an impairment of the hearing in his left ear.

Award: \$1,731.89 (pain and suffering \$1,200.00). (Same occurrence as 200-640 and 200-698).

200-669 The applicant, 27 years of age, was shot by an unknown caller while visiting in the home of a friend in Welland. The applicant sustained

a laceration of the left leg. The offenders are unknown and no charges were laid.

Award: \$400.85 (pain and suffering \$250.00).

200-671 The applicant, age 53, accompanied by his son, had gone into brush land near Barrie to line up their rifles for the forthcoming moose hunting season. A hunting party, who were after deer out of season, mistook the applicant for a deer at a distance of approximately 150 feet and shot him in his upper left arm. (The bullet also struck the son in his upper left arm, requiring amputation). The offender was found guilty of dangerous use of a firearm, fined \$200.00 and prohibited from carrying any firearms for two years.

Award: \$697.50 (pain and suffering \$500.00). (Same occurrence as 200-672).

200-672 The applicant, 28 years old, was previously employed in Toronto as a shipper. In 1969 his employment terminated as he was suffering from Hodgkin's disease. The applicant and his father were walking in the country when they were both struck by the same bullet fired from a high-powered rifle by a careless hunter. The applicant received a serious wound in the upper left arm requiring amputation. The offender pleaded guilty to a charge of using a firearm dangerous to the safety of others and was fined \$200.00.

Award: \$8,752.00 (pain and suffering \$8,000.00).

200-675 The victim, a 7 year old boy, was looking out of the window of the second floor apartment in a Toronto duplex. He observed a neighbour's son shooting a pellet gun and called to the boy, who fired a pellet directly at him, striking him in the left eye and resulting in the complete loss of sight in that eye. The eye has been removed and replaced by a prosthesis. There was no prosecution as the offender was a juvenile, being ten years of age.

Award: \$8,396.69 (pain and suffering \$7,500.00).

200-679 A 19 year old Toronto mail handler was assaulted in a parking lot as he was waiting for a ride to work for the night shift. Two men attacked him for no apparent reason and kicked him repeatedly. He sustained abrasions, bruises and a fracture of the right mandible. He was able to identify his assailants but one has not been apprehended. The one located was found guilty of assault causing bodily harm and received two years probation in addition to restitution of \$450.00 at the rate of \$50.00 per month.

Award: \$400.00 (pain and suffering \$400.00).

200-682 The applicant, a 24 year old self-employed barber, was shopping in a Toronto supermarket. A man and woman, accompanied by a child passed through a turnstile ahead of him and the turnstile hit the child on the head causing him to cry. The man accused the applicant of hitting the boy and, without warning, struck him a hard blow in the face with his fist. The applicant was further assaulted and suffered a broken nose and dislocated shoulder. The offender was never apprehended.

Award: \$3,100.00 (pain and suffering \$1,500.00).

200-689 The applicant, a 47 year old sheet metal worker, was assaulted

by two youths at his Cobourg residence by being struck on the head with a bottle, then kicked in the face. The assailant then stole the applicant's automobile. He suffered lacerations to his chin, nose and cheek. He also sustained an injury to his left eyeball. One of the offenders was convicted of assault and sentenced to five years. No charges were laid against the other person.

Award: \$1,908.91 (pain and suffering \$1,000.00).

200-692 The applicant is a 63 year old stationary engineer from Ottawa. While on duty in a boiler room, a stranger attacked the applicant, knocking him down and kicking him about the face. He sustained a rather severe fracture of the left wrist and a laceration under the left eye. A psychiatric assessment indicated a post traumatic anxiety state, which was expected to continue indefinitely. The assailant was convicted of unlawful assault and sentenced to two years less a day, followed by three years probation, with a recommendation for psychiatric treatment.

Award: \$1,073.75 (pain and suffering \$850.00).

200-693 The applicant, at the time of the occurrence was a 24 year old Metropolitan Toronto police constable. Together with two other police officers, the applicant had arrested a person for causing a disturbance and assaulting a peace officer. While in the police station, the offender threw a chair, striking the applicant in the face. He sustained a fractured nose and a cut under the left eye. The assailant pleaded guilty to the charge of causing a disturbance and assaulting a peace officer and was fined \$200.00 or 30 days.

Award: \$500.00 (pain and suffering \$400.00).

200-695 The applicant, a 33 year old able seaman, spent most of the evening at a beverage room in Goderich before returning to his ship. He then became involved in an argument with a female kitchen helper who appealed to another member of the crew for assistance. This person armed himself with a knife and stabbed the victim in five places. The assailant pleaded guilty to a charge of assault causing bodily harm and was fined \$200.00.

Award: \$2,872.00 (pain and suffering \$1,500.00).

200-697 The applicant, 54 years of age, found two young men drinking in the hallway of her apartment in Willowdale. When questioned they ran. Her husband chased one, and she followed the other who entered a taxicab, slamming the door on the applicant's hand. She sustained a fracture of her right ring finger. Neither offender was apprehended.

Award \$250.00 (pain and suffering \$250.00).

200-701 The applicant, a 24 year old security guard, entered a warehouse in Toronto to check an alarm. He was assaulted from behind and sustained a concussion. The offender remains unknown.

Award \$250.00 (pain and suffering \$250.00).

200-706 The applicant, age 23 and unemployed, and his wife came upon a car blocking their passage in the parking lot of their Toronto apartment building. An argument ensued and the applicant was assaulted with a tire iron, causing a fractured left elbow. One offender was convicted of the dangerous use of an offensive weapon and fined \$500.00 or six months

and put on three years probation. Another was given a suspended sentence and placed on probation for three years. The charge against the third was dismissed.

Award: \$540.75 (pain and suffering \$500.00).

200-707 The applicant, a 27 year old part-time security guard and student, attending George Brown College in Toronto, was ordered by his landlord to vacate his room. Upon returning to collect his belongings, he found that his room had been padlocked. While attempting to gain entry, he was assaulted by the landlord with a steel crowbar, sustaining a fracture to his right femur. The assailant, on pleading guilty to a reduced charge of assault causing bodily harm, was fined \$150.00.

Award: \$6,946.00 (pain and suffering \$2,500.00).

200-711 The applicant, a 35 year old cashier, was beaten with an iron bar about the head, shoulders and arms by her ex-husband, who broke into the Kingston apartment. The applicant sustained scalp lacerations and had trouble with continuing headaches, dizziness and pain. The offender was convicted of assault causing bodily harm and received a suspended sentence plus two years probation.

Award: \$1,169.24 (pain and suffering \$750.00).

200-713 The victim, a 16 year old student, and a friend were in a Toronto take-out restaurant having something to eat. Three strangers entered and one of them became ill. The victim and his friend helped to take the sick person outside, when one of the man's friends started to fight with them. One of the other men grappled with the victim and bit off a portion of his nose. The assailants were never apprehended.

Award: \$1,560.75 (pain and suffering \$750.00).

200-714 The applicant, a 25 year old printer, was shot in the head while drinking in the Keystone Tavern in Toronto. The applicant had consumed a quantity of beer and was intoxicated and the offender was high on speed. The offender was charged with attempted murder but convicted of assault causing bodily harm and sentenced to five years in prison.

Award: \$12,551.92 (pain and suffering \$6,000.00).

200-715 The victim, age 10, was riding his bicycle in Downsview, when he was approached by another youth who demanded his bicycle. On refusing, the victim was dragged from his bicycle, punched and kicked in the face, sustaining superficial facial injuries and damage to his teeth. Owing to the age of the youths involved and a language difficulty, the matter was not reported to the police. An award was made to cover dental costs only.

Award: \$400.00.

200-721 The applicant, a 41 year old manager of the Edwin Hotel in Toronto, was assaulted twice by the same offender in the hotel by being punched in the mouth. The applicant sustained facial fractures which later became complicated and resulted in aspiration pneumonitis. The offender was charged with two counts of assault. He was convicted on the first charge and sentenced to 30 days. The second charge was dismissed. Because the applicant failed to report the first offence promptly to law en-

forcement agencies, the Board denied the application for that occurrence. He received an award for the second occurrence.

Award: \$815.00 (pain and suffering \$800.00).

200-724 The applicant, a 37 year old London truck driver, on leaving for work one morning, was set upon by his neighbour without warning. He was struck repeatedly and forcefully with a baseball bat. The lacerations to his head required suturing and the swelling and bruising on various parts of his body testified to the violence of the beating. The offender was convicted of assault causing bodily harm and fined \$200.00 or sixty days in jail. He was placed on probation for twelve months.

Award: \$1,626.72 (pain and suffering \$1,000.00).

200-725 The offender in this matter disapproved of the manner in which the applicant was operating his car. He followed the applicant to his home in Weston, Ontario and assaulted the applicant while he was sitting in his car with the shoulder harness still in place. The applicant, a 27 year old estimator, sustained damage to his teeth in addition to bruises and abrasions. The offender was convicted of assault causing bodily harm and fined \$200.00 or twenty days.

Award: \$410.00 (pain and suffering \$150.00).

Recovery of \$110.00 has been made from the offender towards reimbursement of the above-noted award.

200-726 The applicant, age 31, was assaulted with a beer glass as he entered the washroom of the Lido Tavern in Windsor. No provocation whatsoever could be found for the occurrence and the offender was found guilty of assault causing bodily harm and was sentenced to nine months definite and six months indefinite. The applicant suffered eight separate serious lacerations to the face, which, in all, required forty sutures to close.

Award: \$2,004.61 (pain and suffering \$1,500.00).

200-734 The applicant is a 20 year old employee of Canadian General Electric in Newmarket. He was quietly enjoying his beer in the Bonanza Restaurant and Tavern when, without provocation, he was thrown from his chair by the offender. Upon emerging outside the restaurant, the applicant was pushed through a nearby plate glass window and sustained severe lacerations to the right front forearm and back. The offender was convicted of common assault, fined \$50.00 or ten days, and placed on probation for one year.

Award: \$521.59 (pain and suffering \$350.00).

200-740 The applicant, a 25 year old postal clerk, was assaulted by four men in the Red Lion Tavern in Toronto while attempting to prevent their harassment of his girl friend. The applicant sustained a cut above the eye and a chipped tooth. Although the applicant could describe the offenders, the offenders were never identified and no charges were laid.

Award: \$294.30 (pain and suffering \$200.00).

200-741 The applicant, age 28, a police officer in North Bay was shot five times by the offender whom he was attempting to arrest. He sustained wounds to his right hand, left thigh, right groin and stomach. The offender

who was convicted of attempted murder, was sentenced to twenty years imprisonment.

Award: \$2,710.00 (pain and suffering \$2,500.00).

200-743 This application was made for funeral expenses by a mother as a result of the death by violence of her 21 year old daughter, who had been stabbed to death by the daughter's husband of one week in Toronto. The offender was convicted of non-capital murder and sentenced to life imprisonment.

Award: \$1,099.55.

200-753 The victim, 40 years of age, manages a Becker Milk Store in Toronto. He was pistol-whipped by two men and a girl who robbed the store. He sustained lacerations to his scalp and forehead. One of the offenders died before standing trial; another was convicted of robbery with violence, and was sentenced to an indeterminate term not to exceed fifteen months.

Award: \$860.00 (pain and suffering \$850.00).

200-754 The applicant, a 30 year old factory worker, was punched in the nose by a fellow worker at his job at Ford Motor Company of Canada Limited plant in Talbotville. The applicant sustained complete left nasal obstruction and required four different operations. The offender was convicted of assault causing bodily harm and fined \$100.00 or fifteen days in default.

Award: \$1,893.18 (pain and suffering \$1,000.00).

200-756 The applicant, a 22 year old sales representative, became involved in an argument with a waiter at the Colonial Tavern, Toronto. The waiter, without provocation, struck the applicant in the face, causing a laceration above the left eye. The assailant was found guilty of assault causing bodily harm and received a sentence of three months imprisonment consecutive to a sentence of seven years imprisonment resulting from an unrelated charge of manslaughter.

Award: \$250.00 (pain and suffering \$150.00).

200-757 The applicant, age 19, was attacked and beaten in the Kitchener Memorial Auditorium just as he had completed skating. He was treated for dental injuries plus minor cuts to his head and mouth. The offender pleaded guilty to assault causing bodily harm and was fined \$100.00 or eight days in jail.

Award: \$980.73 (pain and suffering \$400.00).

200-759 The applicant, a 22 year old drapery installer was seriously injured when a dynamite explosion occurred at a Toronto bakery, causing a portion of the roof to collapse on him. He sustained puncture wounds of the scalp, arms and hands. The majority of the foreign bodies were removed from the affected areas. The offender remains unknown.

Award: \$1,731.45 (pain and suffering \$750.00). (Same occurrence as 200-760).

200-760 The applicant, a 20 year old legal secretary, was injured when a dynamite explosion occurred at a Toronto bakery, causing a portion of the roof to collapse on her. She sustained a mild concussion and multiple

lacerations as a result. The offender remains unknown.

Award: \$1,323.40 (pain and suffering \$500.00). (Same occurrence as 200-759).

200-764 The applicant, age 33, a truck driver's helper, sustained fractures of his jaw and nose when he was assaulted at his rooming house in Toronto. The offender pleaded guilty to assault causing bodily harm and was sentenced to thirty days in jail plus probation for six months.

Award: \$804.28 (pain and suffering \$500.00).

200-765 The applicant, a 23 year old underground miner, and his fiancée, were patrons in the Cafe Europe in Elliot Lake. A group of members of the Coffin Wheelers motor cycle gang were at an adjoining table and were harassing and disturbing other patrons. The applicant, who is known as a peaceful man, attempted to intercede and act as a peacemaker during an altercation. One of the gang assaulted him with a broken bottle, knocking him to the floor and inflicting multiple facial lacerations. The offender pleaded guilty to assault causing bodily harm and was sentenced to six months in jail.

Award: \$1,405.71 (pain and suffering \$1,000.00).

200-767 The victim, a young girl age 11, was murdered in Haldimand Township. The offender, who was charged with non-capital murder, was found not guilty by reason of insanity and was confined to the Ontario Mental Hospital, Penetanguishene.

Award: \$1,322.22 to the applicant, step-father of the victim, for expenses related to her death.

200-768 The applicant, a 35 year old used car salesman, was assaulted at his place of employment in London. He sustained soft tissue injuries to the cervical and lumbar spine. Severe headaches continued for a considerable period of time. The applicant laid a charge of common assault against the alleged offender which was dismissed.

Award: \$1,769.74 (pain and suffering \$1,000.00).

200-769 This 40 year old Chrysler trim repairer, was enjoying a drink in the Fleming House Tavern in Windsor. Suddenly, and without warning or provocation, another patron smashed a beer glass into the applicant's face. It was suspected that the offender may have been affected by drugs. The applicant received severe lacerations to both lips, his nose and the left side of his face. Three of his teeth were also chipped. The offender was convicted of assault causing bodily harm, and was sentenced to fifteen days in jail.

Award: \$692.00 (pain and suffering \$350.00).

200-773 The applicant, a 44 year old Hamilton nurse, was attacked on her way home and dragged towards some bushes. Her assailant was frightened away by passers-by. The applicant suffered anxiety neurosis and depression as a result of this assault. The offender was convicted of assault causing bodily harm and sentenced to four months in jail.

Award: \$675.92 (pain and suffering \$600.00).

200-774 The applicant, a 41 year old female, was the victim of an unprovoked assault committed by a stranger when she entered a Toronto

alleyway late in the evening, in order to relieve herself. She sustained a knee injury which necessitated her absence from work for a period of thirty-five weeks. Her assailant was not apprehended.

Award: \$2,820.75 (pain and suffering \$1,500.00).

200-777 The applicant, age 54, and his wife were visiting at the home of their daughter and son-in-law in Richmond Hill. A neighbour, who was in an intoxicated condition, walked the daughter home and was chased away by her husband. He returned with a loaded shotgun and, without warning, fired from a distance of seventy-five feet. The applicant was struck with about fifty pellets from his ankles to his face. The offender was charged with attempted murder, but pleaded guilty to wounding, and he was placed on probation for three years.

Award: \$1,207.50 (pain and suffering \$1,000.00).

Recovery of \$100.00 has been made from the offender towards reimbursement of the above-noted award.

200-779 A 30 year old Windsor bulldozer operator was doing final grading on a project for his employer, when he was approached by the owner of the adjoining property, who requested that he perform some gratuitous work for him. On refusing, the bulldozer operator was struck in the face. He sustained a fracture of his right nasal bone, which required a closed reduction under general anaesthesia. The assailant was convicted of assault causing bodily harm of \$175.00 or fifteen days in jail.

Award: \$375.00 (pain and suffering \$250.00).

200-780 The applicant, age 29, had gone to the Manitonna Hotel in Brockville for a few drinks. On being harassed and threatened by another patron, the applicant left and went to another establishment, the Carriage House. When he left this latter establishment, his tormentor was outside and followed him up the street where the assault on the applicant took place. The victim suffered a fractured cheek-bone, and multiple lacerations and bruises to his face, in the area of his eyes. His assailant was charged and convicted of assault causing bodily harm and sentenced to sixty days in jail.

Award: \$1,566.95 (pain and suffering \$750.00).

200-782 The applicant, a 39 year old London store investigator, was assaulted while attempting to apprehend a thief. Minor injuries were sustained. However, an extended period of psychiatric treatment was necessary as a result of this occurrence. Her former emotional state was never fully regained. Charges of assault causing bodily harm and theft under \$200.00 against the alleged offender were dismissed.

Award: \$2,500.00 (pain and suffering \$2,500.00).

200-784 The applicant, a 52 year old employee of the Ford Motor Company in Windsor, was on his way home when he observed a car with lights on and the motor running and the driver slumped over the steering wheel. He approached the car to ascertain if the occupant was ill. The man got out of the car and assaulted the Good Samaritan and then attempted to run over the victim. The victim regained his feet and ran while being chased by the assailant in his car. Most of the physical injury was in the head area with several bruises and lacerations. The applicant continued

for some time to have headaches, spells of dizziness and depression. The offender was convicted of common assault.

Award: \$4,014.84 (pain and suffering \$2,000.00).

200-787 The applicant, a 56 year old mechanic, was assaulted in a Toronto parking lot. Minor injuries and minimal hearing deficiency resulted from this occurrence. The offender was not positively identified.

Award: \$539.20 (pain and suffering \$500.00).

200-788 The applicant, age 40, a police constable in the City of London, attempted to intervene in a fight at the Bothwell Arena in Bothwell. For his trouble he was assaulted and sustained a fractured jaw plus dental damage. The offender was convicted of assault causing bodily harm and was fined \$50.00 or five days in jail.

Award: \$2,136.52 (pain and suffering \$500.00).

200-793 The victim, a 17 year old Etobicoke High School student, called upon two girls in response to a telephone invitation. There were four other youths in the house and one of them, without provocation or warning, kicked the victim in the face, which resulted in a displaced nasal fracture. Although the Board found the victim to be compensable within the meaning of the Act, they were satisfied that no person, including the victim, told the whole truth. The youthful offender has left the country to reside with his parents in the United States so that there has been no conviction.

Award: \$250.00 (pain and suffering \$250.00).

200-794 The 34 year old welder and his wife were shopping in a London, Ontario department store. A man rushed past them, closely pursued by a female store security officer, who requested assistance in apprehending a thief. The applicant responded to this request and grappled with the alleged offender. They both fell to the pavement in the parking area and the applicant suffered a fractured right arm. The department store elected not to lay charges against the alleged shop lifter for goods subsequently valued at approximately \$4.00.

Award: \$2,467.37 (pain and suffering \$400.00).

200-797 The applicant, age 37, lives in New York State, where he is a school teacher. After leaving a restaurant in Toronto, he was assaulted and robbed by two men. He sustained a minor laceration to the right eye and a swelling on his left cheek. Both offenders were charged with robbery with violence. A warrant is outstanding in respect to one, but the other offender was convicted and sentenced to thirty days in jail, plus eighteen months probation.

Award: \$158.25 (pain and suffering \$125.00).

200-802 The applicant, age 72 and retired, was assaulted and robbed of \$80.00 outside his residence in Windsor. He sustained a fractured nose and rib, in addition to multiple facial contusions. The offender was convicted of robbery with violence and sentenced to three years in prison.

Award: \$970.00 (pain and suffering \$750.00).

200-804 A 23 year old Toronto automotive parts salesman, impatiently sounded his horn as he attempted to pass a panel truck on Danforth Avenue in Toronto. The driver of the truck pulled over to the curb and

signalled for the applicant to stop. An argument ensued, in the course of which the applicant was struck on the mouth. The truck driver then left the scene in his vehicle and was never identified or apprehended. The provisions of Section 17(1) were applied since the applicant voluntarily entered into an altercation. His injuries consisted of present and future dental work.

Award: \$390.00.

200-805 The victim, then age 16, was physically assaulted in her parents' apartment building in Toronto. She sustained a broken finger and facial lacerations and bruises as a result. The offender was convicted of assault causing bodily harm and of indecent assault in an unrelated matter and sentenced to a jail term of eighteen months definite, six months indefinite and one year probation.

Award: \$1,430.00 (pain and suffering \$500.00).

200-806 The applicant is a 31 year old Toronto car wash attendant. On entering a restaurant, he met a woman with whom he had previously had a common-law relationship. As they were walking along the street, the applicant was suddenly assaulted by a person who had also enjoyed a common-law relationship with this woman. The victim was struck on the head and face with a rock and sustained a fractured skull. The offender pleaded guilty to a charge of assault causing bodily harm and was sentenced to one years' imprisonment.

Award: \$2,173.00 (pain and suffering \$1,500.00).

200-807 The applicant, a 26 year old Toronto boiler technician, was drinking with a friend in the Knob Hill Tavern. He was brutally attacked and beaten by members of the Satan's Choice motor cycle gang. The principal injury suffered by the applicant was the loss of his left eye. Two of the assailants were convicted of assault causing bodily harm, one being sentenced to twenty months and the other to imprisonment for one year.

Award: \$7,016.00 (pain and suffering \$5,000.00).

200-809 A 70 year old Toronto widow was walking on the sidewalk near her home when she was knocked down by a bicycle ridden by a boy about 12 or 14 years of age. She sustained a fractured thumb and a soreness in her left knee. The offender was never apprehended.

Award: \$650.00 (pain and suffering \$400.00).

200-811 A 32 year old Simcoe taxi-cab driver was assaulted and beaten by a passenger when he requested his fare to be careful with his cigar. The applicant suffered a flexion extension injury of the cervical spine, headaches and abrasions to his knee and elbow. The offender was convicted of assault causing bodily harm and fined \$10.00 or sixty days.

Award: \$1,282.00 (pain and suffering \$500.00).

200-813 The applicant, a 45 year old teletype operator, was attacked by several youths and as a result he fell down the stairs at the entrance to a Toronto subway station. He sustained lacerations to his right forehead and a fractured wrist. The offenders were never apprehended.

Award: \$796.35 (pain and suffering \$250.00).

200-815 The applicant, a 24 year old labourer, sustained a pellet gun-

shot wound in the left hand while leaving the Dixie House Tavern in Windsor. The offender was never apprehended.

Award: \$1,394.69 (pain and suffering \$400.00).

200-814 The applicant, age 24 and unemployed, was assaulted by two men who forced their way into his girl friend's Toronto apartment. The victim sustained a lacerated thumb when he jumped from a second storey window. The next night, the applicant naively accompanied these same men and was taken to Cherry Beach, where he was shot numerous times with a pellet gun because he had informed the police of the previous assault. The applicant lost the sight in his left eye as a result. One offender was convicted of wounding and sentenced to two years in penitentiary. The other offender received a sentence of six months for possession of a dangerous weapon. The Board considered the provisions of Section 17(1). Award: \$2,500.00 (pain and suffering \$2,500.00).

200-816 The applicant, age 21, and two male friends were confronted and harassed by two acquaintances on a Toronto street. A fight ensued and the applicant, attempting to intercede, was knocked to the floor. Her ankle was stepped on, resulting in a fracture. Bench warrants for the offenders are outstanding.

Award: \$2,209.10 (pain and suffering \$1,500.00).

200-819 The applicant, a 52 year old dispatcher, was propositioned by a woman in the Continental Hotel in Toronto. The woman advised a male companion that the applicant had used foul language to her and this man assaulted the applicant as a result. The applicant sustained a fractured nose, cheek lacerations and two loosened teeth. The two offenders were convicted of assault causing bodily harm. The man was sentenced to one year and three months plus two years probation and the woman was placed on probation for two years.

Award: \$975.00 (pain and suffering \$700.00).

200-821 The applicant, a 44 year old Chrysler worker, was contacted at his Toronto residence by his ex-wife's common-law husband, who requested the applicant to step outside for a talk. When he did so, he was attacked by five men and badly injured. His injuries resulted in a blood clot on the brain, which left one side of his body paralysed and the loss of most of the sight in his left eye. He required treatment in a psychiatric ward and the prognosis was a minimum of two years for potential recovery. One of the assailants was convicted of wounding and sentenced to six months and another was convicted of common assault and given a conditional discharge. In view of the applicant's conduct prior to the actual assault, the amount which would otherwise be awarded in respect of loss of wages and pain and suffering was, under subsection (1) of Section 17, reduced by 50%.

Award: \$6,542.04 (pain and suffering \$2,500.00).

200-822 The applicant, age 37, a part-time correctional officer in Chatham, was assaulted when he escorted two prisoners to a different ward. He sustained dental injuries and bruises to his nose and chest. Each offender was convicted of assaulting a peace officer; one was sentenced to nine

months consecutive to the term being served, and the other was given six months.

Award: \$267.50 (pain and suffering \$250.00).

200-824 The applicant, a 20 year old junior purchasing agent, was driving near his Toronto home when a snowball was thrown at his car by a group of three youths and a girl. He stopped and questioned their reasons for such behaviour and one of the youths punched him several times in the face. He sustained bruises and a loss of a tooth which required installation of bridge work. The matter was reported promptly to the police but the offenders have not been apprehended.

Award: \$225.20 (pain and suffering \$200.00).

200-825 The applicant, a 51 year old plater, was assaulted by a neighbour while dismantling a fence on his Hamilton property. He sustained a fractured nose as a result of a punch to the face. The charge of common assault against the offender was dismissed. The Board found that there was provocation on the part of the applicant and, in accordance with Section 17(1) of the Act, made no award for pain and suffering. Compensation was limited to expenses incurred and loss of income.

Award: \$285.11.

200-831 The applicant, a 20 year old Lakefield factory worker, was a passenger in his own car being driven by a friend. A soft drink container was thrown from a passing car and struck the applicant's car. The occupants got out of both cars and the person who had thrown the container broke off a radio antenna, struck the applicant over the head with it repeatedly, and stabbed him on the right cheek and then in the left eye with it. The left eye was subsequently enucleated. The offender was convicted of assault causing bodily harm and sentenced to six months in jail and placed on probation for two years.

Award: \$6,227.58 (pain and suffering \$5,000.00).

200-832 This 31 year old Toronto commercial artist was at a house party with his wife. One of the guests accused him of stepping on a lady's foot and hit him in the face, knocking him to the ground. The assailant's girl friend offered apologies and said that the wrong person had been hit. The applicant sustained extensive dental damage requiring two extractions, two caps and a fixed bridge. The offender, on a conviction of assault causing bodily harm, was sentenced to one month in jail.

Award: \$1,361.53 (pain and suffering \$250.00).

200-835 The applicant is a 52 year old constable employed by the Canadian Pacific Railway in Windsor. While on duty checking company property, the applicant stopped at a restaurant for lunch and another customer taunted the applicant. The applicant attempted to ignore this harassment but the other person approached him from behind and struck him at the base of his neck with a fist. The two men then grappled and fell through a plate glass window. The applicant received a severe laceration of his left arm. The assailant was convicted of common assault and fined \$150.00.

Award: \$360.00 (pain and suffering \$250.00).

200-836 The applicant, a 62 year old self-employed tax consultant, was struck while attempting to secure a taxi in Kitchener. He sustained a laceration of the forehead and suffered from headaches for a short period of time as a result. The offender was convicted of assault causing bodily harm and sentenced to imprisonment for three months and probation for eighteen months.

Award: \$423.45 (pain and suffering \$300.00).

200-841 The applicant, age 68, was in his home in Deep River when he heard glass in the front door break. He observed a person attempting to enter and went to the door to prevent the entry. This offender slashed out at the applicant with a knife, causing a deep wound to his hand. The offender, in attempting to flee from a police officer, had attempted to enter the applicant's home. The offender was charged with a number of offences including assault causing bodily harm to the applicant and sentenced to twelve months in penitentiary to run concurrent with a ten year sentence on the other charges.

Award: \$550.00 (pain and suffering \$500.00).

200-842 The applicant, a 20 year old Toronto student, was kicked in the groin and face outside of Harriston. As a result of this occurrence, the applicant lost one upper tooth. The offender was convicted of assault causing bodily harm and sentenced to sixty days in jail.

Award: \$925.00 (pain and suffering \$300.00).

200-844 The applicant, a 25 year old student, was hit in the right chest and left side when several shots were fired through the window of a house trailer in Timmins. One bullet damaged the victim's spinal cord with the result that he is a permanent paraplegic. The offender was convicted of discharging a firearm with intent to wound and sentenced to seven years imprisonment.

Award: \$7,770.58 (pain and suffering \$7,500.00).

200-846 The applicant is a 27 year old millwright utility man from Dryden. During the course of an evening of drinking, an acquaintance had invited him to visit his home, and he did, arriving in an inebriated condition. His next recollection was being attended to by an ambulance attendant and being transported to the hospital. As a result of police investigation, the householder and host of the victim was charged and convicted of assault causing bodily harm and fined \$500.00 or ninety days. The victim suffered a fracture of the left mandible.

Award: \$824.66 (pain and suffering \$400.00).

200-847 The applicant is a 51 year old transient tobacco farm worker. At the time of this occurrence he was residing with the offender in a house at a tobacco farm near Simcoe. Following considerable drinking, an argument developed, and the applicant was struck on the right arm and legs with a baseball bat, suffering multiple bruises and abrasions to the legs and a transverse fracture of the distal end of ulna. The offender was charged with assault causing bodily harm and sentenced to three months in jail.

Award: \$692.70 (pain and suffering \$500.00).

200-848 The applicant, a 30 year old labourer, was assaulted in the parking lot of the Halton Inn in Oakville. He sustained a broken nose and suffered headaches for an extended period of time as a result. The offender was convicted of assault causing bodily harm, and sentenced to three months in jail.

Award: \$1,215.24 (pain and suffering \$400.00).

200-851 This 32 year old unemployed applicant, after visiting at a Toronto residence, left in company with a casual acquaintance. An argument ensued and the applicant was beaten and left on the sidewalk in an unconscious state where he was found by the police. Charges were laid against the offender but are still outstanding with a bench warrant in effect. The applicant's injuries were diagnosed as bilateral mandibular fractures, compound nasal fracture, facial lacerations and lacerations to the left eyeball, requiring enucleation.

Award: \$4,630.00 (pain and suffering \$4,500.00).

200-852 The applicant, a 49 year old security guard, employed as watchman at a private girls' college in Toronto, became embroiled in an argument with another security guard over their assignment of duties. The applicant was struck on the nose with a fist. Although a charge of common assault was laid, the case was never disposed of by the Courts.

Award: \$500.00 (pain and suffering \$400.00).

200-855 This 25 year old applicant engaged in a violent argument with another man concerning the affections of a woman, in Elliot Lake. Later that day the offender attacked the applicant with a knife, inflicting grievous wounds of varying degrees of seriousness on several parts of the victim's body, and a deep laceration into the hand, severing certain tendons, which will prevent him from returning to his previous occupation. The assailant was convicted of assault causing bodily harm, fined \$500.00 and placed on probation for two years. In view of the behaviour of the applicant, the Board invoked Section 17(1) of the Act and reduced the award accordingly.

Award: \$2,320.81 (pain and suffering \$1,250.00), with continuing periodic payments of \$100.00 per month.

200-857 The applicant, a 24 year old labourer, was sitting with his girl friend in the bar of the Kenwood Hotel, Kenora. An acquaintance approached and suddenly, without warning, attacked the applicant and knocked him to the floor. The assailant then grabbed a glass and struck at the applicant. The applicant suffered a serious laceration to his right wrist which severed all of the important structures in the front of the wrist, except for his radial artery. The offender was subsequently apprehended, charged with assault causing bodily harm and on conviction sentenced to two years.

Award: \$2,313.00 (pain and suffering \$2,000.00), plus periodic payments of \$100.00 per month.

200-858 The applicant, a 27 year old television repairman in Brampton, was shot twice when he went to the assistance of his prospective father-in-law, who was involved in an argument with a man. The applicant suffered brain damage that left him unable to speak coherently. He can only

speak a few, almost unintelligible words at a time, and his condition will continue indefinitely. The offender was convicted of attempted murder, and sentenced to seven years imprisonment.

Award: \$567.03 with periodic monthly payments of \$350.00.

200-859 The applicant, a 19 year old student, was the victim of an unprovoked stabbing on school premises in Toronto. The knife penetrated the right shoulder area. The offender was convicted of wounding and possession of a dangerous weapon and was sentenced to six months in jail and two years probation.

Award: \$655.00 (pain and suffering \$500.00).

200-861 The applicant is a 58 year old Toronto Transit bus driver. As the bus was moving, an inebriated passenger suddenly shouted to the driver to stop the bus and hooked a cane around his neck, pulling him to the floor. The offender departed in haste and was never identified. The applicant suffered a laceration to his left ear resulting in shock and headaches.

Award: \$221.69 (pain and suffering \$150.00).

200-863 The applicant, a 23 year old general production worker, was stabbed on the left side of his chest in the Royal Alex Hotel in London. Heart surgery was performed as a result. The offender, an inmate of Collins Bay Institute, was on a three day pass at the time of the occurrence. He was found guilty of wounding and sentenced to ten years in penitentiary. On appeal, this was varied to five years.

Award: \$5,506.02 (pain and suffering \$4,500.00).

200-864 The applicant is a 46 year old lift-bridge operator at Port Dover. One evening, while on duty, a stranger forced his way into the office and, for no known reason, produced a knife and slashed the applicant around the head and shoulders. He sustained superficial lacerations to the left shoulder, left ear and back. The assailant pleaded guilty to a charge of assault causing bodily harm and was sentenced to five months imprisonment and was placed on probation for two years.

Award: \$450.00 (pain and suffering \$450.00).

200-865 The applicant, age 50 and on a disability pension, went looking for a youth who had threatened and insulted his daughter in Hamilton. The applicant was punched several times and sustained a fractured wrist. The offender was convicted of assault causing bodily harm and received a suspended sentence and eighteen months probation.

Award: \$438.85 (pain and suffering \$250.00).

200-866 The applicant, a 68 year old plant superintendent, was struck on the head with a gun at his place of employment in Toronto. He sustained a severe laceration as a result and suffered from headaches for several weeks. The offender was convicted of armed robbery and sentenced to fifteen years imprisonment.

Award: \$432.60 (pain and suffering \$300.00).

200-867 The victim, age 27, and her common-law husband, became embroiled in an argument in their Thornhill home. The husband left the house, purchased a .22 calibre rifle and ammunition, and returned to the

house, where he shot the eight month pregnant woman in the head. The offender was sentenced to life imprisonment. This application was filed by the father of the deceased for funeral expenses.

Award: \$1,024.00.

200-869 A 30 year old Kenora policc constable was seriously injured by a bank robber who demanded a truck and driver to take him out of town as a condition for releasing certain hostages. The robber was carrying a dynamite bomb against his chest and held a triggering device between his teeth. The robber was shot by another police officer, which resulted in the triggering of the mechanism, and in turn detonating the dynamite bomb, killing the robber and injuring this applicant and others. He sustained lacerations and bruises to his lower extremities and suffered injury to his hearing system and his back, as well as emotional upset.

Award: \$7,750.00 (pain and suffering \$7,500.00).

200-871 The victim, a 16 year old girl, was walking home at eleven o'clock in the evening from her part-time employment at a Belleville restaurant. A man approached her from behind and, without warning, violently attacked her, striking her on the head and dragging her into the back yard of a nearby house. She was on the ground and the man continued to beat her and attempted to disrobe her. However, her screams scared off her assailant whom she was unable to identify.

Award: \$783.22 (pain and suffering \$500.00).

200-878 The victim, a 20 year old clerk, was found fatally stabbed in the kitchen of her Hamilton apartment. Despite a lengthy police investigation, no offender has been identified. The application was made by the mother of the deceased in respcct to funeral expenses.

Award: \$1,606.36.

200-882 The applicant, aged 25, is a streetcar operator in Toronto. Upon hearing a dull thud against his vehicle, he stopped and was physically assaulted by three youths. He sustained numerous bruises, abrasions and lacerations. The three offenders were charged with assault causing bodily harm; two received conditional discharges and six months probation, and the charge against the third offender was dismissed.

Award: \$734.90 (pain and suffering \$500.00).

200-884 The victim, a 7 year old child, resides with his family in Toronto. He was struck in the eye by a stone fired from a sling shot in the hands of a neighbour's child. He suffered a loss of sight in the injured eye. As the offender was a juvenile, no charges were laid. However, the Board considered that an offence of criminal assault had been committed.

Award: \$8,795.71 (pain and suffering \$7,500.00).

200-885 The applicant, a 48 year old federal government employee, was a passenger on an Air Canada flight from Ottawa to Toronto. As the plane approached Toronto, a male passcnger, in an inebriated condition, lurched and fell on the applicant while she sat in her seat. She pushed the man away from her, whereupon he began to strike her about the head and neck. The offender was convicted of assault and fined \$75.00 or fifteen days in jail. The applicant, having a previous history of spinal disorder, continues

to suffer discomfort with aches in her neck and some numbness in the ulnar two fingers of the left hand and recurring headaches.

Award: \$700.00 (pain and suffering \$400.00).

200-889 The applicant, a 31 year old disability pensioner, was drinking with a number of people in the Savoy Hotel in Hamilton. Having consumed eighteen or nineteen glasses of beer, he left the hotel about 1:00 a.m. and, as he stepped outside, was struck from behind over the head and kicked in the stomach. Two of his companions were charged with assault causing bodily harm. One assailant was convicted and given twelve months probation. The charges against the other alleged assailant were withdrawn. In view of the large amount of alcohol which the applicant admitted was consumed by all parties, the Board applied Section 17(1).

Award: \$750.00 (pain and suffering \$750.00).

200-890 The applicant, age 55 and employed by the National Research Council, was punched by a man who asked her for money in the parking lot of her apartment building in Ottawa. She was knocked unconscious and was severely shaken emotionally. The offender pleaded guilty to common assault and received a suspended sentence and six months probation.

Award: \$425.30 (pain and suffering \$400.00).

200-893 The applicant, a 22 year old labourer from Chippawa Hill, was stabbed at the Embassy Hotel in Warton. He sustained multiple stab wounds of the chest, abdomen and neck, with an injury to the jugular vein. The offender was convicted of assault causing bodily harm with intent to wound and sentenced to one year in jail and six months probation.

Award: \$6,964.87 (pain and suffering \$5,000.00).

200-894 The applicant, a 36 year old baker, was driving to his place of employment in Toronto. While stopped at a red traffic signal, he was attacked by two men and forced to drive to North Bay. En route, he was punched repeatedly in the face. He suffered multiple and physical shock as a result of this occurrence. The offenders pleaded guilty to robbery with violence; one being sentenced to twelve months definite and eighteen months indefinite, and the other twelve months definite and fifteen months indefinite.

Award: \$1,150.00 (pain and suffering \$1,000.00).

200-898 The applicant, a 35 year old sheet metal worker from Winchester, was shot in the wrist at Bruno's Restaurant in Ottawa. Extensive medical treatment was required and the applicant will never be able to return to his former employment. The offender pleaded guilty to wounding and received a suspended sentence and two years probation.

Award: \$8,404.41 (pain and suffering \$5,000.00).

200-900 The applicant, a 54 year old Toronto taxi-cab driver, was assaulted by two passengers. He sustained a head wound, which required suturing. The two assailants were convicted of common assault.

Award: \$320.75 (pain and suffering \$100.00).

200-903 The applicant, a 53 year old labourer, was stabbed in the arm while attending to his duties at the Harbour Mission in Hamilton. The of-

fender pleaded guilty to a charge of wounding with intent and was sentenced to two years less one day in jail.

Award: \$435.75 (pain and suffering \$250.00).

200-907 This 55 year old Toronto widow was attacked by a youth who struck her on the nose, causing her to pitch to the ground. He then struck and kicked her several times in an unsuccessful attempt to force her to release her purse. She suffered bruises and abrasions to her face, hand and left hip. She complained of insomnia and a fear of the streets in the evenings. The assailant was never identified.

Award: \$650.00 (pain and suffering \$500.00).

200-908 The applicant, a 60 year old truck driver, was in charge of the cash at the Saturday night dance at the village of Keene Royal Canadian Legion Hall. One of the patrons became incensed and struck the applicant in the face and about the head. The applicant sustained a dislocated right shoulder and facial injuries, including a laceration to his forehead. The offender was convicted of assault causing bodily harm and fined \$250.00 or thirty days. He was also charged and convicted of common assault against the applicant's wife and fined \$50.00 or fifteen days.

Award: \$2,630.50 (pain and suffering \$500.00).

200-910 The applicant, an 18 year old Toronto student, while driving to his summer job, was harassed by the occupants of another car. The applicant's car was blocked and he was punched in the face. He sustained a broken dental plate and fractured teeth. The offenders have not been identified.

Award: \$730.00 (pain and suffering \$150.00).

200-911 The applicant, age 82, was taking an evening walk in London when he was knocked down and kicked in the face by an unknown assailant. This occurrence had an adverse effect upon the applicant's mental state, leaving him nervous and confused.

Award: \$1,230.00 (pain and suffering \$1,000.00).

200-913 While proceeding to church, this 78 year old Kingston widow was attacked by two youths in an attempt to steal her purse. She received a laceration to her lip, bruises, an impacted fracture of the surgical neck of the humerus and avulsion of the greater tuberosity of the humerus. The two offenders were apprehended and convicted on a charge of unlawfully robbing the applicant of a purse and contents to the value of \$200.00. Sentence was suspended and the offenders were placed on probation for two years.

Award: \$1,368.75 (pain and suffering \$1,200.00).

Recovery of \$684.38 has been made from an offender towards reimbursement of the above-noted award..

200-915 The applicant, a 40 year old accountant from London, was abducted at gun point by her estranged husband who shot her in the jaw and finger when she attempted to escape. In addition to her physical injuries, she suffered depression and anxiety as a result of this traumatic experience. The offender was found not guilty of attempted murder by reason of insanity.

Award: \$3,966.33 (pain and suffering \$3,000.00).

200-917 The details of this occurrence are recorded immediately below in relation to case file No. 200-918. This applicant was thrown to the ground by his two assailants and then struck about the body with an axe handle. In grappling with the offenders he received a severe laceration to his hand which will result in permanent disability. The applicant was unemployed at the time of the occurrence, the two offenders were acquitted due to lack of positive identification.

Award: \$1,289.20 with periodic payments of \$100.00 per month (pain and suffering \$1,000.00). (Same occurrence as 200-918).

200-918 The applicant and two friends were sitting on the front verandah of their home in Kingston. Two strangers approached and began teasing the applicant's dog and one of them swung an axe at the dog. The applicant was then struck on the side of the head with the flat side of the axe and rendered unconscious. He sustained a fractured skull and a large extradural hematoma compressing the brain in this area. The two offenders, although charged with assault causing bodily harm, were acquitted on the basis that identification could not be established beyond a reasonable doubt.

Award: \$1,700.80 (pain and suffering \$1,500.00). (Same occurrence as 200-917).

200-921 The applicant, a 35 year old dish washer was assaulted in his room in Brampton. As the applicant attempted to subdue his assailant he was stabbed on the left side of the face and scalp. The offender was convicted of wounding and carrying a dangerous weapon and sentenced to six months in jail.

Award: \$476.70 (pain and suffering \$300.00).

200-922 The applicant, a 51 year old Waterloo labourer, was attacked by four men who stole his car. He sustained facial lacerations and a sprained wrist as a result of this occurrence. Although the car was recovered the offenders were never identified.

Award: \$814.00 (pain and suffering \$750.00).

200-923 The applicant, age 27 and unemployed, was drinking with some acquaintances at one of their homes in Barrie. The host became abusive and stabbed the applicant in the abdomen causing a protrusion of the bowel. The offender pleaded guilty to assault causing bodily harm and was sentenced to three months in jail and placed on probation for one year.

Award: \$1,038.02 (pain and suffering \$750.00).

200-924 The applicant, age 19, and some friends were requested to leave the beverage room of the New Lord Simcoe Hotel in Niagara Falls following a minor altercation. Once outside, the applicant was attacked by a waiter employed by the hotel and he suffered facial bruises, contusions and damage to his teeth. His assailant was convicted of assault causing bodily harm and fined \$200.00 or thirty days in default.

Award: \$645.80 (pain and suffering \$400.00).

200-928 The applicant, a 43 year old carpet layer, passed the evening drinking beer in the Savoy Hotel in Hamilton. On leaving the hotel, he was struck on the back of the head and believes that one of his drinking partners was the assailant. The applicant suffered lacerations to the back

of his head and in the area of his right eyebrow. His assailant was never identified or apprehended. The Board did not find the applicant to be an entirely credible witness; however, it did accept that he was the victim of a crime of violence, and being of the opinion that Section 17(1) of the Act merited consideration, the Board did not make an award for pain and suffering.

Award: \$170.85.

200-933 This 23 year old labourer was proceeding on foot to the Welland Arena when he was struck on the back of the head by a projectile from a pellet gun which imbedded in his skull. While there was insufficient evidence to lay a charge, the police confiscated the BB gun owned by a suspected juvenile in the area.

Award: \$405.82 (pain and suffering \$250.00).

200-935 The victim, a 41 year old Midland machine attendant, died as the result of a severe physical beating. The offender was convicted of manslaughter and sentenced to ten years in penitentiary. The Board found that the applicant, the victim's wife, had not incurred any financial loss as a result of her husband's death. However, the Board awarded an amount for funeral expenses and counsel.

Award: \$1,226.00.

200-938 The applicant, a 28 year old maintenance mechanic, spent an evening drinking in the bar of the Lock City Hotel in Sault Ste. Marie. On leaving the hotel, he was set upon by a number of young men. There was no provocation on the part of the applicant and although he cooperated to the fullest, his assailants were never identified. In the occurrence he sustained a depressed skull fracture and lacerations to the face.

Award: \$2,978.83 (pain and suffering \$1,500.00).

200-939 The applicant, a 55 year old Toronto housewife, was knocked down by two youths while returning from a shopping trip. She sustained a fractured and dislocated shoulder when the two youths snatched her purse. Due to the fact that the applicant could not positively identify her assailants, charges were not proceeded with.

Award: \$809.00 (pain and suffering \$750.00).

200-946 The applicant, a 31 year old Windsor police constable, was on patrol duty with another police constable when they received a call regarding a stolen taxi. The taxicab was located and shots were exchanged. The applicant and his partner were both wounded. The applicant's partner killed the offender. The applicant sustained shotgun pellet wounds to his left arm and hand and above his left eye.

Award: \$1,643.00 (pain and suffering \$1,500.000). (Same occurrence as 200-947).

200-947 The applicant, a 31 year old Windsor police constable, and his partner, were on patrol duty when they received a call regarding a stolen taxi. Shots were exchanged and the applicant was wounded, but before he collapsed, he shot and killed his assailant. He sustained a shotgun wound to the mid upper abdomen which penetrated into the abdominal cavity.

Award: \$3,034.51 (pain and suffering \$2,500.00). (Same occurrence as 200-946).

200-949 The applicant, a 61 year old disabled pensioner, residing in Hamilton was proceeding home when a strange youth accosted him and struck him in the face, causing minor bruising and breaking his glasses. The applicant has indicated to the Board that he is content to have his claim restricted to \$15.00, the cost of an eye examination required for the replacement of the glasses.

Award: \$15.00.

200-950 The applicant, a 66 year old Toronto housewife, heard screams coming from a neighbour's apartment and, upon investigating, she was punched in the face. The applicant had witnessed a murder and became highly nervous as a result. The offender was convicted of manslaughter and sentenced to eight years imprisonment and because of this no charge of assault causing bodily harm with respect to the applicant was proceeded with.

Award: \$164.00 (pain and suffering \$150.00).

200-959 The applicant, age 33, was employed as a building cleaner in Thunder Bay. The applicant resided in a building having two apartment suites and was assaulted by the occupant of the upper suite. The applicant suffered a cut eyebrow, injured ribs and bruises. The offender was convicted of assault causing bodily harm and fined \$100.00 and placed on probation for six months.

Award: \$757.25 (pain and suffering \$250.00).

200-960 A 16 year old Sudbury student and two friends went on their bicycles to a take out stand and for no apparent reason the applicant was assaulted by another 16 year old customer. The victim sustained two compound fractures to the lower jaw. The offender was convicted of assault causing bodily harm and sentenced to 18 months definite and three months indefinite.

Award: \$926.00 (pain and suffering \$500.00).

200-968 The applicant, a 27 year old upholsterer, was parked in his car, accompanied by his girl friend in St. Catharines, when a car containing seven youths drove up beside them. An altercation ensued and the applicant was hit over the head with a beer bottle and he fell to the ground. He sustained two fractured fingers and a broken dental plate. The offenders were never apprehended.

Award: \$897.75 (pain and suffering \$500.00).

200-969 The applicant, a 51 year old insurance salesman, observed four suspects being chased by a police officer through a neighbour's property in Cambridge. The applicant took chase, and while in pursuit his ankle gave way and he fell to the ground. He sustained a ruptured tendon. The offender was convicted of dangerous driving and fined \$200.00 or 30 days in jail. The applicant was found to be compensable under Section 5(b) of the Act.

Award: \$933.00 (pain and suffering \$750.00).

200-970 The applicant, a 44 year old Toronto maintenance worker, was attending a house party in Windsor and decided to leave when an argument broke out. However, he was struck on the head with a black jack before he could make his exit. He sustained a traumatic head injury which

resulted in loss of smell, impairment of memory and fatigue. The offender was convicted of assault causing bodily harm and sentenced to 60 days concurrent to sentences on unrelated charges.

Award: \$2,477.64 (pain and suffering \$1,500.00).

200-973 The applicant, a 62 year old proof reader, was returning to her Toronto apartment when she was knocked to the ground in a purse snatch occurrence and sustained a fractured shoulder as a result. Her assailant fled and was not apprehended.

Award: \$1,035.76 (pain and suffering \$750.00).

200-974 A 22 year old Toronto University student was a passenger on a Toronto bus. About 15 high school students boarded the bus and caused a disturbance by pushing and shoving each other. Several of them fell, as a group, against the applicant, pinning him against the arm rest. He suffered contusion of the left hip, sprain of the lower back, contusion of the left eye and post traumatic syndrome. The offending students were never identified and no charges were laid.

Award: \$450.00 (pain and suffering \$300.00).

200-975 The victim, age 47, became embroiled in an argument with another tenant of the same residence in Hamilton with the result that the victim was instantly killed by a pistol shot. The applicant is the brother of the deceased and is claiming funeral expenses only.

Award: \$756.37.

200-978 The applicant, aged 69 and retired, was playing cards in Toronto's High Park. An argument ensued during the game and the offender fell on top of the applicant when a scuffle broke out. The applicant sustained a fractured hip. The offender was convicted of common assault and fined \$25.00 with five days in jail and six months probation. In view of the abusive conduct of the applicant prior to the assault, the Board considered Section 17(1) of the Act and reduced the award for pain and suffering by one-third.

Award: \$1,025.00 (pain and suffering \$1,000.00).

200-979 The applicant, a 39 year old security officer, was on duty in the plaza of the Toronto Dominion Bank Tower. An argument ensued with a delivery man who kicked the applicant several times in the groin and punched him in the right eye causing a laceration. He suffered acute pain and discomfort in his lower groin. His assailant was convicted of common assault and fined \$300.00 or three months in jail.

Award: \$200.00 (pain and suffering \$200.00).

200-981 The victim, a 17 year old student, was struck in the face without provocation by another youth on a street in Sault Ste. Marie. He sustained a cut lip and broken teeth. The offender pleaded guilty to common assault, was given a conditional discharge and placed on 12 months probation.

Award: \$527.00 (pain and suffering \$200.00).

200-985 A retired secretary, age 78, was returning to her Toronto apartment when she became the victim of an attempted purse snatching. She tried to hit the offender with her umbrella, but was pulled off balance and

fell on her side. She retained her purse and the offender was not apprehended. She suffered injuries to her shoulder consisting of a fracture of the head and neck of the left humerus.

Award: \$1,106.65 (pain and suffering \$1,000.00).

200-988 The applicant, a 26 year old Ontario Provincial Police constable, was attending a dance in Wallacetown. A fellow constable was experiencing difficulty in evicting an unruly person and the applicant came to his aid and was assaulted. He sustained cuts to his lip and the inside of his mouth, as well as the breaking of his upper denture. The offender was convicted of common assault and fined \$100.00.

Award: \$240.00 (pain and suffering \$150.00).

200-989 A 50 year old Canadian customs officer, while acting as an official in a little league baseball game in Windsor, was assaulted by the manager of one of the competing teams. The victim sustained a severe back injury, leaving him with a 30%-40% restriction of motion of the neck. The offender was convicted of assault causing bodily harm, given a \$200.00 fine, and prohibited from taking part in minor sports for a period of two years.

Award: \$1,855.00 (pain and suffering \$1,250.00).

Recovery of \$1,885.00 has been made from the offender towards reimbursement of the above-noted award.

200-993 The applicant, a 36 year old electronic technician, was brutally attacked in the parking lot of the Wayland Hotel in Thunder Bay. He sustained an abrasion of the right cornea and severe damage to the vision capacity of the left eye. The offender was convicted of assault causing bodily harm and fined \$300.00 or thirty days in jail.

Award: \$1,357.99 (pain and suffering \$1,000.00).

200-995 The applicant, a 37 year old factory worker, was assaulted by a neighbour in her Toronto home. She sustained lacerations to the mouth in addition to back, chest and elbow pains which persisted for an extended period of time. As a result of this incident, she is unable to return to work. The offender pleaded guilty to assault causing bodily harm and was fined \$100.00 or five days in jail.

Award: \$3,377.72 (pain and suffering \$2,500.00).

200-998 The applicant, a 26 year old shipper and receiver, was assaulted by five strangers at a Toronto restaurant. His lower jaw was fractured in two places and his seventh rib was also fractured. Two of the offenders were identified and charged with assault causing bodily harm. Through lack of notification, the applicant did not attend at the Court to give evidence with the result that the charges were dismissed.

Award: \$400.00 (pain and suffering \$400.00).

200-1000 The applicant, a 20 year old apprentice mechanic, was assaulted in the Jane Park Plaza Tavern in Toronto. He sustained a fractured jaw. The offender was convicted of assault causing bodily harm and sentenced to fifteen days in jail and six months probation.

Award: \$703.72 (pain and suffering \$400.00).

200-1006 The applicant, a 19 year old London high school student, was assaulted during the course of an argument. He sustained lacerations to the mouth and loosened teeth as a result of this unprovoked assault. The offender pleaded guilty of assault causing bodily harm and received a suspended sentence and twelve months probation.

Award: \$816.00 (pain and suffering \$500.00).

200-1007 The applicant, a 26 year old Toronto shopkeeper, was struck on the right eye with a blunt instrument in the course of a robbery. She sustained a lacerated eyebrow as a result. The offender remains unknown.

Award: \$458.00 (pain and suffering \$250.00).

200-1008 The applicant, a 51 year old labourer, was stabbed in the abdomen in his Toronto residence. A bowel stoppage developed occasioning some complications. The offender was convicted of assault causing bodily harm and fined \$100.00 or sixty days in jail.

Award: \$600.00 (pain and suffering \$600.00).

200-1014 The applicant, a 57 year old Windsor counter clerk, was watching television when two men knocked at her door. Their motive was robbery and, having gained access, the two assailants struck her with a sawed-off shotgun and tied her hands and feet and put a gag in her mouth. Although an arrest was made, positive identification could not be made and the persons were released. Consequently, no charges were ever laid.

Award: \$1,043.68 (pain and suffering \$500.00).

200-1015 The applicant, a 39 year old Toronto machine operator, was dragged into a ravine by two youths who snatched her purse. She sustained a fractured finger. Movement of the affected finger is severely limited. The offenders remain unknown.

Award: \$1,295.61 (pain and suffering \$800.00).

200-1016 The applicant, a 62 year old Wellandport housewife, went to the aid of her fatally injured son and sustained a gunshot wound to the back. As a result of this occurrence, she walks with a limp and is forced to use a cane permanently. The offender, the applicant's husband, is confined to the Penetanguishene Mental Health Centre and, because of his mental condition, he did not stand trial for either of the shootings.

Award: \$5,483.50 (pain and suffering \$5,000.00) and continuing payments of \$35.00 per month.

200-1018 The victim, age 12, was struck on the side of the head with a billiard ball at a Toronto pool hall. He sustained a minor soft tissue injury. The two offenders were convicted of public mischief and fined \$100.00 each.

Award: \$150.00 (pain and suffering \$100.00).

200-1026 The applicant, a 66 year old Belleville widow, at 7:00 p.m., was walking to church. A tall youth, of about 18 years of age, approached her from behind and wrestled her to the ground. She struggled with her assailant and managed to escape and crawled to a nearby store. The police were called and she was taken to hospital. It was found that she had suffered a comminuted fracture of the neck of the humerus. The offender was never identified.

Award: \$823.00 (pain and suffering \$500.00).

200-1035 The applicant, a 55 year old Toronto subway conductor, was punched in the face by a youth who was standing on the subway platform. He sustained facial lacerations and bruising. The offender was never apprehended.

Award: 433.53 (pain and suffering \$300.00).

200-1042 The applicant, age 23, had been keeping company with a woman in Amherstburg who was separated from her husband. The applicant, on hearing a noise, opened his kitchen door and was confronted by the husband with a shotgun. A shot was fired at him through the door, striking the applicant in the upper right shoulder. He was hit by a second shot which struck him in the right upper arm and the side of his back. The husband, although charged with attempted murder, was found guilty by a jury on a lesser charge of discharging a firearm with intent to endanger life and was sentenced to five years in the penitentiary. The applicant has been left with a partially disabled right arm.

Award: \$2,757.00 (pain and suffering \$1,000.00).

200-1043 The applicant, age 59, resides in Richfield, Ohio, but has a cottage in the North Bay area. He became involved in a dispute with the next-door cottager and was the target of an unprovoked and shocking assault with a shovel. He suffered a complete separation of the right acromioclavicular joint involving a series of pinnings by screw fixation. Although the offender was found not guilty by a jury, the Crown Attorney, in referring to the dismissal, stated that it was "one of the most distressing things I have endured as a Crown Attorney."

Award: \$1,718.26 (pain and suffering \$1,000.00).

200-1045 The applicant, a 24 year old student, was a patron in the St. Clair College Pub in Windsor. A local member of a motor cycle gang bumped into the applicant's table and spilled some beer. On leaving, the applicant was set upon by the offender and other members of his gang. He sustained severe facial bruising and lacerations. His major injury was loss of four front teeth. The offender was convicted of assault causing bodily harm and sentenced to three months in jail.

Award: \$1,276.00 (pain and suffering \$1,000.00).

200-1048 The applicant, a 26 year old Queen's University student, was assaulted in the Chez Lucian Hotel in Ottawa during the course of an argument. He sustained a badly comminuted nasal bone fracture. The offender was convicted of assault causing bodily harm and sentenced to fifteen days in jail.

Award: \$871.30 (pain and suffering \$500.00).

200-1050 The applicant, age 54, was standing in front of a store in Sudbury when he was approached by a complete stranger who appeared to be intoxicated. The applicant was struck in the face several times by this person. He was treated for cuts and bruises on the cheek bone and heavy hemorrhaging around the eye. The offender was found guilty of common assault and sentenced to twelve months probation.

Award: \$274.00 (pain and suffering \$250.00).

200-1055 The applicant, a 53 year old self-employed carpenter, was hit over the head and over the right arm with a beer bottle while leaving a

park at Nepean Point, Ottawa. The applicant sustained a concussion, multiple lacerations to his face and head and a fractured right thumb. Two offenders were convicted of robbery and received sentences of six months and twelve months respectively.

Award: \$756.00 (pain and suffering \$500.00).

200-1057 The applicant, a 55 year old Kitchener housewife, was walking home when a youth approached her, grabbed her purse, and fled. The fingers of her right hand were injured as a result. She also sustained a fracture of the upper arm close to the shoulder and muscle damage when she fell in an attempt to pursue the thief. The offender, an emotionally disturbed youth, was apprehended and dealt with in Juvenile Court.

Award: \$1,328.26 (pain and suffering \$1,000.00).

200-1058 The victim, then 18 years old and unemployed, and a group of friends, were attempting to locate another friend and frightened the occupant of the house they visited in London. After the occupant had explained that the girl they sought was elsewhere, out of fear he fired a warning shot which hit the victim in the head. The applicant is the victim's mother who is applying to the Board in order to recover funeral expenses. The offender was charged with manslaughter but the charges were dismissed.

Award: \$1,118.00.

200-1063 The applicant, a 69 year old retired agent, was knocked over by a car brushing against him at an intersection in Toronto and was then punched in the face and nose by the car's driver. The applicant sustained facial lacerations, broken glasses and dentures. The offender was convicted of common assault and fined \$100.00.

Award: \$374.25 (pain and suffering \$250.00).

200-1070 The applicant, a 31 year old nurse's aid, was in a shoe repair store in Toronto when her ex-common-law husband entered the store and slashed her about the face and neck. The applicant sustained five lacerations on the face and neck which required more than 100 sutures to close. The offender was charged with attempted murder, which charge was dismissed, and the offender was subsequently deported back to Jamaica.

Award: \$1,298.15 (pain and suffering \$1,000.00).

200-1072 The applicant, a 70 year old retired lady, was knocked to the pavement by two youths, who stole her purse on a street near her home in Ottawa. The applicant sustained an undisplaced fracture of the right shoulder and required extensive physiotherapy, followed by a long convalescence. The offenders are unknown and no charges were laid.

Award: \$822.95 (pain and suffering \$550.00).

200-1075 The applicant, a 34 year old assembly line worker for Ford Motor Company at Talbotville, was assaulted on the job by a fellow worker. The applicant sustained a fractured skull, concussion, facial lacerations, nausea and dizziness, and, as a result, suffers severe headaches and hyperacuity. The offender was acquitted on a charge of assault causing bodily harm.

Award: \$4,218.98 (pain and suffering \$2,000.00).

200-1079 The applicant, a 36 year old bus driver for the Ottawa-Carleton Regional Transit Commission, was punched in the face and chest by a passenger he was attempting to subdue. The applicant sustained fractured ribs. The offender was convicted of common assault and sentenced to six months in jail.

Award: \$390.27 (pain and suffering \$250.00).

200-1082 The applicant, a 48 year old Toronto labourer, was playing cards with several people when the offender, having lost, hit the applicant over the head with a broom breaking the handle, then attempted to stab the applicant in the chest with the sharp end of the broken broom handle. The applicant sustained a cut in the chest. The offender was convicted of assault causing bodily harm and sentenced to nine months in jail.

Award: \$100.00 (pain and suffering \$100.00).

200-1084 The applicant, 27 years old and unemployed, was punched in the face by an acquaintance in the parking lot of the Royal Hotel in Hastings, while attempting to assist a man who was being severely beaten by the offender. The applicant sustained a fractured cheek bone. The offender was convicted of assault causing bodily harm and was fined \$300.00.

Award: \$1,264.78 (pain and suffering \$500.00).

200-1088 The applicant, age 48, had previously been the principal at a private boys' school, but at the time of this occurrence was employed by the Canadian Bankers Association. In the early hours of the morning, he went on to a balcony overlooking the swimming pool at his residence at Niagara-on-the-Lake, as he thought he had heard the garden gate open. He testified before the Board that as he was leaning over the railing, he was struck on the head from behind by an intruder, which caused him to fall forward over the railing to a concrete patio some twelve feet below. The applicant sustained fractured ribs and vertebrae, fractured toes, abrasions to both feet and pains in the chest. There was no physical evidence of a break-in. The offenders are unknown and no charges were laid.

Award: \$3,844.00 (pain and suffering \$3,500.00).

200-1091 The applicant, a 26 year old Windsor police officer, was called upon to investigate a domestic complaint. He was kicked in the chest while attempting to arrest a suspect and received treatment for severely bruised ribs and a swollen chest. The offender was convicted of assaulting a police officer and sentenced to fourteen days in jail.

Award: \$1,106.00 (pain and suffering \$900.00).

200-1094 The applicant, an 18 year old mother's helper, was indecently assaulted while returning to her employer's residence in Toronto. Her unknown assailant was frightened off by an approaching car. She sustained multiple superficial lacerations and experienced anxiety and recurring nightmares for many months following this incident.

Award: \$1,270.00 (pain and suffering \$1,000.00).

200-1105 The applicant is 62 years old and is employed as a constable in the Senate of Canada. He was severely slashed on the left wrist by a man who drew a knife and robbed the applicant of \$80.00 in an Ottawa

parking lot. The applicant experienced pain and numbness in his left hand. The offender was never apprehended.

Award: \$1,211.00 (pain and suffering \$900.00).

200-1109 The applicant, an 18 year old student from Carleton Place, was walking along an Ottawa street when he was attacked by a youth who smashed a beer bottle in his face. The applicant sustained fractured teeth as a result. The offender pleaded guilty to assault causing bodily harm and was sentenced to three months in jail.

Award: \$1,091.00 (pain and suffering \$400.00).

200-1112 The applicant, a 27 year old part-time employee at a liquor store in Hamilton, observed a person leaving the store with two bottles for which he had not paid. The applicant pursued the thief, and while attempting to restrain him was hit in the face with one of the bottles. He sustained lacerations to the left eyebrow and cheek. The offender was convicted of robbery and personal violence, and sentenced to nine months definite and six months indefinite.

Award: \$603.25 (pain and suffering \$400.00).

200-1113 The applicant, a 54 year old pharmacist, heard a woman's screams for help in a parking lot of the Town and Country Plaza in Toronto and was brutally assaulted when he went to her aid. He sustained a concussion, a fractured nose and multiple abrasions. The offender was convicted of assault causing bodily harm and sentenced to imprisonment for three months definite and nine months indefinite with two years probation.

Award: \$3,483.00 (pain and suffering \$2,500.00).

200-1114 The applicant, a 48 year old catering company employee, was the victim of a purse snatch incident on a Toronto street. She was robbed of \$400.00 and sustained severe neck pains, as well as acute anxiety, as a result of this occurrence. The offender was never apprehended.

Award: \$775.00 (pain and suffering \$500.00).

200-1115 The applicant, age 30, and four acquaintances, were drinking in the applicant's room in Toronto. The offender, in company with the others, attacked the applicant and beat him severely, choking him about the neck and kicking him in the head and body, breaking his nose and inflicting numerous bruises to his chest and body. Two of the assailants were charged with assault causing bodily harm and one was convicted, being sentenced to three months definite, six months indefinite and two years probation, while the other was sentenced to six months definite and three months indefinite.

Award: \$520.00 (pain and suffering \$500.00).

200-1118 The applicant, a 53 year old correctional officer at the Metropolitan Toronto jail, was assaulted while escorting an inmate to his cell. The inmate bit the applicant on the left middle finger and swallowed it. The offender was convicted of wounding and assault causing bodily harm and was sentenced to thirty days concurrent to a sentence already being served. He was also ordered to be deported back to Grenada, B.W.I.

Award: \$1,549.65 (pain and suffering \$1,500.00).

200-1128 The applicant, a 75 year old housewife and her husband, were awakened by noises in their house near Desboro. Upon investigating, the applicant was hit with a stick, however she managed to ward off the intruders. She sustained a fractured wrist and facial bruises and was treated for hypertension. The offenders were never apprehended.

Award: \$2,959.00 (pain and suffering \$2,500.00).

200-1129 The applicant, a 55 year old saleslady, was the victim of purse snatchers on a Toronto street. She sustained bruises and a minor hearing problem as a result of this occurrence. The offender remains unknown.

Award: \$534.81 (pain and suffering \$400.00).

200-1130 The applicant, a 63 year old electrician, was brutally beaten near his Toronto residence. This resulted in the loss of his left eye. The offenders were never apprehended.

Award: \$4,419.50 (pain and suffering \$4,000.00).

200-1132 The applicant, a 38 year old Toronto parking attendant, was assaulted when she sought payment from a customer. The injuries she sustained as a result of being thrown against a wall aggravated a recent whip-lash injury. The offender was never apprehended.

Award: \$689.03 (pain and suffering \$500.00).

200-1133 The applicant, a 39 year old police constable, was called to assist another officer in a domestic dispute in St. Catharines. During a struggle, the applicant was knocked to the floor, sustaining an injury to his spine. The offender was charged with assaulting a police officer. He testified to the Court that he was remorseful and that his young son had just died from a heart ailment and, having had too much to drink, he lost control of himself. He was given an absolute discharge by the Court.

Award: \$1,237.00 (pain and suffering \$1,000.00).

200-1135 The applicant, a 49 year old Toronto bus driver, was punched in the face by an irate passenger. He sustained nasal lacerations and required surgery for a deviated septum. The offender was never apprehended.

Award: \$479.00 (pain and suffering \$400.00).

200-1143 The applicant is a 29 year old Ontario Provincial Police constable in Mount Forest. In the performance of his duties he was taking a suspect into custody on a charge of impaired driving and became involved in a scuffle with a passenger in the offender's car. The applicant was punched in the left cheek, causing cuts to his face and lip. He also sustained an injury to his right knee and a cut on the index finger of his right hand. The offender, on a plea of guilty to a charge of assaulting a peace officer, was sentenced to six months in jail.

Award: \$529.00 (pain and suffering \$500.00).

200-1144 The applicant, a 19 year old Toronto hairdresser, struck her head on the side of a car in the course of an assault by an unknown assailant. She sustained multiple facial contusions as a result of this occurrence.

Award: \$400.80 (pain and suffering \$350.00).

200-1146 The applicant, a 32 year old truck driver from Cobden, was accidentally shot in the abdomen while visiting at a friend's home. The of-

fender was convicted of dangerous use of a firearm and fined \$104.00 or ten days in jail.

Award: \$3,235.93 (pain and suffering \$2,000.00).

200-1147 The applicant is an 18 year old Toronto student. He was playing basketball with a group of youths, including the offender, without permission in the gymnasium of the East York Collegiate. He accused the alleged offender of stealing change from his pants and was struck in the mouth, causing him to lose two front teeth and subsequent damage to two other teeth. The alleged offender was charged under the Juvenile Delinquents Act, was found guilty and received a suspended sentence. (The alleged offender admitted to the Board at the time of the hearing that he had, in fact, taken the money from the applicant's pocket).

Award: \$1,538.00 (pain and suffering \$400.00).

200-1148 The applicant, a 54 year old press operator, was assaulted in the Hamilton apartment building in which he resides. He was kicked repeatedly and suffered a concussion, nasal fracture and general bruises as a result. The offender was convicted of assault causing bodily harm and was fined \$200.00 or thirty days in jail.

Award: \$2,001.88 (pain and suffering \$1,250.00).

200-1151 The applicant, a 48 year old butcher, stopped his car when the car in front came to an abrupt halt on a Toronto street. He sustained a fractured nose as a result of being struck by an occupant of the other car. The offender was never positively identified.

Award: \$324.64 (pain and suffering \$200.00).

200-1153 The applicant, a 22 year old student, was stabbed in the abdomen by a stranger on a Toronto street. The applicant sustained lacerations of the abdominal wall, which resulted in adhesion problems and required further surgery. The offenders are unknown and no charges were laid.

Award: \$1,784.92 (pain and suffering \$1,500.00).

200-1158 The applicant, a 36 year old police constable, was assaulted while investigating a disorderly drinking party in Scarborough. The offender struck the applicant in the face with a beer bottle, severing the applicant's nose, so that the tip hung loose. The applicant also sustained other lacerations and bruises and a fractured big toe. The offender was convicted of assault causing bodily harm and assaulting a police officer and was sentenced to thirty days in jail.

Award: \$500.00 (pain and suffering \$500.00).

200-1162 The applicant, 39 years old and totally blind, was approached by a stranger in the washroom of a department store in Hamilton and asked for money. The offender viciously punched and kicked the applicant until he was unconscious. The applicant sustained lacerations to the head and bruises to the legs, hips, ribs and arm. The injuries resulted in acute tension as well as discomfort in sleeping and dizzy spells. The offender is unknown and no charges were laid.

Award: \$2,777.37 (pain and suffering \$2,500.00).

200-1165 The applicant, 25 years old and unemployed, was thrown into the plate glass window of a store in Toronto during a fight he did not

provoke. The applicant sustained three minor lacerations on his arm. Two offenders were convicted of assault causing bodily harm and sentenced to \$200.00 or twenty days in default.

Award: \$107.00 (pain and suffering \$100.00).

200-1166 The applicant is a 69 year old Morrisburg housewife. When her husband became involved in a dispute with a neighbour concerning the parking of a car, she attempted to intercede and was personally assaulted by the neighbour, sustaining a seriously fractured hip. The occurrence was witnessed by a police officer who, in attempting to arrest the neighbour, was also assaulted. The offender was convicted of assault causing bodily harm and fined \$500.00 and also convicted of the offence of resisting arrest for which he was fined \$50.00.

Award: \$3,907.75 (pain and suffering \$3,500.00).

200-1167 The applicant, age 80, accompanied by her husband, was walking near her home in Ottawa, when a youth ran up behind them, snatched the applicant's purse and fled into a nearby vacant lot. The force of the purse grabbing severely damaged the ring and middle fingers of the left hand and the nail on the left middle finger was pulled from the flesh. The offender was not identified or apprehended.

Award: \$205.00 (pain and suffering \$200.00).

200-1168 The applicant, a 65 year old retired lady, was riding on a streetcar in Toronto when the offender, who was attempting to catch the streetcar, broke the window next to her with his fist. The applicant sustained facial lacerations, whiplash and some spinal discomfort. The offender was charged with wilful damage but failed to appear.

Award: \$1,154.00 (pain and suffering \$1,000.00).

200-1172 The applicant, age 22, a resident of Toronto, was attempting to park his car in a space on which four men were standing. The applicant was struck in the face with a bottle by one of these men. He sustained facial lacerations and a permanently blocked tear duct. The offender was convicted of assault causing bodily harm and given a suspended sentence of one year's probation.

Award: \$396.02 (pain and suffering \$300.00).

Recovery of \$30.00 has been made from the offender towards reimbursement of the above-noted award.

200-1176 The applicant, a 52 year old janitor, was kicked in the eye by a suspected shop lifter who was being detained by an employee in a Canadian Tire store in Ottawa. The applicant sustained a severely swollen and bruised eye. The offender, a juvenile, was convicted of theft and received a suspended sentence with indefinite probation.

Award: \$172.00 (pain and suffering \$150.00).

200-1179 The applicant, a 50 year old Toronto housewife, was attacked by two youths who stole her purse. In the scuffle she was tripped and fell to the pavement, striking her mouth sharply. She sustained extensive and severe dental damage (chips and fractures), and abrasions to the right knee. The offenders are unknown and no charges were laid.

Award: \$1,101.00 (pain and suffering \$350.00).

200-1181 The applicant, a 50 year old female, residing in Cornwall, was injured during the course of a purse snatching occurrence. She was momentarily knocked unconscious as a result of the fall and suffered cuts and bruises, loosened teeth and a badly sprained left wrist. The offender was apprehended, charged with robbery with violence and sentenced to fifteen months definite and eight months indeterminate.

Award: \$550.00 (pain and suffering \$500.00).

200-1183 The applicant, age 26, was a part-time employee at the Beverly Hills Hotel, Toronto and, while performing his duties, he had become engaged in an altercation with a female patron. At this time he was in the hotel as a patron and was accosted by a man who had been escorting the female patron on the previous occasion. He was brutally assaulted by this person, sustaining a concussion, scalp lacerations and multiple bruises. A bench warrant is outstanding for the offender.

Award: \$941.99 (pain and suffering \$500.00).

200-1186 The applicant (see 200-1082), was again assaulted by the same offender one month later and was struck on the head with the handle of an ice chopper. The applicant sustained a head wound and no charges were laid.

Award: \$200.00 (pain and suffering \$200.00).

200-1189 The victim, age 9, was accompanying her parents on an automobile trip, and they stopped at a service station on Highway #401, west of Belleville. The mother and daughter encountered a male who had been hiding in one of the washroom cubicles and he struck the child in the face. She was subsequently treated for a bruised nose and cuts about the face. Evidence indicated that she still has fears and apprehensions and periodically wakes up during the night. The offender on a conviction of assault causing bodily harm was sentenced to four years in penitentiary.

Award: \$1,068.20 (pain and suffering \$500.00).

200-1194 The applicant, a 21 year old Toronto waitress, was going to work when she was grabbed from behind and pushed to the ground. The applicant sustained a broken foot which required a below the knee cast. The offender is unknown and no charges were laid.

Award: \$756.00 (pain and suffering \$350.00).

200-1201 The applicant, a 55 year old cook, was assaulted in his room at the Strathcona Hotel in Toronto by a man he had met in the bar earlier and had invited him to his room. The applicant sustained lacerations to the head and lip, pulmonary contusions and tenderness and three fractured ribs. The offender is unknown and no charges were laid.

Award: \$681.00 (pain and suffering \$600.00).

200-1205 The applicant, a 21 year old labourer, was requested to go to an acquaintance's house in Acton regarding an urgent matter. An argument ensued and he was there punched in the head and abdomen. The applicant sustained abrasions to the face and tenderness of the spleen. The offender was convicted of assault and sentenced to fifteen days in jail.

Award: \$568.49 (pain and suffering \$250.00).

200-1209 The applicant, a 64 year old Ottawa janitor, was assaulted in his caretaker's office from the rear with a heavy object during a robbery

attempt. The applicant sustained lacerations to the head and as a result of the injuries is extremely nervous and has developed a nervous tremor of the right hand. The offender is unknown and no charges were laid, although the evidence of a break in was discovered.

Award: \$1,051.60 (pain and suffering \$900.00).

200-1212 The applicant, a 48 year old correctional officer at the Don Jail, Toronto, was kicked and assaulted while assisting another officer in subduing an inmate. The applicant sustained a separated shoulder with torn ligaments. The injuries resulted in limited use of his arm. The offender was convicted of assault causing bodily harm and sentenced to forty days in jail.

Award: \$500.00 (pain and suffering \$500.00).

200-1213 The applicant, age 24, had been a patron of the Sherwood Tavern in Markham and on leaving the tavern, he attempted to act as a peacemaker in an argument involving a friend. He was then set upon by one of the spectators and received a most severe beating, resulting in a dislocation of the left shoulder, abrasions to his elbow and contusions to his left cheek and left upper arm. The offender was found guilty of assault causing bodily harm and sentenced to one day in jail and a fine of \$175.00 or ten days in jail and was placed on probation for nine months.

Award: \$1,105.12 (pain and suffering \$500.00).

200-1214 The applicant, a 23 year old cashier, was assaulted in the hall of her Toronto apartment building by another tenant who punched her in the face several times. The offender had earlier disagreed with the applicant's mother about a fire door nearby. The applicant sustained a fractured nose, two black eyes, a cut lip, bruises and abrasions. The offender, a juvenile, was convicted of common assault and fined \$20.00.

Award: \$475.00 (pain and suffering \$400.00).

200-1216 The applicant, a 44 year old registered nurse, was shot twice by her estranged husband at her Ottawa residence. She sustained two bullet wounds to the upper abdomen and some permanent impairment to the muscles of her left leg as a result. The offender was charged with attempted murder and pleaded guilty to assault with intent to commit an indictable offence. He was sentenced to imprisonment for one year less a day definite and one year less a day indefinite and three years probation.

Award: \$11,889.70 (pain and suffering \$9,000.00).

200-1225 The applicant, a 44 year old protection officer, was assaulted while attempting to apprehend a suspected thief at a Toronto shopping centre. He sustained a bite mark to the shoulder and fractured ribs. The alleged offender did not turn up for his trial and a warrant for his arrest is outstanding.

Award: \$587.58 (pain and suffering \$500.00).

200-1227 The applicant, aged 42 and her common-law husband, were brutally assaulted in their Hamilton residence. She sustained a fractured nose and jaw. Three of the offenders were convicted of break and enter and assault with intent to maim and sentenced to twelve months in jail. The fourth offender was convicted of the same offences and was sentenced to six months in jail.

Award: \$1,216.60 (pain and suffering \$1,000.00). (Same occurrence as 200-1233).

200-1228 The applicant, a 27 year old Windsor police officer, and his partner, were participating in a drug raid and, while standing guard over five persons apprehended, one of them fired a shot, striking the applicant in the right upper leg and causing extensive damage to the soft tissue and the artery. The offender, on a charge of assault causing bodily harm, was sentenced to one year additional to a life sentence on other unrelated charges.

Award: \$1,528.85 (pain and suffering \$1,000.00).

200-1229 The applicant, a 44 year old Small Claims Court bailiff from St. Catharines, was assaulted while he was attempting to serve a summons. He experienced marked pain in the arm and shoulder and neck as a result of this occurrence. The offender was convicted of common assault and fined \$150.00 or twelve days in jail.

Award: \$605.00 (pain and suffering \$500.00).

200-1231 The applicant, an 18 year old Cornwall student, accepted a ride home from a fellow student. When the driver refused to allow her to leave, the applicant jumped from the car which she estimates was travelling at 55 miles per hour. In addition to sustaining the loss of a tooth and multiple abrasions, she became very edgy and nervous as a result of this occurrence. The offender was convicted of assault causing bodily harm and sentenced to imprisonment for two years less one day definite, two years less one day indefinite and three years probation.

Award: \$1,524.98 (pain and suffering \$750.00).

200-1233 The applicant, a 35 year old construction worker and his common-law wife, were brutally assaulted in their Hamilton residence. He sustained a fractured rib and temporary facial bruising and disfigurement as a result. Three of the offenders were convicted of break and enter and assault with intent to maim and sentenced to twelve months in jail. The fourth offender was convicted of the same offences and was sentenced to six months in jail.

Award: \$1,327.20 (pain and suffering \$1,000.00). (Same occurrence as 200-1227).

200-1234 The victim, a 26 year old maintenance worker, was shot in the stomach at a house party in Toronto. She died two months later from her wounds. The offender committed suicide immediately after the shooting. The applicant, father of the victim, was granted an award covering funeral expenses and legal fee.

Award: \$1,100.00.

200-1237 The applicant, a 26 year old Warton police officer, was a spectator at a hockey game in the Town of Durham. He remonstrated with a group of youths who persisted in being offensive by spitting and throwing drinks on other spectators as well as using vile language. Several of the group held him and took his badge while one of their number brutally attacked him. The applicant sustained bruises to his face, including upper lip and left eye, as well as a loosening of his upper front teeth. The of-

fender was convicted of assault and sentenced to a fine of \$200.00 or ten days in jail.

Award: \$665.60 (pain and suffering \$500.00).

200-1245 The applicant, a 25 year old Toronto registered nurse, sustained gunshot wounds to the breast and abdomen while visiting her parents in St. Catharines. The applicant's brother was fatally wounded and her mother was also shot. The offender, father of the applicant, committed suicide immediately thereafter.

Award: \$7,350.00 (pain and suffering \$3,500.00).

200-1254 The applicant, age 59, was assaulted during a robbery of his Toronto store. He sustained chest pains and severe headaches as a result of this occurrence. The offenders were never apprehended.

Award: \$1,185.00 (pain and suffering \$750.00).

200-1263 The applicant, a 21 year old unemployed Toronto butcher, was scratched on the face. He sustained minor soft tissue injuries. The offender, brother of the applicant, was a mental patient at the time of the assault and there is a bench warrant outstanding for him.

Award: \$324.00 (pain and suffering \$250.00).

200-1265 The applicant, a 29 year old Metropolitan Toronto police constable, was in the process of arresting a suspect for impaired driving. The suspect's companion jumped on the back of the applicant and knocked him to the pavement. As he fell, his assailant landed on top of him and his left knee was badly injured. Surgery was performed upon his knee and he was partially disabled for approximately ten months. His assailant was convicted of obstructing police and fined \$500.00 or fifteen days.

Award: \$750.00 (pain and suffering \$750.00).

200-1279 The victim, a 17 year old student, was accosted on a Thunder Bay street by two youths who demanded money. A scuffle ensued and the victim sustained a fractured wrist as a result of being struck with a crow bar. One offender was convicted of assault with intent to steal and sentenced to imprisonment for twelve months definite, six months indefinite and one year probation. The other offender was convicted of assault causing bodily harm and sentenced to imprisonment for six months concurrent with other sentences being served.

Award: \$500.00 (pain and suffering \$500.00).

200-1349 The applicant, a 28 year old Oshawa apartment resident, complained to the building superintendent about excessive noise coming from the apartment directly above his. The occupant at that apartment went to the applicant's apartment and hit the applicant in the face twice and then punched him forcefully on the right side of the jaw, resulting in a fracture of the mandible on the right side and a fracture of the condyle on the left side. The offender was convicted of assault causing bodily harm and fined \$200.00 or twenty days.

Award: \$754.00 (pain and suffering (\$750.00)).

200-1374 The victim, age 10, was riding his bicycle in a Toronto school yard when another juvenile rammed a stick between the spokes of the front wheel, catapulting the victim on to the pavement. He sustained a con-

cussion, multiple abrasions and four loose teeth. No charges were laid against the offender.

Award: \$750.81 (pain and suffering \$400.00).

200-1437 The applicant, a 23 year old provincial park planner, went to the aid of a girl who was being severely shaken by a man on an Owen Sound street. The applicant was punched in the face and required root canal therapy as a result. The offender pleaded guilty to assault causing bodily harm and was sentenced to thirty days in jail.

Award: \$537.60 (pain and suffering \$300.00).

SUMMARY WHERE PUBLICATION OF EVIDENCE  
WAS ORDERED TO BE RESTRICTED

100-758 The applicant, a 39 year old taxi driver, picked up two 18 year old fares. As he proceeded towards their destination, one of the passengers, bent upon robbery, stabbed him repeatedly with a knife. He sustained very serious lacerations requiring surgery. One offender was convicted of assault causing bodily harm and sentenced to five years imprisonment. The second pleaded guilty to charges of wounding and was also sentenced to five years.

Award: \$4,422.50 (pain and suffering \$4,000.00).

200-298 This application, on behalf of the widow and five surviving children of the victim, was reported in our Fifth Report. An award was ordered of \$1,670.00 immediate, plus continuing payments of \$313.00 per month. In the course of our annual review of monthly awards, our investigation disclosed that the domestic situation had changed as the applicant, together with her children, was living in a common-law relationship. A variation of award was made following a further hearing, and the monthly payments of \$313.00 were terminated and replaced by an order for \$50.00 per month to be paid to the mother on behalf of each of the four minor children.

200-416 The victim, age 45, was assaulted and robbed in his room at a hotel. He sustained severe lacerations to his scalp and a stab wound to his left lung. The offender has been charged with robbery with violence but has not yet been tried.

Award: \$2,807.00 (pain and suffering \$2,500.00).

200-527 The applicant, age 28, had been separated from her husband for approximately nine months. When visiting at her home to see their seven year old son, he threatened her and then shot her in the right breast. Her estranged husband was convicted of wounding with intent and sentenced to two years less a day. As of the date of the hearing the husband had been released and the applicant, being fearful of further violence, was under police protection. The Board therefore ordered publication of the award to be restricted.

Award: \$2,573.47 (pain and suffering \$1,000.00).

200-622 The victim, age 18, along with two friends accepted a ride from an unknown male as they hitch-hiked. The three were taken to a nearby dump where the applicant was raped and beaten with an axe handle. She sustained a depressed fracture of the skull. The offender was sentenced to twelve years in prison after having been found guilty of wounding and rape.

Award: \$1,970.13 (pain and suffering \$1,500.00). (Same occurrence as 200-641 and 200-642).

200-641 The applicant, age 20, in the company of two friends, accepted a ride from an unknown male as they hitch-hiked. They were taken to a nearby dump, where she was raped and beaten with an axe handle. She sustained lacerations to her skull and developed problems with her right ear drum. The offender was found guilty of rape and wounding and was

sentenced to a total of eleven years in prison.

Award: \$1,722.90 (pain and suffering \$1,500.00). (Same occurrence as 200-622 and 200-642).

200-642 The applicant, now 18, was hitch-hiking with two friends. They were picked up by an unknown male and were taken to a nearby dump where the applicant was tied to a tree and beaten with an axe handle. He sustained minor injuries to his skull. The offender was convicted of wounding and was sentenced to three years imprisonment to run concurrent to sentences already being served.

Award: \$497.30 (pain and suffering \$300.00). (Same occurrence as 200-622 and 200-641).

200-687 The victim, a five year old child, was accidentally shot in the neck and chin by a teen age babysitter. The child sustained some damage to his spinal column and suffers some disability in the right side of his body which should decrease with time. A charge of criminal negligence causing bodily harm against the offender was dismissed.

Award: \$1,425.50 (pain and suffering \$1,000.00).

200-716 The applicant, a 22 year old production checker, was struck in the face with a beer bottle while visiting at his mother's house. The applicant sustained lacerations to the cheek, bruising of both eyes and shoulder and facial fractures. He also sustained some temporary hearing loss. The offender was charged with assault causing bodily harm and at the time of the hearing had not yet come to trial.

Award: \$553.35 (pain and suffering \$350.00).

200-744 This applicant was in receipt of funeral expenses paid by him on behalf of his deceased daughter, age 30, who was the victim of a fatal stabbing at the hands of her common-law partner. The assailant pleaded guilty to a charge of manslaughter and received five years in prison.

Award: \$1,603.00.

200-748 This 27 year old female school bus driver had retired for the night. The offender, a family friend and in a drunken state, broke through three locked doors and indecently assaulted her. The offender was convicted of breaking and entering and indecent assault and was given a suspended sentence and placed on probation for two years, during which period he is to take no alcohol or drugs and is required to report monthly to a probation officer. The applicant suffered scratches and bruises on the arms and legs and acute anxiety.

Award: \$1,375.00 (pain and suffering \$750.00). (Same occurrence as 200-747).

200-791 The applicant, a 21 year old quality control inspector, was attending a house party. He was physically assaulted, in addition to being struck with a beer bottle. He sustained a nasal fracture, skull lacerations and facial bruises. The offender was charged with assault causing bodily harm but failed to appear in Court. A bench warrant for his arrest is outstanding.

Award: \$222.05 (pain and suffering \$200.00).

200-810 The applicant, a 45 year old police officer, was investigating a

burglary at a local department store. In the course of his investigation, he was shot in the mouth, neck and back. He was unable to return to patrol duty as a result of the serious injuries which he sustained. Two of the juvenile offenders were found guilty of attempted murder and sentenced to seven days in jail and three years probation. On appeal, this was varied to eighteen months and two years probation.

Award: \$5,386.00 (pain and suffering \$5,000.00).

200-875 The victim, age 17, together with her girl friend, was found dead in a construction yard, having been murdered by a person or persons unknown. This application was made by the mother of the deceased for funeral expenses.

Award: \$744.80.

200-881 The applicant, a 30 year old secretary, had gone with a friend to a restaurant. As she left a cubicle in the ladies' room, she was confronted by a man brandishing a paring knife, who struck her in the face and knocked her to the floor. In an attempt to rape her, he stabbed her several times in the groin and other parts of her body with a paring knife. The assailant, frightened by his victim's screams, fled, but was apprehended by members of the staff of the restaurant. In addition to the stab wounds, the applicant required psychiatric treatment for anxiety neurosis. The offender was sentenced to two years less a day and probation for a period of two years.

Award: \$3,083.00 (pain and suffering \$2,500.00).

200-952 The applicant, a 42 year old welder, was assaulted in his apartment after he had complained of noise made by another tenant. He sustained a fractured jaw and multiple facial bruises. The alleged offender is still being sought by the police.

Award: \$1,500.57 (pain and suffering \$750.00).

200-962 The victim, age 7, was indecently assaulted and, although the offender was known, there was insufficient evidence for the laying of charges. The Board made no order as to compensation in relation to this occurrence, since the applicant, the victim's mother, could produce no medical evidence concerning this incident. (Same victim as 200-963).

200-963 The victim, age 7, was indecently assaulted and, although no physical injury was sustained, she underwent a psychiatric examination. The offender pleaded guilty of indecent assault and was given a two year suspended sentence and was placed on probation for a two year period.

Award: \$710.00 (pain and suffering \$700.00). (Same victim as 200-962).

200-1021 The applicant, age 27, testified before the Board that he had been at a "gay club" and was walking home in the early hours of the morning, when he was assaulted by two youths. He at first refused examination but was subsequently re-admitted to hospital where it was ascertained that he had suffered a fractured skull. The offenders were never identified or apprehended.

Award: \$1,000.00 (pain and suffering \$1,000.00).

200-1069 The applicant, a 39 year old housewife, was attacked by her husband with a hammer and knife following a discussion concerning a

legal separation. The applicant sustained numerous lacerations to her scalp, a fractured skull and a fractured cheek bone. Her injuries resulted in chronic conjunctivitis. The offender was charged with attempted murder but was convicted of wounding with intent and sentenced to two years less a day definite and two years less a day indeterminate.

Award: \$5,541.20 (pain and suffering \$5,000.00).

200-1081 The applicant, a 53 year old lady cashier, was forcibly removed from the elevator of her apartment building by a stranger, indecently assaulted, and struck several times with the fist in the face. The applicant sustained a badly bruised and swollen face and eyes. The offender is unknown and no charges were laid.

Award: \$505.00 (pain and suffering \$500.00).

200-1085 The victim, age 17 and unemployed at the time of the occurrence, was visiting at a friends' home. The friend was handling a rifle by loading and unloading it with live ammunition. Thinking that the rifle was unloaded, he pulled the trigger. The gun discharged and the bullet struck the victim, wounding him in the right foot. Charges of dangerous use of a firearm were laid against the offender in Juvenile Court. The charge was disposed of sine die.

Award: \$2,105.00 (pain and suffering \$2,000.00).

200-1108 The applicant, age 64, accepted a ride to her residence after attending a party, but she was driven to a beach instead. The applicant was beaten and her assailant attempted to rape her. She sustained multiple lacerations and bruises. The offender was convicted of attempted rape and assault causing bodily harm and sentenced to two years less one day on the first charge and one year concurrent with two years probation on the second charge.

Award: \$1,256.82 (pain and suffering \$750.00).

200-1127 The victim, a 20 year old taxi driver, was shot and killed by a passenger who demanded money. The two offenders were found guilty of non-capital murder and sentenced to life imprisonment. The applicant, father of the victim, was granted an award covering funeral expenses and legal fee.

Award: \$1,050.00.

200-1174 The applicant, age 58, is the widow of the victim, a taxi-cab driver who was found dead in his taxi, having been shot with a small calibre weapon through the right ear. At the time of the hearing of this application, the offender had not been identified although the matter was still under active investigation. The Board awarded the widow a lump sum payment of \$1,206.00 for funeral and legal expenses and periodic payments of \$200.00 per month.

Award: Lump sum payment of \$1,206.00 and periodic payments of \$200.00 per month.

200-1305 The applicant, age 22, was brutally attacked in a laneway. She alleged having been raped and forced to commit an act of gross indecency. The offender was convicted of assault causing bodily harm and gross indecency and sentenced to imprisonment for eighteen months defin-

ite and three months indefinite on each count, the sentences to be served concurrently.

Award: \$1,127.62 (pain and suffering \$800.00).

200-1392 The victim, age 14, and two other youths, commenced shooting for birds and rats at a ranch. The victim was struck in the left eye by a pellet and the eye was removed as a result. The offender pleaded guilty in Juvenile Court to a charge of dangerous use of a firearm, was found to be delinquent and was placed on probation for nine months.

Award: \$5,369.03 (pain and suffering \$5,000.00).

## SUMMARY OF DISALLOWED APPLICATIONS

100-955 The 51 year old applicant and a male friend had been drinking beer in both their Hamilton homes. A quarrel broke out and the applicant was stabbed in the abdomen. The offender was found guilty of unlawfully causing bodily harm with intent and was sentenced to six months in jail. The Board did not find the applicant to be a credible witness and also found it necessary to invoke Section 17(1) of the Act. The application was accordingly dismissed.

200-203 Application was made by the parents of a 7 year old Port Credit boy, claiming that he had been pushed by a playmate into the path of an oncoming car, resulting in a fracture of the left parietal region and dislocation of the spine. The victim told the Board that he was not pushed but that he ran out into the street after a penny that his chum had thrown. Being unable to produce witnesses to prove that the boy was pushed, counsel, on behalf of the applicants, requested that the matter be considered closed.

200-339 The applicant, age 25, was struck in the face with a rifle butt in the outskirts of Sudbury, and sustained several broken teeth. At his hearing, the applicant was evasive and demonstrated a clear disregard for accuracy and consistency in his answers. In his statement to the police, the applicant indicated that the attack was motivated in part by his selling to his assailant, illegal drugs of poor quality. At the offender's trial, the applicant was declared to be a hostile witness. In accordance with Section 17(1) and 17(1a) of the Act, the Board dismissed the application.

200-390 The applicant, a 53 year old unemployed millwright, had consumed a considerable amount of liquor at the home of his wife in Toronto. The applicant sustained a broken leg, facial lacerations and a severed finger. The evidence did not establish that the injuries were the result of an assault and, in accordance with Section 5 of the Act, the Board dismissed the application. Under Section 21 of the Act, the Board directed that a fee of \$50.00 be paid for a medical report.

200-431 The applicant, age 20, was severely injured in an altercation in Mississauga; however, he suffers from amnesia as a result of the assault and cannot remember any details of it. The alleged offender was found not guilty of assault causing bodily harm. The Board accepted the Court's opinion that under the circumstances, as related by witnesses, the alleged offender had every right to defend himself and in light of Section 17(1) of the Act, dismissed the application.

200-453 The victim, then age 17, was employed as a labourer in Windsor. The victim and the offender were rivals in the drug trade in the Windsor area and in the course of a scuffle, the victim was stabbed in the chest. The Board considered the victim's behaviour and the fact that he failed to fully co-operate with the investigating authorities. In accordance with Sections 17(1) and 17(1a) of the Act, the Board denied the application.

200-493 The applicant, age 35 and a resident of Ridgetown, was shot in the abdomen and wrist by the husband of a woman with whom he had been having an affair. The offender, originally charged with attempted

murder, was found guilty of assault causing bodily harm. He was given a suspended sentence of two years on probation, and prohibited any firearms for five years. The Board considered that the behaviour of the applicant in pursuing an affair with the offender's wife was directly responsible for provoking this occurrence. The application was denied but the Board allowed costs in the amount of \$316.00 in accordance with Section 21 of the Act.

200-564 The applicant, a 25 year old gasoline service station manager, consumed a bottle of whisky alone and then proceeded to the West Hill Hotel where he continued to drink. He there made the acquaintance of a young lady and they proceeded to her apartment. Without warning, the husband of the lady arrived to find his wife and the applicant in bed, whereupon he assaulted the applicant. The Board was compelled to conclude that the applicant's behaviour contributed to his injury to a degree which precluded him from entitlement to an award and, in accordance with Section 17(1), the application was dismissed. However, an order was made to pay \$25.00 for a doctor's report.

200-586 The applicant, age 27, was attending a house party in Toronto and on responding to a knock at the door, he received a gunshot injury. The applicant was uncooperative and obnoxious with police and refused to give any information concerning the incident. He was high on drink and drugs at the time of the occurrence. The Board is of the opinion that admitted and established behaviour of the applicant contributed to the injury and in light of Section 17(1) of the Act, dismissed the application.

200-591 The victim, age 22, was shot and killed while trespassing on certain private property in Scarborough, after failing to leave when requested to do so by the owner. The owner was tried by jury and acquitted of manslaughter. In view of the victim's behaviour under Section 17(1) of the Act, the Board could make no order for compensation with respect to funeral and burial expenses and the application made by the victim's mother was dismissed.

200-600 The applicant, age 24, was one of a group of nine persons hunting moose in the Township of Caithness. He had been instructed to position himself at a particular spot and to remain there. However, he changed his position and one of his group who had shot and killed a moose was continuing to shoot at a second moose when one of the shots struck the applicant. The applicant, as a result of his injuries, has a drop-foot and a sensory anaesthesia of the sciatic nerve distribution. The Board found that the applicant was not a victim of crime and dismissed the application.

200-603 The victim a 24 year old Toronto widow was fatally stabbed by a neighbour. The occurrence was completely unprovoked. The offender was charged with non-capital murder but was committed indefinitely to Penetanguishene Mental Institution. The application to this Board was made by the victim's brother on behalf of the two surviving infant children in his capacity as guardian. Monthly benefits received, on behalf of the children by the guardian, total \$430.80 per month. The Board is of the opinion that no pecuniary loss has been sustained. The application was denied but costs under Section 21 of the Act were allowed in the amount of \$200.00.

200-614 The applicant, a 37 year old labourer, alleged that he had been assaulted by a companion as the result of an argument following an all night drinking session in Waterford. Although the assailant was found guilty of assault and sentenced to imprisonment for one year, the presiding judge commented that this was the outcome one must expect when participating in such a drunken orgy. The applicant did not attend at the scheduled hearing and, in accordance with the provisions of The Statutory Powers Procedure Act, the Board proceeded with the hearing and based upon the documentary evidence filed, dismissed the application.

200-627 The applicant, a 53 year old unemployed mechanic, sustained injuries from an unidentifiable source while drinking at the Good Neighbours Club in Toronto. The applicant failed to co-operate with the police or to report what he contended were the facts of the case. The applicant had been drinking heavily and was unable to account for periods of time. The Board in its discretion exercised Section 17(1a) of the Act and the application is dismissed.

200-635 and

200-636 The applicants, both 26 years old, were members of the Vagabonds' Motor Cycle Club. They had consumed a quantity of beer and marijuana and were shot in a fight in the Coco's Nest, an after-hours club in Toronto. The applicants seemed to have been the aggressors. The offender was convicted of attempted murder and sentenced to twelve years. The Board in its discretion exercised Section 17(1) and the applications are dismissed.

200-673 The applicant, a 28 year old pipeline fitter, was assaulted in a scuffle at the Bod Pod, an after-hours club in Toronto, after an evening of bar hopping. The applicant sustained lacerations to the face. The Board is not satisfied that the applicant is a completely credible witness. The Board infers rather that the applicant engaged voluntarily in a fight from which he emerged the loser. The offenders are unknown and no charges were laid. The Board in its discretion applies Section 17(1) of the Act. The application is dismissed.

200-731 The applicant, a 27 year old unemployed labourer, was assaulted by a group of people at a party at the Kettle Point Reserve. The applicant and his companions had consumed large quantities of liquor and the applicant was able to give the Board few details concerning the events that led up to the assault. Three offenders were charged with assault causing bodily harm, but the charges were dismissed for lack of evidence identifying the offenders as the attackers. The Board, in its discretion, applies Section 17(1) of the Act and the application is dismissed.

200-735 The applicant, age 71, is a plasterer by vocation. Having spent the evening drinking in the Duke of York Hotel in Toronto, he left with the intention of going home. He arrived at his doorway being carried by three unknown persons with a laceration to his nose. He is vague about the occurrence but testified that he had been struck and knocked down. He had previously advised his doctor that he had slipped and fallen on a curb striking his forehead. The Board was not satisfied that the applicant was a victim of crime and rejected the application.

200-742 The applicant, a 20 year old labourer and a number of companions proceeded to the Lakeview Lodge Hotel near Thunder Bay where they consumed a quantity of beer. The applicant became involved in an argument with a female at the adjoining table and, without warning, she broke a glass, pressed it against the applicant's left cheek and rotated it, inflicting a serious laceration. The Board was of the opinion that the applicant's behaviour contributed to his injury to the extent that it disentitled him to compensation in the light of Section 17(1) of the Act. The application was dismissed.

200-747 The victim, age 6, and his mother had retired for the night. The offender, a close friend of the family, while under the influence of alcohol, broke into the house in LaSalle and indecently assaulted the mother. The victim witnessed this assault and a claim was submitted, on his behalf, for mental and nervous shock, as he sustained no physical injury. The Board found the victim to be a normal child for his age, doing well in school, and successful in overcoming this traumatic experience. The application was denied. (Same occurrence at 200-748).

200-752 This 39 year old carpenter was drinking with friends in the beverage room of the Crest Hotel in Thunder Bay. It was apparent from the evidence that the applicant, in an intoxicated condition, persisted in aggravating the people at the table from which a glass had been thrown in his direction. He accepted an invitation to discuss the matter in the parking lot and, as a result, was beaten up and received a number of superficial injuries. As the applicant's behaviour and conduct contributed to his injury, Section 17(1) of the Act would disentitle him to compensation. The application was dismissed.

200-766 The applicant, age 67, was found by the police lying in a laneway in Timmins. He was removed to the hospital and questioned but due to intoxication did not give any coherent answers. His injuries appeared to be a dislocated shoulder and facial bruises. Hospital records indicated that he had fallen on the sidewalk and injured his shoulder. In his original evidence before the Board the applicant testified that he had nothing at all to drink on the night of the occurrence but he later admitted that he had. The Board was of the opinion that the applicant was the author of his own misfortune and, in the light of Section 17(1) of the Act, dismissed the application.

200-778 The applicant, age 23, and his girl friend went to a friend's Toronto apartment. Following the consumption of some beer, the friend became enraged and shot the applicant in the left knee. The evidence given at the hearing indicated an involvement with drugs by all parties concerned. The applicant would not co-operate with the police however. The offender pleaded guilty to a charge of causing bodily harm with intent and was sentenced to eighteen months imprisonment. The Board applied Section 17(1) and refused to make an order for compensation.

200-792 The applicant, a 48 year old shipper, sustained a nasal fracture following a minor traffic accident in Toronto. The applicant was unable to state exactly what happened or that he was assaulted. The Board applied Section 17(1) and 17(1a) of the Act and dismissed the application

even though the alleged offender was convicted of assault causing bodily harm, fined \$100.00 and placed on probation for six months. Under Section 21 of the Act, the Board awarded \$60.00 for a medical report.

200-820 The applicant is a 29 year old Toronto upholstery worker. The alleged offender parked his service truck in a manner that would simplify the moving of a heavy unit from the truck to the house, thereby interfering with a vehicle owned by the applicant's brother. The alleged offender grabbed a hockey stick from a spectator and hit the applicant in self-defence. The injuries were of a minor nature and the applicant admitted to the Board that he should not have pursued the matter in the manner that he did. The Board having regard to the provisions of Section 17(1) denied the application.

200-862 The applicant, age 51, and his assailant have been employed by a Toronto industrial firm for some time. Physical violence took place between the two, resulting in serious injury to the applicant. There were no witnesses to the incident and the two versions of the occurrence differ greatly. However, there are indications of provocation on the part of the victim. The Board was of the opinion that the applicant had failed to establish his right to an award under the Act, having regard to the mandatory provisions of subsection 1 of Section 17 of the Act. The application was dismissed.

200-872 The applicant, a 22 year old finance company employee in Dundas, was assaulted in a Hamilton restaurant. He then retaliated by striking his unknown assailant after a police officer had taken control of the situation. The applicant did not wish to pursue the assault charge and the Board applied the provisions of Section 17(1) of the Act and dismissed the application. Costs incurred by the applicant's counsel were awarded under Section 21 of the Act in the amount of \$138.15.

200-880 The applicants, a farm labourer and his wife, aged 39 and 29 respectively, reside in Ohsweken. A relative of the husband took the car keys and \$420.00 from the husband's trousers while the applicants were sleeping. The car was driven into a ditch and the husband claimed to have suffered severe nervous shock and depression as a result of this occurrence. The Board found that the husband was not the victim of a crime of violence and accordingly dismissed the application.

200-883 The applicant, age 63 and unemployed, claimed that an eye injury resulted after he was struck in Downsview by the alleged offender. The Board found no satisfactory evidence to substantiate his claim and dismissed the application.

200-943 The applicant, age 20, a resident of St. John's, New Brunswick, suffered a gunshot wound to the abdomen after making an illicit drug deal in Toronto. He identified his assailant but later claimed he did not know who had shot him. The Board found that the wounding was attributable to the applicant's own conduct and under Section 17(1) of the Act dismissed the application.

200-953 The applicant, a 47 year old mechanic from Arva, was involved in a minor traffic accident in London. The applicant did not stop but pur-

sued a dangerous course through several streets and was chased by another man in another car. The applicant was forced to stop abruptly, fell out of the car and claimed to have been assaulted. The police were unable to confirm the assault. The applicant had been drinking and in view of his behaviour throughout, the Board applied Section 17(1) of the Act and dismissed the application.

200-958 The applicant, age 42, a railway yardman, and his brother have had a long-standing disagreement in relation to adjoining properties which they farm in Nottawasaga Township. They finally came to blows over the situation, and charges were laid by the applicant against his brother but were subsequently dismissed. Both brothers attended at the hearing before the Board. Their answers during questioning were evasive and their cross examination of each other was a nonsensical demonstration of the bitter feeling between them. The Board was not satisfied that a crime of violence within the meaning of the Act had been committed and dismissed the application.

200-965 The applicant, a 26 year old unemployed driver, met an acquaintance in the Yonge Station Tavern in Toronto, and an altercation occurred outside. At the time the application was made, this occurrence had not been reported to the police. Therefore in accordance with Section 17(1a) of the Act, the Board dismissed the application.

200-997 The applicant, age 25, received a serious injury to his right eye as the result of a shooting incident in Windsor. At the time of the occurrence, the applicant called his assailant by name and later advised the police that he knew who had shot him but refused to divulge his name. The victim denied in Court that the accused was the person who had shot him. The Board was convinced that the applicant knows who his assailant was, but had no doubt that he refused reasonable co-operation with the police and accordingly, pursuant to subsection (1a) of Section 17, dismissed this application.

200-1004 The applicant, age 46, a resident of Toronto, was propositioned by a strange girl. He agreed to go for a walk with her and noticed that they were being followed by a man. They turned along a dimly lit street and the applicant was set upon, beaten, and his wallet stolen, by this man. Owing to a lack of co-operation on the part of the victim, the police were unable to conduct a proper investigation so that the offender and his female accomplice were never apprehended. In view of the provisions of subsection (1) of Section 17 of the Act, together with subsection (1a) of the same Section, the application was dismissed.

200-1027 The applicant, a 19 year old Blenheim garage mechanic, was shot in the arm by a rejected suitor of his girl friend. The applicant had willingly entered the offender's car to discuss the matter. The offender was convicted of wounding with intent and sentenced to eighteen months definite and twelve months indefinite, placed on probation for three years and prohibited from having firearms for five years. The applicant voluntarily placed himself in a position where the assault could not be regarded as unexpected. The Board was of the opinion that Section 17(1) was applicable and accordingly dismissed the application.

200-1059 The applicant, a 29 year old postal clerk, sustained injuries to his leg in the Eglinton subway station in Toronto. The nature of the injuries suggested a fall and there were no witnesses to the alleged assault. The applicant was not co-operative with the police. The Board must question the applicant's credibility and in its discretion dismissed the application.

200-1093 The applicant took up with two strange men and got into the front seat of a car between them. She claimed unconvincingly that she had been raped in the back seat of the car and again in the room of a Windsor motel to which she was taken. The car was stopped by the police because of the erratic manner in which it was driven. The applicant had apparently been injured and on questioning by the police stated that she had fallen on the ice. However the injury was sustained, it is clear that the applicant's behaviour contributed to the injury to a degree that would preclude her from compensation under the Act. In the light of Section 17(1) the application was dismissed.

200-1098 The applicant, a 42 year old advertising salesman, invited two women to his Toronto apartment and several drinks were consumed by the parties. He was hit over the head and \$388.00 was taken from his dresser drawer. His assailants have not been positively identified. The Board considered the applicant's conduct and, in accordance with Section 17(1) of the Act, dismissed the application.

200-1134 The applicant, age 70, and retired, was leaving a Toronto restaurant when he was pushed to the pavement by two unknown assailants. The applicant failed to attend the hearing of this application. However, by virtue of Section 7 of the Statutory Powers Procedure Act, the Board dealt with the application on documentary evidence and found that there was insufficient evidence to indicate that the applicant was a victim of a crime of violence. The Board dismissed the application.

200-1138 The victim, age 7, and a friend, also age 7, were playing with bows and arrows in Waterloo. The victim was hit in the eye with an arrow and this eye was enucleated as a result. The Board was of the opinion that the two boys voluntarily involved themselves in a dangerous game and since the incident was accidental, found that the injured boy was not a victim of crime within the meaning of the Act. Although the application was dismissed, the sum of \$50.00 was ordered to be paid for expenses incurred in attending the hearing by the applicant, father of the victim.

200-1238 The applicant, a 22 year old roofer, was assaulted at a stag party in St. Catharines in the course of which the upper portion of his right ear was bitten off. Since the applicant declined to give evidence against his alleged assailant, the charges were withdrawn. The Board considered the provisions of Section 17(1) of the Act and dismissed this application. However, under Section 21 of the Act, the Board directed the sum of \$40.00 be paid for a medical report.

DEPARTMENT OF JUSTICE,  
 MINISTERE DE LA JUSTICE,  
 Ottawa, Ontario, May 26, 1976.

Mr. TOM HUTCHISON,  
*House of Representatives, Subcommittee on Criminal Justice, Room 2137,  
 Rayburn House Office Building, Washington, D.C.*

DEAR MR. HUTCHISON: Further to our telephone conversation earlier today, I am enclosing for your information a brief background paper with respect to the Federal Government's role in crime compensation in this country. The paper was prepared for a meeting of federal and provincial Ministers of Justice for the month of June 1976 and is therefore up to date.

Yours very truly,

D. M. FARRELL,  
*Programmes and Law  
 Information Development Section.*

Attachment.

#### BACKGROUND PAPER

##### COMPENSATION FOR VICTIMS OF CRIME

At the present time eight of Canada's ten provinces and both territories have compensation programmes for innocent victims of crime. Nova Scotia introduced a bill to create a crime compensation plan in 1975 but this bill has not yet been proclaimed in force. Prince Edward Island has yet to introduce legislation in this field.

The federal government has cost-sharing agreements covering crime compensation with the provinces of British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and both territories. Negotiations with Alberta are in the final stages and it is expected that an agreement will be signed shortly. The programmes are administered by the provinces and territories with the federal role being limited to financial contribution on condition that programmes conform to certain minimum standards.

The basic terms included in the federal-provincial agreements are consistent with the Model Act prepared by the Conference of Commissioners on the Uniformity of Legislation in Canada. The following is a summary of those basic terms:

1. Payment to the provinces annually by the Government of Canada of an amount the lesser of five cents per capita or 90% of the actual amount expended by the provincial agencies for compensation claims paid in relation to physical injuries or deaths resulting from the commission of crimes covered by the agreements.
2. Compensation shall be paid where a person is injured or killed in the province as a result of the commission of a crime by another or as a result of lawfully seeking to enforce or to assist in the enforcement of federal laws.
3. Compensation shall not normally be awarded in cases where the victim is the author of his own misfortune.
4. Compensation is payable to or on behalf of a victim, a person responsible for the maintenance of a victim or dependants of a victim where the victim is killed.
5. Compensation may be awarded for expenses resulting from the victim's injury or death, pecuniary loss or damages resulting from the victim's incapacity to work, pecuniary loss or damages incurred by the victim's dependents in the event of his death, maintenance of children born as a result of rape, other pecuniary loss or damages including pain and suffering resulting from the victim's injury and, in the case of claims arising from law enforcement assistance, such other damages as a court of law might award, excluding punitive and exemplary damages.
6. Compensation may not be refused only because the victim at the time of the injury or death was not ordinarily resident in the province.
7. The provincial agency must take into account in determining the amount of compensation to be awarded benefits received or to be received from other sources.
8. The provincial Attorney General must submit annually to the Attorney General of Canada an audited statement of amount of compensation paid under the terms of the agreement during the preceding twelve month period. Payment of the amount claimed is subject to approval of the Attorney General of Canada

upon being satisfied that the monies have been expended in accordance with the terms of the agreement.

9. The province must publicize the compensation plan throughout the province.

10. The schedule of crimes covered may be amended by mutual agreement of the parties. The schedule of crimes covered (some 40 in number) is appended to each of the annexed memoranda of agreement.

11. The first agreements became effective January 1, 1973 and were of indefinite duration, terminable by either party on one year's notice in writing, and the financial terms are reviewable by the parties at the end of each three year period.

Pursuant to the financial review obligations in the federal-provincial agreements the federal Cabinet has considered the question of funding and has agreed to extend for another year (1976-77) the existing federal commitment of a maximum five cents per capita with a proviso to review the financial provisions once again in early 1977. During the fiscal year 1976-77 it is hoped to have further federal-provincial consultations with respect to crime compensation.

A letter was sent to each of the provincial Attorneys General in April of this year advising of Cabinet's decision on the funding issue and suggesting federal-provincial consultations. It is hoped to complete the consultation process by early fall.

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INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.,  
*Gaithersburg, Md., October 5, 1976.*

Senator PETER W. RODINO, Jr.  
*Rayburn House Office Building,  
Room 2462, Washington, D.C.*

DEAR SENATOR RODINO: Last week in Miami Beach, Florida, the President of the International Association of Chiefs of Police, while attending the Association's 33rd Annual Conference, sent a letter to Attorney General Edward H. Levi voicing IACP support of H.R. 13157, "Victims of Crime Act of 1976." A copy of that letter and a 1967 resolution are attached.

After careful review of the Bill, I would like to join with our President in support of it and urge prompt and affirmative action on the Bill.

You will note in the letter to Mr. Levi that we point out that not only would victims benefit, but police, through further cooperation on the part of victims, would be better able to serve their communities.

We appreciate your continued concern and support of law enforcement.

Sincerely,

GLEN D. KING, *Executive Director.*

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[From the Journal of Public Law, vol. 12, No. 1, 1963]

COMPENSATION FOR VICTIMS OF CRIME: THE NEW ZEALAND EXPERIMENT\*

(By B. J. Cameron†)

The South Pacific country of New Zealand has since the end of the nineteenth century enjoyed a reputation for advanced legislation in social matters. Reputations of this sort do not always bear examination but it can at least be said that among countries of the Commonwealth New Zealand is often the first to introduce new procedures, remedies, and institutions of a social and humanitarian nature. It is, however, less a birthplace of novel ideas than an adoption centre for what has been proposed elsewhere. The New Zealand Legislature has made some original contributions, the best known of which is perhaps the legislation relating to testator's family maintenance;<sup>1</sup> but its distinction in this field lies

\*An earlier symposium on the question of compensation for victims of crime appeared in 8 J. Pub. L. 191.

†Chief Advisory Officer, Department of Justice, Wellington, New Zealand.

<sup>1</sup>Family Protection Act of 1955, 4 Reprint of Statutes 839 (N.Z.). This act provides that when, because of the terms of a decedent's will or as a result of his intestacy, adequate provision is not available from his estate for the proper maintenance and support of certain relatives, the Supreme Court may order that such provision as it thinks fit shall be made out of his estate for all or any of those relatives. The relatives who may receive the benefit of an order are the deceased's wife or husband, his legitimate or illegitimate children, and in certain circumstances his grandchildren, stepchildren, and parents. The original legislation was enacted in 1900, and its principles have been copied in all the Australian states, in England, and in certain Canadian provinces.

chiefly in its readiness to borrow freely from other countries both new legislation and proposals for legislation.

It would be outside the scope of this article to discuss the reasons for this. Reference may be made, however, to the tradition since the country became a British colony in 1840 of freely using the legislative machinery to remedy ills or supposed ills of, the most varied sort.<sup>2</sup> Moreover, the comparatively late settlement of the country by Europeans meant that there was no traditional structure to dismantle and that the whole history of New Zealand as a European colony belongs to the post-Benthamite period. The dominant working philosophy in New Zealand has been pragmatic from the beginning.

The most recent example of the New Zealand Legislature's taking up a proposal formulated elsewhere, in this instance England, adapting it, and taking the lead in carrying it into effect is afforded by the Criminal Injuries Compensation Act.<sup>3</sup> As its title indicates, this act provides for the compensation of victims of certain crimes of violence. The responsibility for compensation to the extent laid down is undertaken by the state, with provision for recovery from the offender where practicable. The measure was introduced into Parliament on 12 September 1963, received general support both inside and outside the Legislature, and after a smooth passage was enacted on 24 October 1963, to become effective on 1 January 1964.<sup>4</sup>

#### THE PREVIOUS LAW

Hitherto the law of New Zealand with regard to restitution to victims of crime has been similar to that of other common law countries, and indeed of most countries.<sup>5</sup> Its basis was a clear distinction between civil and criminal proceedings and civil and criminal remedies. Naturally, the same act can be both a civil wrong and a crime. Virtually all serious crimes are also torts, and no civil remedy for any act or omission is suspended by reason that such act or omission amounts to a criminal offence.<sup>6</sup> However, the law left it almost entirely to the injured person to take action against the offender and recover what he could. The obvious objection to this has been that in most cases the offender, supposing he is identified and discovered, is simply not worth suing because he has few assets and little prospects of acquiring any. The situation is exacerbated by the fact that the more serious the injury the more likely it is that the offender will go to prison and the longer his sentence will be. Since in New Zealand prison earnings are trivial, this effectively prevents an offender from acquiring means to satisfy a judgment against him.<sup>7</sup> Moreover the current aims of penal policy, to prevent further offending and to rehabilitate the offender, are likely to be frustrated if an obligation to pay large amounts by way of compensation is hanging over his head for many years.

The argument for the separation of civil and criminal proceedings was that a criminal proceeding to which the victim is not a party is not an appropriate tribunal for the assessment of damages; however, in certain limited cases compensation can be awarded in court proceedings. On convicting an offender for car conversion a court may order him to pay by way of compensation a sum not exceeding the amount of the loss suffered by the owner.<sup>8</sup> A more general provision enables the court to order an offender to pay to any person such sum as it thinks fit by way of compensation for any loss of or damage to property suffered by that person through or by means of the offence.<sup>9</sup> There is also power to award compensation for property loss as a result of the commission of an assault.<sup>10</sup> These

<sup>2</sup> The first two years of New Zealand's existence as a Crown colony produced so many ordinances that Sir James Stephen, Under-Secretary at the Colonial Office in London, protested that there seemed to have been a "morbid propensity to interfere with everything."

<sup>3</sup> Act No. 134 of 1963 (N.Z.).

<sup>4</sup> For some years New Zealand has had a unicameral legislature, the single chamber being known as the House of Representatives. The former second chamber, the Legislative Council, was abolished in 1950.

<sup>5</sup> See Schafer, *Restitution to Victims of Crime* (1960).

<sup>6</sup> Crimes Act, 1961, 1 Stat. 499 (N.Z.).

<sup>7</sup> There has been introduced a scheme for the daytime release of selected inmates to work in the community at ordinary rates of pay, but of necessity this can be used in a few cases and the criteria of selection do not and could not very well relate to the needs of the victim.

<sup>8</sup> Crimes Act, 1961, 1 Stat. 423 (N.Z.).

<sup>9</sup> Crimes Act, 1961, 1 Stat. 487 (N.Z.).

<sup>10</sup> Police Offences Amendment Act, 1957, 12 Reprint of Statutes 51 (N.Z.).

powers are widely used by the courts in cases of wilful damage (mischief), but infrequently in other cases.<sup>11</sup>

Where the offender is released on probation greater emphasis is placed on restitution. The court may impose as a condition of probation that the offender shall, within such period and by such instalments as the probation officer may direct, pay such sum as the court may direct by way of damages for injury or compensation for loss suffered by any person by reason of the offence.<sup>12</sup> This has been the only provision in New Zealand law that enabled restitution for personal injury to be ordered in court proceedings. Its use for this purpose is, however, infrequent, although it is extensively resorted to in respect of offences against property. In any event, under the prior law, full restitution can be achieved only in minor cases, and the primary purpose of the provision is to make the offender realise the consequences of his offence and repair something of the loss he has caused.

The question of better providing for the victims of crime has been widely discussed in England and elsewhere during recent years. In June 1961 the report of a working party of officials appointed by the Home Secretary was presented to the United Kingdom Parliament.<sup>13</sup> This group had been set up to examine a proposal put forward by the late Margery Fry in 1954 and to see whether, if the principle of state compensation were accepted, a workable scheme could be devised. The report gave the impression of being more concerned with finding difficulties than with trying to overcome them. However it did lead the Council of Justice, the British section of the International Commission of Jurists, to set up its own working committee to propose a practical scheme. The report of this committee was published in 1962, and the new legislation in New Zealand has clearly been strongly influenced by that report although it differs in many matters of detail.<sup>14</sup> In particular the New Zealand legislation adopts the proposal for a special administrative tribunal of three members to administer the scheme, a hybrid basis of compensation involving some elements both of workers compensation and common law damages, and makes provision for the state to seek recovery from the offender.

The intention to introduce legislation compensating victims of offences involving violence was first announced by the Governor-General at the opening of the 1963 session of Parliament on 20 June. The inclusion of the bill in the Government's programme was prompted mainly by genuine humanitarian considerations. There is room to wonder, however, if action would have been taken quite so speedily if political motives had not also been present. The Conservative Government's progressive penal policy, and in particular its refusal to revive corporal punishment (abolished in 1941) despite a public outcry following a sudden increase of sexual offences, was generally supported by the Labour opposition. Nevertheless, there was widespread discontent at grassroots level and the charge was freely made that the Government was concerned to help the offender but paid no regard to his victims. The introduction of a bill establishing a compensation scheme for victims of offences, therefore, served the double purpose of doing something that was thought desirable on its merits and answering criticism of the Government's approach to penal policy.

In introducing the bill the Minister of Justice emphasized that the philosophy behind it was rather the community's duty towards those who suffer misfortune than the liability of the state for failing to prevent crime.<sup>15</sup> A similar approach was taken in paragraphs 7 and 68 of the report of Justice. The closest analogy in New Zealand law to the scheme both in its approach and in the

<sup>11</sup> In magistrate's courts, which deal with most offences against property, some compensation is ordered in two thirds of the cases where an offender is convicted of wilful damage, 9 percent of the cases of common assault convictions, 5 percent of the cases of car conversion convictions, and 6 percent of the cases of convictions for other property offences. Most orders are complied with but the amounts involved are usually relatively small.

<sup>12</sup> Criminal Justice Act, 1957, 3 Reprint of Statutes 461 (N.Z.).

<sup>13</sup> Working Party on Compensation for Victims of Crimes of Violence, Report, Cmd. No. 1406 (1961).

<sup>14</sup> See generally Griew, "Compensation for Victims of Crimes of Violence" 1962 Crim. L. Rev. (Eng.) 801; 112 L.J. 830 (1962); Cross, "Compensating Victims of Crimes," *Litner*, May 16, 1963, p. 815; Committee of Conservative Party, *Victims of Violence* (1962). No official documents or papers and no articles have been published in New Zealand on the subject. The New Zealand bill was prepared in the Advisory Section of the Department of Justice, drafted by the Parliamentary Law Draftsman, and introduced as a Government measure.

<sup>15</sup> N.Z. Parl. Deb. 1865 (1963).

amounts payable is to be found in the Workers Compensation Act of 1956. Just as industry has the duty to compensate those who suffer injury as employees, so in this act the community as a whole accepts a special responsibility outside the ordinary welfare benefits towards those who suffer personal injury from criminal acts. Even so, it would be incautious to press this analogy too far because the question arises why special treatment should be given to these people and why there should be a limitation to personal injuries. The only real answer in the long run is that the Government and people thought it was a fair thing to go so far but not, for the present at least, any further.

#### THE SCHEME OF THE ACT

The act sets out to provide a limited measure of compensation to victims and their dependents who have suffered from certain acts of violence that can be broadly grouped under the heads of homicide, assaults and woundings, and sexual offences of violence. The offences concerned are set out in a schedule to the act.<sup>16</sup> It is sufficient to found a claim if the act causing the death or the injury comes within the description of one of these crimes. Robbery, for example, is not a crime specified in the schedule, but injuries suffered in the commission of that crime would undoubtedly come within the definition of assault, if not one of the more serious crimes of this sort, and would therefore be covered. The reason for this slightly unusual approach is that compensation may be paid even if an offender is not apprehended or because of some special defence—for example insanity—is acquitted. This avoids the need to consider possibly difficult questions whether a particular crime has been committed or whether a particular intent was present, and prevents the danger of compensation being denied on technical grounds.

The act does not apply to loss of or damage to property, a feature that is inconsistent with any theory that the state is to be liable for failing to prevent crimes. The limitation to personal injuries arose partly from a desire to begin cautiously,<sup>17</sup> and partly from considerations of the expenses of the scheme. Insurance against property loss is thought to be much more widespread than personal accident insurance, and it was felt reasonable to leave the individual, for the time being at least, to insure against this type of loss.

Injury is defined so as to include actual bodily harm, pregnancy, and mental or nervous shock. The inclusion of mental or nervous shock has been criticised as being likely to give rise to numbers of undeserving claims which would be hard to reject. Injury resulting from mental or nervous shock has been recognized by statute<sup>18</sup> as a proper ground for damage in common law actions; thus there seems no particular justification for rejecting it for the purposes of state compensation of victims. In many sexual cases it is about the only form of injury upon which one could found a claim. This could be used as an argument for not including such sexual offenses within the scheme. The only unanswerable reply is that public opinion would not have accepted their exclusion.

The question arises as to what is meant by a victim. The bill as introduced defined a victim as a person who suffers injury or death as a result of any act done or omitted in New Zealand which is an offense within the meaning of any of the enactments specified in the schedule. This would probably have applied to others beside the immediate victim, the person shot or bashed or raped, and the problems of causation and remoteness that have complicated the law of negligence to the profit of lawyers and the dismay of students would almost certainly have confronted the tribunal. In an apparent attempt to confine compensation to persons directly injured, their dependents, and those obliged to maintain them the definition was amended. In the act as passed a victim is defined as a person who is injured or killed by any act or omission (being an

<sup>16</sup> The schedule of offences is as follows: rape, attempt to commit rape, sexual intercourse with girl under twelve, indecency with girl under twelve, indecent assault on a girl between twelve and sixteen, indecent assault on woman or girl, indecent assault on boy, indecent assault on a male, murder, attempt to murder, manslaughter, wounding with intent, injuring with intent, injuring by unlawful act, aggravated wounding or injury, aggravated assault, assault with intent to injure, assault on a child or by a male on a female, common assault, disabling, discharging firearm or doing dangerous act with intent, acid throwing, poisoning with intent, infecting with disease, endangering transport, abduction of woman or girl, and kidnapping. See also Committee of Council of Justices [hereinafter cited as Justice], *Compensation for Victims of Crimes of Violence* 29 (1962).

<sup>17</sup> N.Z. Parl. Deb. 1865 (1963).

<sup>18</sup> Law Reform Act of 1957, Reprint of Statutes 820 (N.Z.). This abrogated the decision of the Privy Council in *Victorian Ry., Comm'r v. Coultas*, 13 App. Cas. 222 (P.C. 1888) (Austl.), a decision which was binding on the New Zealand courts.

act or omission that occurred in New Zealand) which is within the description of any of the offenses specified in the schedule to the act.<sup>19</sup> On this wording there is a good argument that the act applies only to the direct and immediate victim, but it cannot be said that all uncertainty has been dispelled, and it is to be regretted that clearer language was not used.

Claims are to be heard by a tribunal of three members. The chairman must be a judge, a former judge, or be qualified to hold judicial office, i.e. a barrister or solicitor of at least seven years practice. It is thought probable that the present judge of the Compensation Court will be appointed and in view of the affinities between the scheme in the bill and the workers compensation scheme such an appointment would have advantages. The method of appointment, term of office of members, and procedure follow the usual New Zealand pattern for administrative tribunals of this nature and do not call for particular comment. With one minor exception there is no appeal from any decision of the tribunal, but the tribunal may state a case for the Supreme Court on a point of law.<sup>20</sup> The proceedings are civil and not criminal in character; curiously enough the offender is not specifically required to be heard even if his identity is known, and the civil standard of proof is expressly imported.<sup>21</sup> The Attorney-General has been given power to apply for an adjournment of proceedings before the tribunal on the ground that criminal proceedings have been commenced or are likely to commence soon.<sup>22</sup>

The heart of the act is to be found in sections 17-19 which deal with the award of payments of compensation. Where any person is injured or killed by any act or omission of any other person which is within the description of one of the offenses in the schedule, the tribunal may make an order for the payment of compensation to or for the benefit of the injured person or to any person responsible for the victim's maintenance. In the case of the death of the victim, the payments are to be to or for the benefit of his dependents. A noteworthy point is that the power is discretionary not merely as to the amount ordered but as to the making of an order at all. While, according to the well-known rule, this discretion must be exercised judicially and not arbitrarily,<sup>23</sup> it should give the tribunal a flexibility that is desirable in a novel field such as this. If such an overriding discretion had not been given it is probable that a much more elaborate act would have been thought necessary, so as to provide various safeguards and qualifications to meet every imaginable contingency.<sup>24</sup>

The tribunal is directed to consider behaviour of the victim which contributed directly or indirectly to his injury or death—a wide provision designed as insurance against unmeritorious claims. To avoid stale claims there is a limitation period of one year, but this period may be extended by the tribunal. There is no requirement, such as was recommended in the Justice report,<sup>25</sup> that the victim should report the crime to the police within a specified time, although doubtless the tribunal will in practice pay some regard to this.

The heads of compensation, which are not mutually exclusive, are as follows:

1. Expenses actually and reasonably incurred as a result of the victim's injury or death.
2. Pecuniary loss to the victim as a result of total or partial incapacity for work.
3. Pecuniary loss to dependents as a result of the victim's death.
4. Other pecuniary loss resulting from the victim's injury, and any expenses which in the opinion of the tribunal it is reasonable to incur.
5. Pain and suffering of the victim, but no compensation is to be awarded under this head if the victim is a relative of the offender<sup>26</sup> or a member of his household.

<sup>19</sup> Act No. 134 of 1963, § 2(1) (N.Z.)

<sup>20</sup> This is the effect of Act No. 134 of 1963, § 10 (N.Z.), which confers on the tribunal the powers of a commission of inquiry.

<sup>21</sup> Act No. 134 of 1963, § 17(5) (N.Z.).

<sup>22</sup> Act No. 134 of 1963, § 17(6) (N.Z.).

<sup>23</sup> See, e.g., *Sharp v. Wakefield* [1891] A.C. 173.

<sup>24</sup> As it is, the amount of detail of the act with its fifteen pages and thirty-three sections may surprise some American readers. New Zealand legislation by and large is much more complex and detailed than United States enactments and leaves much less to the courts. This promotes precision and certainty at the expense of readability.

<sup>25</sup> Justice, *op. cit. supra*, note 16, at 23.

<sup>26</sup> For purposes of the act, a relative means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parent; and, in respect of an illegitimate victim or offender, includes his or her mother, father, brother, sister, half brother, or half sister.

There is a ceiling of £NZ500 (approximately \$1,400) on the compensation that may be awarded for pain and suffering, a limitation that bears little relation to what might be awarded in a common law action and suggests that this head has been included more or less as a gesture. It is believed that the main reason for its inclusion was to provide a means of giving something in respect of sexual offenses, most of which would result in little or no pecuniary loss.

A perhaps surprising omission is that no provision seems to have been made for the maintenance of any child of the victim conceived as the result of a rape.<sup>27</sup> In most such cases the child would probably be adopted. Pecuniary loss and expenses, other than loss sustained by reason of incapacity to work, are limited to £NZ1,000 (\$2,800).

One important principle of the act is that a victim should not receive double benefits or be better off by reason of the crime than he would otherwise have been. Accordingly, in assessing the compensation to be paid the tribunal is required to deduct any payment received as compensation or damages from the offender or under the compulsory third party insurance provisions of the Transport Act of 1962. If damages are recovered after an order is made the victim must refund any amount received up to the amount of the compensation paid.<sup>28</sup> The tribunal must also deduct any payments received or payable under the Workers Compensation Act of 1956, which would happen where the victim was killed or injured in the course of his employment, and any payments received or payable under the Social Security Act of 1938 or the War Pensions Act of 1954 in respect of the injury or death. When the bill was introduced it contained a provision giving the tribunal a discretion to deduct the whole or part of any other payment made or to be made in respect of injury or death. This would have included the proceeds of an accident insurance policy taken out by the victim. Fortunately, in the writer's view, this provision was removed from the bill and the act now follows in this respect the recommendation in the Justice report.<sup>29</sup>

The modesty of the scheme is seen by comparing the amount that would be received by way of unemployment or invalidity benefit under the Social Security legislation with the maximum that may be awarded under the act for loss of earnings. A single adult male would receive under the Social Security Act of 1938 during a period of total incapacity for work an amount of up to £NZ5 (\$14) a week, and a married adult, irrespective of the number of children, would receive £NZ9 (\$25) a week. The maximum amounts payable under the Criminal Injuries Compensation Act under this head would be £10.5.0 a week and £12.15.0 a week, respectively.

The amounts paid for pecuniary loss as a result of death or incapacity for work are almost identical with those payable for industrial injuries under the Workers Compensation Act. In both cases the amounts are inadequate in relation to the average weekly wage of a working man.<sup>30</sup> However for political reasons it was felt impossible to be more generous under the Criminal Injuries Compensation Act than under the Workers Compensation Act, and a more realistic measure of compensation will have to await an amendment of the workers compensation legislation. The real importance of the new scheme lies in establishing the principle.

Not surprisingly the policy is that as much as possible of the compensation paid by the state should be recovered from the offender. Having regard to realities, however, it is likely that the proportion actually obtained will be small. No doubt a substantial increase in the earnings paid to prisoners would help, but unless this is to be done for its own sake it would be little more than an involved process of taking out of one pocket in order to put into another. There is also the important factor of the effect on the offender's rehabilitation when he re-enters the outside community in due course. The act deals with the problem by giving the tribunal a discretionary power on the application of the Secretary for Justice to order the offender to refund the whole or any part of the compensation paid or payable.<sup>31</sup> The Secretary for Justice is the permanent head of the Department of Justice which administers the prison and probation and parole system in New Zealand and thus is in as good a position as anyone to judge when it is expedient to recover.

<sup>27</sup> See also Justice, *op. cit. supra*, note 16, at 17.

<sup>28</sup> Act No. 134 of 1963, § 125 (N.Z.).

<sup>29</sup> Justice, *op. cit. supra*, note 16, at 27.

<sup>30</sup> In 1963, £NZ.14 (\$39) a week without overtime.

<sup>31</sup> Act No. 134 of 1963, § 23(2) (N.Z.).

The act generally seems to be regarded in New Zealand as a sufficiently full and workable measure. Crimes resulting in serious injury are relatively infrequent in this country and the indications are that the scheme will not be unduly expensive. The estimate is that the yearly cost should not exceed £NZ30,000 (\$84,000) at the outside. Time alone will tell whether the act justifies the enthusiasm that has marked its passing. As to the desirability of the measure there has been no disagreement and there is likely to be none. Indeed such a chorus of approbation has gone up that one wonders why nothing was done long ago. The advantages of the act are twofold. There is the material benefit from the awards of compensation that may be made by the tribunal, and in addition there is the psychological effect on the community produced by the very fact that there is such a scheme in existence. While this aspect is of course impossible to measure it may well be of the greater importance.

[From the Criminal Law Review, July 1973]

CRIMINAL INJURIES COMPENSATION BOARD\*

(By Alec Samuels)

The Criminal Injuries Compensation Board (CICB) was set up under the prerogative as a non-statutory scheme in 1964, largely due to the efforts of Margery Fry and of Justice. CICB now receives about 10,000 applications a year. This figure represents only a comparatively small proportion of those eligible in the light of the criminal statistics, i.e. probably 30,000 or more, although a proportion of this number would always be unwilling to take proceedings of any kind following an incident. The criminal statistics can never give an accurate indication of eligibility because some offences of violence may not cause injury, e.g. indecent assault, and others do not result in criminal prosecution, and others take place within the family. Over £3m is now paid out annually, the awards being mostly £100-£400, although because of some substantial awards the average payment is a little over £400, and fairly static. There has been an award of £40,000 for the paralysed victim aged twenty-eight, and £51,000 is the highest award, total blindness, loss of taste and smell, impairment of hearing, and other injuries. Increased social security benefits such as the 1971 permanent invalidity benefit a kind of permanent sickness benefit, with the consequent increased set off are tending to contain any increase in the size of awards. If compensation is paid it is normally paid promptly because the CICB is aware of the problem of functional overlay or neurosis and of the therapeutic effect of prompt payment. The delay that there is, is often caused by delay in prosecution or in final medical prognosis. In the case of serious injury frequent use is made of the power to make an interim award. The decision on an application is taken by a single member, who normally decides on the papers, except perhaps in a scar case when he might wish to see the applicant personally. 90 percent of the cases go no further, but on average nearly 10 percent are taken further by the applicant to a panel of three members, not including the single member, who hear oral evidence. The applicant is given notice at least seven days, often more in practice, before the hearing of the nature and substance of the case to be presented in opposition to the claim and rejection of the award by the single member. The Guide to procedure is available to help the applicant and his advisers. The hearing takes the form of a rehearing *denovo* *R. v. CICB, ex parte Lain*,<sup>1</sup> fresh evidence and new heads of claim being admissible. Further medical evidence is sometimes obtained.

Sometimes a case is referred in the first instance to a panel of three if it raises questions of difficulty or principle, and a single member may refer the matter direct to the panel without taking a decision himself,<sup>2</sup> about 40 cases a year. The applicant must make out his case.<sup>3</sup> Difficulty sometimes arises in

\*I wish to acknowledge kind assistance from Members of the Board and from its officials but nothing in the text necessarily represents the policy of the Board and the interpretation of the practice of the Board is solely my responsibility, as well as the proposals for reform. I also had the good fortune to discuss the practice of the Board with a solicitor, who wishes to remain anonymous, having an extensive practice before the Board.

<sup>1</sup> [1967] 2 O.B. 864, 879g.

<sup>2</sup> Para. 21 of the Criminal Injuries Compensation Scheme.

<sup>3</sup> Para. 22.

the case of the unexplained injury, *e.g.* applicant found lying injured outside flat of friend in which convivial party had been taking place, or in the street having no recollection of anything. He must persuade the Board to draw the inference on the balance of probabilities, the civil standard of proof, that a crime of violence caused the injury. If the applicant is found lying injured in his own home, perhaps after returning from a drinks party, then the inference might be very much harder to draw in view of other plausible, more plausible, explanations. Witnesses are examined and cross-examined. The solicitor to the CICB acts as a kind of advocate-general to assist the Board, acting in an independent non-partisan role putting relevant matter and argument forward, whether favourable or unfavourable to the applicant. Where the applicant is legally represented the solicitor to the Board tends to put the other side in cross-examination and argument. The applicant may be represented if he wishes, and the Board welcome this, especially where issues of interpretation as opposed to assessment are involved, though legal costs cannot be awarded.<sup>4</sup> Witness expenses may be awarded in the discretion of the Board.<sup>5</sup> Procedure at a hearing is as informal as is consistent with a proper determination of the application, and the hearing is in private.<sup>6</sup> About half the applicants are represented, mostly by trade union officials or by lawyers, and the represented applicant, especially the legally represented applicant, tends to be more successful than the unrepresented applicant. The overall level of success is extraordinarily high, 80 per cent, probably because the hearing is oral whereas the single member decided upon the papers alone, fresh medical evidence is sometimes forthcoming, and favourable features for the applicant come to light. In the ordinary courts the trial is oral, the appeal on the papers; in CICB it is the opposite sequence. The panel knows of the single member's determination, and informs him in due course of its own determination. The panel may reduce the compensation, or even award none at all, but the chairman warns the applicant of this at the outset. Members of the Board meet together from time to time to discuss matters of general interest. The Board have a discretion to make special arrangements for the administration of any money awarded as compensation.<sup>7</sup> In the case of a substantial award to a young person the Board may require the execution of a voluntary settlement or pay the money to the Public Trustee under a trust deed or in the case of a smaller award purchase national savings certificates,<sup>8</sup> or urge consultation with a bank manager. It appears that the Board often insist that the money be tied up until the minor reaches twenty-one, not eighteen. In the case of the victim who has become a cabbage a receiver is appointed, the Official Solicitor, and the matter falls under the jurisdiction of the Court of Protection.

#### *Scope of the scheme*

"The Board will entertain applications for ex gratia payment of compensation in any case where the applicant or, in the case of an application by a spouse or dependant,<sup>9</sup> the deceased, sustained in Great Britain, or on a British vessel, aircraft or hovercraft, on or after August 1, 1964 personal injury directly attributable to a crime of violence (including arson and poisoning) or to an arrest or attempted arrest of an offender or suspected offender or to the prevention or attempted prevention of an offence or to the giving of help to any constable who is engaged in arresting or attempting to arrest an offender or suspected offender or preventing or attempting to prevent an offence. In considering for the purpose of this paragraph whether any act is a criminal act, any immunity at law of an offender, attributable to his youth or insanity or other condition, will be left out of account."<sup>10</sup> The scheme is not restricted to British subjects. A bomb explosion on a British aircraft over the high seas led to an award to widows.

The personal injury is usually a physical injury, but it may be consequential shock or other psychological result of an assault, if medically diagnosable. What is an offence of violence? Assault, aggravated assault and robbery are much the most common situations. There have been some borderline cases which the Board

<sup>4</sup> Para. 22.

<sup>5</sup> Para. 22.

<sup>6</sup> Para. 23.

<sup>7</sup> Para. 18.

<sup>8</sup> B/INF/1.

<sup>9</sup> See para. 12 below.

<sup>10</sup> Para. 5.

have admitted, *e.g.*, endangering the safety of passengers on the railway, injury caused by explosives left lying around by thieves, and the injury caused to a pedestrian when a passenger in dispute with a taxi driver in the absence of the taxi driver released the handbrake causing the taxi to run away. A good test to apply would presumably be: Has the alleged offender been convicted, or could he have been convicted, of an assault or aggravated assault? The question is often what was the state of mind of the person causing the injury. If he acted intentionally (or deliberately) or recklessly then very probably the offence will be made out, *e.g.*, discharging a gun, catapult, or how and arrow, or throwing a stone; if he acted negligently or accidentally then no offence will be made out. In practice the Board apply the test laid down in *R. v. Cunningham*.<sup>11</sup> For example, two fifteen-year old boys bully a twelve-year old boy and toss or drop him, causing injury: probably intentional or reckless infliction of injury. Sometimes the Board will have to infer the state of mind, *e.g.*, applicant is injured in the street, or on a bus platform, by shot (direct, not ricochet) fired from a gun by an unidentified person. A threat of violence constitutes an assault. The assailant threatens the victim who "in the agony of the moment" runs away into the path of a bus, "directly attributable" consequence. Similarly with the girl, reasonably believing herself threatened with a sexual assault, who gets out of a moving car.

The injured victim has been refused an award in the following situations: firearm or firework discharged within fifty feet of the highway, willful obstruction of the highway; dog on road causing accident; railway ticket collector pushed down and injured by crowd surging through the barrier; chasing away stone-throwing boys; shock sustained on discovery of theft. Personal injury suffered as a result of a breach of the factories legislation is not covered, but in such a case the victim will have an action for breach of statutory duty and perhaps also negligence against an insured employer.

The personal injury must be directly attributable to the crime of violence. Difficulty might arise when some sort of heart condition arises after an assault. In one case the assailant kicked the victim in a stomach which was already in a cancerous condition and aggravated that condition, and compensation awarded for the aggravation; similarly where a blow on the face accelerated death by cancer. The claimant who suffered shock, if medically diagnosable, may receive an award if he was a witness to the event but probably not if not a witness, *e.g.* was subsequently told of rape of daughter. The victim engaged in a rescue operation may be covered, *e.g.* the fireman injured in fighting a fire started by arson. In one case the assailant indecently assaulted a girl on a train, she pulled the communication cord, got out of the train and walked along the live rails. The guard was injured in rescuing her from the live rails. The Board held that he could not recover. If he had been rescuing the girl from the assault presumably he would have been covered. Yet was the chain of causation broken? An offender tampered with an electricity substation and interfered with the safety devices. A maintenance man called to the scene was injured in attempting to inspect or to repair the damage, but he failed because he exceeded his instructions by tampering with high voltage equipment and was the author of his own misfortune. An explosives expert received an award when a blown safe which he was investigating toppled over and crushed his fingers.

The arrest and prevention of crime cases—law enforcement cases—generally involve the police, indeed some 870 policemen were awarded compensation in 1970. For example, a policeman may be injured in the course of an arrest, or he may slip when chasing a criminal. In one case a store detective was chasing and attempting to arrest a shoplifter and an innocent bystander was knocked down by one or other of them. It was held that the bystander was covered, not only the person attempting to effect an arrest: *R. v. CICB, ex parte Schofield*.<sup>12</sup> A thief pursued by the police drove in the wrong direction along a one way street and collided with the applicant driving his car, and the applicant succeeded. A policeman answering an emergency call passed a traffic light at red and was fatally injured in a collision. The Board held that he was not preventing or attempting to prevent an offence, because the call was a false alarm. Surely it should be sufficient that the policeman was engaged in the execution of his duty in the work of law enforcement, albeit no offence in fact was com-

<sup>11</sup> [1957] 2 O.B. 396.

<sup>12</sup> [1971] 1 W.L.R. 926; [1971] 2 All E.R. 1011.

mitted. Secondly the Board held that the driving of the policeman although not anti-social nor perhaps morally to be condemned did nonetheless amount to reckless or careless driving and accordingly was a one hundred per cent disabling factor.<sup>13</sup> The police service was understandably disappointed by this decision.

The same principles have been applied to the police driver hurrying to the scene of the crime after receiving an emergency call and being killed or injured by skidding off the road into a tree or running into a pool of water and losing control of the vehicle. A similar situation can arise where a policeman in pursuit of a criminal steps on to a glass roof and is injured or killed.

What is an arrest and how long does it last? A suspect is arrested one evening, taken to the police station, and next morning before he can be taken to court jumps out of a window and is pursued by a policeman who is injured by glass broken by the departing suspect. Presumably the suspect is still under arrest at the time and presumably the policeman is trying to prevent the offence of escaping from lawful custody. A suspect is arrested, is found to be mentally ill, arrangements are made for his transfer to a hospital for observation under the Mental Health Act 1959 and while everybody is waiting for the ambulance to arrive the suspect, or patient, jumps out of the window and the pursuing policeman is injured by the glass broken by the departing suspect, or patient. It was held that the arrest was still on foot: *R. v. CICB, ex parte Lawton*.<sup>14</sup> When does the arrest terminate?

A boy under ten not infrequently puts out the eye of another boy with a gun. The fact that the boy cannot be prosecuted is ignored, but presumably it must be shown that he intentionally or recklessly as opposed to negligently used the gun. Similarly mental patients not infrequently attack and injure hospital staff, and again presumably the element of intention or recklessness has to be shown. Personal injury caused per se by the mental patient struggling or kicking in the course of a fit or being placed under restraint does not come within the scheme.

Common situations giving rise to claims are: unprovoked assault by a stranger in the street, often outside licensed premises—drink is a potent factor in many cases before the Board; assault on the staff of licensed premises; assault on a busman; a robbery such as handbag snatching; assault by a relative, friend or acquaintance; injury by policeman suffered in the course of his duty; loss of an eye caused by a child playing with a gun.

#### *Motoring offences*

"Traffic offenses will be excluded from the scheme, except where there has been a deliberate attempt to run the victim down."<sup>15</sup> Thus the victim of the dangerous driver and the hit-and-run driver cannot recover, although he will be able to proceed against the driver's insurance company or, if injured on a public road, the Motor Insurers Bureau. Passengers are now covered by MIB from December 1972. The cyclist injured by the bank robbers making a getaway in a car is covered because his injury is directly attributable to a crime of violence. Difficulty arises where a policeman, who may not even suspect an offence, beckons a driver to stop, and the driver, who may have stolen property in the boot, panics and accelerates, and the policeman hangs on the bonnet and is injured. The deliberate or reckless infliction of injury upon the policeman would appear to be a crime of violence within the scope of the scheme. The CICB and the MIB have tried to avoid the situation arising of the victim falling between two stools and being unable to recover from either.<sup>16</sup> But the victim of dangerous driving on a private road is covered by neither scheme.

#### *Reporting to the police*

The CICB must be satisfied that the circumstances of the injury have been the subject of criminal proceedings or were reported to the police without delay,<sup>17</sup> though this requirement may be waived. The assailant may have been acquitted yet the Board, on the civil balance of probabilities, may be nonetheless satisfied that a crime of violence was committed. The reporting requirement is rigidly applied. An immediate and full reporting is in practice required, a gloss on the scheme calling in aid the conduct of the applicant.<sup>18</sup> A solicitor consulted by a

<sup>13</sup> Para. 17.

<sup>14</sup> [1972] 1 W.L.R. 1589; [1972] 3 All E.R. 582.

<sup>15</sup> Para. 8.

<sup>16</sup> See *Hardy v. MIB* [1964] 2 Q.B. 745 C.A.

<sup>17</sup> Para. 6(b).

<sup>18</sup> Para. 17.

client should immediately report the matter to the police or obtain written confirmation of an earlier reporting. Thus the victim's claim has been rejected when he reported six weeks after the accident; and when he reported three weeks after the accident, having been receiving out-patient treatment, even though his girl friend made a 999 call at the time of the assault; and when he was a foreigner not conversant with English habits. But it is the injury not an anticipated injury that must be reported, and sometimes victim and assailant have departed from the scene before the police arrive. Fear of reprisal was considered an insufficient reason, *e.g.* the victim waited until the assailant was in custody, but presumably it would be accepted as a good reason in a genuine and extreme case, *e.g.* serious threats to wife and child. The danger of too ready an acceptance of a plea of fear of reprisal would be that every dilatory applicant would seek to rely upon such an argument. Waiver will be made only in exceptional circumstances, *e.g.* victim admitted unconscious to hospital, victim believed that the matter was reported by a third person, or victim a child and the parents did not report. A child is not to be prejudiced by parental default. The seventeen year old victim could be expected to report the matter himself. In the case of hospital staff it has been agreed that a full and prompt report to the hospital authorities will suffice, though the victim should ensure that the incident is recorded in writing in the books. The reporting requirement is a safeguard against abuse of public money, and furthermore the citizen ought to report crime. But extreme pain, or fear of being involved with the police, or fear of loss of employment, or fear of reprisal, or belief that the matter has been reported by a third person, these things if established should be given due weight in determining whether to waive. Ignorance that a crime has been committed may justify a waiver.

The Board have formulated their policy as follows:

"The fact that the circumstances of the injury were not reported to the police without delay or at all will be a cogent factor to be taken into account when deciding whether an applicant's injuries were directly attributable to a crime of violence or otherwise within the terms of paragraph 5 of the Scheme. The Board must be completely satisfied about the bona fides of any application before making an award. It is only when paragraph 5 of the Scheme has been satisfied that the question of waiver arises. The test then to be applied is whether the Board would consider that the applicant has done what a reasonable man would do in the circumstances.

"(1) If the applicant reasonably believed that his injuries were so trivial that he had suffered little or no damage he can be excused from reporting. But if, shortly afterwards, he discovers his injuries to be serious, he may be in breach of his duty if he does not then report to the police.

"(2) An applicant who reasonably believes that the circumstances of the injury would be reported to the police without delay by a third party is not in breach of his duty; but, depending upon the circumstances, he may subsequently be in breach if a reasonable man would, at a later date, have reported to the police.

"(3) An applicant, whose physical condition is such that he could not be expected to report without delay, is not in breach of his duty, but he may be subsequently in breach if, when he is physically fit to do so, he should have realised that it was his duty to report but he did not do so.

"(4) Belief that the police would not be able to take effective action will not usually justify waiver. But, for example an applicant who has been physically incapable of reporting for a long period of time and who can give no useful information to the police, may not be in breach of duty.

"(5) Fear of reprisals will not usually justify a waiver, save in most exceptional circumstances."

#### *Family*

"Where the victim who suffered injuries and the offender who inflicted them were living together at the time as members of the same family no compensation will be payable. For the purposes of this paragraph where a man and woman were living together as man and wife they will be treated as if they were married to one another."<sup>19</sup> It is cohabitation which is the disabling factor, not a sexual relationship *per se*, especially when it has been terminated at the time of the assault. But the family concept is widely interpreted, in a supposedly common-sense way. The victim's brother-in-law, an ex borstal boy, reluctantly

<sup>19</sup> Para. 7.

given temporary shelter, attacked him and the claim was rejected. Similarly the husband returned from prison to the matrimonial home and the wife, who was justifiably frightened of him, slept in a different room and did not clean and cook for him. He attacked her and her claim failed: *R. v. CIOB, ex parte Staten*.<sup>20</sup> If the spouses separate and the husband then seeks out and finds the wife and assaults her then she is eligible. It is a curious and unjustified anomaly that the separated wife should have more protection than the cohabiting wife.

#### *Basis of compensation*

The general principle is that the victim should receive compensation on the basis of lump sum common law damages.<sup>21</sup> An interim or provisional payment may be made, and increased from time to time, for example where only a provisional medical assessment can be given in the first instance. A pension, certainly a contributory pension, will be ignored: *Parry v. Cleaver*.<sup>22</sup> The position under the scheme differs, however in some material respects from the common law. There is a minimum limit of £50.<sup>23</sup> The rate of loss of earnings must not exceed twice the average of industrial earnings at the time the injury was sustained (now well over £30 p.w.) and there is no element comparable in exemplary or punitive damages.<sup>24</sup> Social security benefits are deducted in full<sup>25</sup> and the victim must obtain those social security benefits if he can.<sup>26</sup> No deduction is made in respect of sums received from funds raised by public subscription in gallantry cases.

Where the victim is a one-man company one imagines that the Board will lift the veil.<sup>27</sup> The small shopkeeper may have difficulty in proving loss of earnings when his family have rallied round and helped out in the shop whilst he was in hospital.

Where the assailant killed the victim the position is similar to that under the Fatal Accidents Acts. Funeral expenses less death grant are recoverable by the dependants.<sup>28</sup> But there are, however, some differences. Nothing can be obtained for the benefit of the estate, e.g. no £500 for loss of expectation of life, though at common law this is set off against Fatal Accident Act damages. The income of the deceased is deemed to have been limited to twice the average of industrial earnings<sup>29</sup> and this in turn imposes a limit upon dependency. Social security benefits are deducted in full<sup>30</sup> and must be claimed.<sup>31</sup> Any extra pension attributable to the criminal killing and awarded in consequence of the death is deducted to the extent of four-fifths.<sup>32</sup> With her extra pension, her gratuity and her social security benefits the police widow will suffer quite a few deductions from her compensation.

"It is not intended that a person who has pursued a claim for damages for personal injuries should obtain compensation from the Board in respect of those injuries in addition to obtaining satisfaction from that claim; and compensation will be reduced by any sum which the victim has received in pursuance of an order for compensation by a criminal court in respect of his injuries. Furthermore, a person who is compensated by the Board will be required to undertake to repay them from any damages, settlement or compensation he may subsequently obtain in respect of his injuries.<sup>33</sup> If a civil action results in judgment but that judgment is wholly or partly unsatisfied the Board will nevertheless entertain an application. It is rare that the victim has obtained or has any prospect of obtaining compensation from the assailant, who is often unidentified, or untraced, or a man of straw or in prison. Indeed this was the principal reason for the establishment of the scheme. But the Criminal Justice Act 1972 s. 1 greatly simplifies and strengthens the law of compensation in criminal proceedings and it may be that we shall see a somewhat greater incidence of compensation for the victim in the criminal proceedings than hitherto, and a

<sup>20</sup> [1972] 1 W.L.R. 569 [1972] 1 All E.R. 1034.

<sup>21</sup> Para. 10.

<sup>22</sup> [1970] A.C.1.

<sup>23</sup> Para. 6(a).

<sup>24</sup> Para. 11.

<sup>25</sup> Para. 14. Cf. Law Reform (Personal Injuries) Act 1948, s. 2.

<sup>26</sup> Para. 15.

<sup>27</sup> "Lifting the Veil," Alec Samuels [1964] J.B.L. 107.

<sup>28</sup> Para. 11.

<sup>29</sup> Para. 12.

<sup>30</sup> Para. 14.

<sup>31</sup> Para. 15.

<sup>32</sup> Para. 16. Amending *R. v. CIOB, ex parte Lain* [1967] 2 Q.B. 864.

<sup>33</sup> Para. 24.

consequent reduction in the number and extent of claims upon the Board. Some employers, *e.g.* of busmen, it is believed, following a criminal injury make "loans" to the employee instead of continuing to pay wages whilst he is off work so that he can recover for lost wages from the Board and then repay the employer. If the employee victim is under an obligation to reimburse the employer the Board compensate him for loss of earnings in the normal way.

#### *The undeserving victim*

"The Board will reduce the amount of compensation or reject the application altogether if, having regard to the conduct of the victim, including his conduct before and after the events giving rise to the claim, and to his character and way of life it is inappropriate that he should be granted a full award or any award at all."<sup>34</sup> A lot of cases involve consideration of this paragraph. A boy of thirteen burned when fireworks in his pocket went off as a result of another boy dropping a lighted squib into the pocket suffered a reduction because an offense under the Highways Act 1959, section 140(2) had been committed. The victim might be aggressive or provocative, *e.g.* make derogatory remarks about the wife or girl friend of the assailant, or insult the assailant on the basis of colour. If the victim voluntarily participates in a fight, and comes off worse, he will get nothing. The assailant may be acting in self defence. Previously the Board used to reduce damages by 50 per cent, now they appear to reduce them 100 per cent. But if there is a disproportionate response the victim might recover a substantial proportion. *e.g.* victim agrees to fight with fists, but assailant grabs and breaks a bottle and jabs it in his face, or uses a knife or gun, or calls in friends to help. The victim may be foolhardy. He may refuse proper medical attention and thus aggravate the injury. He may have been foolishly participating in a gun game with the assailant when he lost his eye. The victim may flash a lot of money in a public house and remain there after a warning of danger. The victim may be a woman who accepts a lift from a stranger, invites him home or accepts an invitation to his home and is sexually assaulted. The Board are not concerned to make a moral judgment upon the behaviour so much as to ascertain whether the victim was foolhardy or negligent or reckless of his or her own safety. The woman who sexually submits to a casual stranger may be foolish but she is not necessarily endangering her safety.

The fact of a previous criminal conviction is not in itself a disabling factor, especially if it is unconnected with the assault in question, but criminality, a regular life of crime, may be.<sup>35</sup> The victim who subsequently, some months later, became an assailant was refused an award, a more dubious case because the quality of his claim ought to be ascertained at the moment of the assault and the award ought not to depend upon whether the subsequent assault is made before or after the determination of a claim. The escaping hurglar peppered with shot will recover nothing. The victim may be lacking in any merit and so suffer a reduction. He may be an adulterer attacked by a husband. If a married woman has an affair and her lover criminally kills her husband she is not a "victim," or at least a direct "victim" to be undeserving, but her dependency as a widow might be calculated on a low multiplier if the Board thought that the marriage would sooner or later break up because of the affair. The victim may be a customer attacked by associates of a prostitute, or a prostitute assaulted by a customer. The landlord injured whilst unlawfully evicting a tenant has no merit. Then there are the cases where the victim will not assist in bringing the assailant to justice, *e.g.* he refuses to co-operate or to co-operate fully with the police, or to make a statement, he refuses to name or identify or describe the assailant, or gives false or misleading information, he refuses to give evidence in proceedings, or gives false evidence, or belatedly co-operates solely in order to claim compensation. The Board would be reluctant to make a reduction in an award because of false information given inadvertently when suffering or confused as a result of the crime of evidence. However, asking the police not to prosecute, or a refusal on advice to take criminal proceedings for assault so as not to lose the right to sue in civil proceedings (Offences against the Person Act 1861, s. 45) may well be justified: *R. v. CICB, ex parte Townend*.<sup>36</sup> The neighbour involved in cross summonses for assault must try to avoid admissions or findings in the magistrates' court that might subsequently embarrass a claim for compensation from CICB.

<sup>34</sup> Para. 17.

<sup>35</sup> See *Burns v. Edman* [1970] 2 Q.B. 541.

<sup>36</sup> June 9, 1970, unreported.

The scheme does not appear to permit the Board to take into account common law contributory negligence.<sup>37</sup> The applicant must be morally undeserving.

#### *Reform*

The scheme appears to have worked satisfactorily and to have given general satisfaction. But in a modern civilised compassionate society a more effective system of social security is needed for social casualties, and an *ex gratia* non-statutory prerogative scheme is no substitute. No doubt the Royal Commission under Lord Pearson will be urged to formulate a comprehensive scheme for compensation for victims of injury. The victim may have at least three possible avenues of claim, social security, common law damages and the CICB. Multiplicity of claims should not be necessary. The CICB should be set up on a permanent statutory basis, with a more permanent staff. Secondment, transfer and turnover of staff create administrative problems, although these are common to the public service. Instead of being a branch of the Home Office, a civil service organization, CICB should become an independent body including on its staff solicitors and insurance assessors with experience of personal injury claims. In order to give expedition and continuity to the work some of the members of the Board should be full time, especially the Chairman, and it would be pleasing to have a woman on the Board and a medically qualified member. Full time members could deal with most of the cases at first instance and could see the applicant personally in many cases. The reason for the comparatively low level of award at first instance and the reason for the high level of success on appeal is that the single member under existing practice does not see the applicant, except occasionally in the scar cases. A medical member might have some difficulty at the beginning in assessing quantum, but no doubt he could be assisted by a legal colleague. The legal members seem able to cope with medical issues without much difficulty, although interpreting medical reports does cause some problems. Possibly, though this is very controversial, the Board might work to a tariff, because common law damages arising from motor car accidents, *e.g.* injuries to body and legs, are rather different from criminal injuries, which are often injuries to the head, and so there are comparatively few precedents. The solicitor to the Board does not normally address them on quantum. The Board is undoubtedly inclined to be lacking in generosity on compensation. The role of the solicitor to the Board is a little anomalous, for he acts as advocate-general and he is the administrative head. These tasks should be divided, specialisation developed, and the advocate-general should become an independent person free from administrative involvement. Power to compel witnesses would be useful, though probably it will not often need to be exercised. The unwilling witness is rarely a helpful witness. Compulsion on an acquitted assailant might be thought to be improper. As the applicant is frequently an ill educated and inarticulate person and it is difficult to get the full story from him, it might be better if the applicant, or preferably his legal adviser acting on instructions, were to prepare a written statement to be used as the basis of the evidence, and examination and cross examination to follow after the written statement had been read. The power of subrogation to pursue the civil remedy of the victim against the assailant might be useful, but the Board would probably find practically all assailants to be men of straw. The compensated victim has no incentive to pursue a civil remedy against the assailant whereas with all its resources CICB might be able to recover money paid out from public funds. There is no good reason for not awarding legal costs of a hearing in a proper case. Why should an appellant to a panel be out of pocket in obtaining what he is entitled to?

The £25 scheme under the Legal Advice and Assistance Act 1972 will enable a solicitor to prepare a written case for the applicant, though ridiculously it will not cover appearance at the hearing. The legally drafted written brief is sometimes submitted by the unrepresented applicant. If a solicitor acting for an applicant could receive a small fee for obtaining police and medical and employer reports and proofs of witnesses the administrative burden on the Board would be reduced. Legal advice will often point out the hopelessness of an appeal and thus reduce the incidence of unmeritorious appeals. Legal aid for representation before the hearing of the Board is manifestly desirable. With an appeal rate running as high as nearly 10 per cent, with 80 percent success, some method of discouraging or sifting appeals, *e.g.* by way of leave, may have to be devised in order to limit the amount of the work. The single member may be deciding cases too promptly on insufficient medical evidence,

<sup>37</sup> Home Secretary, Hansard, House of Commons July 20, 1972 W.A. 83, 84.

especially of long term prospects. The odd "nut" case is inevitable, though the problem can perhaps be kept under control by sympathetic yet firm handling. An appeal leading to a marginal increase in compensation hardly justifies the effort involved. An appeal costs the CICB on average £120 (£25 single member determination). The Board refuse to allow an application to be renewed, and refuse to allow an appeal for a hearing once an award by a single member has been accepted and paid. But there appears to be no restraint upon a dissatisfied rejected applicant appealing to the Board at any time. A time within which to appeal should be imposed, subject to extension with leave for good cause shown. An application to the divisional court must show an error on the face of the record or a breach of natural justice, a very narrow jurisdiction, and a case can be argued for providing for an appeal on the merits to either the county court or the Court of Appeal. The scope of the scheme should be reviewed. The limitation to a crime of violence has excluded some prima facie deserving cases, e.g. "victim" deliberately and courageously breaks fall of attempted suicide jumping from window, bus driver is injured in jamming on brakes to avoid attempted suicide; "victim" is poisoned when harman accidentally serves cleaning fluid instead of lemonade. Suicide and attempted suicide are no longer crimes. Serving poison is an offence of strict liability under the food and drugs legislation. To say that the injury must be "directly attributable" to a crime of violence may be too narrow a way of expressing causation, which should be left to ordinary legal principles, i.e. "caused" by a crime of violence. However, a fairly robust approach has been taken to problems of causation. The rescuer cases have turned out unfortunately. Reporting without delay is a sound requirement in principle, but has been too strictly applied especially where the claimant has been foreign. It should be sufficient that the matter has been reported reasonably promptly by the victim or a third party to the police or other appropriate authority. As the applicant has to prove the offence of violence<sup>39</sup> and that he has fully co-operated with the police,<sup>40</sup> it may be that the reporting requirement<sup>40</sup> is superfluous. Paragraph 17 should be redrafted, spelling out as an example the necessity of full co-operation with the police.

Motoring offences should be included insofar as the victim has no redress against an insured driver or the MIB. The exclusion of the family victim is totally unjustified and a gross defect of the scheme. The wife (and the mistress) and the child are particularly vulnerable to the assailant husband (and lover) and father. The victim has a remedy in criminal and civil matrimonial law, why not under the scheme? The Board could meticulously scrutinise such a claim, detect the fraudulent claim, take account of any provocation, and ensure by an investment order that any compensation went only to the victim and not the assailant. The assailant may be sentenced to a long term of imprisonment, or divorced, or both. To exclude the battered baby because he has the misfortune to live in the same household as the assailant father, or stepfather, or mother's lover, is truly shocking. The Board themselves recognize its unsatisfactory state of affairs<sup>41</sup>: "The exclusion of children who are assaulted by their parents or by the man who is living with their mother appears to us to be unjustified. We refused a claim on behalf of a young child who was assaulted by the man with whom her mother was living as man and wife. Although this is the only application by a child injured by a member of the family which has been refused, we cannot tell how many have failed to apply for the good reason that their claims are excluded by the present wording of paragraph 7." The basis of compensation is unnecessarily complicated, e.g. the different deductions system, surely it would be preferable simply to apply the ordinary statutory and common law in all cases. The upper limit on earnings for assessing loss of earnings is quite illogical. The deceased victim was earning £150 p.w. gross, £100 p.w. net and his widow's dependancy was £50 p.w. net. Under the scheme he will have a notional income of £60 p.w. gross and £45 p.w. net and the widow's dependancy will be £22.50 p.w. Why should the better-off be penalised in this way? In fatal cases pensions should be disregarded as under the Fatal Accidents Act 1959, section 2. The four-fifths rule under the scheme is entirely arbitrary. Compensation is said to be high for loss of an eye and low for rape (£850, though £1,250 was awarded to a girl of fifteen who suffered psychiatric disturbance). But it is fair to say that the physical and psychological injuries suffered in rape

<sup>39</sup> Para. 5.

<sup>40</sup> Para. 17.

<sup>41</sup> Para. 6(b).

<sup>42</sup> Elght Report, p. 11, para. 8.

differ so greatly from case to case and there is little guidance in the reported cases on quantum. The Board are perhaps understandably cautious but nonetheless too restrictive in dealing with non-physical injuries. The lower limit of £50 should be removed in the citizenship cases. The scheme is nowadays fairly widely known, and the police often advise victims of the scheme, but the take-up rate is still a long way below 100 per cent, and much greater publicity is necessary. Television is today easily the most effective form of publicity.

The injuries suffered by wholly innocent people in our criminally violent society are often horrible and tragic. The police figure largely amongst applicants, because they are naturally well aware of their rights and receive considerable assistance from the police federation and its legal advisers. Incidentally, ought not the police service and any similar service with a high inherent occupational risk to have a more comprehensive scheme for injury suffered on duty without the necessity of having to go to the CICB? It should be put beyond any doubt that the policeman on duty answering a call and going to the scene of a crime or suspected crime should be covered, subject to reduction of compensation for inexcusable foolhardiness on his part in bringing any injury upon himself. Whether he is injured in a building investigating the ringing of a burglar alarm or whether he fell off his motor cycle when approaching some youths, properly intending to question them though not to arrest them so far as he knew, he should be covered. Information about the working of the scheme is scattered in the annual reports, Criminal Law Review, Current Law and the articles in the legal periodicals. The case reports are usually rather brief. Some kind of full length printed study is now required describing and analysing the accumulated experience of the Board. A research worker should be installed in the Board's offices for a year or so. Prudent people still have their own personal accident policy. Personal accident policy insurance money is not deductible from compensation.

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## THE NEW ZEALAND CRIMINAL INJURIES COMPENSATION SCHEME

(By Kent M. Weeks\*)

The nexus between the criminal courts and the victim has been noted. Considerations of fairness to the accused make these institutions inappropriate vehicles for a compensation program. Likewise, use of the civil trial as a compensating device was considered and rejected because of the difficulty of identifying and executing judgment against the criminal. One possibility, adopted by Massachusetts, is an *ex parte* proceeding before a civil court. That solution utilizes the fact finding expertise of the court and assures the victim that familiar procedural safeguards will be respected. Most compensation jurisdictions, however, have established independent administrative agencies. The desire to rationalize governmental organization charts and to reduce the percentage of funds expended for administration has been manifested in a trend toward the merger of new social programs into already existing entities. The unhappy experience of California's victims under the Welfare Department should preclude further inquiry into the viability of a comprehensive program administered by a single agency. New Zealand, which was the first jurisdiction to enact violence victim compensation legislation, has recently studied the feasibility of such a program. The symposium concludes with an examination of the New Zealand program and the recommendations of the Royal Commission to Inquire Into and Report Upon Workers' Compensation.

## INTRODUCTION

Despite the contention that New Zealanders are a socially conservative people,<sup>1</sup> the New Zealand government has been extensively involved in maintaining and enhancing the economic and social well being of its citizenry.<sup>2</sup> The tacit assumption underlying this social legislation has been that economic security is essential to individual liberty. Consequently, in recent times compensatory programs rarely have generated heated opposition and debate is confined to the details necessary to insure the program's success.

In September of 1963 the incumbent National Party proposed legislation for the compensation of victims of violent crime. Ironically, the legislation was motivated more by considerations of political convenience than by affirmative public sentiment. The National Party, heavily committed to penal reform, had recently abolished capital punishment and was sponsoring legislation providing for pre-release homes.<sup>3</sup> The government offered the legislation as a palliative to blunt opposition to these penal reforms, as well as to respond to the public's general concern about crime.<sup>4</sup> In addition, the legislation was consistent with the multitude of benefits offered citizens under the social security system.<sup>5</sup> The government was explicit in characterizing the program as a rational extension of existing programs rather than as a legal obligation of the state. When the Minister of Justice argued that "the State should accept some responsibility for those who are injured by crim-

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<sup>1</sup>R. Milne, *Political Parties in New Zealand* 9 (1966).

<sup>2</sup>New Zealand has experienced two waves of social and economic innovation. During a sixteen year period beginning in 1890, compulsory arbitration and old age pensions were initiated. In the 1930's a comprehensive social security scheme and a national health service were established and provisions for a minimum wage, a forty-hour work week, and compulsory unionization were enacted into law. The release of the Woodhouse Report (see text accompanying notes 44-57 *infra*) could herald a third wave of liberal reform.

<sup>3</sup>Prisoners under the pre-release home program are permitted to maintain ordinary jobs and leave the home during working hours.

<sup>4</sup>This reason was suggested to the author by Dr. J. L. Robson, Secretary of Justice, in an interview in Wellington, New Zealand on July 24, 1967.

<sup>5</sup>Other factors may have made the compensation of persons injured by violent crimes more politically appealing than the compensation of persons injured by other means. The obligation of the state to a victim of crime is arguably *stronger* than to persons injured in some other manner because of the state's responsibility for the prevention of crime. (But see text accompanying note 6 *infra*.) The state's incarceration of the criminal makes it more difficult for the victim to obtain compensation. The legislation provides a needed social benefit because individuals are more likely to insure their property than their person against injury. It is noteworthy, however, that the Osgoode Hall Law School study of victims of crime in Toronto found that 66.7 percent of the victims who answered a questionnaire were not compensated for their property losses. A. Linden, *The Report of the Osgoode Hall Study on Compensation for Victims of Crime* 31 (1968).

inal acts," he denied that the legislation was based "on the premise that the State is financially responsible for failing to prevent crimes." <sup>6</sup> Accordingly, the scheme was to be discretionary and the receipt of compensation was conceptualized as a privilege, not a right.

Following a languid debate in Parliament, the act was passed just six weeks after it was introduced, and became effective January 1, 1964.<sup>7</sup> The scheme's simplicity may have contributed to the lack of controversy. The Tribunal established by the legislation has operated virtually unnoticed by the legislators; there has been no review of the legislation or its implementation.<sup>8</sup>

The model for the legislation was the New Zealand Workers' Compensation Act of 1956,<sup>9</sup> and marked similarities exist between the two schemes. Both are based on the premise that fault is immaterial to the award of benefits. Employers are held responsible not because they are at fault but because it is socially desirable that compensation be provided to injured workers; similarly, state payment to victims of crime is justified not because the state is at fault but because compensation is socially desirable. Once the workmen's compensation model was accepted, the benefits offered victims of crime were tied to the provisions of the workmen's compensation scheme. Specifically, the weekly payments to victims and their dependents could not exceed the maximum payable under workmen's compensation,<sup>10</sup> and such compensation could be provided for a maximum of six years. Although the Government agreed in Parliament that the benefits paid under workmen's compensation were inadequate,<sup>11</sup> it argued that it would be inequitable to treat victims of crime more generously than injured workers.

#### ADMINISTRATION

The program is administered by the Crimes Compensation Tribunal, which is composed of three members appointed by the Government. One of the three must be an attorney who has practiced for at least seven years, but there is no requirement that any of the members have had experience as a judicial officer. It was felt that "it would be wrong to place too much emphasis on legality in this field."<sup>12</sup> Currently, however, the Chairman of the Tribunal also serves as judge on the Compensation Court (which administers the workmen's compensation scheme) and his presence has no doubt resulted in the same concern for form and precedent that is evidenced in the decisions of that body.<sup>13</sup>

Although each claimant is technically entitled to a hearing before the Tribunal, no matter how small his claim, the Tribunal has adopted an extra legal procedure of making determinations without a full hearing and asking the victim if he will accept the Tribunal's award. If the victim rejects the offer a full hearing is held. This procedure is desirable for facilitating the settling of small claims and expediting payment to the victim.

In addition to the three members of the Tribunal, legal counsel is present during all hearings. Since the Tribunal does not require full-time legal assistance (because of the small number of claims reviewed) attorneys from the Solicitor's Office represent the Tribunal. While the role of the Tribunal counsel seems to be

<sup>6</sup> 377 Parl. Deb. No. 2633 (1963) (N.Z.).

<sup>7</sup> Criminal Injuries Compensation Act, 1963, No. 134 of 1963 (N.Z.). [Hereinafter cited as Criminal Injuries Act].

<sup>8</sup> When introducing the scheme the Government indicated that it was proceeding cautiously and that at a later time the scheme would be reviewed. To this date there has been no such reevaluation.

<sup>9</sup> In addition, the New Zealand legislation was influenced by the report of, British Section of the International Commission of Jurists, Justice, Compensation for Victims of Crimes of Violence (1962).

<sup>10</sup> The Worker's Compensation Act, 1956, No. 134 of 1956 (N.Z.), was intended to provide 80 percent of an employee's normal weekly earnings during periods of temporary or permanent incapacity. This result has not been obtained because the amount of compensation awards under this Act has not kept pace with the rising income of the New Zealand worker.

<sup>11</sup> 337 Parl. Deb. No. 1866 (1963) (N.Z.).

<sup>12</sup> 337 Parl. Deb. No. 2631 (1963) (N.Z.). The New Zealand Law Society recommended that the administration of the Act should be given to the Compensation Court or to at least one person of judicial status. See 337 Parl. Deb. No. 2631 (1963) (N.Z.).

<sup>13</sup> Cameron argues that the appointment of a judge of the Compensation Court as chairman of the Crimes Tribunal was an appropriate choice. See Cameron, "The New Zealand Criminal Compensation Act," 1963, 16 U. Toronto L.J. 177, 178 n. 6 (1965). One of New Zealand's leading advocates for an Administrative Court is critical of the tendency in New Zealand towards the proliferation of special administrative bodies as opposed to Administrative Courts. See G. Orr, Report on Administrative Justice in New Zealand, 61-63 (1964).

that of devil's advocate,<sup>14</sup> it is not clear whether he is there to protect the State treasury or to see that the social purpose of the statute is fulfilled by protecting the rights of the claimants.<sup>15</sup> Since decisions of the Tribunal are not appealable, except on jurisdictional grounds, his functions should probably encompass both duties by calling errors of either party to the attention of the Tribunal.

### Coverage

The thrust of the legislation is compensation of victims and their dependents for actual pecuniary loss, particularly loss of earnings.<sup>16</sup> Five categories of compensation are provided by the statute:

(a) Expenses actually and reasonably incurred as a result of the victim's injury or death;

(b) Pecuniary loss to the victim as a result of total or partial incapacity for work;

(c) Pecuniary loss to dependents as a result of the victim's death;

(d) Other pecuniary loss resulting from the victim's injury, and any expenses which, in the opinion of the Tribunal, it is reasonable to incur;

(e) Pain and suffering of the victim.<sup>17</sup>

Under provisions (b) and (c), an injured person is eligible for compensation for loss of earnings by weekly payments<sup>18</sup> up to a maximum of approximately twenty five dollars. Additional benefits are provided for a dependent spouse and children. Provision (d) allows compensation for out-of-pocket costs, other than loss of earnings, up to a maximum of \$2,250. Benefits for pain and suffering up to a maximum of \$1,125 are provided, primarily for victims of sexual offenses who are unlikely to sustain any loss of earnings. Out-of-pocket costs and compensation for pain and suffering are not covered under the Workers' Compensation Act.

Under the Criminal Injuries Compensation Act a claimant must have received his injury as the result of one of the twenty-seven crimes specifically enumerated in the legislation.<sup>19</sup> Compensation is limited to persons directly injured and their dependents—bystanders are not covered.<sup>20</sup>

With the exception of payments for pain and suffering (which are designed for victims of sexual offenses) the New Zealand scheme provides compensation for victims even if the offender is a member of the victim's family. In the United Kingdom,<sup>21</sup> Saskatchewan,<sup>22</sup> and California,<sup>23</sup> victims of a crime committed by a member of the family are not compensated because of the fear of fraudulent claims, and the notion that the wrongdoer ought not to profit from his wrongful conduct. Rather than exclude such victims who in many cases may be blameless,

<sup>14</sup> Interview with Mr. D. P. Neazor, attorney in the Solicitor's Office, Wellington, New Zealand, July 20, 1967.

<sup>15</sup> This was indicated to the author by two of the solicitors.

<sup>16</sup> In contrast, the Worker's Compensation scheme provides compensation for listed injuries—regardless of whether or not ability to work is affected.

<sup>17</sup> Criminal Injuries Act § 18(1).

<sup>18</sup> Awards for wage loss are made through weekly payments. This system of periodic payments affords the Tribunal the opportunity to take into consideration facts which come to its attention later and which might suggest the readjustment of the initial award. For example, it is possible that the Tribunal might revise an award because of inflation, although thus far it does not appear to be inclined to increase payments for this cause. In one case the Tribunal indicated that the weekly payments to a widow might be reduced if she remarried during the period of compensation. In any case, this flexibility enables the Tribunal to make an award immediately, if the need is great, and later adjust the amount of the award if new evidence or a different financial situation develops. Both the British scheme and the proposed United States federal program provide only lump sum payments under the rationale that this will encourage the victim to return to gainful employment sooner. See Yarborough, *The Battle For a Federal Violent Crimes Compensation Act: The Genesis of S. 9*, 43 S. Cal. L. Rev. 93, 104 & n. 68 (1970).

<sup>19</sup> These crimes relate to homicide, assaults, and sexual crimes of violence. Although robbery and arson are not included, any injury received during commission of these crimes would be the product of an assault and the victim would therefore be eligible for compensation. Property losses were not originally covered in the statute; however, § 22 was amended in 1966, as part of a support to the penal reform policy, by providing for compensation for loss of or damage to property caused by an escape.

<sup>20</sup> The exclusion of bystanders from compensation is a function of the desire for administrative simplicity. According to one commentator, the exclusion of bystanders was an effort to avoid "the problems of causation and remoteness that have complicated the law of negligence to the profit of lawyers and the dismay of students." \* \* \* Cameron, *Compensation for Victims of Crime: The New Zealand Experiment*, 12 J. Publ. L. 367, 371-72 (1963).

<sup>21</sup> Home Office, *Compensation for Victims of Crimes of Violence*, Cmnd. No. 2323 § 7 (1964).

<sup>22</sup> Criminal Injuries Compensation Act, 1967, No. 84 of 1967 § 10(1)(c) (Sask.).

<sup>23</sup> Cal. Gov't. Code § 13901 (West Supp. 1968).

the New Zealand scheme allows the Tribunal to make determinations regarding the contributory conduct of the victim.

Beyond these basic qualifications, the scope of the Act is uncertain. The stated purpose of the legislation is to compensate for *pecuniary* loss. The tendency of the Tribunal to define "pecuniary" in terms of earnings and wages has raised several problems. For example, does a child suffer loss of income upon the death or injury of a mother who is unemployed at the time of her death or injury? Under the statute a dependent is defined as a relative of the victim dependent upon the victim's income at the time of injury or death.<sup>24</sup> In a case in which the claimant's mother was killed by the claimant's father,<sup>25</sup> the attorney for the claimant argued that the daughter was dependent on her mother's income for two reasons.<sup>26</sup> (1) the mother had income through her husband, that is, the husband gave his wife money and this should be considered income for the purpose of the statute, and (2) the mother might have worked in the event of the father's death or incarceration, in which case she would have been an income producer. The Tribunal, in rejecting both arguments, stated:

"It may be that physically she handles the money, but in no ordinary use of language can it be said that she or her child or children are dependent on this money as her income."<sup>27</sup>

The Tribunal, however, has not been consistent in its decisions. In another case where a child was injured by an eleven year old boy, the Tribunal relied on the provision which requires the Tribunal to consider future incapacity for work.<sup>28</sup> They concluded that, even though the damage to one eye might not preclude full-time employment, the damage did reduce his options and, accordingly, a small award for future loss of earnings was granted in addition to a small amount for pain and suffering.<sup>29</sup>

Presumably one of the justifications for eliminating housewives and others from consideration in the wage loss category is that their inclusion would present difficult problems of valuation.<sup>30</sup> *Quere* whether it would be more difficult to value the services of the housewife in the first example than the potential earning loss to the eleven year old boy with an eye injury in the second. Indeed, in the housewife situation, the board could refer to the cost of a full-time housekeeper and cook. There is no comparable analogy to the injured boy.

### *The Standard of Recovery*

The Tribunal determines according to the balance of probabilities whether the victim has been injured as the result of a crime.<sup>31</sup> Compensation may be awarded to the victim regardless of whether the offender has been apprehended or convicted for the alleged offense and even though the offender is not held criminally responsible for the injury.<sup>32</sup> Once a conviction has been entered, however, it is

<sup>24</sup> Criminal Injuries Act § 2(1).

<sup>25</sup> The father was subsequently found insane by a jury and committed to a mental hospital.

<sup>26</sup> This case was not given a number at the time it was decided; the hearing was held on May 25, 1966.

<sup>27</sup> While the claimant in this case was denied criminal injuries compensation, she was able to receive a modest social security award.

<sup>28</sup> Criminal Injuries Act § 19(6).

<sup>29</sup> Decision No. 9.

<sup>30</sup> This result is not unique to compensation programs. American jurisdictions have split over the issue of damages for a housewife's labor. Compare *Kone v. Reed*, 101 A.2d 800 (Del. Super. Ct. 1954) (not compensable) with *Rodgers v. Boynton*, 315 Mass. 279, 52 N.E.2d 576 (1943) (compensable).

<sup>31</sup> The decisions of the Tribunal are not appealable except on the ground that the Tribunal lacks jurisdiction. Criminal Injuries Act § 16.

<sup>32</sup> Criminal Injuries Act § 17(2). As in most other victim compensation plans, the New Zealand act provides a recovery procedure whereby the offender may be required to reimburse the government for funds paid out. In making a recovery order, the Tribunal is to give consideration to the financial position of the offender, his employment, his possibilities for future employment, and his liabilities to his family. Criminal Injuries Act § 23(3). The offender has the right to a hearing prior to a recovery order being instituted, and he may appeal such an order to the courts. However, as in other countries, few recovery orders have been sought by the government. Offenders are rarely able to compensate their victims. The Osgoode Hall Study indicates that only 1.8 percent of all victims recovered any compensation from their attackers prior to the institution of a government scheme. A. Linden, *supra*, note 5, at 21.

It has been suggested that knowledge of civil liability might deter criminals from making attacks. Sebafer, "Restitution to Victims of Crime—An Old Correctional Aim Modernized," 50 Minn. L. Rev. 243 (1965), but there is no conclusive evidence on this point. Indeed, on one occasion in New Zealand, when an attorney for the Tribunal discussed a recovery order with an offender, the offender indicated that had he known he would have to pay he would have killed the victim.

conclusive evidence that the offense has been committed, and the state is bound by the court's determination.<sup>33</sup>

In applying the balance of probabilities standard the Tribunal does not always give the victim the benefit of the doubt. In one case a victim who had been drinking was offered a ride by an unknown person after leaving a pub. There were several other persons in the car. He accepted the ride and asked that he be taken home. The next thing he remembered was that he was lying on a stretcher in a hospital with his money and certain other personal possessions gone. He claimed that he had been assaulted and sought compensation for his injuries. On the basis of the fragmentary evidence offered by a woman who testified that she had thought she had seen the claimant that afternoon walking down a road and on the basis of the kind and location of his injuries, the Tribunal developed an alternative theory that the claimant had been let out of the car and subsequently hit by an automobile, and accordingly refused to grant compensation unless the claimant could produce further evidence to support his position—an unlikely event. Moreover, the Tribunal concluded that because the claimant's behavior *might* have contributed to the attack the Tribunal might reduce or refuse an award for compensation: "this is one of the cases in which an applicant for compensation would not have got (sic) into the trouble which caused his injury if he had stayed sober."<sup>34</sup>

In determining the amount of compensation to which a claimant is entitled, the Tribunal is directed not only to consider the contributory behavior of the victim, but also to deduct any payments received under various state schemes including funds obtained from workmen's compensation, the compulsory third party insurance scheme and social security system, and any funds received from the offender in a civil suit.<sup>35</sup> The related provision which permits the Tribunal to consider "such other circumstances as it considers relevant"<sup>36</sup> might be construed to authorize the Tribunal to deduct the value of private insurance obtained by the victim. Denial of benefits from either private or compulsory state insurance is unjustified. Language in the original legislation permitting the Tribunal to deduct private insurance benefits was deleted before adoption. Compulsory third party insurance, while required by law, is also paid for by the individual.

While the state has a definite interest in preventing an individual from collecting from the treasury twice, it has no such interest when the programs are privately funded. On the other hand, where the individual has received compensation through an effective civil remedy from the criminal, the victim should not get a windfall by being allowed to recover against the state fund as well.

#### IMPACT OF THE LEGISLATION

Just as the Criminal Injuries Compensation draws its inspiration from Worker's Compensation, it also suffers from its limitations. Both programs fail to provide truly adequate compensation.<sup>37</sup> Unfortunately, the political climate seems to indicate that any increase in compensation to violence victims is tied to a concomitant increase in workmen's benefits.

The success of the program has also been impeded by lack of use. The funds allocated for the scheme for the first year exceeded the total amount of awards made during the first four and a half years of the program's existence.<sup>38</sup> Although there has been increased utilization of the scheme during the last two years, the number of claims filed and the absolute amount of the awards made remain small.<sup>39</sup> There are several reasons why so few claims have been filed and awarded.

<sup>33</sup> Criminal Injuries Act § 13(2).

<sup>34</sup> This case was not given a number at the time it was decided; the hearing was held on June 8, 1967. The Tribunal's opinion suggests that drunkenness might be considered as contributory conduct which will justify reduction or denial of compensation.

<sup>35</sup> Criminal Injuries Act § 19(7) (a) (h) (c) (d).

<sup>36</sup> *Id.* § 19(7) (c).

<sup>37</sup> If the New Zealand scheme were placed on a continuum with other victim compensation schemes it would fall somewhere between the British scheme where awards tend to be generous, and the California scheme, where meager awards are common.

<sup>38</sup> For example, Cameron, *supra* note 20, at 375, indicates that the projected yearly cost of the scheme would not exceed \$67,500. This estimate is considerably higher than the total amount of the awards granted during the first four and a half years of the scheme's existence.

<sup>39</sup> The total number of awards made in each year is as follows: 1964, 7 awards for a total of \$2,354.92; 1965, 9 awards for a total of \$3,613.74; 1966, 8 awards for a total of \$3,175.30; 1967, 20 awards for a total of \$6,824.07; and the first six months of 1968, 13 awards for a total of \$8,259.17. Thus, during a four and a half year period only 57 awards have been made for a total amount of \$24,227.20. However, 58 percent of the total awards have been made during the last year and a half and represent 62 percent of the total funds expended for compensation.

First, the scheme is not well publicized and few New Zealanders know of or understand the victim compensation provisions.<sup>40</sup> Although the Tribunal is required by the statute to hold public hearings and to record its decisions, the hearings are not publicized and persons undertaking research are not permitted to review the written opinions of the Tribunal.<sup>41</sup> This rather clandestine operation seems to contradict the legislative intent in this respect.<sup>42</sup> Second, there are existing alternate benefits to which a victim is entitled. The victim compensation scheme offers awards that range from 5 percent to 50 percent higher than social security benefits, depending upon the circumstances of the case. If the difference is as low as 5 percent, a person might think that it is not worth the effort to apply for compensation from the Tribunal. The state also provides medical care; injuries which require medical treatment but do not interrupt employment are dealt with under this system. An employee criminally injured in a job-related activity is covered under workmen's compensation.<sup>43</sup>

#### IMPLICATIONS—THE WOODHOUSE REPORT

As noted before, political pressure to avoid favoring one class of state-compensated injured parties over another<sup>44</sup> has tied the fortunes of the Injuries Compensation Act to those of the Workers' Compensation provisions. The tendency to maintain a rough parity of all compensation payments has led New Zealand to reevaluate the interrelationship of all governmental programs designed to promote the economic security of its citizens.

In 1966 the Royal Commission to Inquire into and Report upon Workers' Compensation was established to study the inadequacy of benefits under Workers' Compensation and the manner in which that program interacts with other economic security programs<sup>45</sup> such as the victim program. The government had already explored the possibility of providing compensation for persons injured in automobile accidents regardless of fault.<sup>46</sup> The Commission was instructed to review problems related to employment accidents and was to delve into "any associated matters that the Commission may deem to be relevant to the objects of the inquiry." From the Commission came the 254-page *Woodhouse Report*<sup>47</sup> which went far beyond a mere tinkering with the workmen's compensation scheme.

The Commission expressed serious doubts regarding the efficacy of civil litigation in securing equitable settlements of cases involving personal injury. In a chapter entitled somewhat graphically, "Disadvantages of the Common Law Process," the Commission characterized litigation and the common law fault system as a lottery. Since there are often two "innocent" parties, the Commission questioned the propriety of forcing the assignment of responsibility for the injury

<sup>40</sup> For example, New Zealand has not printed a pamphlet similar to that distributed to all victims in the United Kingdom.

<sup>41</sup> The opinions referred to in this article were not obtained from the Crimes Tribunal.

<sup>42</sup> One of the additions to the original legislation was an amendment, now part of the Criminal Injuries Act, § 12(11), requiring the Tribunal to consider the desirability of informing the public of the nature of the cases heard and the principles applied by the Tribunal. This mandate for publicity does not appear to have been followed, although several of the decisions of the Tribunal have been published in the *New Zealand Law Journal*.

<sup>43</sup> New Zealand officials suggests a third reason for the apparent lack of public interest, namely, that only a few crimes produce serious injury and that most victims receive minor injuries and suffer only a short-term work loss. The experience in the United Kingdom confirms the impression that most victims receive only minor injuries, requiring minimal compensation.

<sup>44</sup> See text accompanying notes 10-11 *supra*; note 45 *infra*.

<sup>45</sup> In New Zealand, injury compensation may be secured through one of three channels: (1) civil litigation in the courts based on fault; (2) Workers' Compensation Act and the Criminal Injuries Compensation Act; and (3) Social Security, which affords a minimal benefit based upon a means test.

<sup>46</sup> In July, 1963, the Government-appointed Committee on Absolute Liability refused to make any recommendations because it concluded that it was improper to favor victims of automobile accidents over the victims of other types of misadventure. However, the Committee did suggest that a scheme for total injury compensation regardless of fault or cause of injury be explored. REPORT OF THE COMMITTEE ON ABSOLUTE LIABILITY (1963). Note that the Saskatchewan Criminal Injuries Compensation Act covers injuries incurred as a result of the negligent operation of motor vehicles. Criminal Injuries Compensation Act, 1962, No. 84 of 1967 (Sask.).

<sup>47</sup> The Commission consisted of Arthur Owen Woodhouse, a judge of the Supreme Court of New Zealand, Herbert Bockett, a retired former permanent head of the Labour Department, and Geoffrey Parsons, a public accountant. During public hearings, testimony was heard from representatives of labor unions, the Law Society, the medical societies, the Government, employers, and insurance companies. In addition to several European countries, the Commissioners also visited the United States, Australia and Canada.

losses on the injured party. It pointed out the damages are not always a function of the conduct of the defendant, but are based primarily on the injury to the plaintiff. Indeed, under the current system, "reprehensible conduct can be followed by feather blows while a moment's inadvertence could call down the heavens."<sup>48</sup> In particular the Commission raised questions as to whether the adversary system is capable of producing the "truth" about an event which may have occurred months or years prior to the litigation, and whether juries consistently apply "community standards". The Commission also challenged the efficacy of lump sum awards, indicating that if such awards are squandered the recipient may become a ward of the state, thereby undermining the purposes of compensation.<sup>49</sup> Finally, the anxiety often caused by the delay, suspense and uncertainty associated with litigation was noted. The Commission concluded that these criticisms called for an abolition of the fault system and its concomitant dependence on litigation.

For many of the same reasons the Commission criticized the Workmen's Compensation proceeding for its dependency on legal definitions<sup>50</sup> and its adversary character. The Commission argued that as long as the employer or insurance company has an interest in the outcome of claim settlement the adversary atmosphere will continue:

"Private organizations cannot reasonably be expected to disburse their stock-in-trade (in this case their funds) on the basis that the injured man should be treated generously or given the benefit of most reasonable doubts."<sup>51</sup>

Dissatisfaction was expressed with the inequities inherent in classifications which provide opportunities for forum shopping and the possibility of awards which vary greatly for the same type of injury. For example, if negligence can be proven, a workman is likely to win a larger award through civil litigation than workmen's compensation. Yet, if the workman or any person is injured in an activity not related to a job and there is no fault, his only option is generally a meager social security stipend. The Commission also noted that Worker's Compensation and recovery through litigation both involve extremely high administrative costs.<sup>52</sup> Overlapping jurisdictions contribute not only to this administrative cost, but, in some instances, to windfalls and unequal recoveries for some claimants.

The Commission proposed a unified and comprehensive system to provide benefits to all injured persons regardless of the cause of injury and irrespective of fault. It proposed that there be no preferential treatment for any segment of the injured population and that the common law tort action relating to personal injuries be abolished. It was further suggested that both the Criminal Injuries Compensation Act and the Worker's Compensation Act be repealed. In essence, the proposal was to establish a comprehensive state run social insurance scheme. The inequities of the present system would be eliminated by extending coverage to all injured persons in all activities, and by determining the amount of the award according to the nature of the injury.<sup>53</sup>

The scheme is structured upon five guiding principles: (1) community responsibility—society should accept responsibility for compensating all persons injured regardless of where or how the injury occurs; (2) comprehensive entitlement—every person should receive compensation based on a uniform method

<sup>48</sup> ROYAL COMPENSATION FOR PERSONAL INJURY IN NEW ZEALAND, REPORT OF THE COMMISSION OF INQUIRY ¶ 85 (1967) [hereinafter cited as the WOODHOUSE REPORT].

<sup>49</sup> See note 21 *supra*.

<sup>50</sup> For example, the definition of "arising in the course of employment" was cited by the Commission as a technicality which often leads to costly and time consuming litigation. Similar criticisms had been made about the workmen's compensation system in the United States. Compensation Mess. Fortune 78 (April 1954).

<sup>51</sup> In the new state-run compulsory scheme proposed by the Commission, neither employer nor private insurance company would be involved. The proposal, by eliminating fault as an issue and removing private interests, will replace litigation as a means to recovery and, the Commission argues, decrease the adversary nature of compensation proceedings.

<sup>52</sup> It was estimated that the administrative expenses and legal fees amount to 40 percent of the total funds generated by the litigation system. (WOODHOUSE REPORT at ¶ 111.) It was also estimated that 30 percent of the funds that go into the Worker's Compensation system represents administrative expenses and profit accrued by the insurance companies. (WOODHOUSE REPORT at ¶ 214.)

<sup>53</sup> Other inequities may be created by the proposal. The Commission recognized the absence of a logical reason for differentiating between persons injured in accidents and persons who suffer loss of employment as a result of illness and disease. (WOODHOUSE REPORT at ¶ 17.) The Commission noted the difficulty, however, in obtaining adequate cost estimates of illness due to the lack of reliable statistical information about disease and illness. On the other hand, the possibility of illness compensation was not precluded by the proposal. WOODHOUSE REPORT at ¶ 17.

of assessment, regardless of the causes of the injury; (3) complete rehabilitation—in addition to compensating for injury, the scheme should encourage rehabilitation; (4) real compensation—the injured person should receive compensation approximating his real earnings and the means test should be eliminated;<sup>54</sup> (5) administrative efficiency—delays and high costs should be eliminated.<sup>55</sup>

It is difficult to predict what the effect of the *Woodhouse Report* will be. Until recently there has been little discussion of it in New Zealand. During the Commission's hearings in 1966-1967 representatives of several groups including organized labor and the public service association argued against the elimination of the common law tort action. The Law Society, composed of 2,500 attorneys, admitted that its membership was divided on the question, but suggested that the Society would be against abolishing the possibility of a tort action in workmen's compensation cases if it was maintained in other areas. As one would anticipate, the insurance industry, which would be preempted by the government under the proposed scheme, has attacked the commission's recommendations and the facts on which they were based.<sup>56</sup> The Social Security Depart-

<sup>54</sup> Compensation is to be based upon loss of bodily function rather than on actual loss of earnings. A person totally disabled by an injury would be eligible to receive up to 80 percent of his total loss of earnings-related income. A maximum amount of \$135.00 per week is stipulated: According to the Commission this maximum would include almost everyone in New Zealand. (The maximum payment would be about five times larger than the maximum currently provided under the workmen's compensation scheme.)

No doubt the question will be raised as to why society should compensate a victim in excess of the average wage. Anticipating this question, the Commission suggests:

"Our answer is that if such a person should become the chance victim of socially acceptable activity it would be wrong to leave him to make drastic adjustments in his standard of living merely to pay lip service to egalitarian doctrines unneeded by any economic consideration. The community should accept responsibility for all victims of accident; and if that responsibility is to be fairly discharged every man should be provided with a fair measure of his actual loss." WOODHOUSE REPORT at ¶ 17.

The proposal would reverse the priorities of workmen's compensation and would give the most precious awards to those suffering long-term incapacities. Persons suffering incapacities of less than two weeks would receive lower benefits. The Commission suggests:

"The greatest happiness of the greatest number is not, in our view, a suitable foundation for a just system of injury compensation. The real purpose of such a scheme is "not to smooth out the routine ups and downs" but to provide for the material strains and needs of incapacity. We firmly believe that if preference should be needed in this distribution of the available funds, then it should go in favor of the longer term incapacities and the more severe cases of permanent partial disability." *Id.* at ¶ 237.

Persons with minor partial disabilities would receive lump sum payments but those with major permanent disabilities would receive weekly payments. Benefits would be reviewed every two years to take into consideration changes in the cost of living. The benefit could be increased if the condition of the beneficiary had deteriorated since the time the original award was made. However, the benefit would not be reduced if a man overcame his disability and obtained full-time employment.

"A man should not be left with the thought that energetic attempts to overcome physical handicap might result in a reduced pension, and we think it in the national interest that there should be no uncertainty in this respect." *Id.* at ¶ 293.

<sup>55</sup> The proposed scheme is to be administered by an independent authority attached, for purposes of administrative convenience, to the Social Security Department. The authority is to be under the direction of a three-man Board, the chairman of which must be an attorney who has practiced at least seven years. The initial decision on compensation, which is to be made by those of the Board, could be appealed to an appeal tribunal composed of three members not connected with the authority and could be appealed finally to the Board itself. An appeal on a point of law could be taken to the Supreme Court. In funding the scheme, employers would pay an amount up to one percent of wages, such amounts producing approximately the same revenue now being paid into the workmen's compensation scheme by the employers. Every employer would pay the same percentage regardless of the type of business or the hazardous nature of the business. Those employed would be taxed on the basis of their net income. The Government would continue to contribute approximately the amount it now provides for injury protection. Owners of automobiles would continue to make the same payments into the new fund as they now make pursuant to the compulsory third party insurance scheme. Drivers of automobiles would pay a small additional amount. Should further funds be required, they would be raised through general taxation, but not increasing the specific taxes and fees mentioned above. One of the most startling findings of the Commission is that the cost of the proposed scheme would be no greater than the current cost of existing fragmented non-comprehensive compensation schemes, because: (1) the scheme is too far on long-term disabilities rather than short-term ones; and (2) administrative costs could be reduced from 30 percent to 10 percent of the fund under the new procedures. The Commission points out that the 10 percent estimate is not unrealistic and has already been obtained by the Government-operated Workmen's Compensation Board in Ontario, Canada.

<sup>56</sup> Under the current Workmen's Compensation scheme private insurance companies provide the coverage. The industry has issued two reports criticizing the WOODHOUSE REPORT. See AN INITIAL COMMENTARY ON THE REPORT OF THE ROYAL COMMISSION OF INQUIRY, December, 1967 (issued July 1968); 2ND COMMENTARY ON THE REPORT OF THE ROYAL COMMISSION OF INQUIRY, December, 1967 (issued April, 1969).

ment supported the abolition of the common law remedy for injury compensation as did the Health Department. However, the two major political parties have not yet taken positions. The National Government has indicated its intention to open discussion on the report.<sup>57</sup> No doubt the Labour Party is postponing its response until it can determine the Government's position and until the labor unions clarify their position.

Regardless of whether or not the proposals made by the *Woodhouse Report* are actualized, the idea of a unified and comprehensive injury compensation plan is worthy of serious consideration. And it is against this development that current compensation plans must be evaluated.

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#### VICTIM COMPENSATION AND OFFENDER RESTITUTION—A SELECTED BIBLIOGRAPHY

(By Marvin Marcus, Robert J. Trudel, and Robert J. Wheaton, National Criminal Justice Reference Service)

1. Alaska. *Violent Crimes Compensation Board: Annual Report*. Juneau, Alaska, Department of Health and Social Services, Published Annually.

These annual reports contain data on the experiences for a particular year of the Violent Crimes Compensation Board. The report covers a period from 1 January to 31 December of the year in question and includes an administrative background, which discusses problems encountered during the year on administrative matters; statistical and analytical information about cases processed during the year; projections for the future; general policy, intent, and philosophy; and on the method of processing an application. One entire section is devoted to claims that have been finalized and those pending and includes case histories.

2. Amelunxen, Clemens. *Das Opfer Der Straftat—Beiträge zur Viktimologie (Victim of Crime—A Contribution to the Study of Victimology)*. Hamburg, Kriminalistik, 1970. 127 p. (NCJ 14835)

Typology of potential victims, discussion of conditions under which they become victims, and recommendations for a proposed reform of the West German criminal code are the main topics of this document. The position of the victim under the law in history and in fiction is traced, with a number of examples being provided. A typology of the most likely victims of crime is presented. Special attention is given to instances where the victim himself provokes or encourages the commission of the offense. The author recommends that, in the process of reforming the West German criminal code, consideration be given to victim behavior toward the offender, the victim involvement in the offense, victim defense of his property, confidence in the offender, and victim vulnerability. Furthermore, he recommends that the criminal code include a new offense—inducement to commit suicide—to protect the weak-willed. He also recommends definitions covering the ethics of the medical profession in the doctor-patient relationship concerning the patient's consent to an operation. A discussion of victim compensation is presented. Numerous citations from other writers on victimology are included, and a bibliography is provided. (In German)

3. Best, Judah and Paul I. Birzon. Conditions of Probation: An Analysis. In Carter, R. M. and L. Wilkins, Eds. *Probation and Paroles Selected Readings*. New York, John Wiley and Sons, 1970. p. 407-431. (NCJ 3436)

This article covers the general topic of probation, including the probation process and conditions of probation, with emphasis on costs, fines, bonds, support, banishment, imprisonment and restitution. The restitution discussion details the differences between it and reparation. The rationale articulated for the imposition of the restitution and reparation conditions is the reformatory effect the imposition of such a responsibility will have upon the probationer's character. The author states that making reparation a condition of probation might unduly complicate the probation process. Thus, payment and rehabilitation, desirable without relation to a specific context, may yet be in conflict with the due process and equal protection safeguards of the Constitution.

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<sup>57</sup> The Government has just issued a white paper, *PERSONAL INJURY: A COMMENTARY ON THE REPORT OF THE ROYAL COMMISSION OF INQUIRY INTO COMPENSATION FOR PERSONAL INJURY*, NEW ZEALAND (1969). The white paper, which takes no position, analyzes the *WOODHOUSE REPORT* proposals, discusses alternatives, and offers a more detailed cost analysis. With the issue clarified, the public and legislative debates are proceeding.

4. Brooks, James. Compensating the Victim of Crime—Should "Criminal Offense" Be Defined. *New York State Bar Journal*, v. 45, no. 8:561-565. December, 1973. (NCJ 12954)

There are three ways of defining crimes for compensation plans—general definition, list of crimes in plan, and list of crimes from the penal code. The author describes these methods, and reviews the experiences of various jurisdictions. The study concludes that in practice, any one of the three definitions would adequately cover the crimes under which compensation has been claimed. Death, stabbing, and assaults account for practically all claims filed. The esoteric case that is debated when plans are established is rarely encountered.

5. ———. Crime Compensation Programs—An Opinion Survey of Program Administrators. *Criminology*, v. 11, no. 2: 258-274. August, 1973. (NCJ 11564)

The preferences and opinions of the program administrators surveyed closely mirrored the provisions of their respective programs. Results seem to indicate an inclination on the part of each administrator to accept, for the most part, the particular arrangements and provisions of his program as being ideal and to equate them with "model" recommendations. Numerous tables of data are presented.

6. ———. How Well Are Criminal Injury Compensation Programs Performing? *Crime and Delinquency*, v. 21, no. 1: 50-56. January, 1975. (NCJ 16848)

This is an overview of victim compensation programs in several states and foreign countries. The first decade of experience with criminal injury compensation programs has been a period of evolution and innovations, during which nearly 30 jurisdictions have adopted such programs. This article analyzes those program features thought to provide the best clues to performance and adequacy and emphasizes the operational practices of those jurisdictions that have had substantial experience. Program performance appears, for the most part, to be realizing general objectives.

7. Canadian Corrections Association. *Compensation to Victims of Crime and Restitution by Offenders*. By W. T. McGrath. Ottawa, 1968. 20 p. (NCJ 28564)

This report states the case for restitution and compensation and defines both. It is suggested that compensation may overcome public apathy in relation to both the victim and the criminal and may help law enforcement by encouraging the laying of criminal charges. "Fear is sometimes expressed," the article states, "that the availability of compensation might remove the inhibition some potential criminals feel about stealing from the individual." "But," it goes on, "the small potential dangers are outweighed by large known benefits." The report reviews recent developments, and ten recommendations are made for a compensation program in Canada.

8. Chappell, Duncan and L. Paul Sutton. Evaluating the Effectiveness of Programs to Compensate the Victims of Crime. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*, v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 207-220. (NCJ 30596)

The rationale and need for objective testing of alternative victim compensation models and the dilemmas posed for those wishing to conduct evaluation research in the field of victim compensation are discussed in this paper. The paper attacks the problem from the standpoints of rationale and need, determining the goals of victim compensation programs, evaluation as a function of program objectives, and operationalizing variables. This article aims at exposing the scarcity of evaluation programs in this area and at stressing the need for such programs. It also explores a number of issues that will be involved in the development and implementation of any design to evaluate compensation programs.

9. Cornil, P. La Notion de Victimologie et sa Place Dans la Criminologie (Notion of Victimology and Its Place in Criminology). *Revue de Droit Penal et de Criminologie*, no. 6: 573-580. March, 1974. (NCJ 14455)

A renewed interest over the last 25 years in victim compensation and in the role of the victim in the cause and execution of crime is noted. Experimental victim compensation legislation has been adopted in England, New Zealand, and some parts of Canada and the United States. These programs are limited to victims of crimes of violence and each case must be examined by a court or commission to meet such standards as victim need and absence of provocation of the criminal by the victim. Briefly mentioned are several American studies of the behavior, personality, and social traits of victims. (In French)

10. Council of Europe. *Compensation for Victims of Crime*. Strasbourg, France, 1975. 80 p. (NCJ 28507)

This document was published by the Council of Europe to show the results of a meeting to exchange information on recent or proposed reforms to penal codes concerning compensation for victims of crime. A memorandum of the subject prepared by the Secretariat lists certain principles and questions that might arise. It is a summary of various ideas on compensation and contains rationale of new methods, other planned new methods, the operation of a compensation fund, and the relationship between new and traditional methods. The national reports include existing or proposed plans from Austria, Cyprus, Denmark, France, West Germany, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, Switzerland, Turkey, and the United Kingdom.

11. *Crime—Cause and Care—Conference Held at Liverpool University, September 28–30, 1973—Conference Report*. Liverpool, England, Liverpool and Bootle Constabulary, 1973. 91 p. Microfiche (NCJ 14860)

This report contains a discussion of legal, social, and personal implications of crime; recommendations for crime control, and six addresses presented at a conference at Liverpool University. Causes for crime, violence, local and community responses, and some countermeasures to crime were discussed. One syndicate proposal generated at the conference included suggestions to increase victim compensation.

12. Edelhertz, Herbert and Gilbert Geis. *Public Compensation to Victims of Crime*. New York, Praeger Publishers, 1974. 324 p. (NCJ 13352)

This document is an overview of victim compensation programs in the United States and abroad, as well as a discussion of the key procedural and ideological issues involved. Its basic aim is to provide the kind of information and analysis about current compensation schemes considered useful for blueprinting further efforts. Contemporary compensation programs are placed in their historical perspective as the volume reviews the subject from the Code of Hammurabi of ancient Babylon to the most recent developments.

13. ——— and others. Public Compensation of Victims of Crime—A Survey of the New York Experience, Part 1. *Criminal Law Bulletin*, v. 9, no. 1:5–47. January–February 1973. (NCJ 13081)

The background of crime-prevention compensation, outlining reasons for its creation, and discussing and evaluating its practical application in New York are the main topics covered in this document. Presented are a detailed legislative history, study committee findings, initial legislation, and final revisions. The study details the operations of the crime victims compensation board, formed as a result of the legislative effort. Certain evaluative data such as work load, expeditiousness, and limits of possible recoveries are included.

14. Edwards, J. L. J. Compensation to Victims of Crimes of Personal Violence. *Federal Probation*, v. 30, no. 2: 3–10. June, 1966. (NCJ 5949) This article also appears in Dinitz, Simon and Walter C. Reckless, Eds., *Critical Issues in the Study of Crime*. Boston, Little Brown, 1968, p. 207–214. (NCJ 2001)

This document examines the important issues underlying a state system of victim compensation by examining the statutory and administrative principles applied in the New Zealand and British systems and adopted by many other jurisdictions that have revealed their own legislative proposals. The author concludes that . . . "our penal system would not only provide a more effective deterrent to crime, but would also find greater moral value, if the concept of personal reparation to the victim were added to the concepts of deterrence by punishment and of reform by training."

15. Enker, Arnold N. A Comparative Review of Compensation for Victims of Crime. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*, v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 121–138. (NCJ 30589)

The author reviews a number of issues on victimization, including the victim's right to compensation, the rationale for state compensation, some present situations in various countries throughout the world, the types of crimes covered by compensation, the kinds of damages to be covered, reimbursement of the state by the offender, and some administrative and procedural matters. The author submits that the idea of state compensation for victims of crime has expanded from limited compensation in narrowly defined circumstances to the establishment of a broad sophisticated program assuring compensation to almost all victims.

16. Feeney, Thomas G. Pity the Criminal Less, More His Innocent Victim. *Canadian Society of Forensic Science Journal*, v. 6, no. 1: 11-18. March, 1973. (NCJ 9415)

The author makes suggestions for better ways of providing compensation to victims of crimes and of compelling the criminal to assume his responsibility for his crime. He recommends that victim restitution could aid in the dual purpose of criminal law-deterrence and rehabilitation. The author suggests that if criminals were forced to repay victims, crime would be less profitable and therefore be deterred, and that compensating victims could have a rehabilitative effect on the criminal.

17. Floyd, Glenn E. Victim Compensation: A Comparative Study. *Trial*, v. 8, no. 3: 14-16, 18-19 and 27. May-June, 1972. (NCJ 4238)

This document studies the approach taken by different state compensation plans in the U.S. and Great Britain with relation to selective problems that have arisen. Problem areas examined include determination of crimes and victims which should be compensated, the victim's conduct, minimum claims, criteria for awards, and degree of proof.

18. Fogel, David, Burt Galaway, and Joe Hudson. Restitution in Criminal Justice—A Minnesota Experiment. *Criminal Law Bulletin*, v. 8, no. 8: 681-691. October, 1972. (NCJ 7473)

The development and implementation of a proposed restitution plan which will be integrated into a community-based correctional facility is discussed in this document. The plan calls for participants to be randomly selected from adult male and female property offenders upon their admission to prison. These offenders would be offered the option of living in a community correctional center and making restitution as an alternative to penal incarceration. Basic to this restitution proposal is a contractual process of reconciliation entailing a negotiated settlement of grievances by the parties involved, mediated by a representative of the correctional system.

19. Fooner, Michael, Victim-Induced, Victim-Invited, and Victim-Precipitated Criminality: Some Problems in Evaluation of Proposals for Victim Compensation. In Drapkin, Israel and Emilio Viano, Eds. *Victimology*. Lexington, Massachusetts, Lexington Books, 1974. p. 231-233. (NCJ 30600)

The author warns that although compensation schemes are gaining wide-spread acceptance, legislators should be alert to possibilities that some compensation schemes may contribute to the growth of crime and add unwarranted complications to the administration of criminal justice. He states three issues that need to be dealt with if a coherent system of victim compensation is to be created: (1) Does the victim's behavior in connection with the crime still entitle him to compensation? (2) Is a victim's entitlement to compensation determined by apprehension and conviction of an offender? and (3) Will compensation contribute to a temptation/opportunity pattern in victim behavior?

20. Galaway, Burt and Joe Hudson. Restitution and Rehabilitation—Some Central Issues. *Crime and Delinquency*, v. 18, no. 4: 403-410. October, 1972. (NCJ 7697)

Restitution, in the form of payment by the offender to the victim of the crime, is considered in this article for its rehabilitative effect on the offender. The article considers whether restitution is more effective when it is voluntary or when it is required, whether there should be offender-victim interaction within a restitution scheme, and whether the offender should be responsible for making restitution in victim-precipitated crime.

21. Gels, Gilbert. Compensation for Victims of Violent Crimes. In U.S. National Commission on the Causes and Prevention of Violence. v. 13. *Crimes of Violence*. Washington, U.S. Government Printing Office, 1969, p. 1559-1597. (NCJ 4916)

This review of programs to provide financial redress for criminally inflicted injuries places the concept of victim compensation in historical perspective. The experiences of existing programs in New Zealand, Australia, Great Britain, and Canada are examined. The authors detail specific provisions of state legislation and evaluate their results. An extensive bibliography is provided on victim compensation topics.

22. ———. State Compensation to Victims of Violent Crime. *Task Force Report: Crime and Its Impact—An Assessment*. The President's Commission on Law Enforcement and Administration of Justice. Washington, U.S. Government Printing Office, 1967. p. 157-177. (NCJ 494)

This article reviews extensively the reasons and history of compensation to the victims of crime. Modern programs given particular attention include those in New Zealand, England, and various states of the United States. In general, these are just reviews of existing programs. The conclusions and summary, however, review some of the thinking on compensation and some of the problems that have occurred. A few aspects of the programs presented earlier in the article are commented on. The author concludes . . . "experience and research should come to offer a substantiated body of data that will allow more knowledgeable consideration of substantive and procedural matters."

23. Glatfelter, Ralph. For the Victims of Crime: A New Approach. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*, v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 139-146. (NCJ 30590)

The author states that it is time that the victim is considered as well as the offender. Since law enforcement cannot be 100 percent effective, there are going to be victims; these victims individually suffer more than society as a whole, losing sometimes their homes, health, and jobs. The alternatives available to the victim through the private sector—private insurance, restitution, and civil actions—the author labels non-alternatives and carefully states his reasons. The answer is state-backed compensation that will assure the people that their government is concerned with the ruinous consequences of crime, and as a by product it will encourage citizen participation with law enforcement.

24. Goldfarh, Ronald L. and Linda R. Singer. *After Conviction*. New York, Simon and Schuster, 1973. 741 p. (NCJ 10437)

Criticisms of the existing American correctional system, with proposed changes which would make it almost entirely a community-based system, are given in this document. "No one has questioned the idea of caging men, only how to perfect the cage." These words echo the authors' sentiments that current reforms of the correctional system in America are merely futile mutations of an already far too imperfect concept. Critical analyses are made of the many facets of the criminal justice process—sentencing, probation, prison architecture, institutions, convicts' rights, clemency, parole, and community programs. One suggestion for reform is implementation of a program for compensation for the victims of crime. At various places throughout the text, the authors refer to compensation in relation to reparation. A brief history and modern adaptations are cited.

25. Goldstein, Naomi. Reparation by the Offender to the Victim as a Method of Rehabilitation for Both. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*, v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 193-205. (NCJ 30595)

This paper shows that the network of processes by which the victim may obtain reparation for an injury sustained by a criminal act is still deficient in ensuring the total rehabilitation of all victims, despite the introduction of state compensation boards. The paper also attempts to show how reparation by the offender might remove some of these deficiencies. This method might also be beneficial to the offender in his rehabilitation process. Reparation by the offender need not be financial and should be carried out while the criminal remains in the community.

26. Hasson, Uzy and Leslie Sebba. Compensation to Victims of Crime: A Comparative Survey. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*, v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 103-120. (NCJ 30588)

A brief historical review of compensation is presented in this article, followed by some modern compensation schemes throughout the world, including New Zealand, Australia, Northern Ireland, England, and the United States. An appendix gives a survey of some sample cases of compensation in the state of Israel. The authors conclude that most of the schemes discussed have some basic weakness; for example, they take into effect only crimes of violence, minimum and maximum limits should be abolished, compensation for crimes within the family should be included, and emergency compensation should be available in cases of need.

27. Hawaii. *Criminal Injuries Compensation Commission: Annual Report*. Honolulu, Department of Social Services and Housing, Published Annually.

This annual report reviews the experiences of the Criminal Injuries Compensation Commission of the State of Hawaii. It presents a statistical analysis of awards, decisions by types of crimes, average award, awards reduced and lapsed, and collateral sources. A special report is included on certain legal proceedings

arising out of a claim filed by a widow for compensation for herself and children because of the death of her husband in an auto accident. Actions through the legislature also are covered. There are ten appendices that cover a table of awards, claims denied, applications withdrawn, commission budget, legislative proposal, procedure for compensation application, and copies of Supreme Court decisions on denied compensation cases.

28. Jacob, Bruce R. *Reparation or Restitution by the Criminal Offender to His Victim: Applicability of an Ancient Concept in the Modern Correctional Process.* *Journal of Criminal Law, Criminology and Police Science*, v. 61, no. 2: 152-167. June 1970. (NCJ 5303)

This article also appears in Drapkin, Israel and Emilio Viano, Eds. *Victimology*. Lexington, Massachusetts, Lexington Books, 1974. p. 215-220. (NCJ 12281)

The article reviews the historical background of the concept of reparation or restitution and then discusses both concepts in the modern criminal process. Other items discussed include reparation or restitution as a means of rehabilitating the offender and reparation as a philosophical aspect of penology. Existing victim compensation plans are examined with a discussion of arguments for including reparation in victim indemnification schemes. The article also considers possible ways to increase the earnings of convicted offenders so as to make practicable the incorporation of the concept of reparation in existing victim indemnification plans or in future legislation to provide financial assistance to victims of crime.

29. Johnson, Joan H. and others. *Recidivist Victim: A Descriptive Study.* In *Criminal Justice Monograph*, v. 4, no. 1; 1973. Huntsville, Texas, Sam Houston State University, Institute of Contemporary Corrections and Behavioral Sciences. 83 p. (NCJ 9447)

The social, medical, and criminal characteristics of normal gunshot and stab wound victims in Austin, Texas are distinguished in this publication from those of recidivist victims. The concept of the recidivist victim emerged from local hospital experience with patients who were admitted not once, but several times for treatment resulting from an act of violence. The results of the study, summarized in a series of profiles, show that recidivist victims tended to be older than other victims, to have a more prominent pattern of alcoholism and drug abuse, and to have a longer history of arrests and jail sentences. The text includes a review of literature on victimology and summaries of various domestic and foreign victim compensation plans.

30. Knudten, Richard D., Ed. *Criminological Controversies*. New York, Appleton-Century-Crofts, 1968, p. 307-309. (NCJ 2414)

This selection by the editor states the history and cases for and against compensation for victims of crime. One side of the case states "... if government has preempted the right of the individual to seek reparations or compensation ... it must also assume responsibility for the victim." The other side of the case says, "A Government plan to reimburse victims of crime may increase rather than decrease physical violence." The introduction to this section cites such authorities as Margery Fry, Marvin F. Wolfgang, Gerhard O. W. Mueller, James Starrs, and Stephen Schafer.

31. Kole, Janet. *Arbitration as an Alternative to the Criminal Warrant.* *Judicature*, v. 56, no. 7: 295-297. February, 1973. (NCJ 16140)

The author reveals how the American Indian compensated for crimes rather than punish the offender. For example, if a man murdered another, he was adopted into the family of the murdered man to compensate for the loss. The reason was that if vengeance were allowed and the killer punished by death, their society would simply lose one more worker. This same concept is at the root of an innovative program at work in the urban communities of Philadelphia. It is a 4-A Program of the American Arbitration Association's National Center for Dispute Settlement. The program's aim is to provide an effective alternative to the issuance of private criminal warrants, using mediation, fact-finding, and arbitration to improve relationships between groups in a conflict situation. Experience of the group has shown that the process of private arbitration can more effectively serve basic public policy and goals.

32. Kutner, Luis. *Crime Torts—Due Process for Crime Victims.* *Trial*, v. 8, no. 3: 28-30. May-June, 1972. (NCJ 4234)

This is a proposal for legal action by crime victims to sue government agencies for compensation for their losses. The action would be brought in either a tort or contract and would be based on the argument that the government has failed to adequately police society. Other types of compensation programs for victims are discussed.

33. McClean, J. D. and J. C. Wood. *Criminal Justice and the Treatment of Offenders*. London, Sweet and Maxwell, 1969. 344 p. (NCJ 10025)

Review of British treatment facilities and programs for adults, young offenders, women, and mentally disordered offenders is covered in this document. While the majority of offenders are fined, there exists a broad spectrum of other non-custodial measures as well as a variety of treatment institutions. The authors discuss the use of monetary penalties, probation, and the British custom of discharge. All types of offenders are subject to imprisonment, but young offenders may be sentenced to less harsh confinement before reaching the stage in their criminal careers where institutionalization is the only alternative. Women are subject to the same treatments used with their male counterparts. The mentally ill offender can be sent to a secure or open treatment facility. The document discusses the problem of victim compensation by reviewing present legal alternatives—civil action—and finally detailing the provision of state supplied compensation as practiced in England. The English scheme is reviewed, exploring its background and general stipulations.

34. MacNamara, Donal E. J. and John J. Sullivan. Making the Crime Victim Whole: Composition, Restitution, Compensation. In Thornberry, Terence P. and Edward Sagarin, Eds. *Images of Crime: Offenders and Victims*. New York. Praeger Publishers, 1974. p. 79-90. (NCJ 30006)

Three different approaches to the task of making the victim whole after suffering from a crime are discussed in this article. These areas are composition, restitution, and compensation. Comparisons are made and some brief case histories are offered. The authors feel that crime victim compensation must be retained and expanded into jurisdictions where such legislation has not been adopted. They feel that there is great potential in a mandatory crime victims insurance scheme.

35. Moran, Richard and Stephen Zeldman. Victims Without Crimes: Compensation to the Not Guilty. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*. v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 221-225. (NCJ 30597)

The case for compensation to the not guilty—those charged with a crime and found not guilty—is taken up by the authors of this article, who feel that the expenses incurred because of a criminal trial, when the person is acquitted, should be compensated for. After all, in the cases of indigents, the public defender is paid by the state whether or not the defendant is adjudged guilty. "Thus, although the defendant is presumed innocent until proven guilty," state the authors, "he is nevertheless punished unless compensated." A parallel is made with civil tort law where the unsuccessful party bears the cost of bringing suit. Compensation is also seen as a means for helping safeguard the criminal justice system from being used for political purposes—trials to discredit political enemies often are far more expensive for the defendant than a regular criminal proceeding. The authors conclude that the not guilty are victims without crimes and the judiciary should recognize its responsibility to compensate them.

36. Morris, Albert. What About the Victims of Crime? *Correctional Research*, no. 16: 1-15. November, 1966. (NCJ 9680)

This discussion shows the relationships between offense, the perpetrator, and victim. Some crimes, such as car or property theft, are encouraged or precipitated by careless owner behavior. The key to prevention is increased citizen awareness. Crimes against the person sometimes result from longstanding or intimate relationship between the victim and offender. Here, prevention is more complex and difficult. There may be some value in compensating the victims of both types of crime, either by a public fund or by offender restitution.

37. Mueller, Gerhard O. W. Compensation for Victims of Crime: Thought Before Action. In Knudten, Richard D., Ed. *Criminological Controversies*. New York, Appleton-Century-Crofts, 1968, p. 321-329. (NCJ 30602)

This article constitutes the dissenting side of the argument on compensation for the victims of crime. Mueller writes, "The very question—why not pay the victim of crime?—seems appealing to anyone with a social conscience. . . . We are, however, faced with considerable social risks if a topic as serious and significant as victim compensation becomes the playball of public emotions and possibly even a premature political campaign slogan." Mueller states that the rise of compensation schemes grew out of the new concept that in a crime there were two new parties, the offender and the victim; previously there were two different parties, the offender and the state. He attempts to point out the enormous difficulties, in terms of behavioral unknowns, which stand in the way of implementing any victim compensation schemes.

38. ———, and H. H. A. Cooper, *Civil Alternatives for Victims of Crimes*. New York, New York University, 1973. 27 p. (NCJ 11455)

Three topics are covered in this document: a review and critique of alternative means of crime victim compensation, a review of historical considerations, and a comparison with other penal approaches. Two basic alternatives are considered: civil action and compensation on the insurance principle. The advantages and disadvantages of each are noted. The authors recommend and discuss various practical compensation means. These include restitution as a probation or parole condition, levying of fines to compensate victims, civil attachment of prison or non-institutional earnings, combination of civil and criminal proceedings, private or public insurance on a pre-determined actuarial basis, and the administrative assessment of loss immediately following criminal trial. Whatever solution is tried, the authors recommend that it must be simple, effective, and available at little or no cost to the victim.

39. ———. Society and the Victim: Alternative Responses. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*, v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974, p. 85-101. (NCJ 30587)

This article presents some historical consideration and alternatives of victim compensation, including: a civil action for compensation and compensation on the insurance principle. Some recommendations made include restitution or reparation by the defendant as a probation or parole condition, a system of fines with diversion of part of these to compensate the victim, correctional labor or day-fine system, civil attachment of prison earnings, civil attachment of non-institutional earnings, combining civil and criminal proceedings, private insurance compensating the victim, public insurance, and trial of the criminal issues followed by an administrative adjustment of the loss. The author concludes that the different principles discussed can be combined, as circumstances dictate, to establish a satisfactory balance between the public and private interests and to ensure a prompt and effective remedy for the individual victim.

40. New York. *New York Victims Compensation Board*, Annual Report. Albany, New York, Executive Department, Crime Victims Compensation Board, Published Annually.

This document indicates minimum requirements to make a claim for state compensation, who may file a claim and typical claims, reasons for denial and appeals. The Compensation Board's workload is described, and an explanation is given of why the number of claims received and filed does not truly reflect the board's actual workload. Open claims are described, as well as the types of crimes that are not covered. The effect of civil actions and/or workman's compensation claims on the victim compensation claim is dealt with. The New York state law provides that if the victim of the crime contributed to his own victimization (not an uncommon occurrence), the compensation award may be reduced, or the claim may be rejected altogether. The New York State "Good Samaritan Law" is described and ties in with victim compensation payments. Other states have adopted similar laws. The discussion also covers the Federal Crime Victims Compensation Board legislation.

41. Polish, J. Rehabilitation of the Victims of Crime—An Overview. *UCLA Law Review*, v. 21, no. 1: 317-355. October, 1973. (NCJ 11976)

This overview analyzes the weaknesses of current victim compensatory remedies, and proposes a government-financed plan to aid victims of violent crime. Victims of crime are rarely compensated for losses. Private suit and restitution by the offender is limited by the offender's ability to pay while private insurance and tax deductions are either unavailable or inadequate for low income victims. State compensation, when available, is severely limited in scope and effect. The Federal Government proposed plan would cover job training and education, where appropriate: out-of-pocket expenses caused by injury; and recovery of earnings and compensation for pain and suffering, with an upper limit. Property losses would not be paid.

42. Quinnev, Richard. Who Is the Victim. *Criminology*, v. 10, no. 3: 314-323 November, 1972. (NCJ 8278)

The legal definition of crime victims, the victim as a reflection of society's character, patterns of victimization, and victim compensation are discussed in this article. Compensation is reviewed briefly and historically, and the pros and cons of compensation are considered.

43. Rich, Vernon. *Law and the Administration of Justice*. New York, John Wiley and Sons, 1975. 430 p. (NCJ 16237)

This is a textbook for students of justice administration, covering such topics as the behavioral, philosophical, and historical setting of American law, a broad view of common law, and theories of justice. The role of criminal law in social order is first investigated by identifying the fundamental concepts guiding change in law. A comparative study of criminal law and the origins and premises of Anglo-American criminal law are also presented. Elements of criminal liability, and offenses against person, property, habitation and occupancy are discussed. Defenses to charges of criminal liability are examined, and rights of the victim, the inmate, and the juvenile offender are considered as well. Restitution and compensation are reviewed both historically and in the light of modern practices and theories.

44. Rubin, Sol. *Law of Criminal Correction*. (2d ed.) St. Paul, West Publishing Company, 1973. 854 p. (NCJ 13723)

This is a treatise on the law of corrections, including sentencing, probation, parole, imprisonment, fines and restitution, and prisoner's rights. In this second edition, the author examines the revival of the eighth amendment prohibition of cruel and unusual punishment and its offspring, the Supreme Court declaration that the death penalty is unconstitutional. The treatise reviews the historical development of the law of criminal corrections, and outlines the sentencing, imprisonment, punishment, probation, and parole processes. The treatment and rights of misdemeanants, felons, and recidivists, as well as youthful and mentally ill defendants, are discussed. The discussion on restitution is not involved with any new legislation to compensate the victim, but with the provisions of existing statutes. There are already laws that provide for restitution to be fixed by the court but not to exceed the loss or damage as established by the prosecution. Restitution for rehabilitation is used to support a healthy attitude by the offender. Often restitution is imposed as a condition of probation, but it is not an authorized sentence unless made so by statute.

45. Schafer, Stephen. *Compensation and Restitution to Victims of Crime*. (2d ed. enl.) Montclair, New Jersey, Patterson Smith, 1970. 211 p. (NCJ 10822)

The author states that he has approached his study from two angles in an attempt to serve not only the ideas of victimology, but the tasks of penology as well. Restitution should help not only the victim, but at the same time it should refine the practical concept of punishment. Schafer's approach differs from past solutions in which restitution appeared almost entirely as a criminal retribution. Schafer studies the common past of restitution and punishment and the decline of restitution from a historical perspective. He then covers legislation in various countries of Europe, the Americas, the Middle and Far East, Australia, Africa, and Communist territories. Special emphasis is given to the United Kingdom. Punishment and restitution are examined from the standpoints of restitutive concept of punishment, punitive concept of punishment, and justification of compensation and correctional restitution. Developments in victim compensation to 1970 are examined for New Zealand, the United Kingdom, and the United States. The appendix contains a survey questionnaire that served as a basic starting point for further investigation and statutes on governmental compensation for the states of California, Hawaii, Maryland, Massachusetts, and New York, and a proposed Federal bill (S. 9).

46. ———. Compensation of Victims of Criminal Offenses. *Criminal Law Bulletin*, v. 10, no. 7: 605-636. September, 1974. (NCJ 16518)

Schafer begins his article by reviewing briefly the historical experience of both restitution and compensation. He then makes a comparative summary of victim compensation systems, among which are civil damages, civil restitution, civil restitution as part of penal procedures, civil compensation, and neutral compensation. He also discusses the restitutive concept of punishment and state participation. In this area he lists arguments for state compensation. The trend of compensation in America is also reviewed. Finally, the idea of correctional restitution is discussed, which is different from civil restitution since it must be carried out by the offender and should be equally burdensome and just for all criminals, whether they be poor or wealthy. He concludes by giving five ways of operating a restitution program.

47. ———. The Correctional Rejuvenation of Restitution to Victims of Crime. In Reckless, Walter C. and Charles L. Newman, Eds. *Interdisciplinary Problems in Criminology: Papers of the American Society of Criminology*. Columbus, Ohio; the Ohio State University, 1965. p. 159-168. (NCJ 30603)

In this article the author stresses that restitution to victims of crime should find its logical place in the universalistic operation of the criminal law. That res-

stitution to victims of crimes deserves a place in the settlement of the criminal case should be evident if only because without the crime which is being tried, the victim would not have suffered the damage for which he seeks restitution. He degrades levying of fines as a substitution, since it would degrade restitution to a position and role outside the scope of judgment of crime and correction of the criminal. He also reports research soundings to support his case and discusses the possibility that restitution should replace punishment.

48. ———. *The Proper Role of a Victim-Compensation System. Crime and Delinquency*, v. 21, no. 1: 45-49, January, 1975. (NCJ 16847)

Compensation to the victim of a criminal injury is not effective, states the author, if it consists merely of financial remedy supplied by the state rather than punitive restitution. This must come from the offender's resources (either money or service), and it must be part of the criminal court sentence by being tied to whatever reformatory plan is contemplated. Correctional restitution goes a significant step further than compensation by requiring the offender to maintain a relationship with the victim until the victim's pre-injury condition has been restored to the fullest extent possible. It compensates the victim, relieves the state of some burden of responsibility, and permits the offender to pay his debt to society and to his victim. Thus, it makes a contribution to the reformatory and corrective goals of criminal law and finds its proper place in the criminal justice system.

49. ———. *Restitution to Victims of Crime—An Old Correctional Aim Modernized. In Knudten, Richard D., Ed. Criminological Controversies*. New York, Appleton-Century-Crofts, 1968. p. 310-320. (NCJ 30601)

This article constitutes the affirmative side of the argument on compensation. Schafer states, "The case for restitution to victims of crime has rested on two obligations: an obligation of the criminal perpetrator who inflicted personal or property harm and also an obligation of society which failed to protect the victim. In either case, compassion for the victim has prompted proposals for compensation schemes. "However," he states, "there is really no adequate compensation now on the books anywhere in the world," which may have been the case in 1968. Schafer briefly reviews the past and recent history of compensation or restitution and discusses some modern alternatives.

50. ———. *Victim and His Criminal—A Study in Functional Responsibility*. New York, Random House, 1968. 178 p. (NCJ 10816)

This document is an introduction to the study of criminal-victim relationships, and contains a history of victimology and the practice of victim compensation. The criminal-victim relationship as a crime factor is covered. A survey is included of Switzerland, New Zealand, and the United Kingdom countries which provide some form of victim restitution. Mention is made of American efforts to provide compensation through state legislation and in academic publications. A final chapter deals with the problem of determining responsibility in the case of both criminal and victim.

51. Schoreit, Armin. *Entschädigung der Verbrechenopfer als öffentliche Aufgabe (Compensation to Victims of Crime as a Public Function)*. Berlin, J. Schweitzer Verlag, 1973. 112 p. (NCJ 27230)

This document is a discussion of the factors that should be considered in preparing victim compensation legislation for West Germany. Also included is an estimate of the probable costs. English legislation is described as a model, and English case histories and statistics are provided. A list also is provided of eleven other states that have similar legislation. In preparing legislation the author discusses the need to distinguish between three possible cases: the offender should be required to make compensation, the state should be required to make compensation, no compensation should be given because the victim contributed to or brought about the offense. (In German)

52. Schumacher, Mary. *Violent Offending—A Report on Recent Trends in Violent Offending and Some Characteristics of the Violent Offender*. Wellington, New Zealand, New Zealand Department of Justice, 1971. 62 p. (NCJ 14049)

This study confines itself to eight categories of violent offending—common assault, aggravated assault, robbery, aggravated robbery, wounding with intent, assault by a male on a female, rape, and attempted rape. Demographic characteristics of both offenders and victims are compared, with the resulting discovery that more than thirty percent of the victims knew their offenders. Under the New Zealand Criminal Injuries Compensation Act, provision is made for recovery from the offender of amounts awarded to the victim.

53. Serrill, Michael S. The Minnesota Restitution Center. *Corrections Magazine*, v. 1, No. 3: 13-20. January-February, 1975. (NCJ 25292)

The compensation plan as described in this article for the State of Minnesota was designed to aid not only the victim of the crime but also to rehabilitate the offender. In order to qualify for the program, the offender must not have committed a violent crime nor have a history of violence for at least five years. His earning ability also must be within the requirements of the restitution. For example, a dishwasher could not qualify for \$50,000 restitution. The program operates outside of prison at a special restitution center where the offender pays room and board. The offender works at full time employment and signs a contract to repay the victim in installments. The program encourages face to face meetings between offender and victim. Where this has taken place, the offender often has come away feeling guilty for having hurt "such a nice person." The victim has left with empathy for the offender and his problems, which is one of the objectives of the program. Administrative problems and experiences of the program are cited.

54. Sethna, Minocher J. Compensation of Victims of Offenses. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*. v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 167-174. (NCJ 30593)

While the need for sufficient and expeditious compensation for victims of crime is discussed, the main thrust of this article is toward insurance against injury or loss through victimization by crime. The types of insurance discussed include life insurance, fire insurance and protection of property, insurance against deceit, insurance against damage by mischief, insurance against injuries by accident, insurance providing personal safety, and insurance against loss or damage by such offenses as defamation, infringement of copyright, etc. Although applicable in only a few cases, insurance as a means of compensation would be a great boon to victims of offenses, claims the author.

55. Starrs, James E. A Modest Proposal to Insure Justice for Crime Victims. In Reckless, Walter C. and Charles L. Newman, Eds. *Interdisciplinary Problems of Criminology: Papers of the American Society of Criminology*. Columbus, Ohio; the Ohio State University, 1965. p. 181-189. (NCJ 30605)

Despite criticisms voiced by many authorities against insurance as a means of compensation for the victims of crime, the author plunges ahead with his idea for just such a system. He claims that because there is a deep chasm between state compensation and public acceptance of it, it is wrong to denounce private insurance in cavalier terms, since it does injustice to victims of crimes. The author suggests that the payment structure and insurable class be broadened to include legislation prohibiting exclusion of crime victims from benefits of existing coverage, the issuance of a major occupational policy to complement a basic accident policy, and the drafting of a pain-and-suffering rider to be attached to almost any existing policy.

56. U.S. Department of Housing and Urban Development. Federal Insurance Administration. *Federal Crime Insurance Program—Revised Quick Reference Rate Tables and Simplified Manual*. Washington, 1973. 36 p. (NCJ 11225)

This is a guidebook used by insurance companies who administer the Federal Crime Insurance Program, which covers both residential and commercial policies. The duties of the insurance agents and brokers are explained, and the general operating procedure of the program is described. Included are illustrations and descriptive material on protective devices required of policy-holders, tables of commercial insurance rates, and a list of servicing companies participating in the program.

57. U.S. Law Enforcement Assistance Administration. *Analysis of S. 2994: Victims of Crime Act of 1972. Staff Study*. Washington, U.S. Law Enforcement Assistance Administration, 1972. 39 p. (NCJ 2745)

This analysis provides estimates and information relevant to the annual costs of a nationwide Victims of Crime Program. Data was developed on the basis of cost patterns experienced in Maryland and New York, two states which were then operating compensation programs. The proposed legislation, S. 2994, would establish a National Violent Crimes Compensation Board. Those eligible include the victim, dependents in case of death, others where loss results from victim's injury, and anyone suffering pecuniary loss. The plan is restricted to \$100 minimum loss plus undue financial hardship and provides a \$50,000 limit on award. It provides civil means for recovering from the offender and allows certain attorney fees.

58. ———. National Criminal Justice Reference Service, *Criminal, Society, and the Victim*. By Gerhard O. W. Mueller and H. H. A. Cooper. Washington. 19 p. Microfiche (NCJ 10927)

Historical foundations, present status, and alternative proposals for victim compensation are explored in this document. Proposals discussed for compensating victims of crimes include restitution as a condition of probation, portion of fine to the victim, day fine systems, attachment of prison earnings or non-institutional earnings, combining civil and criminal procedures, private and public insurance, and post criminal trial monetary adjustment.

59. ———. National Institute of Law Enforcement and Criminal Justice. *Crime Victim Compensation Laws and Programs*. Prepared by the Center for Criminal Justice and Social Policy, Marquette University. Washington, U.S. Government Printing Office, 1976. 67 p. Loan (NCJ 30324)

This report addresses the present status of victim compensation legislation and programs in the United States. Attention is also given to a review of the American Bar Association's proposed Uniform Crime Victims Reparation Act. The scope of current bills pending in Congress is examined along with the variable characteristics of state programs of victim compensation. The pertinent characteristics of each of the state programs are presented in a standard format in the Appendix. The strengths and weaknesses of existing laws are discussed along with a model for legislation.

60. ———. Office of Operations Support. *Victims of Crime Act of 1972—Staff Study*. Washington, 1972. 51 p. Microfiche (NCJ 12140)

This study provides background and statistics on the effect of proposed legislation S. 2994 in terms of costs of implementing the Victims of Crime Act. The Senate bill proposed to provide grants to states for the payment of compensation of innocent victims of crime in need, to authorize an insurance program and death and disability benefits for public service officers, and to provide civil remedies for victims of racketeering activity and similar offenses.

61. U.S. National Commission on the Causes and Prevention of Violence. v. 13, *Crimes of Violence*. Washington, U.S. Government Printing Office, 1969. 764 p. Loan (NCJ 571)

This is a search for the causes of violence and the means of prevention. Selected topics analyze crimes of violence by women; the relationship of violence to organized crime; American juvenile gangs, drugs, and accidents; and various theories of violence.

62. Van Honste, V. *La Réparation par l'Etat du Dommage Subi par les Victimes de Certaines Infractions* (Compensation by the State for Damages Suffered by Victims of Certain Crimes). *Revue de Droit Penal et de Criminologie*, no. 5: 403-472. February, 1974. (NCJ 14456).

This discussion covers the concept, rationale, and procedures for compensation, mentioning features of existing and projected programs in Europe, North America, and New Zealand. Reference is made to program Europe, New Zealand, Northern Ireland, Sweden, Austria, the Netherlands, Canada, and the states of New York and California. The rationale behind these programs is that the damage suffered by individuals from certain crimes is a social evil for which the state assumes liability on the basis of the socialization of the risks taken by all. In all countries compensation is limited to crimes of violence. Also, most programs consider the role of the victim in the crime when determining eligibility for compensation. The programs differ, however, in whether or not to consider the victim's nationality or financial means, in how they determine the amount of compensation, and in what kind of organization is charged with deciding whether or not to grant it. Included in the article is a brief discussion of program costs. Extensive references as well as descriptions of the Dutch and English programs, in their respective languages, are appended. (In French)

63. Waller, Louis. *Compensating the Victim of Crime in Australia and New Zealand*. In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*. v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books. 1974. p. 175-192. (NCJ 30594)

The main discussion of this paper covers the compensation statutes of New Zealand and Australia. The reasons for compensation statutes are reviewed and the differences and stipulations of the various laws are covered. Despite the differences, however, all statutes provide limited compensation from state funds for personal injuries or death resulting from criminal acts. The compensation schemes in practice and the amounts paid out for various offenses, and the prospect of changes or additions to the existing laws also are discussed.

64. Williams, Donald B. *Compensating Victims of Crimes of Violence: Another Look at the Scheme.* In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*. v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 147-153. (NCJ 30591)

The article discusses compensation to the victim under English law, which covers England, Scotland, Northern Ireland, and British vessels and aircraft, without regard to nationality. It is restricted to claims of personal injury or death attributable to crimes of violence. The author discusses the procedure for filing a claim, some major criticisms, as well as some suggestions for improvement.

65. Williams, Vergil L. and Mary Fish. *A Proposed Model for Individualized Offender Restitution Through State Victim Compensation.* In Drapkin, Israel and Emilio Viano, Eds. *Victimology: A New Focus*. v. 2, *Society's Reaction to Victimization*. Lexington, Massachusetts, Lexington Books, 1974. p. 155-165. (NCJ 30592)

This article reviews the history of compensation and restitution and makes comparison between the two in the light of modern thinking. Restitution is looked at as being both therapeutic and compensatory. The author concludes that victim compensation programs and the use of behavior modification techniques are quickly developing in the field of corrections as is concern for offender restitution. The use of token economy is discussed. The authors indicate that the state compensates the victim with money and requires reimbursement by the offender with points earned. Token economy is used by institutionalized offenders, while contracts with offenders can be used by probation officers, parole officers, and managers of half-way houses.

66. Wolfgang, Marvin E. *Victim Compensation In Crimes of Personal Violence.* In Reckless, Walter C. and Charles L. Newman, Eds. *Interdisciplinary Problems in Criminology: Papers of the American Society of Criminology*. Columbus, Ohio, the Ohio State University, 1965. p. 169-180. (NCJ 30604)

The purpose of this paper is to explore and to support the principle that society has a responsibility to compensate the victim of a criminal assault. Examples of compensation are given in primitive cultures, in early western civilization, and to some extent in criminal law. The author states that . . . "repayment may be, in some cases, an excellent psychological impetus to reformation." He states precedents for restitution in workman's compensation laws and the Swedish penal code. He raises procedural problems, but only from the standpoint of principle. An epilogue is included, reviewing new ideas and legislation that occurred since the paper was first written. It discusses the need for some system of measuring harm so that proper compensation can be granted.





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