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COMPENSATE VICTIMS OF CRIMES OF VIOLENCE

DOCUMENTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE JUDICIARY

OF THE

COMMITTEE ON

THE DISTRICT OF COLUMBIA

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 3264

TO COMPENSATE VICTIMS OF CRIMES OF VIOLENCE IN  
THE DISTRICT OF COLUMBIA

APRIL 17 AND JUNE 14, 1973

Serial No. 93-8



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# COMPENSATE VICTIMS OF CRIMES OF VIOLENCE

TUESDAY, APRIL 17, 1973

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON JUDICIARY OF THE  
COMMITTEE ON THE DISTRICT OF COLUMBIA.  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:40 a.m. in room 1310, Longworth House Office Building, Hon. Walter E. Fauntroy, chairman of the subcommittee, presiding.

Present: Delegate Fauntroy [presiding], and Representatives Breckinridge and Ketchum.

Also present: Robert Washington, majority counsel; James T. Clark, legislative counsel; Harley Daniels, subcommittee counsel; and John Hogan, minority counsel.

Mr. FAUNTROY. The hearing will come to order.

I have convened this meeting of the Judiciary Subcommittee for the purpose of hearing testimony on H.R. 3264. This is our first hearing on the measure this session of Congress, and I anticipate that an additional day of hearings will be held shortly after the upcoming congressional recess.

The purpose of H.R. 3264 is to establish in the District of Columbia a system to compensate victims of crimes of violence in the District of Columbia. The hearings on a virtually identical measure offered by our former colleague, Mr. Abner Mikva, were held by this subcommittee in the 92d Congress.

[The bill, H.R. 3264, follows:]

[H.R. 3264, 93d Cong., 1st sess.]

A BILL To compensate victims of crimes of violence in the District of Columbia

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Crime Victims Compensation Act of 1971".*

SEC. 2. As used in this Act, unless the context otherwise requires, the term—

(1) "Commission" means the Commission to Compensate Victims of Crimes of Violence, created by this Act;

(2) "applicant" means any victim of a crime of violence who applies to the Commission for compensation under this Act, including any person who was dependent on a deceased victim of a violence for his support at the time of the death of that victim;

(3) "crime of violence" includes any of the following offenses: murder, manslaughter, kidnaping, rape, sexual assault, assault, battery, reckless conduct, arson, resisting or obstructing a peace officer, mayhem, assault with intent to commit any of the foregoing offenses, and any offense of which one of the above offenses is a lesser, including offense;

(4) "victim" includes any person (A) killed or injured as a result of a crime of violence perpetrated or attempted against him in the District of



Columbia, (B) killed or injured while attempting to assist a person against whom a crime of violence is being perpetrated or attempted in the District of Columbia, if that attempt of assistance would be expected of a reasonable man under the circumstances, or (C) killed or injured in the District of Columbia 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;

(5) "Commissioner" means the Commissioner of the District of Columbia.

SEC. 3. (a) There is created the Commission to Compensate Victims of Crimes of Violence consisting of five members appointed by the Commissioner of the District of Columbia. No more than three members of the Commission may be of the same political party. At least one member of the Commission must be licensed to practice medicine in the District of Columbia, and at least one other member of the Commission must be licensed to practice law in the District of Columbia.

(b) The Commissioner shall designate one of the members of the Commission to serve as chairman. The chairman shall serve in a full-time capacity and shall be paid at a rate equal to the rate of basic pay in effect for grade GS-15 of the General Schedule, payable in equal monthly installments. The Commissioner may designate a vice chairman to serve in the chairman's absence. Other members of the Commission, including the vice chairman, shall each receive \$100 for each day that they are engaged in the work of the Commission, but not more than \$10,000 in any one year.

(c) In making his original appointments to the Commission, the Commissioner shall designate three members to serve for terms of two years, and two members to serve for terms of four years. Thereafter, Commission members shall serve for a term expiring on January 1, four years after the expiration of the antecedent term. Each member shall serve until his successor is appointed and qualified.

SEC. 4. The Commission shall—

(1) prescribe and furnish forms for making applications for compensation under this Act;

(2) accept applications for compensation under this Act and determine the amount of compensation, if any, to which persons are entitled under this Act;

(3) hold hearings as permitted or required by this Act at such times and places as are reasonably suited to effectuate the purposes of this Act;

(4) appoint such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this Act, and fix their compensation subject to the approval of the District of Columbia Council;

(5) submit to the Commissioner and the council each year a written report for the preceding calendar year setting out the Commission's findings and conclusions as respects each application which was the subject of a hearing under this Act and setting out a summary of the applications disposed of by the Commission without a hearing;

(6) promulgate and amend such rules and regulations as are consistent with this Act and necessary to its administration.

SEC. 5. A person is entitled to compensation under this Act if—

(1) he is a victim as defined in section 2 of this Act, 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;

(2) his pecuniary loss resulting from the injury or death to the victim is \$50 or more, as determined under section 6;

(3) 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;

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

(5) the victim and his assailant were not related nor of the same household;

(6) the injury to or the death of the victim was not entirely attributable to his wrongful act or substantial provocation by him of his assailant; and

(7) his application for compensation under this Act is filed with the Commission within twelve months of the date of the injury to the victim



or within such further extension of time as the Commission, for good cause shown, allows.

SEC. 6. Pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes, in the case of injury, medical expenses (including psychiatric care), hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury, and other expenses actually and necessarily incurred as a result of the injury 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 six months immediately preceding the date of the injury or on \$500 per month, whichever is less. Nothing in this section shall be construed to authorize 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.

SEC. 7. (a) An applicant for compensation under this Act must file with the Commission an application, under oath, on a form prescribed and furnished by the Commission, setting out—

- (1) the name and address of the victim;
- (2) 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;
- (3) the date and nature of the crime or attempted crime of violence on which the application for compensation is based;
- (4) the date and place where and the law enforcement official to whom notification of the crime was given;
- (5) 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;
- (6) the pecuniary loss to the applicant and to such other persons as are specified under paragraph (2) resulting from the injury or death;
- (7) the amount of benefits, payments or awards, if any, payable under the District of Columbia Unemployment Compensation Act, the District of Columbia Policemen and Firemen's Retirement and Disability Act, or from any other local governmental or Federal funds, which the applicant or other person listed under paragraph (2) has received or to which he is entitled as a result of the injury or death;
- (8) an authorization surrendering to the Commission any reports, documents, and other information relating to the matters specified under this section; and
- (9) such other information as the Commission may reasonably require.

The Commission may require that materials substantiating the facts stated in the application be submitted with that application.

(b) If the Commission finds that an application does not contain the required information or that the facts stated therein have not been sufficiently substantiated, it shall notify the applicant in writing of the specific additional items of information or materials required and that he has thirty days in which to furnish those items to the Commission. The Commission 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 Commission 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 Commission. 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.

SEC. 8. (a) If an application meets the requirements of section 7, the chairman shall designate a member of the Commission as examiner. That examiner shall consider the application and the substantiating materials which accompanied the application and shall submit to the chairman a written report recommending that the application be rejected, that an offer of an award of compensation in a stated amount be made to the applicant or that the application be set for hearing before the Commission and stating his reasons in support of the recommendation.



(b) When he receives the examiner's report, the chairman shall transmit a copy of the report and a summary of the facts stated on the application to the other three members of the Commission and shall designate one of them as reviewer if the examiner has recommended that the application be rejected or that an offer of an award of compensation be made to the applicant. The reviewer shall examine the report and the summary of facts and express his acceptance or rejection of that recommendation to the chairman. If the examiner's recommendation was for an offer of an award of compensation and the reviewer's objection is based on the amount stated in the recommendation, he shall state the amount to which he believes the applicant is entitled.

(c) The chairman shall examine each examiner's report which has been accepted by the reviewer and either approve or disapprove it. He shall also examine each examiner's report to which objection is made only as to the amount of an award of compensation to be offered and, if he agrees that such an offer should be made, attempt to reach agreement with the reviewer and examiner as to the amount of that offer. If such agreement is reached, the chairman shall approve the examiner's recommendation as modified.

(d) When the examiner, reviewer and chairman have agreed that an application should be rejected or that an offer of an award of compensation in a stated amount should be made to the applicant, the chairman shall notify the applicant accordingly. This notice must be in writing, must state the reasons for the rejection or the amount of the offered award of compensation, as the case may be, and must provide that the action reflected in the notice becomes final unless the applicant makes a request for hearing within twenty days of the date shown in the notice. If the applicant does not make a request for hearing to the Commission within that twenty-day period, the amount of compensation offered him becomes an award for purposes of this Act or the rejection of the application becomes final as the case may be.

SEC. 9. (a) The chairman shall set an application for hearing, as soon as is reasonably practicable, when (1) the examiner has recommended that a hearing be held, (2) the examiner, reviewer and chairman have not agreed as to the disposition of the application, or (3) the applicant has requested a hearing, within the twenty-day period provided for in section 8.

(b) Hearings may be held at any convenient location in the District of Columbia, but the Commission must send to the applicant written notice of the date, time and place of the hearing, at least ten days before the date set for hearing. Hearings shall be conducted by the chairman before the full Commission, three members constituting a quorum. The vote of a majority of the members present shall be necessary to decide matters at a hearing. The Commission may continue a hearing or postpone the consideration of an application pending the outcome of legal proceedings which have been instituted to determine the civil or criminal liability of the alleged assailant.

(c) The Commission may adopt regulations governing the conduct of hearings under this Act. The hearings shall be conducted in a manner provided by those regulations whether or not they prescribe a procedure which conforms to the common law or statutory rules of evidence or other technical rules of procedure. No informality in the manner of taking testimony in the hearings nor the admission of evidence contrary to the laws of evidence affects the validity of a determination by the Commission.

(d) The Commission on its motion may, and on the motion of the applicant shall, issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of documents and records, relevant to the facts stated in the application. Such subpoenas shall issue over the signature of the chairman or of either of the other members hearing the application. Upon the willful failure to respond to subpoenas issued by the Commission, the Commission through the chairman may seek a court order compelling the attendance and testimony of the witness or compelling the production of the documents or records subpoenaed. Applicants may appear personally or by counsel, present evidence and cross-examine witnesses.

SEC. 10. (a) Hearings shall be open to the public unless the Commission determines that a closed hearing should be held because—

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



(2) the offense allegedly perpetrated against the victim involves a sexual offense, and the interests of the victim or of persons dependent on his support require that the public be excluded from the hearing;

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

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

(b) A record shall be kept of the proceedings of hearings held before the Commission and shall include the Commission's 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 record of any hearing before the Commission 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 Commission. A copy of the record may be furnished to the applicant upon his written request accompanied by payment of an appropriate fee. Where the interests of justice require, the Commission may refuse to disclose the names of victims or other material in the record by which the identity of the victim could be discovered.

Sec. 11. (a) In determining the amount of compensation to which an applicant is entitled, the Commission shall consider the facts stated on the application of the applicant, and—

(1) 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;

(2) 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;

(3) 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;

(4) shall deduct the amount of benefits, payments or awards, payable under the District of Columbia Unemployment Compensation Act, the District of Columbia Policemen and Firemen's Retirement and Disability Act, or from any other local governmental or Federal funds, 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

(5) shall offer or award, as the case may be, the resultant amount or \$10,000, whichever 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.

(b) An award to persons other than the victim shall be based on the Commission's findings and order under section 12(a), and an offer of an award of compensation to such persons shall be based on like determinations made by the examiner, reviewer and chairman on the basis of facts stated in the application for compensation.

Sec. 12. (a) At the conclusion of a hearing held under this Act, the Commission 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 11, (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 Commission may order temporary payments to be made pending its determination of the total amount of compensation due under this Act.

(b) If the Commission 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.

Sec. 13. The Commission may on its own 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 and 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.

SEC. 14. (a) The Commission may offer, or may award, compensation on the condition that the applicant or other recipient subrogate to the District of Columbia his rights to collect damages from the assailant. In such a case the District of Columbia may bring suit against an assailant for money damages, but must 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 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 Commission of the making of a claim or demand or the filing of a suit for such damages.

(c) The District of Columbia 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 Commission, the Commission shall give written notice of this charge to the applicant or other recipient of compensation. The charge attaches to any verdict, judgment or decree 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 District of Columbia or by the applicant or other recipient of compensation, the Superior Court of the District of Columbia, on written notice to all interested parties, shall adjudicate the rights of the parties and enforce the charge.

SEC. 15. 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.

SEC. 16. 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 Commission. 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 Commission determines to be reasonable.

SEC. 17. 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 fined not more than \$1,000 or imprisoned in a penal institution other than the penitentiary for not more than one year or both. No compensation under this Act may be paid to an applicant who violates this section or knowingly acquiesces to a violation of this section.

SEC. 18. There are authorized to be appropriated for the fiscal year ending June 30, 1973:

(1) for payment of the costs of administering this Act, not to exceed \$250,000;



(2) for payment of the compensation awards made under this Act, not to exceed \$1,750,000.

SEC. 19. This Act applies only to injuries, including those resulting in death, which are inflicted on and after July 1, 1972.

Mr. FAUNTROY. As far as I've been able to determine, there is no opposition to the idea of crime victim compensation. Nine States have enacted such legislation—Alaska, California, Hawaii, Maryland, and Massachusetts, Nevada, New Jersey, New York, and most recently, Rhode Island.

These legislative schemes take a variety of approaches, and this subcommittee will be carefully examining each of these approaches with a view to formulating legislation that can be a model for other jurisdictions who have not yet enacted such legislation.

The Senate has passed this year a bill that would encompass the District of Columbia. The subcommittee would be working out the question of whether the Senate bill represents a sensible approach to the problem here in the District, or whether some additional legislative authority is required.

Without objection I will insert into the record at this point a Library of Congress analysis of the pending Federal bill and existing state laws; and also, without objection, I will insert in the record a cost analysis prepared by the Library of Congress on the cost of the various State programs.

[The documents referred to follow:]

THE LIBRARY OF CONGRESS,  
CONGRESSIONAL RESEARCH SERVICE,  
Washington, D.C., July 24, 1972.

To: District of Columbia (Judiciary Subcommittee)

From: Education and Public Welfare Division

Subject: Expenditures by the States for Compensation to Victims of Crime Programs

This is in response to your request for information on the costs of existing State Compensation to Victims of Crime programs. As we mentioned in a phone conversation there is very little information available in this area. We are enclosing excerpts from the latest annual reports of New York, Maryland, and Hawaii which may be helpful. In addition, we obtained the following information recently through phone calls to the State Compensation Boards.

In fiscal year 1971, *California* allowed 173 claims and awarded a total of \$385,780. In addition, \$25,000 was spent on investigatory costs.

In fiscal year 1971, *Massachusetts* made 41 findings for a total amount of \$45,974.04.

*New York's* budget for 1971-1972 was \$2,637,000. For the fiscal year 1971, which started on April 1, New York made 552 awards. The average settlement for a personal injury lump sum award was \$1,460. The average settlement for death awards was \$2,344 per year and for protracted awards the average was \$3,228 per year.

For calendar year 1971, *Hawaii* made 80 awards for a total of \$195,450.83. The operational budget was \$28,000.

For fiscal year 1971, *Maryland* made 111 awards for a total of \$175,000. The total budget for the Maryland Commission was \$250,392.

In 1971, *Nevada* made 5 awards for a total of \$20,059.40.

The *New Jersey* program was enacted into law on November 4, 1971. No information was available on costs under this program.

JO ELLEN JENNETTE.



# FEDERAL CRIME—COMPENSATION STATUTE, MAJOR FEATURES

## 1. GENERAL

| Authority                         | Administration                                                 | Jurisdiction                                                                                                                                                                                          |
|-----------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Victims of Crime Act of 1972..... | Violent Crimes Compensation Board (Department of Justice)..... | Crimes or other acts giving rise to the claim must occur (1) within the maritime or territorial jurisdiction of the United States; (2) within the District of Columbia; or (3) within Indian country. |

## 2. SCOPE OF COMPENSATION

| Claimant's recognized                             | Losses recognized                    | Need requirement                         | Maximum compensation                                   | 3-party claimants                         |
|---------------------------------------------------|--------------------------------------|------------------------------------------|--------------------------------------------------------|-------------------------------------------|
| (1) Victim.....                                   | (1) Net losses of intervenors.....   | Victim must show "financial stress"..... | \$50,000 as to victims. Not applicable to intervenors. | Payments, but not claims, are authorized. |
| (2) Intervenor or their surviving dependents..... | (2) Pecuniary losses of victims..... | Not applicable to intervenors.....       |                                                        |                                           |

## 3. LIMITATIONS

| Crimes covered                                                                            | Period of limitations                          | Members of household                                                                                                                     | Deductible feature                                       | Collateral recovery                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| List of crimes and "any other crime which poses a substantial threat of personal injury." | 1 year. Extended upon showing of "good cause." | No claim of person is member of the family or household or maintaining continuing unlawful sexual relations with offender or accomplice. | Loss must be over \$100 or 2-weeks' earnings or support. | "Net Losses," reduced by amounts recovered or recoverable from "public or private means." "Pecuniary losses," are deducted from net losses. If suit gives rise to collateral recovery, amount is first deducted from "gross losses." |

## 4. REQUIREMENTS

| Duty to report                                                                                                    | Duty to cooperate                                                                                                                                  | Responsible claimant                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Must be reported within 72 hours, but not necessarily by victim or claimant. Waived upon showing of "good cause." | May reduce, deny, or withdraw compensation if claimant does not substantially cooperate with law enforcement incident to act giving rise to claim. | Compensation may be reduced in proportion to responsibility of claimant for act giving rise to claim, or deny compensation if claimant's behavior is substantial contributing factor. |



## 5. PROCEDURES

| Hearings                                                                          | Burden of proof                                                   | Attorneys fees                                                                                           | Standards of review                                      |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| Initially determined by 1 member, Hearing en banc (of record) is matter of right. | "Preponderance of the evidence" is burden to be met by claimants. | Authorized in accord with Criminal Justice Act. Do not diminish recovery and are not subject to ceiling. | "Substantial evidence" is standard for sustaining Board. |

## 6. MISCELLANEOUS FEATURES

| Emergency payments                                                                                                        | Subrogation                                                                                                              | Indemnity fund                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Maximum of \$1,500 which is subsequently deducted from final claim or repaid if claim is denied. Repayment may be waived. | Claim of victim against offender to extent of compensation may be pursued by the Attorney General for the United States. | Fund established which is the repository of (1) fines; (2) appropriated funds, (3) subrogation recovery, and (4) contributions. |

## STATE CRIME—COMPENSATION STATUTES, MAJOR FEATURES

## GENERAL

| States        | Authority                                                                                                                                             | Administration                                                             | Jurisdiction                                                                                                                 |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Alaska        | Violent Crimes Compensation Act of 1972                                                                                                               | Violent Crimes Compensation Board within department of health and welfare. | Crime covered must be a crime against the State.                                                                             |
| California    | Victims of Crime Act of 1967                                                                                                                          | Board of Control (part State welfare system)                               | Crimes which are committed in the State against a resident-claimant or an out-of-State crime against a domiciliary claimant. |
| Hawaii        | Criminal Injuries Compensation Act of 1967                                                                                                            | Criminal Injuries Compensation Commission (independent).                   | Coextensive with jurisdiction to prosecute crime giving rise to the claim.                                                   |
| Maryland      | Criminal Injuries Compensation Act of 1968                                                                                                            | Criminal Injuries Compensation Board (independent).                        | Situs of crime giving rise to the claim must be within the State.                                                            |
| Massachusetts | Compensation of Victims of Violent Crimes Act of 1967                                                                                                 | District Courts of the Commonwealth                                        | Situs of crime giving rise to the claim must be within the Commonwealth.                                                     |
| Nevada        | Compensation for Victims of Crime Act of 1969                                                                                                         | State Board of Examiners (workmen's compensation).                         | Crime covered must be a crime against the State.                                                                             |
| New Jersey    | Criminal Injuries Compensation Act of 1971                                                                                                            | Violent Crimes Compensation Board (independent).                           | Do                                                                                                                           |
| New York      | Crime Victims Compensation Act of 1966                                                                                                                | Crime Victims Compensation Board (independent).                            | Situs of crime giving rise to the claim must be within the State.                                                            |
| Rhode Island  | Criminal Injuries Compensation Act of 1972 (effective 120 days following passage of Federal legislation entitled "The Victims of Crime Act of 1972"). | State Superior Court sitting in special session at least once a year.      | Situs of crime giving rise to claim must be within (1) physical confines of State; or (2) maritime jurisdiction of State.    |



## SCOPE OF COMPENSATION

| State         | Claimants recognized                                                                                                                                                      | Losses recognized                                                                                                                      | Need requirement                                              | Maximum compensation                                                                                | 3d party claimants                                           |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| Alaska        | Victims (including intervenors)<br>—persons responsible for maintenance,<br>—family<br>(1) Victim<br>—dependent persons<br>(2) "Private citizens" (intervenor)<br>—widows | (1) Expenses; (2) loss of earning power; (3) pecuniary losses of dependents; (4) other reasonable losses.<br>Pecuniary losses          | A consideration but not a requirement.                        | \$10,000                                                                                            | Claims and payments are authorized.                          |
| California    | (1) Victim<br>—family<br>—dependent persons<br>(2) "Private citizens" (intervenor)<br>—widows                                                                             | Pecuniary losses                                                                                                                       | Victim must show "need". Not applicable to "private citizen". | \$5,000                                                                                             | Claims or payments not authorized.                           |
| Hawaii        | (1) Victim<br>—dependents<br>(2) "Private citizens" (intervenor)<br>—Individual bearing loss                                                                              | (1) Pecuniary losses; (2) earning power; and (3) pain and suffering.                                                                   | None                                                          | \$10,000 plus any recovery from criminal.                                                           | Authorizes payments "to or on behalf of" the claimant.       |
| Maryland      | (1) Victim<br>(2) "Good Samaritans" (intervenor)<br>—their spouses, children or dependents.                                                                               | (1) Out of pocket expenses; (2) earnings; (3) support.                                                                                 | "Serious financial hardship" requirement.                     | In accordance with State workmen's compensation standards.                                          | Claims or payments not authorized.                           |
| Massachusetts | (1) Victim.<br>—dependents                                                                                                                                                | (2) Out of pocket expenses; (2) earnings; (3) support.                                                                                 | None                                                          | \$10,000                                                                                            | Claims or payments not authorized.                           |
| Nevada        | (1) Victim (means only intervenors).<br>—dependents<br>—person responsible for maintenance                                                                                | All reasonable losses.                                                                                                                 | "Need" is a consideration, but not a requirement.             | \$5,000                                                                                             | Authorizes payments "to or for the benefit of" the claimant. |
| New Jersey    | (1) Victim<br>—dependents<br>—person responsible for maintenance                                                                                                          | (1) Expenses; (2) loss of earning power; (3) reasonable pecuniary losses.                                                              | None                                                          | \$10,000                                                                                            | Do.                                                          |
| New York      | (1) Victim<br>—spouse<br>—child<br>—dependents                                                                                                                            | (1) Out of pocket expenses; (2) loss of earnings or; (3) support.                                                                      | "Serious financial hardship" is a requirement.                | \$15,000 as to support or income. No ceiling on out-of-pocket expenses, including medical expenses. | Authorizes payments "to or on behalf of" the claimant.       |
| Rhode Island  | Victim<br>—guardian<br>—persons responsible for his maintenance<br>—dependents<br>—closest relative<br>—legal representative                                              | (1) Expenses; (2) pecuniary losses of dependents; (3) pain and suffering of victim; (4) any other reasonable pecuniary loss of victim. | None                                                          | \$25,000                                                                                            | Authorizes payments "to or on behalf of" claimant.           |



## LIMITATIONS

| States             | Crimes covered                                                                                                           | Period of limitations                                             | Members of household                                                                                                 | Deductible feature                                       | Collateral recovery                                                                                                        |
|--------------------|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| Alaska.....        | Lists State crimes of violence.....                                                                                      | 2 years.....                                                      | No claim allowed if person is member of the family or household or maintaining sexual relations with the offender.   | None.....                                                | Recovery from any private or public source reduces compensation.                                                           |
| California.....    | State crime against resident or out of State crime against a domiciliary.                                                | 1 year for victims. No limitation on claim by "private citizens." | No restriction.....                                                                                                  | do.....                                                  | Compensation reduced by "indemnification from any other source."                                                           |
| Hawaii.....        | Lists State crimes of evidence.....                                                                                      | 18 months.....                                                    | No claim allowed if person is relative or member of household of offender.                                           | do.....                                                  | Compensation reduced by money received from offender or agency of State or Federal Government.                             |
| Maryland.....      | State crimes. Motor vehicle crimes are covered only if intentional.                                                      | 90 days.....                                                      | No claim allowed if person is a member of the family or household or maintaining sexual relations with the offender. | Loss must be over \$100 or 2 weeks' earnings or support. | Compensation reduced by "recovery from public or private sources."                                                         |
| Massachusetts..... | Crimes of force committed in the Commonwealth. Motor vehicle crimes are covered only if intentional.                     | 1 year or 90 days after death, whichever is earlier.              | do.....                                                                                                              | do.....                                                  | Compensation reduced by "insurance amounts received from offender and other public funds."                                 |
| Nevada.....        | "A crime".....                                                                                                           | 2 years.....                                                      | do.....                                                                                                              | None.....                                                | Compensation reduced by recovered expenses but not capital losses recovered elsewhere.                                     |
| New Jersey.....    | List of crimes plus catchall "other crimes of violence."                                                                 | 1 year.....                                                       | do.....                                                                                                              | Loss must be over \$100 or 2 weeks' earnings or support. | Compensation "takes into account" amounts received or receivable from other sources.                                       |
| New York.....      | Crimes under State law. Motor vehicle crimes are covered if intentional.                                                 | 90 days. Extended to 1 year upon showing of "good cause."         | do.....                                                                                                              | do.....                                                  | Compensation reduced by collateral recovery.                                                                               |
| Rhode Island.....  | List of crimes plus catchall "any other crime, excluding motor vehicle offenses, resulting in personal injury or death." | 2 years.....                                                      | No compensation to spouse of offender or to other relative if benefit would indirectly inure to offender.            | None.....                                                | Recovery from public sources reduces compensation if such recovery and payments under act exceed total compensable losses. |



# REQUIREMENTS

| States        | Duty to report                                                                                                                               | Duty to cooperate                                                                      | Responsible claimant                                                                                                                                                                                                                                                                                                                            |
|---------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Alaska        | Must be report of crime to police within 5 days of time when report could first have been reasonably made.<br>No personal duty for claimant. | None                                                                                   | No compensation may be awarded if victim violated a penal law of State which violation caused or contributed to his injuries or death.<br>Not applicable to victims, but implicitly applicable to "private citizens."<br>Compensation may be reduced or denied in proportion to responsibility of claimant for act giving rise to claim.<br>Do. |
| California    | None                                                                                                                                         | May deny compensation if claimant does not cooperate with police.                      | Do.                                                                                                                                                                                                                                                                                                                                             |
| Hawaii        | Must be arrest or report of crime to trigger statute. No personal duty for claimant.                                                         | None                                                                                   | Do.                                                                                                                                                                                                                                                                                                                                             |
| Maryland      | Crime must be reported within 48 hours, but not necessarily by victim or claimant.                                                           | May reduce, deny, or withdraw compensation if claimant does not cooperate with police. | Do.                                                                                                                                                                                                                                                                                                                                             |
| Massachusetts | Report of crime is a "consideration" in deciding whether to award compensation.                                                              | None                                                                                   | Do.                                                                                                                                                                                                                                                                                                                                             |
| Nevada        | Report of crime is a "consideration" in deciding whether to award compensation.                                                              | Cooperation with police is a "consideration" in determination of compensation.         | Do.                                                                                                                                                                                                                                                                                                                                             |
| New Jersey    | Crime must be reported within 3 months, but not necessarily by victim or claimant.                                                           | None                                                                                   | Do.                                                                                                                                                                                                                                                                                                                                             |
| New York      | Crime must be reported within 48 hours, but not necessarily by victim or claimant. Waived upon showing of "good cause."                      | do                                                                                     | Do.                                                                                                                                                                                                                                                                                                                                             |
| Rhode Island  | None                                                                                                                                         | do                                                                                     | Do.                                                                                                                                                                                                                                                                                                                                             |

Claimant's behavior is always a consideration in determining amount of award. No compensation allowable which would inure to benefit of offender.



## PROCEDURES

| States        | Hearings                                                                                                                 | Burden of proof                                                   | Attorneys fees                                                                 | Standards of review                                                      |
|---------------|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| Alaska        | Hearing (not of record) is matter of right.                                                                              | None set forth in statute.                                        | Up to 15 percent of compensation and considered part of award.                 | None.                                                                    |
| California    | Automatic hearing (not of record) in which State attorney general is a party.                                            | "Preponderance of the evidence" is burden to be met by claimants. | Up to 10 percent of compensation which is not subject to maximum.              | Do.                                                                      |
| Hawaii        | Hearing (not of record) is matter of right.                                                                              | None set forth in statute.                                        | Up to 15 percent of award but subject to maximum.                              | Do.                                                                      |
| Maryland      | Initially heard by 1 member. Hearing en banc is matter of right.                                                         | do.                                                               | Not authorized.                                                                | Do.                                                                      |
| Massachusetts | Proceeds as civil action in which State attorney general defends suit.                                                   | do.                                                               | Up to 15 percent of award but subject to maximum.                              | Do.                                                                      |
| Nevada        | Hearing of record by hearing officer with right to subsequent hearing en banc.                                           | do.                                                               | Up to 10 percent and considered part of award.                                 | Do.                                                                      |
| New Jersey    | Hearing conducted if member of board so desires.                                                                         | do.                                                               | Up to 15 percent over and above award.                                         | Do.                                                                      |
| New York      | Hearing optional with disposition by individual member. Matter of right if claimant requests subsequent hearing en banc. | do.                                                               | Not authorized.                                                                | Do.                                                                      |
| Rhode Island  | Proceeds as civil suit.                                                                                                  | Substantial evidence.                                             | Authorized in accordance with State minimum fee schedule over and above award. | Court decision is final. No review but may petition for reconsideration. |



## MISCELLANEOUS FEATURES

| States             | Emergency payments                                                                                                                | Subrogation                                                                                                                      | Indemnity fund                                                                               |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Alaska.....        | Maximum of \$500 if "undue hardship" would otherwise result. Subsequently deducted from final award or repaid if claim is denied. | Claim of victim against offender may be pursued by the State if compensation is paid and any surplus recovered goes to claimant. | None authorized.                                                                             |
| California.....    | Not authorized.                                                                                                                   | Claim of victim against offender may be pursued by the State if compensation is paid and recovery is to the State.               | Fund established which is the repository of special authorized fines and appropriated funds. |
| Hawaii.....        | do                                                                                                                                | Claim of victim against offender may be pursued by the State if compensation is paid and this is all paid to claimant.           | None authorized.                                                                             |
| Maryland.....      | Maximum of \$500 which is subsequently deducted from final award or repaid if claim is denied.                                    | Claim of victim against offender may be pursued by the State if compensation is paid and recovery is to the State.               | Do.                                                                                          |
| Massachusetts..... | Not authorized.                                                                                                                   | do                                                                                                                               | Do.                                                                                          |
| Nevada.....        | do                                                                                                                                | do                                                                                                                               | Do.                                                                                          |
| New Jersey.....    | do                                                                                                                                | Claim of victim against offender may be pursued by the State if compensation is paid and any surplus recovered goes to claimant. | Do.                                                                                          |
| New York.....      | Maximum of \$500 which is subsequently deducted from final award or repaid if claim is denied.                                    | Claim of victim against offender may be pursued by the State if compensation is paid and recovery is to the State.               | Do.                                                                                          |
| Rhode Island.....  | None.                                                                                                                             | Claim of victim may be pursued against the offender by the State if compensation is based on criminal conviction.                | Violent crimes indemnity fund is repository of criminal fines.                               |



Mr. FAUNTROY. As we turn now to the subject of the hearing, I want to first welcome a panel of witnesses from States which have enacted victims of crime compensation. And I'm very pleased to have the distinguished Representative of the Third Congressional District of Maryland, Mr. Paul S. Sarbanes, to introduce the panel of witnesses from the States, which he will do now, who have already implemented such crime compensation laws.

**STATEMENT OF HON. PAUL S. SARBANES, REPRESENTATIVE IN CONGRESS FROM THE THIRD DISTRICT OF MARYLAND**

Mr. SARBANES. Mr. Chairman, I appreciate this opportunity to come before your subcommittee. It is my pleasure to have, as a member of the Maryland Criminal Injuries Compensation Board, a constituent of mine. I served in the Maryland Legislature at the time it was enacted—our criminal injuries compensation legislation—so I have some acquaintance with the legislation.

We have a three-member board. We feel it has worked well in Maryland. And you will, of course, hear more this morning from those who actually make it work.

But one of those who is here to testify as a witness this morning is Mr. Dennis McCoy, who is a member of the board, of our three-member board, and has served with great distinction on that board; and in fact, has done considerable testifying in various parts of the country with respect to how the Maryland legislation has worked, and the experience that we have had with it.

I know that the committee will find him a most helpful witness, and I am glad to have this opportunity to come before you and introduce him to you this morning. Thank you very much.

Mr. FAUNTROY. Thank you very much. We're happy to have Mr. McCoy here, and I understand that Mr. Moyland is on the way; so we will delay the panel presentation while we turn to the representative of the District government.

Mr. Murphy, would you kindly come forth and make your presentation at this time?

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Chairman, I have with me Mr. Geoffrey Halpern, who is general counsel of the Metropolitan Police Department.

Mr. HALPERN. Good morning, sir.

Mr. FAUNTROY. Welcome.

**STATEMENT OF FRANCIS MURPHY, OFFICE OF THE CORPORATION COUNSEL, DISTRICT OF COLUMBIA GOVERNMENT, ACCOMPANIED BY GEOFFREY HALPERN, GENERAL COUNSEL, METROPOLITAN POLICE DEPARTMENT**

Mr. MURPHY. Mr. Chairman, the objective of the bill, H.R. 3264, is to provide some form of relief to the victim of crime in the District of Columbia who often suffers physical harm or financial loss as a result of crime.



## DISTRICT SUPPORTS H.R. 3264

We wish to note that we favor the objectives of this bill.

In part, the bill recognizes the fact that in the development of criminal justice systems in existence today, the innocent victims of crime have been neglected, and in many instances completely disregarded.

Several States have already recognized the need to compensate victims of crime. Likewise, a number of foreign nations have instituted compensation programs in recognition of a responsibility to victims.

Several bills have been introduced in the Congress which would provide national programs for compensation of victims of crime. In most instances these bills would establish a national commission to determine and order the payment of compensation to victims under Federal law.

They would also provide for grants to States to establish their own programs of crime compensation. Two such bills, S. 300 and S. 800, have recently passed the U.S. Senate.

A national compensation program for victims of crimes might be the appropriate solution to the serious problem. In this regard, some of the proposed national programs would apply to victims of "Federal" crimes and would apparently apply to all crimes of violence now defined in the Federal law and occurring in the District of Columbia. Such a program could, therefore, obviate the need for a separate compensation program in the District.

## ALTERNATES

Alternatively, the committee may wish to consider as an initial step a more limited form of compensation for victims of crime in the District of Columbia. Such a program might involve specific limitations with respect to the categories of persons who would be eligible to claim compensation, for example, those whose earnings averaged less than \$500 per month during the year preceding the date of the crime.

Compensation could also be limited to certain types of recovery, such as hospital or other medical expenses, and certain types of injuries, such as the loss of limb or sight.

Experience with a limited form of compensation for crime victims in the District of Columbia would enable the committee as well as the District government to evaluate the compensation program, identify serious omissions, and perhaps design a broader program should experience indicate such a course of action desirable.

## COST

For reasons of cost especially, the District government would prefer a more limited compensation program initially, so that we would be in a better position to estimate actual costs, if the Congress were to determine that a broader program would be desirable.

In our report to the committee we make several observations concerning specific provisions of the bill, which I will not discuss at this particular time.

[The report referred to follows:]



GOVERNMENT OF THE DISTRICT OF COLUMBIA,  
Washington, D.C., April 17, 1973.

HON. CHARLES C. DIGGS, Jr.,

*Chairman, Committee on the District of Columbia,  
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Government of the District of Columbia has for report H.R. 3264, a bill "To compensate victims of crimes of violence in the District of Columbia."

The objective of the bill is to provide some form of relief to the victim of crime in the District of Columbia who often suffers physical harm or financial loss as a result of a crime, but may not have insurance or other means of recompense for such loss. In part the bill recognizes the fact that in the development of the criminal justice systems in existence today the innocent victims of crime have been neglected and in many instances completely disregarded.

Several States have already recognized the need to compensate victims of crime. Likewise, a number of foreign nations have instituted compensation programs in recognition of a responsibility to victims. Several bills have been introduced in the Congress which would provide national programs for compensation of victims of crime. In most instances, these bills would establish a national commission to determine and order the payment of compensation to victims under Federal law. They would also provide for grants to States to establish their own programs of crime compensation. Two such bills—S.300 and S.800—have recently passed the United States Senate.

A national compensation program for victims of crimes might be the appropriate solution to this serious problem. In this regard, some of the proposed national programs would apply to victims of "Federal" crimes and would apparently apply to all crimes of violence now defined in the Federal law and occurring in the District of Columbia. Such a program could, therefore obviate the need for a separate compensation program in the District.

Alternatively, the Committee may wish to consider as an initial step a more limited form of compensation for victims of crime in the District of Columbia. Such a program might involve specific limitations with respect to the categories of persons who would be eligible to claim compensation, e.g., those whose earnings averaged less than \$500 per month during the year preceding the date of the crime. Compensation might also be limited to certain types of recovery (such as hospital or other medical expenses) and certain types of injuries (such as the loss of limb, sight, etc.). Experience with a limited form of compensation for crime victims in the District of Columbia would enable the Committee as well as the District Government, to evaluate the compensation program, identify any serious omissions, and design a broader program should experience indicate such a course of action desirable. For reasons of cost especially, the District Government would prefer a more limited compensation program initially so that we would be in a better position to estimate actual costs if the Congress were to determine that a broader program would be desirable.

With respect to the program of compensation for victims of crime which would be established by H.R. 3264, a number of issues are raised by specific sections of the proposed legislation which are discussed below.

Section 2 of the bill contains several definitions, and paragraph (3) thereof defines "crime of violence", for which compensation may be made under the bill, to include serious crimes against the person. In this regard, the definition omits such crimes as negligent homicide, carnal knowledge (statutory rape), and indecent acts with children. It should also be noted that "sexual assault", "battery", or "reckless conduct" are not specifically denominated as crimes in the District of Columbia.

Section 2(4) defines the term "victim" for purposes of the bill, but does not make clear whether a law enforcement officer would be included within the definition. The intent of this legislation does not appear to include law enforcement officers within the coverage of the compensation program and this result seems appropriate in light of the special compensation programs already being provided law enforcement officers. The bill should be amended to reflect exclusion of law enforcement officers from its coverage, however.

Section 3 of the bill would establish a Commission to Compensate Victims of Crimes of Violence. The Commissioner of the District of Columbia presently has authority under Reorganization Plan No. 3 of 1967 to establish organizational



units within the District Government to carry out his functions and it is preferable that all functions of administration for local programs be vested in the Commissioner.

Section 5 of the bill would establish various criteria of eligibility under the legislation. Sections 5 and 7 are overlapping since the procedures set out in section 7 are also in the nature of eligibility requirements.

Section 6 of the bill defines the pecuniary loss for which compensation may be provided. Although the section discusses loss of future earnings, it is not clear how compensation would be provided for someone who was unemployed at the time of the crime.

Section 7(a) (7) and section 11(a) (4) of the bill are concerned with the deduction of benefits, payments, or awards received through other specified compensation programs from any compensation to be granted under the legislation. Recovery under any victim-of-crime program might more appropriately be made secondary to any other compensation which the victim may receive from some other source. This would protect against double recovery and would simplify the compensation procedures.

Sections 8, 9, 10, and certain provisions of other sections of the bill are concerned with various procedures to be followed in establishing and awarding compensation to victims of crime. These procedures do not conform in every instance to the procedures of the District of Columbia Administrative Procedure Act.

Section 10(a) of the bill specifies that hearings with respect to claims for compensation shall be open to the public unless the Commission determines that a closed hearing should be held. In light of the nature of these hearings and the criminal incidents which may be involved, it would seem desirable to give all claimants the right to a closed hearing should they so desire.

Section 11(a) (5) sets a maximum of \$10,000 on the amount of compensation which could be paid to a victim of crime under the provisions of the bill. Experience in other jurisdictions and anticipated average losses to victims of crime must be considered in determining the maximum compensation to be paid under any compensation program.

Section 18 authorizes appropriations for the 1973 fiscal year of up to \$250,000 for administrative expenses under the Act and up to \$1,750,000 for compensation awards. It is believed that the fiscal year date in section 18 should be changed to 1974 and the dates referred to in section 1 and 19 should be changed to 1973.

With respect to funds for the administration of the bill and payment of compensation awards, enactment of H.R. 3264 could result in substantial costs to the District of Columbia Government, although it is not possible to estimate such costs since the number of eligible claimants and the amount of the average claim cannot be determined at this time. No funds are presently available for such expenditures.

Accordingly, we strongly urge, should H.R. 3264 receive favorable consideration, that adequate sources of funding be made available for its implementation.

We have addressed certain specific provisions of the proposed legislation in this report. It should be noted that subject to these comments, we favor the objective of this legislation.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

WALTER E. WASHINGTON.

With respect to funds for the bill and payment of compensation awards, enactment of H.R. 3264 could result in substantial costs to the District of Columbia government, although it is not possible to estimate such costs since the number of eligible claimants and the amount of the average claim cannot be determined at this time.

We wish to note, though, that presently there are no funds available for such expenditures.

Mr. Chairman, Mr. Halpern is here, who could possibly give the committee some statistics in the area that we are dealing with.

Mr. FAUNTROY. We'd be very pleased to hear from Mr. Halpern now.

Mr. HALPERN. Good morning, Congressman.



## OFFENSES

I have with me this morning statistics based on the Metropolitan Police Department's annual report for fiscal year 1971; therefore, the statistics I am about to offer must be qualified. This report is approximately 2 calendar years and 1 fiscal year out of date. The 1972 fiscal year report of the Metropolitan Police Department, the statistical report, is due almost at any time; and the figures I'm about to give, Mr. Congressman, can be updated at that time.

They will, of course, show a decrease in the number of actual reported offenses for the District of Columbia; so some of these figures will be higher than the realities of the situation at the present time are.

But for fiscal year 1971, as I went through the types of crimes that are covered by the proposed bill, I came up with a figure of, I would say, approximately, but an exact figure of 17,871 actual reported offenses which would fit one or more of the categories of offenses covered by this bill. And that again must be qualified, because one of the categories in our annual report were assaults and aggravated assaults, of which we had some 6,352. Now, the bill excludes intrafamily assaults, and there is no way for me to tell at this point, sir, how many of the 6,352 would be excluded. That is, how many of those were intrafamily assaults. I would anticipate somewhere between 2,000 to 3,000.

I can tell you that based on the fiscal 1971 annual report, we had 226 reported murders, which would qualify; 421 reported rapes and sexual assaults, which would qualify; 6,352 assaults, aggravated assaults, which would qualify, I believe, under the bill; 275 instances of arson, which would qualify; and 10,597 instances of robbery. And, although robbery is not specifically denominated as one of the crimes covered in the bill, I believe that Section 2(3) of the bill, which includes any offense of which any one of the above offenses and lesser included offense, and one of the above offenses is assault, that therefore, robbery would be included; and that's why I included that large category of 10,597 offenses.

The total is 17,871 actual reported offenses in fiscal year 1971, which would qualify. Again, that must be reduced by the decrease in crime that we are experiencing over the 2 calendar years since that time and are still experiencing, and hope to continue to an even greater extent in the coming years. And it also must be decreased by the number of intrafamily assaults which would come out of the assault category, which I would estimate approximately 2,000 to 3,000 of the 6,300 would be an appropriate figure.

Therefore, I would guess—and this is really at best an educated guess—that we are talking about somewhere between 13,000 and 15,000, somewhere in that area, that would qualify under the bill as it is now written.

Mr. FAUNTROY. I see.

All right. Thank you so much.

I guess I would like to ask a few questions, and then my colleagues on the committee may have some questions.

First of all, Mr. Murphy, I think I noted in your testimony that you would like to see a District bill—the Senate bill passes, notwithstanding—that might have limitations, and that would cover victims not covered by the national legislation which is now being considered.



Is that——

#### AMENDMENTS PROPOSED

Mr. MURPHY. I think, Mr. Chairman, our point is that if the National bill does not pass, then a local bill—we would initially look to one that might be qualified, particularly because of the funding problem.

Mr. FAUNTROY. I see.

You have noted that we have no hardship requirement in this bill, and I got it from our testimony that you would like to see a hardship requirement there.

Mr. MURPHY. We think this might be one area that the Committee could consider.

Mr. FAUNTROY. Yes. On what basis did you arrive at the figure \$500 monthly income as the maximum income of a person who might be eligible for it?

Mr. MURPHY. I don't believe it was study figure, Mr. Chairman. I think it was just a figure for purposes of example.

Mr. FAUNTROY. I see.

There is some question as to whether or not we shouldn't define, or that we should define crimes of violence as we have in the bill, or whether we should leave that a little more vague.

And I wonder, on basic experience, Mr. Halpern, in the Police Department, whether or not the language as it is stated in the bill at present is adequate, or whether there ought to be a little more specificity or generality with respect to the crimes of violence.

Mr. HALPERN. Mr. Chairman, I think that the more specificity that you have in any statutory enactment, the better; especially when you are potentially talking about a lot of money, or at least possibly a lot of money.

#### DEFINITION OF CRIMES

With regard to the definition of the crimes of violence that exist in the present bill right now, I think it is quite adequate because it is specific with the exception of the fact that the District of Columbia Code does not recognize several of the crimes that exist in the present definition—for example, battery, which is not a specific crime denominated as such in the District of Columbia Code. Battery, of course, is assault or aggravated assault, or assault with a dangerous weapon, or assault with intent to commit a number of offenses.

Also reckless conduct, I am not sure, under the District of Columbia Code and my understanding of the District law, exactly what that would mean. I would recommend that that either be amended or taken out, or changed in such a way as to more specifically define exactly what the meaning is.

With regard to the rest of the definition of crimes of violence, with those qualifications I think it is adequate.

Mr. FAUNTROY. Did you mention in your testimony that robbery was not included; that you would like to see robbery included specifically?

Mr. HALPERN. It is not included by name. You won't find the word "robbery" in this section, but the last line of the section states as



follows, "And any offense of which one of the above offenses is a lesser including offense."

Now, "one of the above offenses" is assault, and every robbery necessarily includes as a lesser included offense the offense of assault; and therefore, it would be my understanding that robbery would, under that definition, be included under the present definition. But to make it more clear, I suspect I would recommend that if you were so inclined, and if that was your desire, that you would include robbery in the definition by name; again, under the theory that the more specificity that you have, the better, I believe.

#### INTRA-FAMILY DIFFICULTIES

Mr. FAUNTROY. You mentioned also the fact that our bill does not include intra-family difficulties.

Mr. HALPERN. It specifically excluded it. Yes.

Mr. FAUNTROY. Yes. What is your considered judgment on that? Is that a good provision?

Mr. HALPERN. Well, that's a difficult question, because I've seen many intra-family assaults and assault cases that are just as traumatic and produce just as much injury as assaults or crimes between strangers.

But I think that that provision is intended to temper the economic thrust of the bill, which is, I believe, quite broad as it stands now, with perhaps 13,000 or so potential offenses covered each year, or something like that. And if you opened it up to more, I think that the economic problems would be even greater.

So my answer is qualified, Mr. Chairman. Intra-family assaults can be very, very devastating, clearly. On the other hand, from an economic point of view, you just can't include everything.

Mr. FAUNTROY. All right.

#### PECUNIARY LOSS

Just finally, Mr. Murphy, have you looked at the means or the method of computing the loss that we have in the bill?

Mr. MURPHY. Yes, sir.

Mr. FAUNTROY. What is your judgment on it? Is it clear and adequate?

Mr. MURPHY. As I understand it, it contains a maximum \$10,000 award, and obviously contemplating lesser awards, depending upon the action of the Commission. There might be one problem with it, in the area of the relationship of an award to other compensation that a person might be entitled to.

And there may be a problem in relating, for example, if someone were killed—

Mr. FAUNTROY. Yes.

Mr. MURPHY [continuing]. And his family were entitled to social security benefits. There might be difficulty in determining how you relate the \$10,000 to the ultimate in moneys which would be received from that source.

Mr. FAUNTROY. Thank you.



I will now yield to the distinguished gentleman from the 36th Congressional District of California, Mr. Ketchum.

#### COMPENSATION

Mr. KETCHUM. Thank you, Mr. Chairman.

No. 1, I am trying to read the bill here, and I haven't found the maximum compensation yet, other than as defined in section 6.

Mr. FAUNTROY. It's on page 3, line 19.

Mr. KETCHUM. Well, doesn't that refer strictly to the Commission?

Mr. FAUNTROY. Oh, it does. Yes.

Section 11.

Mr. MURPHY. Page 15, Mr. Chairman.

Mr. FAUNTROY. Page 15, right.

Mr. KETCHUM. In other words, \$10,000 would be the maximum amount, is that correct?

Mr. FAUNTROY. Yes. That's right.

Mr. KETCHUM. Mr. Murphy, in your testimony, again coming back to this \$500 a month—and I'm sure that you know in California we do have a similar law, \$5,000 maximum. I was in the legislature when that bill was passed, and one of my objections to it was the fact that, as you may realize, the award was made on the basis of "need."

In your testimony you have indicated that we should limit the categories and individuals that can receive or claim compensation; and you have given as an example those whose earnings average less than \$500 a month.

Doesn't that appear to you to be somewhat discriminatory? As an example, Senator Stennis; he makes \$42,500 a year. He certainly was a victim of an assault.

Does that mean, then, if Senator Stennis had seen a crime in the process of commission, had stepped in as a private citizen to assist, that he should receive no compensation simply because of his salary scale?

Mr. MURPHY. I would agree, Mr. Congressman, that it is difficult to look at that type of situation and say that on the face of it it should be treated differently. But in looking at the funding requirements, and mechanisms to come up with a workable program, it just may be necessary, we think, to limit the recoveries that could be obtained under this type of legislation.

Mr. KETCHUM. I am not sure, Mr. Chairman, because I have not had an opportunity to completely read this bill, but is there a provision that would—as we arrive at the compensation figure—that takes into consideration what the individual victim might have received as a result of insurance, Social Security, as pointed out a moment ago?

Mr. FAUNTROY. Yes. There is.

Mr. MURPHY. There is a provision in the bill which takes into account sources of compensation from, as I understand it, government programs; but I don't believe as written it would take into account sources of recovery for nongovernment programs such as insurance.

Mr. KETCHUM. Well, the thing that really does concern me is this limitation on income. As an example, although I don't think we measure it bravely in terms of dollars, but what you're really saying



to an individual is let's take this hypothetical figure of \$500; that if you make \$550, you'd better not help anybody and get injured—if you follow me. Because there's going to be absolutely no compensation for you if you are injured as a result of the commission of this crime.

This was, as I indicated before, my objection to the California law when it was passed. And we do a great deal in California on the basis of "need," and I don't really know how you measure that. But that's one of the things that concerns me.

Now, if we were not to pass this bill, and the District of Columbia chose, by whatever means necessary, to pass an ordinance or a law for the District of Columbia, then the District of Columbia would have to come up with all the funding. Right?

Mr. MURPHY. The legislation would have to be passed by the Congress.

Mr. KETCHUM. And the money would come from——

Mr. MURPHY. Essentially the District taxpayer.

#### COSTS

Mr. KETCHUM. Right. Well, I'm wondering, because there is an authorization in this bill to be appropriated \$250,000 for the cost of administration and for the payment of compensation awards, not to exceed \$1,750,000.

If this bill were to be passed, that would lift quite a load off the District of Columbia government locally is that correct?

Mr. MURPHY. Well, as I read that authorization, it would authorize the District Appropriations committee to make an appropriation.

Mr. KETCHUM. To the District.

Mr. MURPHY. Yes.

Mr. KETCHUM. In other words, you wouldn't have to get it from your taxpayers, am I correct?

Mr. MURPHY. I believe you would, sir.

Mr. KETCHUM. Well, no, I'm asking. I really don't know.

Mr. MURPHY. Yes. We would.

Mr. KETCHUM. I see.

Well, in California—I don't know that you have got a copy of what has transpired there—but in 1971 we spent \$385,780. And in addition, we spent \$25,000 on investigatory costs.

Now, that is in a state of 20 million people. I looked at your budget the other day—and I'm not pointing at you, because you obviously didn't write the budget—and I find that for a city of 750,000, your budget is perilously close to \$1 billion, which very much surprised me.

And so I'm going to be looking very closely at that figure of \$1,750,000, because I am certain that you can't, in this town, have more crime than we do in the whole State of California.

I think I, to, will be looking very closely at the language that describes who gets what; because it just really appears to be very, very discriminatory in its attitude. I think sometimes that we lean over backwards for one aspect of a bill just to get it passed; and I certainly wouldn't want to see that happen.

Thank you, Mr. Chairman.



Mr. FAUNTROY. Thank, Mr. Ketchum.

Now, the distinguished gentleman from the 6th Congressional District of Kentucky, Mr. Breckinridge.

Mr. BRECKINRIDGE. Mr. Ketchum's question raised one in my mind. I don't believe there's an answer to it, but I would just like to be told that there is not an answer, if that's the case.

#### COSTS

I don't suppose it is possible, on the basis of the experience and the statistical data available to those States operating such programs, to arrive at a projection or a particular cost figure for the District, is it?

Mr. MURPHY. It would be helpful. I don't know how reliable it would be to take figures from a State, which may have been generated under other circumstances, and apply them directly; but I would imagine that it would certainly be helpful to analyze the experience in other States to try to come up with a prediction.

Mr. BRECKINRIDGE. I just suggest that it might help answer any questions that the gentleman from California might have at a later date, considering the budget aspect.

Let me ask another question, if I may. I was very interested in the suggestion that the intrafamily exclusion arose out of cost consideration, and being a newcomer to these discussions, Mr. Chairman, we have a question, I think, involving the legislature history here.

I would have assumed, at first glance, that it arose out of the old common law exclusion against claims between spouses, and not in cost considerations. And I would personally be inclined to say that we should get at cost considerations on some basis other than the exclusion of individuals who otherwise would have a valid claim.

Do you know, as a matter of fact, whether or not that was a consideration arising out of cost?

Mr. MURPHY. I don't know that as a fact. I believe Mr. Halpern suggested that he thought that might be one of the considerations related to inclusion of that feature.

Mr. BRECKINRIDGE. We have, in the areas of insurance policies, of course gone beyond that concept and allowed such discoveries out of—between members of the family arising out of battles between them or what have you.

I think that reason applies to that category here. I'm sympathetic to your objective of saving costs, but I would not assume that that was the intent here.

Mr. HALPERN. It may not have been, and there may have been other factors at work, Congressman. I was a prosecutor for 3 years, and I know that we have a great number of such offenses in the District, and I just assumed, maybe incorrectly, that cost savings was one of the primary motivations behind that provision. But maybe not. I really don't know.

#### CLAIMS PROCEDURE

Mr. BRECKINRIDGE. I apologize for not being legally able to express myself, Mr. Chairman, but I have not been able to study the bill in sufficient detail as yet.



I am interested about how the other States have handled the question of the rights that accrue to a claimant upon the establishment of bona fides of his claim, and therefore, his entitlement under the adequate compensation. In the absence of funds sufficient to cover that claim, do those rights vest? Do they become a claim against the District of Columbia, or are they something that has to be picked up at a later date?

Do you happen to have that?

MR. MURPHY. I don't know what the experience has been in the States in that particular area. I would assume that if the legislation authorizes an award to be duly made, that ultimately this would become an obligation of the District.

MR. BRECKINRIDGE. Then I think I would go back to the earlier question and suggest that a comparative analysis between the experience of other States with reference to the question the gentleman from California put to us might be deserving of some close review, in order that we might anticipate the exposure that we are concerned with there.

MR. MURPHY. Yes, sir.

MR. BRECKINRIDGE. That's all I have, Mr. Chairman.

Thank you very much, gentlemen.

MR. FAUNTROY. Thank you, Mr. Breckinridge.

Just before I have our counsel tender a couple of questions, Mr. Corporation Counsel, does the provision in the bill relating to the Administrative Procedures Act—is that consistent with that act?

MR. MURPHY. I think there may be some inconsistencies. I don't see anything of any real substantial problem.

MR. FAUNTROY. I wonder if you could just take a look at that, because we would want it to be totally consistent with the Administrative Procedures Act. It might be helpful if you supplied that for the record.

MR. MURPHY. All right, sir.

[The information referred to was subsequently submitted, as follows:]

THE DISTRICT OF COLUMBIA,  
Washington, D.C., June 13, 1973.

HON. WALTER E. FAUNTROY,  
*Chairman, Subcommittee on the Judiciary Committee on the District of Columbia,  
U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in response to your request for further information relative to the position of the District of Columbia Government with respect to H.R. 3264, a bill "To compensate victims of crimes of violence in the District of Columbia." I refer to three principal questions raised at the hearing before your Subcommittee on April 17, 1973. These questions were as follows:

1. Whether the definition of "crime of violence" contained in D.C. Code, section 23-1331 would be appropriate for the bill;
2. Whether the procedures provided in the bill are consistent with the Administrative Procedure Act; and
3. In regard to S. 300 (a bill to establish a Federal program for crime victim compensation) the preference, if any, of the District Government for coverage under part A as now provided in that bill, or under part B which was drafted to cover State governments.

With respect to the first question, I recommend that the definition of "crimes of violence" as contained in D.C. Code, section 23-1331(4) be substituted for the definition of "crimes of violence" contained in H.R. 3264, provided that certain



crimes (against property or not involving the use of force) be excluded from the definition.

Specifically, I recommend that paragraph (3) of section 2 of H.R. 3264 be amended to read as follows:

"(3) 'crime of violence' includes murder, forcible rape, forcible taking or attempting to take immoral, improper, or indecent liberties with a child under the age of sixteen years, mayhem, kidnapping, robbery, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, arson, assault with intent to commit any criminal offense, or assault with a dangerous weapon;"

With respect to the second question, it was stated in my report of April 17th that the procedures referred to in sections 8, 9, and 10 of the bill do not conform in every instance to the procedures of the District of Columbia Administrative Procedure Act and this statement apparently is the basis of the question which I now address.

In passing, I note that both S. 300 and S. 800, relating to a Federal program for compensation of victims of crime, expressly state that the Administrative Procedure Act "shall not apply to adjudicatory procedures to be utilized before the Board" (proposed subsection (d) of section 455 to be added to the Omnibus Crime Control and Safe Streets Act of 1968).

It may be that the Committee will consider the wisdom of inserting an analogous provision in H.R. 3264 stating that the District of Columbia Administrative Procedure Act shall not apply in the conduct of this program. A consideration of the nature of the problems to be confronted by the Compensation Commission suggests that they are very unique and require an approach to their solution which may not be consistent with the administrative processes that are most satisfactory for other agencies. If the only question were the amount of damage suffered by the victim of a crime, the answer should not be difficult to obtain, and in any case the maximum would be \$10,000. But great difficulties can be foreseen in deciding whether a particular injury resulted from one of the specified crimes or whether it was self-inflicted or the result of reckless intervention by the victim. Interrogation of the victim, and interrogation of police officers, witnesses, and suspects may often be necessary to ascertain the truth.

The "right" of the victim to compensation which would be conferred by the enactment of this bill is not a constitutional right and it is limited. Awards result from "legislative grace." It may be in the public interest to provide procedures which will enable a more expeditious determination by the Commission than could be achieved if the procedures of the Administrative Procedure Act are required. The procedures should insure against undue harassment of innocent persons, and this may not be consistent with the Administrative Procedure Act.

Interference with orderly operation of the criminal justice system should not result from zealous pursuit of the truth by the Commission or the victim.

The bill (H.R. 3264) now provides in paragraph (6) of section 4 that the Commission "shall promulgate and amend such rules and regulations as are consistent with this Act and necessary to its administration." The bill also provides in subsection (c) of section 9:

"(c) The Commission may adopt regulations governing the conduct of hearings under this Act. The hearings shall be conducted in a manner provided by those regulations whether or not they prescribe a procedure which conforms to the common law or statutory rules of evidence or other technical rules of procedure. No informality in the manner of taking testimony in the hearings nor the admission of evidence contrary to the laws of evidence affects the validity of a determination by the Commission."

Furthermore the bill provides that the Commission shall issue subpoenas to witnesses on the motion of the applicant for examination or cross examination by applicant or his counsel at the hearing.

Thus the bill does give the victim of crime a fair chance to prove his case.

If the application of the District of Columbia Administrative Procedure Act (D.C.A.P.A.) is not expressly excluded by an amendment to the bill, then its provisions will also govern with at least the following consequences:

1. The Commission's procedures will be established in accordance with the D.C.A.P.A.
2. Such procedures will include requirements of practice before the Commission.



3. Publication in the District of Columbia Register of any proposed rules before their adoption, amendment, or repeal with opportunity for interested persons to submit data and views.

4. A person adversely affected or aggrieved by an order or decision of the Compensation Commission would be entitled to a judicial review thereof upon filing in the District of Columbia Court of Appeals a written petition for review.

The significant inconsistency between the requirements of the District of Columbia Administrative Procedure Act and the procedure set out in H.R. 3264 may be explained as follows.

The D.C.A.P.A. defines a "contested case" as a proceeding before any agency in which the "privileges" (such as compensation) of specific parties (such as the victim of a crime) are required by any law (such as here proposed) to be determined after a hearing before an agency (such as the proposed Compensation Commission) (D.C. Code, sec. 1-1502(9)). The D.C. Administrative Procedure Act provides that the parties be given reasonable notice of the afforded hearing, stating the time, place, and issues involved and, after setting forth a number of requirements regarding the conduct of the hearing, states:

"Every decision and order adverse to a party to the case rendered. . . by an agency in a contested case shall be in writing and shall be accompanied by findings of fact and conclusions of law. . ."

I interpret the D.C.A.P.A. to mean that the decision shall follow and not precede the hearing. On the other hand H.R. 3264 provides that the applicant (or victim) is only entitled to a hearing if he requests it within twenty days after receiving an adverse decision in which three of the five members of the Commission have concurred. After the hearing provided for in H.R. 3264 the victim may possibly receive a final adverse decision from the same three members of the Commission who decided against him initially. To conform to the objectives of the bill and at the same time eliminate what appears to be an inconsistency with the D.C. Administrative Procedure Act, sections 8 and 9 of H.R. 3264 could be modified by providing for an initial review and tentative recommendations by an examiner, to be followed by a hearing, after notice to the parties of the issues that are involved.

The third question developed at the hearing from a brief consideration of S. 300, recently passed by the Senate, and dealing with compensation to victims of crime. It was pointed out by counsel for the Subcommittee that under part A of S. 300, 100 per cent financing would be provided by the Federal Government in cases arising in the District of Columbia under a system that would be administered by the Department of Justice with members of the Crime Victim Compensation Board being appointed by the President. Part B of S. 300 would amend the Omnibus Crime Control and Safe Streets Act of 1968 to add to the list of possible grants by the Law Enforcement Assistance Administration "[t]he cost of administration and that portion of the costs of State programs, other than in the District of Columbia, to compensate victims of violent crime which are substantially comparable in coverage and limitations" (to the provisions of part A of S. 300). Such grants are limited by law to 75% of the cost of the program.

The question posed by counsel for the Subcommittee was whether the District Government would rather be treated as a State under part B and receive 75% funding, if S. 300 were amended, or accept the provision for Federal administration and 100% funding for District of Columbia cases. The answer to this hypothetical question requires a balance of interests between a degree of local autonomy in carrying out the program to compensate victims of crime at some expense, versus no local control over a Federal program that would not represent any out of pocket cost to the District Government.

In accord with an overall development of local self-government, I believe that the District Government should assume the same share of the cost as the several States do, i.e. 25%, if a bill such as S. 300 were thus amended and enacted, providing that the program would be administered locally.

Thank you for this opportunity to comment further on H.R. 3264. Should your Subcommittee desire additional views from the District Government in its consideration of the bill, please advise.

Sincerely yours,

WALTER E. WASHINGTON,  
Mayor-Commissioner.



Mr. FAUNTROY. All right.

We'll have a question from counsel, now, Mr. Harley Daniels.

#### CRIMES OF VIOLENCE

Mr. DANIELS. Mr. Halpern, you indicated that you felt that it was desirable to have in the legislation the definition of crimes of violence with a high degree of specificity. Are you familiar with the definition contained in section 23-1331 of the District of Columbia Code of crimes of violence, which as I read that definition, gears itself specifically to crimes which are crimes in the District of Columbia.

Do you think it would make some sense to build that definition into this legislation? And if not, why not?

Mr. HALPERN. If I am correct, section 23-1331 is in the bail law, and I assume that's the crime of violence provision, the preventive detention statute. Is that correct?

Mr. DANIELS. That's correct.

Mr. HALPERN. I would have to have that in front of me, Mr. Daniels. I think it is an adequate definition of—in establishing crimes of violence, I never can really understand why somebody just doesn't go through the code and list the ones you're talking about, which I believe this bill has attempted to deal with in a couple of places perhaps, using offenses that really shouldn't be there.

But I would think that the most specific kind of definition at all would be just a seriatum listing of the offenses that you are talking about, which is really what you have here. I think that would be even better than the definition in 1331, which is a pretty good definition; although my recollection is that it is somewhat more limited, since that was a kind of limited statute anyway. That was at least what the thought was.

It's probably a little more limited than what I believe the intent was behind the drafting of this particular section. I would just recommend doing essentially what is done in this bill—list the crimes of violence that you are talking about, whichever ones they are; list them perhaps by District of Columbia Code statutory citation; and then there will be no doubt at all.

Mr. DANIELS. Would you and Mr. Murphy take a look at that section 23-1331, not necessarily now, and submit for the record your view as to whether or not that would be a suitable definition for this crime compensation legislation?

Mr. MURPHY. Yes.

Mr. HALPERN. Yes; certainly.

[The information referred to appears in the foregoing June 13, 1973 letter.]

Mr. DANIELS. Mr. Murphy, I'm looking at page 3 of the Commissioner's report on the bill. Is it your view that law enforcement officers should not be included under this legislation?

Mr. MURPHY. There are presently compensation programs for law enforcement officers; and we think the committee might want to take that into consideration as to whether there is any real need for inclusion.



Mr. DANIELS. Well, section 11 of the bill does specifically exclude from any award given by the Crime Compensation Board any benefits derived from the policemen's, firemen's disability funds.

Can you envisage any circumstances under which the award under the disability fund would be less than the award that a policeman might be entitled to under this Crime Victim Compensation Act?

Mr. MURPHY. Offhand, Mr. Daniels, I would doubt it. I can think of none offhand.

Mr. DANIELS. Would you say, then—I'm assuming that such a circumstance existed—wouldn't you think, then, that there might be some need for a supplemental coverage of a law enforcement officer, in the event that in fact his benefits under the Policemen's Retirement and Disability Act were not sufficient?

Mr. MURPHY. Assuming such a case, I think I would have to agree.

Mr. DANIELS. On page 4 of your statement you observed correctly that the bill would set a maximum of \$10,000 in the amount of compensation. You indicate then that the experience of other jurisdictions might be helpful in determining the maximum compensation to be paid under the program.

Is that question intended to suggest that \$10,000 is too high a figure, or perhaps too low a figure?

Mr. MURPHY. I think it is intended to suggest that it may be on the high side.

Mr. DANIELS. Thank you.

Mr. FAUNTROY. Thank you.

Now, the minority counsel, Mr. Hogan.

Mr. HOGAN. Thank you.

Mr. Ketchum had some questions. Unfortunately, he had to go to another meeting. Do you know how the California statute operates, Mr. Murphy?

Mr. MURPHY. I don't, Mr. Hogan. I'm not that familiar with it.

Mr. HOGAN. Do you happen to know, Counsel?

Mr. HALPERN. No, sir.

#### FUNDING

Mr. HOGAN. How is this going to be funded? Are you going to take the money from the collection of fees and fines from the superior court? How would you actually do it?

Mr. MURPHY. I think the funding would have to come from general revenues.

Mr. HOGAN. So that this is unlike the Federal act, then; is that correct?

Mr. MURPHY. Yes.

Mr. HOGAN. In other words, as I understand the Federal act, that would be funded through the use of fines and fees collected in the court system. Is that not how that operates?

Mr. MURPHY. I believe that is the case.

Mr. HOGAN. Has any consideration been given to that, or did you have occasion to consider the manner in which this would be funded?

Mr. MURPHY. I have not considered that, and I'm not sure, Mr. Hogan, that would have any real change on it. You might be ear-



marking funds which presently go into the general revenues. So you would be stopping funds from going in, and I think the ultimate result would be the same.

Mr. HOGAN. Do you know, as far as the funding for this particular program, or is there another District official who will testify on the cost? In other words—

Mr. MURPHY. One of our problems is, Mr. Hogan, we have been unable up to this point to project cost, obviously. As one of the committee members suggested, that the cost experience for the States that have been operating programs be thoroughly explored for whatever help that might bring about in projecting costs.

Mr. HOGAN. You don't know what the experience is, then, as far as the number of claims and the cost of administering it. It appears here that the administrative cost is in a ratio of approximately one to seven, the total cost of funding; and this again, it is difficult to say how much of that compensation awards would be used up in any one particular year.

But based on Mayor Washington's letter, it appears that you were projecting on the basis of a 1-to-7 ratio. You don't know how they arrived at those figures; is that correct?

Mr. MURPHY. I'm not aware of precisely how it was arrived at.

#### COMPENSATION

Mr. HOGAN. Turning to page 5 of H.R. 3264, section 5, subparagraph 5, it indicates that it in effect makes some exceptions. Do you read 5(5) there as a conjunctive, so that if a victim, and his assailant must not be related and of the same household; or do you read it in a disjunctive, so that an individual, a victim, and his assailant were of the same household or related, that they would not be entitled to coverage.

Mr. MURPHY. As written, I read it disjunctive.

Mr. HOGAN. In other words, either one and they would not be entitled?

Mr. MURPHY. Yes, sir.

Mr. HOGAN. Thank you, Mr. Chairman.

#### STATES' EXPERIENCES

Mr. FAUNTROY. It may be appropriate at this point for me to refer to some experiences on the past that we garnered from the Congressional Research Service, which we already included in the record, which show for example, in California in 1971, there were 173 claims that were awarded, to the tune of some \$385,000 roughly, with about \$25,000 being spent for investigatory costs.

In Massachusetts, there were 41 findings, with some \$45,000 in awards; and in New York, its budget was \$2,637,000 for this eventuality. There were 552 awards, and the average settlement was about \$1,400.

We'll be hearing shortly from the panel from the State of Maryland, where the record shows that in 1971 there were 111 awards, totaling \$175,000, with the total budget for the Commission being some



\$250,000. So that I think we really have to get into that and see if our budgeted appropriation is adequate for the bill.

Mr. Daniels had one more question, and then we'll move on.

Mr. DANIELS. Two brief questions, Mr. Chairman.

#### JUDICIAL REVIEW

First, Mr. Murphy, under H.R. 3264 there is no express provision for judicial review of a decision of a Crime Victim Compensation Board. In your view, would the Administrative Procedures Act provide or require, under the circumstances of this legislation, provide for judicial review? And if so, in what form would judicial review occur?

Mr. MURPHY. Yes, Mr. Daniels. I believe it would provide for appeal. It would be in the District of Columbia Court of Appeals.

Mr. DANIELS. On the grounds this is a contested case?

Mr. MURPHY. Yes. On the grounds that it's a contested case; it's a statute providing for—which requires a hearing.

#### S. 300

Mr. DANIELS. The second question is, Mr. Murphy, have you had an opportunity to look at S. 300, the bill that very recently passed the Senate on this very same subject?

Mr. MURPHY. I personally have not, Mr. Daniels. I haven't been able to study that.

Mr. DANIELS. Well, under S. 300, a bifurcated federal system is established. Under part A of the bill a direct crime victim compensation for special maritime territorial jurisdictions of the United States, the District of Columbia, and Indian territory is established.

Under that direct federal system, 100-percent financing is provided. The system would be administered by the Justice Department, with the officials of the Crime Victim Compensation Board being appointed by the President.

It occurred to me upon looking at that section that with that provision of S. 300, that the vast majority of the claims to the Board are likely to come from the District of Columbia.

Is it the view of the District government that such a federally administered program is desirable in lieu of a locally administered program?

Mr. MURPHY. I think that the basic view is that the problem that is involved is a problem which is coextensive with the Nation, and to the extent that there is national treatment of this problem, that we would be in favor of that.

Mr. DANIELS. Well, part B of S. 300 provides for 75 percent Federal funding of locally enacted and administered crime compensation programs. The District of Columbia is not covered under the part B program. It is expressly excluded because of its coverage under part A.

What is the District government's view as to which of those two aspects of the Federal program it would prefer to be covered by—either the 100-percent financing of the Federal program under part A, or the 75-percent financing of the local program under part B?

Mr. MURPHY. I am not prepared to state officially, Mr. Daniels. However, we could submit that for the record.



Mr. DANIELS. Thank you.

[The information referred to appears in the Commissioner's June 13, 1973, letter above.]

Mr. FAUNTROY. All right. That would be very important.

Thank you, Mr. Murphy and Mr. Halpern.

Mr. MURPHY. Thank you, sir.

Mr. FAUNTROY. We will call now to the witness stand Mr. Ronald Goldfarb, attorney and authority on criminal justice problems.

Mr. Goldfarb.

Mr. GOLDFARB. Good morning.

Mr. FAUNTROY. Good morning and welcome to the panel, Mr. Goldfarb. We're very pleased to have you.

Mr. GOLDFARB. Thank you.

### STATEMENT OF MR. RONALD GOLDFARB, ATTORNEY

Mr. GOLDFARB. I have no formal statement to submit to the committee. I thought I would make some general comments about your bill and about the subject of victim compensation generally, and then submit to specific questions which might be on your mind about the mechanics and nuts and bolts questions of other programs around the country, and specific recommendations with regard to the bill that you submitted.

#### COMPENSATION

I would like to say at the outset that in my opinion, I compliment the committee on getting to the question of victim compensation, which I view as one of the key and critical, very creative steps in the area of criminal justice reform.

I feel that if the District of Columbia, indeed, is to be a model for the country, that it would be very important for us to move into this area. And that with all of the philosophical and political debates raging around the problems of crime prevention, rehabilitation, it might be said that no one step is as important as the question of victim compensation.

The problem of victim compensation programs are peculiarly related to people in the inner city; people of means have the ability to insure against the problems of crime to which they might fall victim. They may even be able to buy private security devices and special protection. They generally have insurance coverage for loss of earnings, and disability and medical expense, as well as property damage.

So, in a city such as ours, with a high crime rate, and with a large inner-city population, I think that a program which aims at doing something for the person who has the real and most direct interest in any crime, that is the victim, is most important. I might add also that the notion of a program such as this is no radical innovation. As a matter of fact, it is an idea with very historic routes.

It is only odd, it seems to me that we have neglected the victim of crime in any but a rhetorical sense until now. Many, many thousands of years ago, when a person fell victim to a crime, the family or friends of that person would go to the offender and take redress for that crime. As the State in later years took over the role of criminal



law enforcement, the technique of getting the victim paid by the offender seemed to have gotten lost in the shuffle to the extent that fines were exacted. They went to the community at large but none of those fines ever got to the victim.

So with all the talk about the need to do something for victims of crime, it seems to me that it is about time that somebody did something for the victims themselves and that's what a bill like this would do and that's why I think it is very important and could be a major contribution to have such legislation.

#### STATES' EXPERIENCE

As the committee knows, there are seven States which now have programs like this and I understand that you have the gentleman from Maryland who can tell you obviously much more than I can about the details.

But one thing is clear, and that is that where they are operating, they are successful and many of the fears and concerns that people had about the costs and dimensions and administrative problems of victim compensation programs have not materialized. As a matter of fact, from my reading of the literature, one of the surprises has been that these programs have been underutilized and those States which have victim compensation programs in being are actually conducting surveys to see how they can get more people to address their claims.

So it has not opened the floodgates as some people feared it might, and as a matter of fact, those people who are designing new programs now are trying to design in techniques to those programs to let people know about it and to expedite the processes of actually exploiting those programs which exist.

#### AMENDMENT PROPOSED

I would like to suggest one idea, though, which is not being considered in any of the existing programs and which is not a part of yours but which I think could be, at the same time as this committee addresses itself to victim compensation, a major contribution and a very innovative step forward. If it could be tied to this, and that is, it seems to me, there ought to be a program whereby the offender himself has some obligation to redress the victims of crime.

I think to start, that there is a very obvious relation between the two and obviously, where responsibility can lie, it ought to be held up to that person. I think the notion is correctionally rehabilitative and very wise and could be exploited to a very great degree.

I think that the debate will rage forever about whether the purpose of the correction system should be to punish, to rehabilitate, deter, or whatever. I think the best evidence is that it doesn't do any of those things very well.

I would suggest that one of the key elements of our criminal justice system ought to be to induce some reconciliation between crime victims and offenders and to the extent that it does, that it places the burden on the person who really should be responsible and at the same time, is creatively punitive, intelligently rehabilitative, and takes the of-



fender himself out of a grinding punitive system which does nothing for him or the victim and gives him some sense of responsibility, some sense of having worked it off.

It seems to me that today this might also defuse some of the very strong feelings that people have about offenders, at the same time that it did something for the person who has the most substantial interest in that offender's offense.

Now, I recognize that this can not be done in very kind of crime. I recognize that there are many individual offenders who are never caught. The greatest number, for that matter and many of them are people without means.

But it strikes me, for example, that you could tie some kind of public works notion to a victim compensation program and when you talk about subrogating, it would also alleviate the public cost of running a victim compensation program, at least to some extent, if those costs were borne by the man who caused the crime.

#### RESTITUTION

In the State of Minnesota, there is an experiment which was begun several months ago which I think is a very laudatory one and which, if it works out, would prove that something like this could be done. There they have developed, the Department of Corrections has developed a program which is called Restitution House. People who are in prison for property offenses are given the option, in certain kinds of crimes, to come out of the prison to work in a community half-way house which is run by citizens and corrections department, board of directors.

He comes to the halfway house and sits down with the victim of his crime and together, they work out a contract which is suitable to the victim. At that point, the people who run the halfway house help the man, the offender gets a job, gets training. They provide him with a place to stay and out of his job, he pays the cost of his correctional experience and at the same time, pays off his victim and when his contract is complete, he is free to go.

That, it seems to me, is victim compensation at its best and while I recognize that it can't happen in all cases, and I'm sure it can't even happen in the majority of cases, it seems to me that would be a great "Liege of Role" if that committee would consider that element. I think when the point of view of public economics and the point of view of good correctional programing, it would be a great idea and I think that it would tie in and augment the work that we are doing in the area of victim compensation.

#### STATE COMPENSATION PROGRAMS

With regard to your specific bill on victim compensation, however, I have a few comments. One was the different States have reported certain problems and there are certain differences in those States' programs and you might want to consider them in refining the bill. As you get more specific and closer to legislation and I could commend you a survey that was done by the Petell Memorial Institute in Seattle, Wash., last year, of State victim compensation programs, in which they



go into the pros and cons of minimums and maximums, judicial bodies as opposed to administrative boards, means tests, property versus personal crimes, et cetera.

The author of that study is Herbert Edelhurts and Gilbert Geis. Their report was done in August of last year and I think by writing to them, you could easily secure a copy of this report which I found very useful myself and my own research. They planned out, for example, and I heard your earlier questions to the prior witness, the question of a minimum and maximum, the States seem to run from as low as \$10,000 maximums to as high as \$50,000 under the Federal program. It seems to me that if the program, if a victim compensation program is going to work, there probably should be no maximum and that would be my recommendation.

#### CRIMES AGAINST PROPERTY

I would also like to see the program not limited strictly to crimes of violence. I suppose I would agree that if you had to pick one, possibly it would have the most ameliorating effect to stick to crimes of violence. On the other hand, it seems to me it would be a lot more administratively simple to administer the program in regard to property offenses where it is objective, what a person's loss is and since the overwhelming majority of crime is property-related and since the staggering majority of people who are now in prisons doing nothing for themselves or their victims are in for property crimes. It seems to me that to ignore the problem of property crime is to miss an opportunity, once you are addressing yourselves to these kind of problems. It would lend itself, it strikes me, peculiarly, to almost a workman's compensation scheduling process. Somebody steals my television set and I can prove that it was stolen, it strikes me that you don't need a judge or a tremendous amount of proof to come out with a judgment that \$100 equals \$100. Whereas, if you are talking about something like rape, or robbery, the question of placing a dollars and cents value becomes very subjective, open to question and really never subject to a satisfactory conclusion because I am sure both sides will always feel that either too much or too little was attributed.

So I would suggest that the committee consider the idea of including property crimes and not having maximums. The only argument against that, it strikes me, is that it would be administratively difficult but then again, that argument is made about every step forward, that it would be too expensive and the experience with programs so far has been that there is not an overwhelming use of them and as a matter of fact, in this report, that I referred to before it mentions a study that was done by a researcher named Childress which concluded at the expense of a comprehensive National program, crime victim compensation might not exceed \$14 million a year.

I would suggest that obviously, some thing on approximately one-fiftieth of that would not be so Herculean a financial assumption and again, if you tied it to some program whereby the offenders themselves bore some responsibility for the cause, at least to some extent, that part of it would be kept down and if the Mansfield bill is passed and the administrative cost of setting up a tribunal like this are borne by the



Federal Government it seems to me that the cost would be quite reasonable, especially in view of the returns or the potential of returns.

I think that rather than going on and on about possible problems in a bill like this, I will be glad to respond to any specific questions that you have about elements that might concern you.

Mr. FAUNTROY. All right. Thank you, sir, very, very much for your very expert testimony on this whole question.

I guess, first of all, I would want to enter for the record the article which you wrote about a year ago in the Post about a plan for repaying victims of crime that outlined the Minnesota program, and I want to commend you for that article and for the contribution that I think your thinking has made to our deliberations here.

[The article referred to follows:]

[Excerpt from the Washington Post, March 28, 1972]

#### MINNESOTA PROGRAM

#### A PLAN FOR REPAYING VICTIMS OF CRIME

(By Ronald L. Goldfarb)

*(The writer is a Washington attorney who has made a continuing study of prisons and the administration of justice.)*

Offenders and victims have something in common: each is a loser in the present criminal justice system. If offenders at last are becoming visible as the abused consumers of the so-called correction system, as victims, if you will, of the prison system, crime victims remain their neglected brothers. For the most part, they, too, are abused by the system and get nothing from it, although they are the only parties with real and substantial interests in the way society deals with the crimes committed against them. Everyone in the criminal justice system speaks for offenders and victims as unappointed, derivative counsel; politicians thrive on their predicaments; but no one does anything for them.

Reconciliation of crime victims and offenders should be the chief goal of the correction system. Restitution from offender to victim should be the goal of the judicial sentencing process. The former almost never takes place; the latter is unusual, incidental. Instead, for 200 years we have tried unsuccessfully to reform convicts and to deter others by punishing offenders. Recognizing our gross mistakes, reformers are now intent on treating offenders in the vain hope that what religionists could not do to men's hearts, scientists can now do to their heads. Victims are left as the debating ammunition for vigilantes and reactionaries; but they are not let in the door of "the system."

A hopeful, very sensible new program has taken this phenomenon into consideration. Because there is so little good going on in the field of correction, this admirable program is worth a look.

The State of Minnesota is about to open a 25-bed Community Corrections Center which, as an alternative to incarceration in prison, will handle adult men and women property offenders who volunteer for this program. If accepted, they repay their victims at the same time as they support themselves and their families. Inmates also will pay for their room and board at the center.

Funded in February (\$110,000) and starting in May, this Restitution House will be located in the ghetto community where offenders come from and to which they will eventually return; it will be run by a seven-man board of citizen directors assisted by Corrections Department staff, counselors and research evaluators.

The program will be open only to property offenders—check writers, burglars, car thieves—the kind who end up in prisons and who rarely get rehabilitated. Here, as opposed to personal crimes, the losses are identifiable and tangible, not covering such subjective concepts as pain and suffering and emotional upset. The purpose will be to provide victims with restitution and thus attempt to neutralize the wrong done by the offender.



The offender can provide restitution in the form of money or personal services, or both. Communications are opened between offenders and victims. Once the plan is accepted, they have a contract with each other.

The program's clients would be chosen immediately upon their admission to prison. Once becoming a resident of a Restitution House, he works out an individualized restitution plan with the help of the staff of the house and with his victim, with a timetable for implementation. He stays at the house until restitution is complete or until it is agreed that he is able to fulfill his plan without the support of the residence.

To get into the program the offender must volunteer to go to the Restitution Community Correctional Center. The program is limited to offenders who would otherwise be in a prison, since to allow others would duplicate community correctional services whose expansion is one of the goals of this program.

David Fogel, the imaginative new Commissioner of Corrections for the State of Minnesota, says "the major goal of the project is retaining offenders within a community setting to provide an opportunity for the offender to take the initiative in redressing wrongs done through deviant acts and improve the nature of community attitudes . . ."

The futures of these convicts will be watched and compared with those of an experimental group who would have been eligible but either could not develop a plan to enter the center or could not complete the program. Victim attitudes toward offenders and the criminal justice system will also be measured. A cost-benefit analysis will be made so that the success of the program can be evaluated.

The basic idea according to Minnesota officials is to provide the offender "with an opportunity to neutralize the damages resulting from his offenses while, in the process, the victim is provided with some degree of compensation." At the same time that he is fulfilling his contract to the victim, the offender is developing marketable skills.

Originally, offenders or their families compensated crime victims. As society became more complex and sophisticated, and as the state took over the responsibility for law enforcement, criminal trials replaced personal feuds and vendettas. But the victim was forgotten in the shuffle.

This simple, sensible new Minnesota program gets the correction process onto the right track in finding situations for avoiding incarceration, helping victims and dealing with offenders in a sane, safe and economic fashion.

#### PROPERTY OFFENSES

Mr. FAUNTROY. On the Minnesota program, you suggest that if you could somehow tie in to this legislation that it should be broadened to include other than crimes of violence and I take it, the contract which the defendant would sign, would work out with the victim, would include how broad a range of crimes.

Mr. GOLDFARB. Well, in Minnesota, it's limited to property offenses. I think the idea there is that first of all, it is a new innovative idea and you go slow and it is easier to rationalize to the community that is unfamiliar with a program like this, letting a man out who has perhaps stolen a car, as opposed to a man who has committed an act of violence.

It would be more acceptable to the community. I think, however, that as something like this proved out, it might well be expanded to other kinds of crimes just as in bail reform; in the early days, it was limited to certain classes of offense. And as the program proved out, it became here in the police and prosecutor's offices that participated in these programs, have agreed that you shouldn't automatically exclude people who have committed or have been charged with crimes of violence.

But it seems to me that there is no reason to limit it to any kind of case based on the nature of the case. I think one should be included or



excluded in a possibility like this only on the same grounds as one would qualify, for example for bail, where it is a clear, demonstrable showing that it would be dangerous to the community that the man would flee or be likely to commit another crime. He shouldn't be eligible for a program like this.

#### REPARATIONS

But all correctional experts agree that even those people who are in our prisons now, the overwhelming number of them could be dealt with in the community. So I would think that a large number, at least, probably a good majority of offenders could qualify and I would say that a program of the nature of restitution house should be used wherever there was no danger to the public community involved in releasing the man and wherever a victim would agree to it. I don't think the victim should be forced to go through something like this if he found for whatever reason that it was undesirable.

But it seems to me that again, in the great majority of cases, somebody breaking into my home, an addict, any one, and steals a television set, or steals some furniture or something and is caught, it does me no good at all for that man to go to prison. No. 1, it cost me as a taxpayer to pay for this whole process and No. 2, I don't have my property back and No. 3, I go through the painful process of testifying simply to have the man put away and I get nothing out of it and finally, when he gets out of those institutions, the best experts tell us that he's going to do a better job when he breaks in again, so he probably won't be caught.

What I would like back is my television set, or whatever it is he took, and maybe even something for the trouble that I have been put to.

And also, it seems to me the criminal justice system, to the extent that it wants its pound of flesh from the offender, ought to be satisfied if the man is caught, the victim is redressed, and perhaps they, too, are paid something for the administrative cost of the system.

But at that point, it seems to me, the man has been getting off scot-free. He is not getting a picnic for having committed a crime; but at least what it is that we exact of him has some useful social benefit that will do somebody some good.

So I would say anytime a victim would agree to it, and anytime it didn't endanger other people in the community, it would make sense to try it.

Take one example. I suggested it at the time, but things were kind of hectic in this town then, and it wasn't picked up. If you recall at the time that Martin Luther King was killed, and there was a mass disturbance in the city and thousands of people, over 5,000 people, were arrested. Many of those people were arrested for minor property-related offenses, and an overwhelming number of them for regulatory ordinances, curfew violations, failure to move on—things of that nature.

It seems to me that the notion of reparation of victims of crime and taking that reparation from the offender himself could have worked perfectly in a situation like that. You have on the one hand the vic-



tims, the men who own stores in the city, and stores were looted and broken apart, and in some cases destroyed.

On the one hand, a very wise decision was made by the chief of police and the Mayor, in my judgment, to not make a massive police showing to stop at any cost the looting. And so here, not as in other cities, people weren't shot for taking a pair of shoes. That made sense.

On the other hand, once that episode was over with, I don't think it was right to forget the people who owned those stores and whose property and businesses and money were ignored by the police for a greater good. And at the time that the system began to gear up again to do something about all of that, instead of just taking these 5,000 people and fining them or putting them in jail, or whatever, it seems to me it might have made good sense to have them pay—those who were caught—pay for the cost of their offenses. And to the extent that they couldn't, a fund could have been created for the victims who suffered at that time.

When it was all over, the people who had committed the offenses wouldn't have had the ugly experience of going to jail; the victims wouldn't have been left hating them and having an abiding feeling that they were not protected by the city; some good would have been done. The city might even have been better cleaned up privately than it appears to have been publicly. As a result of that riot, as I understand, some of those buildings still stand wrecked.

That, of course, is an extraordinary situation; but it seems to me a classic example of kinds of situations where the criminal justice system did no good for the offender; it did no good for itself, because court calendars became clogged, police were dissuaded from the ordinary work that they were doing. Everybody was crushed by trying to bring into the criminal justice system an awful lot of work that could have been diverted from it.

And the victims were left pretty much without anybody taking care of them.

Mr. FAUNTROY. All right.

S. 300

As counsel indicated to the last witness, I would be in somewhat of a dilemma if the present legislation which has passed the Senate, S. 300, becomes law because it would make available to us 100 percent funding for a Federal program that would be administered by Federal appointees.

Given the relative merits of part A and part B of that bill, which would you, based on your experience, opt for—a 100-percent program with Federal administration, or the 75-percent program with local appointment and local administration?

Mr. GOLDFARB. Well, obviously, I don't speak with expertise about the administration of the District government, and other witnesses would, but it would strike me that the only thing to be said in favor operating under a Federal program, is that you get more money. And I recognize that that is not an insignificant matter.

But administratively and every other way, it would strike me that it would be better for this city, or this State—however you want to describe it—to operate its own programs, just as other States would.



Each area, each State, has its own peculiarities. There is something to be said for local people running their own programs, I think in terms of the faith that people have in the proceedings and every other respect.

Also, I think there would be a danger of the District citizens being lost in the shuffle if they have to compete with people from Rhode Island and every place also to get their cases processed.

So for every other reason but the economics, I would say that it would make more sense to come under that part of the program which treated the city as a State equal with all the others.

Mr. FAUNTROY. All right.

The minority counsel have any questions?

Mr. HOGAN. Yes. May I, Mr. Chairman?

#### STATES' EXPERIENCES

Mr. Goldfarb, Mr. Ketchum was talking about the experience in California from the State legislature, and he was exploring the possibility of some other way of funding this, other than perhaps through a system of direct contribution through appropriation process of the State or locality.

Do you know of any locality that, in effect, expands its workmen's compensation program, or something similar to that, to incorporate complaints such as this?

Mr. GOLDFARB. Well, I think Maryland—I gather you're having witnesses from Maryland—but I understand the Maryland system operates with a—funds this through fines which are earmarked for a program like this.

It seems to me that to the extent that the criminal courts exact fines, those fines have to reach somebody; and it makes the most sense they go to the victim of the crime, who only gets some kind of a derivative benefit out of the system as it presently operates.

In other States, I believe, it does come from the general funds. I think that that would be politically less attractive to do it that way, because the people who pay the most taxes—Philip Stern's book notwithstanding—the people who can best protect themselves from people like this, and who are not going to be interested in another administrative agency being set up to protect others who don't have those means. So I'd rather see it come from earmarked fines from the criminal justice system, or from some program that I recommended in general terms, whereby the offenders do something.

Mr. HOGAN. Yes. Well, as I understand it from my conversation with Mr. Ketchum, they had a great difficulty in California as to how they were going to base their compensation for victims—whether it would be on the basis of need, or not.

Mr. GOLDFARB. Well, on that score I think the California program, from what I have read, has been considered to have taken a wrong step. If I remember correctly, they had a step in eligibility which tied a person's eligibility to a program which had to do with a person's being eligible for welfare, which has not been worked out and has not been picked up and followed by the States.



And I don't think it ought to. I don't think, for example, it should be tied to need. I think that a wealthy person who gets hit over the head is just aggrieved as a poor person who gets hit over the head.

I think it's good that a program like this is going to help more people who can't help themselves, because most victims of crime are inner city people, and those people are from lower economic brackets and the high criminal rates, and so forth. And that makes it sure that there's a greater good for a greater number of people.

And on the other hand, the whole notion of this is to equalize that, and you don't equalize them by punishing someone else. It seems to me that the fundamental basic idea behind victim compensation is that a person who is hurt, whoever they are, should be compensated for that damage. And I don't think there should be any needs test. And I think that would be politically astute, because then people wouldn't feel that you have got another welfare program that they are not benefitting from.

Mr. HOGAN. Well, I gather that your position is somewhat similar to Mr. Ketchum's as it relates to the standard for entitlement, at least in his conversations with me.

Does Minnesota actually have a crime compensation statute?

Mr. GOLDFARB. I don't believe—they're not one of the seven States that have it. No.

Mr. HOGAN. So this Minnesota program is just a kind of an extrajudicial program that operates outside of the gamut of any compensation.

Mr. GOLDFARB. That's right. It was set up by the corrections department, and the restitution house itself is run by—is administered by people from the corrections department, but it is run by a private citizens board of directors, which I think is also a good idea because it helps in terms of finding people jobs and community acceptance, and what not.

Mr. HOGAN. Now, at the time they were taking up this program that you were talking about, did they have full consideration in the compensation program?

Mr. GOLDFARB. I don't know. I know that a large number of States have considered it at different stages of acceptance, but I don't know what the situation was in Minnesota.

#### SUBROGATION PROVISIONS

Mr. HOGAN. Now, in many of the States now, as it relates to compensation under their particular provisions, I gather that there are subrogation provisions. Would you consider that there be subrogation for property claims under the Minnesota program that would be adopted, let's say, in the District of Columbia?

Mr. GOLDFARB. Yes; absolutely. I think there should be subrogation where you can have it. And there again, it would tie in with my notion of putting the ultimate responsibility on the offender where it is possible. And to the extent that it isn't, subrogation is meaningless.

But where it is possible, it certainly should be used.



Mr. HOGAN. Now, as I understand it, according to you, you would not necessarily have the claimant and the individual who had been convicted sitting down discussing this. You could well have the insurance claim discussing this, sitting down, entering into a contract by way of subrogation with the individual, who had caused the injury, the property damage.

Mr. GOLDFARB. Well, as I understand the subrogation process, it wouldn't be with an insurance company. It would be the board itself which would be the agency which would be subrogated ultimately to the rights of the victim to the extent that responsibility could be placed, and it could work in one of two ways.

First, it could work in cases where it was deemed appropriate, where a person could be kept from going through the system where he is caught, where it is appropriate for him to go into a program such as that suggested where the victim agrees, there is no need necessarily for him to go.

He could be diverted from the system just as we do with addicts and alcoholics and others. If—to the extent that he fulfilled his contract.

On the other hand, where that didn't occur, but a man did go through the system, but that a program like this was nonetheless brought into play, he could then—or he would then make his deal with his victim; or with the administrator to his program where the victim didn't want to do it himself, and have the opportunity to work off his debt to society in general, to the administrative mechanism that runs the program in general, and to the victim specifically by working his way out of the correctional institution, through a reparation.

Mr. HOGAN. Well, when I say insurance company, what I was really talking about is the—whatever mechanism it would be that would run it, that would act pretty much like a claims adjuster that would be subrogated to the claim of the individual.

Wouldn't most of this be taking place between that agency? Because the agency would be responsible, as I understand it, according to your plan; you would expand the coverage to cover property damage as well as personal injury.

Mr. GOLDFARB. I can't imagine that many offenders would not, who are eligible, would not want to take this opportunity, and to the extent that they did, I would think that they would be excellent; and to the extent that it would work, as an insurance claims adjuster, as somebody who practices law, I can tell you that my clients and I are always better off when we can work it out with the insurance company, and not have to go through the arduous processes and delays and vagaries of the trial system.

The same thing applies double and redouble to the criminal justice system. While; yes, it would add an awful lot of administrative work in terms of "claims adjusting," the contribution to the criminal justice system, and the alleviation of pressures on the system which really is overloaded already would, I think, compensate that greatly.

#### COSTS

Mr. HOGAN. Now, as far as the ratio, the cost of administrating to the cost of compensating the victim, and making up a total to the ex-



tent, that the statute provides for them, do you have any judgment or opinions as to what that ratio normally is in most jurisdictions.

Mr. GOLDFARB. I don't believe I understood your question.

Mr. HOGAN. Well, as I understand, the District government wrote a letter indicating the cost, the estimated cost, at approximately \$250,000, that would be the administrative cost; and the funding for compensation would be approximately \$1¾ million, which would presumably be on a 1-to-7 ratio.

How does that compare to other States?

Mr. GOLDFARB. I think the \$250,000 figure is what I recall reading New York estimated it as.

Mr. HOGAN. Now, is this the entire State of New York, or the city of New York?

Mr. GOLDFARB. No; this was the State—statewide legislation.

I don't have any ratios and figures of that kind. I can't help you.

Mr. HOGAN. Now, as far as California is concerned, do you believe—well, Mr. Ketchum expressed his concern about the cost of the program here. I think he said that in California. The experience had been something in the area of \$387,000, I think it's in that ballpark.

He expressed concern—

Mr. GOLDFARB. I would express no concern at figures anywhere in that ballpark, because I—

Mr. HOGAN [continuing]. As to \$1¾ million?

Mr. GOLDFARB. I am more concerned about the colossal, unbelievable waste of public money that we fritter away in our correctional system now, with the bricks and mortar approach, taking \$640,000 and adding a third floor to the women's house of detention.

That is a colossal blunder. Spending \$320,000 to help perhaps thousands of crime victims in the city makes great sense, and if we are going to spend our public funds for anything, that is what we ought to be spending them for. I think that is an argument for a program like this, as opposed to against it. We seem to do all the worst and most counterproductive things with our public moneys in the area of criminal justice, and this is one thing we could do with our money, where some good would be done and where the victims of crime would see something for it.

Mr. FAUNTROY. Thank you.

A couple of questions from the committee counsel, Mr. Daniels.

#### STATUTORY AUTHORIZATION

Mr. DANIELS. Based on your discussion with Mr. Hogan, I understand that the Minnesota program is not based on statute. Is that correct?

Mr. GOLDFARB. Well, they had to be authorized into some statute to be able to do it, but it was done administratively, through the department of corrections, I believe; and I think the idea, as it proves out, is to set up a network of these organizations and spread them out.

Mr. DANIELS. So in your view, some additional statutory authorization would be necessary here in the District of Columbia?

Mr. GOLDFARB. No question about it. But I think it could be easily tied to, or more naturally be tied to, legislation setting up a board such



as this; and I don't think it would incumber the chances of getting this bill through, because I really feel that we have come full cycle again, and we are catching up with Hammurabi now, and we are getting back to the point where people are ready to talk about compensating victims of crimes.

So it isn't controversial, and the readings I have about the Federal bill, about whether it is going to get through, its time has come.

I think we should maximize the opportunity.

Mr. DANIELS. There are now some nine programs that have been enacted in the States, one or two that have been enacted in the last 6 months or so.

Seven of those programs do not include coverage for pain and suffering. Hawaii and Rhode Island do include pain and suffering in their program. The pending Federal legislation as I understand it would not include pain and suffering, in H.R. 3264 as it has been introduced, does not include pain and suffering. What is your view as to the inclusion of pain and suffering?

What are the advantages as you see it, and what possible disadvantages might result from including pain and suffering under the coverage of the act?

Mr. GOLDFARB. Well, there is always the danger of fraud, in each of the States that have victim compensation programs have found that it has been a problem, but not a great problem. I think an inevitable one in administering any program of this kind.

An additional problem would be that it would expand the judicial phase of the hearings, and make for longer, more protracted—more lawyers, appeals, and you get into subjective things like this, and the whole notion behind the general idea of victim compensation programs is that they should be expeditious and informal, unencumbered by lots of legal folderol and what not.

For all of these reasons, it seems to me that if—I mean, I started with the presupposition that I think the program should be as broad as possible, it should include everything—but, if something had to be eliminated, I could understand eliminating this aspect.

I think it might be wise to hear from those States which do allow it, to learn what their experience is, because I am a great believer in assessing programs like this on reality and not on just conceptual notions.

#### ATTORNEYS' FEES

Mr. DANIELS. H.R. 3264 provides that lawyers' fees shall only be allowed in cases where, first of all, the board allows such fees, and pursuant to reasonable standard that the board established.

There is no schedule in the act itself for such fees. In addition, the bill would limit reasonable attorneys' fees to actual services performed in the course of a hearing, but would allow no fees for the preparation of an application or for preparation for going to a hearing.

Based on your experiences, and how lawyers generally act, what difficulties do you see with the scheme set forth in H.R. 3264; and if the difficulties are great, as I think they may be, what alternative scheme would you suggest?



Mr. GOLDFARB. Well, I think that if you limited attorneys' fees, obviously practicing law, I am speaking with some mixed motives about it—but seriously, I think that if you limit attorneys' fees to in court work, and you are limiting your attorneys to shoot from the hip, don't prepare the time, because the facts of life are that before you get paid for a day in court, you aren't going to do an awful lot of work for it, so a limitation like that makes no sense at all.

On the other hand, it seems to me, a program like this can turn into a huge colossal mess, if every case becomes your proverbial Federal case, and to the extent that it can be expedited and moved swiftly, and I think certainly for example, if you leave out pain and suffering, if you deal with property offenses, it could work as workmen's compensation proceedings do.

On the other hand, I wouldn't ever exclude attorneys, because invariably there are going to be cases where there are issues and there are going to be unsophisticated clients who are not going to be able to even handle the kind of perfunctory processes that would accrue to their favor, and to deprive them of some help would be foolish.

I am a lawyer, and I have prosecuted as a prosecutor complex tax cases, and yet when it comes to doing my own tax returns, I am delighted to have an accountant come and do the thing for me.

The same kind of rationale applies here. Before a person could weave through the labyrinths of a procedure like this, no matter how they are simplified there are going to be many cases where they are going to need some help, so I wouldn't rule out lawyers and I suppose you would want to limit their fees, and what would probably arise is the equivalent to what you have in the workmen's compensation field, where you have lawyers who do nothing but.

Now, the average lawyer from Covington & Burling probably couldn't afford to come up for \$15 a morning to process a case. You would find that workmen's compensation lawyers will process 20 or 30 in the course of a day, and it makes it worthwhile and they get some expertise, and many of them are pretty good at what they do.

Attorneys' fees under victim compensation cases, according to this report I cited earlier, run between \$25 and \$350, total. It doesn't indicate that it is getting out of hand, and I am sure that the \$350 case is probably one where there is a lot of—the situation warranted some professional assistance.

Mr. DANIELS. Do you think it would be valuable for the crime victim compensation board to state in advance what it would be likely to consider a reasonable attorney's fee for a case processed before the board?

Mr. GOLDFARB. To the extent that I don't know how to—it would necessarily be possible, I think that in the kinds of cases where it is clear cut, and one knows how much time it is going to take, that might be the kind of case where the board would urge the individual to process its case, and possibly suggest to him that every indication is the case—the application would be granted, and it would be kind of expedited that way. To the extent that an attorney is truly necessary, it seems to me he is necessary because there are some unanswered questions, and I think it would be presumptuous and difficult for the board to judge ahead of time what that could be.



## AWARDS

Mr. DANIELS. One additional question, Mr. Chairman; the H.R. 3264 does not require deduction from an award, and in the case where private insurance funds have paid for either a portion or all of a victim's medical expenses, do you feel that such an exemption would be wise?

If so, why?

Mr. GOLDFARB. I think that a program like this is based fundamentally on need, and where a person has been compensated once, it shouldn't turn into a windfall kind of program. There is too much good it needs to do for too many people who don't have some other kind of help, so that I would not allow a person to collect twice under a program like this.

On the other hand, I would not exclude a person who had coverage from a program like this, to the extent that the coverage didn't apply.

Mr. DANIELS. So you would be in favor to the extent that a private insurance program didn't cover hospital costs, for example.

Mr. GOLDFARB. Yes, sir.

Mr. DANIELS. Thank you.

Mr. FAUNTROY. Thank you very much, Mr. Goldfarb, for your very useful testimony.

Mr. GOLDFARB. Thank you.

Mr. FAUNTROY. Now, we will call to the stand a distinguished panel of those who have been experienced in administering—oh. It has just been called to my attention that the Honorable Congressman Gilbert Gude is here, and I certainly hope—I know that he is very pressed today, and I would like, I think to hear from him now, and apologize to the distinguished gentlemen from Maryland, but of course when your Congressman is here, you must defer.

## STATEMENT OF HON. GILBERT GUDE

Mr. GUDE. Thank you, Mr. Chairman.

I was at another committee, and I'm sorry I didn't get here punctually on the hour of 11. My statement is brief, and I want to thank you for the opportunity to express my support for the legislation to compensate the victims of violent crimes perpetrated in the District of Columbia.

We must recognize our obligation to those whom we have failed to protect—many innocent persons and their dependents, who suffered grave physical and financial hardship as a result of violent crimes. This extends to persons against whom the crime has been committed personally, and persons injured or killed while assisting either a victim of crime or a law enforcement officer.

This later category—those injured while assisting others—is of particular importance, for they are the rare citizens who selflessly risk personal harm for the sake of another; in many instances total strangers to them.

## MARYLAND EXPERIENCE

As you know, Mr. Chairman, my home State of Maryland was one of the first in the country to create a program of compensation to



crime victims, and it is working quite well. Enactment of such legislation for the District of Columbia would be of great benefit to the Washington area residents; for coverage of this nature would then be available if the necessary eligibility requirements are met on both sides of the District of Columbia, Maryland line.

Crime respects no legal bounds. Mr. Chairman, a system of compensation should be widely available. There is one respect to the Maryland experience, Mr. Chairman, which I should like to mention briefly for the committee's consideration. Maryland Criminal Injury Compensation Board notes in the third annual report that despite the dramatic increase in applications received in 1972 over the previous year, not all of the victims of what appeared to be eligible crimes committed in Maryland were and are filing applications. The Maryland board continues to use all avenues available to them to enhance public awareness of its program of compensation, including electronic and print media and various contacts with agencies and organizations across the State.

Though you might not be able to write something in in this regard into the legislation itself, you might treat it in the committee report. I mention this not necessarily as an element which indeed can be written into the law per se, but rather to call the committee's attention to the significance of public awareness. I would only urge here that the proposed Commission for the District be adequately equipped with the necessary resources to inform the public of its existence and its mode of operation.

In regard to the latter, the committee might also wish to review Maryland's experience in its scheduling of hearings before a single Commissioner in consideration by the full Board only if reconsideration is then requested.

I reiterate my support for legislation to compensate victims of crime, and I urge the committee's prompt and favorable action in this regard.

Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you so much, Mr. Gude.

Particularly in the reciprocity aspects of what you are suggesting here is something we hadn't really thought about.

Mr. GUDE. Well, this is a metropolitan area problem and we are coming to grips with our problems on a metropolitan-wide basis, and I think the element of leadership which you have added to our District of Columbia committee has helped in recognizing our problems as being area-wide and not confined to one jurisdiction or another.

Mr. FAUNTROY. Thank you so very, very much.

Mr. GUDE. Thank you.

Mr. FAUNTROY. Thank you.

I know what it means to be running around this Hill in the morning.

Mr. GUDE. Yes. Off to the next one.

Mr. FAUNTROY. All right.

And now we will hear from our distinguished panel from the State of Maryland, both the Commissioner of the Maryland Crime Injuries Compensation Board, Mr. Dennis McCoy, and the Executive Director of the board, Mr. Martin Moyland.

Oh, excuse me. I do notice that Mr. Riley has come back again.



Mr. MOYLAND. Mr. Giles Riley. He's Commissioner from the State of New Jersey.

Mr. FAUNTROY. We are really going to have an authoritative presentation based on experience.

Mr. McCoy.

**STATEMENT OF MR. DENNIS MCCOY, COMMISSIONER, MARYLAND CRIMINAL INJURIES COMPENSATION BOARD; ACCOMPANIED BY MR. MARTIN MOYLAND, EXECUTIVE DIRECTOR, OF THE BOARD; AND MR. GILES RILEY, MEMBER, NEW JERSEY CRIMINAL INJURIES COMPENSATION BOARD**

Mr. McCoy. Thank you, Congressman.

I think if I could, rather than directing any remarks at the legislation before Congress presently, I would like to make a few remarks about the general philosophy of this type of compensation and try to restrict my comments to Maryland, about which I know the most.

I am one of three commissioners serving on the Maryland Criminal Injuries Compensation Board. I have been a member since 1968. The legislation was passed at the time Congressman Paul Sarbanes—he was here earlier—was a member of our lower house, and at the time our now Governor Marvin Mandel was the speaker of that house.

**MARYLAND EXPERIENCE**

The program actually developed as an offshoot or a result of one rather widely publicized injury that occurred to an individual who had gone to the aid of his fellow man. This was a young man in his thirties, a mechanic who saw someone being robbed. He went to his aid. He chased the robber with his vehicle, and the robber then turned and fired and killed this young man, leaving a widow and some three or four children.

Needless to say, there was a public disturbance about this type of conduct, and the public conscience asked the question what are we doing now for the family of this heroic person?

Who is it that is going to care for his small children?

And of course, that question grew into the broader question of what happens to the victims of crime generally. We knew that in 1969 we were spending about \$36.50 a person to protect ourselves from crime, both police services, and for detention services. We knew that notwithstanding this expenditure, there were about 21 million crimes in the United States in 1969, that there were over 2000 victims of crime for every 100,000 of our population.

We knew, in short, that we really were getting no place. We knew, also, that there had been long-standing systems of compensation for victims of crime. We knew that these went back to the Code of Hammurabi, 1775 B.C., that the State prosecuted cases now, and that sometimes restitution was ordered to be paid to the victim of the crime.

We knew that an individual, if he wished, could procure private insurance to cover himself against these eventualities, but we knew most painfully that none of these things worked. We knew that the burden had to be spread out over the general population. We knew



also that there had to be some system of deciding who was to receive this compensation.

There developed in Maryland, of course, the act which I administer, and there has developed, as the committee noted earlier, the same or similar legislation in nine States in this country, and in at least six Canadian provinces.

#### COMPENSATION

The levels of this compensation range from a minimum of about \$5,000—that is the lowest, or maximum for the State—to \$45,000 that is paid in Maryland, which it is my understanding is the highest in the country. The nine jurisdictions in this country that have a legislation, all differ quite dramatically.

Maryland and New York are very similar, and follow rather closely the legislation that has been enacted in various parts of Great Britain and some of the Canadian provinces, and I feel is the best.

As to our particular experience in Maryland in the year 1969, there were 9.3 homicides, 30 forcible rapes, 294 robberies and 312 assaults per 100,000 of population. Maryland, as you may well know, in 1969, had a population of approximately 4 million. In 1969 the Criminal Injuries Compensation Act actually started functioning. We were created in 1968, but in 1969 we started paying out funds. Our caseload in that year was diminished by our newness, but has presently developed to a level that we consider to be fairly average, and we anticipate not as much growth in the foreseeable future.

We have had—and I think the committee has before it—a copy of our third annual report, which sets out the fact that in 1972, if we could talk about the most recent one, there were 266 decisions made by our board, and these consisted of 150 awards and 116 disallowances. It is important to note from the point of view of constructing new legislation, what type of claims were filed and what type of claims were denied, and the type of crimes that were involved in the payout. And I would suggest to you that these would not vary substantially between the State of Maryland and the District of Columbia.

Mr. FAUNTROY. Mr. McCoy, I wonder if at this point I might ask that that entire report be placed in the record.

Do you have a copy of it that you can leave with us?

Mr. McCoy. Yes, I do, and I would also offer for the committee's consideration our second annual report and our first annual report, which gives a rather good operating history of the Maryland Criminal Injuries Compensation Board.

Mr. FAUNTROY. Yes, if you leave those, and I will put the last in the record.

Thank you.

You may proceed.

[The document referred to appears in the Committee files.]

#### COVERAGE

Mr. McCoy. I might, if I can do this briefly, review for the committee exactly who it is that is covered under the Maryland Criminal Injuries Compensation law. We cover basically six categories of people.



First and foremost are the victims of crimes, the victims of personal injury crimes. Secondly, we cover the families of the victims of crimes. Thirdly, we cover the family of a person who is killed attempting to prevent a crime, or we cover that person's injuries, and lastly we cover a person who is injured attempting to assist a police officer or that person's family.

Our statute defines family in a two-edged fashion as anyone who is dependent upon the injured person or the deceased for their principal support or who maintains a continuing sexual relationship with that person. This, as I will mention later, goes both ways.

#### COMPENSATION

The extent of our compensation is, first, medical payments, second, funeral expenses, third, wages while a person is totally disabled and unable to work, up to a certain maximum, fourth, rehabilitation expenses if it is appropriate in the case, fifth, disfigurement, if that is appropriate, in the particular case, and sixth, compensation for injuries that are permanent in duration but partial in nature.

Maryland can pay, as I mentioned, \$45,000 maximum. We do pay \$27,500 in the case of death. In other words, a person who is permanently and totally disabled would be entitled to more money under the Maryland statute than the family of a person who is killed.

We do have a need provision in our statute that seems to have been the subject of several questions from members of the committee. Our statute provides that before we can make an award, we must find that a serious financial hardship would result to the claimant as a direct and proximate result of this crime.

Now, this is also a two-edged sword by virtue of our interpretation. That is to say, we find that a person who is a welfare recipient—and I am talking about a long-term welfare recipient as opposed to a person who has just a short-term misfortune, but a person who is a long-term welfare recipient who is the victim of a crime, requires hospital and medical treatment, the bills for which were paid by some public assistance program, and that person then returns to the welfare rolls, our interpretation of our statute is that there is no financial hardship to that person and we cannot make an award.

By the same token, if a person is wealthy, if he has provided for his own continuation of his wages or for his own medical treatment, then there may well not be a financial hardship there.

However, we do have authority by statute to pass rules and make certain exclusions. We have excluded from consideration the person's home, one automobile, his books, tools of his trade and his personal wearing apparel, the amount of savings up to 1 year's salary, and amount of life insurance proceeds up to \$1,000 per dependent. They are very generous exclusions and in fact it causes our statute to cover the vast majority of people in the middle, middle-income people, people who are hurt most if they are unable to work, people who ordinarily have their automobile repossessed and their electricity turned off if they have no salary income.

Our experience has been, as reflected in the report, that the hardship provision has directed us to turn down or deny compensation



in 48 of 116 disallowances. So, approximately 40 percent of the claims that we disallow are disallowed because we find that there will not be a financial hardship as a result of the crime.

#### COSTS

It is interesting to note that in 1972 again, remembering the crime statistics and the population statistics that I pointed out before, the Maryland Criminal Injuries Compensation Board expended \$431,000 for the payment of claims. We made awards of slightly over \$1 million.

Now, our awards are paid out over a period of time. That's why the discrepancy exists there. Our operating expenses, the ratio of operating expenses to awards, is about 1-to-12. In other words, our operating expenses were in the range of \$89,000.

#### HARDSHIP CASE

I am very much heartened to see the District of Columbia consider this type of legislation because perhaps one of the most disturbing cases to me that I have had to decide since being named to the criminal injuries board, involved exactly the problem of the Maryland-District of Columbia line. It involved a young man, a young, hardworking man, a man who had a regular job. He had a wife, he had two children, and he also had a second job driving a taxi cab. He drove his taxi cab in the District of Columbia, drove his taxi cab in the State of Maryland.

He could have cared less where the District of Columbia and the Maryland line was. And it so happened some other people could care less, because this one particular night, as he was driving his cab, he saw on the other side of the street a woman unknown to him, completely unknown who was being yoked. Her pocketbook was being snatched by a couple of hoodlums. He jumped out of his cab, not knowing or caring where his cab was, and ran to this woman's assistance. He struggled with the boys that were trying to take her purse.

A short while, a few seconds later, a shot rang out and struck this man in the side of the head. He fell to the sidewalk. The ultimate result was that the man now has an attention span of a couple of minutes. You can talk to him, he's reasonable, but then he drifts off. He floats away on "cloud 9." He is unable to drive his cab. He is unable to perform his other job. He is unable to care for his family.

His wife now goes to work and this man sort of sits around the house all day and looks out. He filed a claim at our board and it so happens that the street that this incident occurred on is the Maryland-District of Columbia line and he was in the District of Columbia at the time this incident occurred.

So it's even compounded more by the fact that he is a Maryland resident. He lived in District Heights, Md. He had always been a Maryland resident. He had always paid taxes, and I believe the woman who was being assaulted was a Maryland resident. Everybody was from Maryland, yet under a technical and strict interpretation of our law, there will be no compensation.

It seems to us to be grossly unfair, and in fact, we denied his claim at the single commissioner level. He did thereafter have very able and competent counsel who then did a great deal of preparation



of the case, photographing the scene, procuring from the District Record Office's plaques of the scene showing exactly where the line was and had testimony of several witnesses. We had a full board hearing and he convinced us that (a), the shot that struck this man was obviously fired also from the State of Maryland; that they had in their struggles crossed back and forth over the Maryland-District of Columbia line several times, and we were unable, really stretching a point, to determine if the incident happened in Maryland or in the District of Columbia, and we really stretched a point to the extent that we found it happened in Maryland and compensated this man.

But it is clear that if the incident had happened a block away, we could not have paid this man. It is just grossly unfair. This man, because he was a good samaritan, would have suffered, but even worse than that, his young wife and his two small children would have suffered even more.

So these are the kinds of things we do, and this is the kind of reason that I am very pleased to see the legislation developing to cover the District of Columbia.

Could I answer any questions?

Mr. FAUNTROY. I certainly want to thank you for a very moving testimony, not only on the subject of some of the questions that are still in our minds, as to the hardship questions, but also on the very pungent illustration of why such legislation is needed, which you provided us.

I think at this time we will hear from Mr. Riley and Mr. Moyland, and then we will perhaps go right to questions.

Mr. MOYLAND. Congressman, I have no statement to make. I'll be prepared to answer any questions.

Mr. RILEY. Mr. Congressman, as you know, I came unprepared. I knew nothing about this, but I'll be glad to answer your questions.

Mr. FAUNTROY. We certainly want to thank you, Mr. Riley, for coming, and agreeing to contribute the benefit of your own experience from New Jersey to our dilemma here.

We have several dilemmas. One is the question which you have already addressed: you have hardship requirements, and I guess—

Mr. RILEY. We do not in New Jersey, no, we don't.

Mr. FAUNTROY. Yes; that's right. Let's deal with that question.

On the basis of your experiences in New Jersey and in Maryland, as you look at our law, our proposed law as relates to hardship, how would you advise us?

Mr. MCCOY. Well, if I might, I look at the hardship question from two points of view. This is a classic job of straddling. I think you should have hardship, a hardship requirement, yet you should not have.

Mr. FAUNTROY. I see.

Mr. MCCOY. That is to say, I think you should not have hardship requirements from the point of view of a person who is injured attempting to prevent a crime or helping a police officer.

I do, however, because of the budget constraints, feel that it is appropriate and also understand that it is quite administratively feasible to have it from the point of view of the victims of crime.

Mr. FAUNTROY. I see.

Mr. Riley, yours is most like the one we propose.



Mr. RILEY. This is my own personal opinion. I agree with Mr. McCoy that we should have a financial hardship clause. We don't in New Jersey, but I think we should.

Mr. MOYLAND. But you have a provision whereby you take into consideration their assets, which is a backdoor approach to financing hardship.

Mr. RILEY. That's right.

#### AWARDS

Mr. MOYLAND. The New Jersey bill is very, very similar to the Maryland bill and while it doesn't set out serious financial hardship, it—the backdoor approach is there, taking into consideration—in other words, John Paul Getty, you know, these other sources of funds. In other words, if a person has two insurance policies for \$1,000 and he gets paid under each insurance policy \$1,000, is he proper coming to the board asking for another \$1,000? In other words, paying him \$3,000 for \$1,000—there's no actual, out-of-pocket loss, in other words.

Mr. FAUNTROY. Under the bill we have a \$50 minimum payment.

Is that realistic, or should it be higher or lower on the basis of your individual experiences in your States?

Mr. McCoy. Well, Maryland is \$100 minimum, \$100 or 2 consecutive weeks of lost wages.

Mr. RILEY. New Jersey is the same.

Mr. McCoy. We find that to be completely workable, and we think there should be a minimum to exclude the nuisance claims.

Mr. FAUNTROY. Do you have intra-family exclusions on your—

Mr. McCoy. Yes, Congressman.

Mr. RILEY. Yes, Congressman.

Mr. McCoy. I have mentioned during the bulk of my testimony that we have this family definition that is a two edged sword. That is, a family is defined as anyone who resides with, is dependent upon for their principal support, or maintains a sexual relationship with the now claimant.

Well, the result of this, in the two-edged aspect of it, it gets a lot of people in who are not technically members of the family but dependent on support from the point of view of collecting, but it also excludes people who are injured as a result of an act perpetrated by someone that they are living with. They are a sort of a member of a pro-forma family or some such thing.

Mr. MOYLAND. When our statute was put on the books in 1968, the statistics then showed 39 percent of the violent crimes in the country were family crimes.

Mr. FAUNTROY. I see.

#### JUDICIAL REVIEW

Does your bill allow for judicial review of decisions?

Mr. McCoy. Well, this is presently being tested in our courts. Our bill sets up an inter-agency administrative appeal procedure, and then says that the determination of the decision of our agency shall be final. However, that is somewhat inconsistent with the Maryland Administrative Procedures Act which is fashioned after the Federal act which seems to allow virtually anyone who has any dealings with an administrative agency who has agreed to go into the courts.



It is my position—and of course, I don't have to interpret that aspect of it—but it is my position that except for the administrative finality of factfinding, that the courts can review our decisions, and they could overturn it if we were arbitrary or capricious.

Mr. FAUNTROY. Is the compensation taxable in your States?

Mr. McCoy. It's not in Maryland.

Mr. RILEY. No.

#### ATTORNEYS' FEES

Mr. FAUNTROY. We have had a couple of—we've had some questions on attorneys' fees, for example.

Do your States allow compensation for the attorneys?

Mr. McCoy. Yes; both States allow compensation, and in Maryland I find, particularly working with cases every day, I prefer having attorneys handle the cases because the work moves faster. We would need a much larger staff if we didn't have attorneys. You know, with \$89,000 to cover this program—and we cover the entire State—we only have two investigators, one secretary, one account clerk, myself and the three commissioners, and to pay the overhead, the travel expense, that \$89,000 is everything, and if we didn't have attorneys on the other side, if we had people come in and we had to put a lot of time into it, we would never be able to do it.

We would then be asking for \$250,000 from the Maryland legislature if it weren't for the attorneys. So, we started having the attorneys handle these things, very similar to the workmen's compensation procedures.

Mr. FAUNTROY. Mr. Riley, what is the maximum compensation in New Jersey?

Mr. RILEY. \$10,000.

Mr. FAUNTROY. And in Maryland it's \$45,000?

Mr. McCoy. Yes; \$45,000.

Mr. FAUNTROY. On the basis of your again separate experiences on this question, how would you advise us, up or down?

Mr. McCoy. Well, I would say the \$10,000 limit that you are suggesting in your bill is unrealistically low. If you consider the possible consequences of a prolonged hospital stay, if we consider the example I talked about, which, by the way, is a real life case—it is written in our report—\$10,000 is just so minimal—I mean, it's help. I'm not saying it's not help, I don't mean to demean it too much, but it is not in line with the injury the person suffers or the expenses he incurs.

Mr. FAUNTROY. That's a very important observation for us.

Mr. Riley, has it been adequate in your State?

Mr. RILEY. No; it hasn't. It's—we have two cases now where the medical is in excess of \$100,000.

Getting back to the attorneys' fees, our attorneys' fees do not come out of the award. From 1 to 15 percent, at the discretion of the board, of the award, in addition to the award, yes.

Mr. FAUNTROY. In addition. That's interesting.

Mr. RILEY. It doesn't come out of the award.

Mr. MOYLAND. Whereas in Maryland, since we use the workmen's compensation scheduled benefits, the attorneys' fees are built into the



award, legislated into the award. Everytime the legislature changes the award schedule benefits, those things are thought of and taken care of.

Mr. FAUNTROY. Very good. Very interesting.

All right.

We will now hear a few questions from counsel, so counsel for the minority may have some questions from among the members.

Mr. HOGAN. Thank you, Mr. Chairman.

On the workmen's compensation, do you find that that works well in Maryland, in other words, following the standards in the schedules of the workmen's compensation?

Mr. MOYLAND. Yes. We have a ready body of law to go to. When we think about, let's say a person who is struck on the back of their head and he starts seeing double, and several weeks thereafter, we can go to workmen's compensation cases and look for causal connection and various other things and we find it very helpful.

Mr. HOGAN. So you work very closely, then, with the board, the Maryland board?

Mr. MOYLAND. No; no. We have nothing to do with it. All we do is read the cases.

Mr. HOGAN. No; I understand, but I mean there's a relationship such that you can have access to information such as this.

Mr. MOYLAND. Yes. We have access to the Maryland code.

Mr. HOGAN. Oh, you just look at published cases, then?

Mr. MOYLAND. Yes. We look at the, you know, they have a workmen's compensation case in New York that's very similar to it, we will use that.

Mr. MCCOY. I might add that it does have a negative aspect, too, but it is administrative. We are a budgeted agency. We submit a yearly budget as most governmental agencies, and we base it upon our payout project. This year, in workmen's compensation laws, you may or may not know, has a tendency to increase yearly.

The legislature is looking upon it as not really being their money since it comes from the insurance companies who really don't care anyhow because their premiums have experienced rates, so nobody really cares, and they keep raising it and raising it, and the result is that our budget goes in at the beginning of the session, and they raise the amount that we are going to pay out at the end, and it is sort of a never-ending circle.

Mr. HOGAN. Well, Mr. McCoy, both you and the executive director and the secretary—your compensation is paid out of the \$89,000?

Mr. MOYLAND. Yes. I'm also the secretary. I'm executive director and secretary to the board. It's just two hats, and there are three commissioners and an account clerk, a secretary-typist, clerk-stenographer, I mean, and two investigators.

Mr. HOGAN. Now, as far as hospitalization is concerned, hospitalization expenses, is there any way that you can work a matter like this out with—let's assume that someone is hospitalized initially and files a claim and is at a private hospital.

Is there any way that you can effect a transfer of that individual to a State hospital?



MR. MOYLAND. Well, we don't really work that ourselves. Let's get back to workmen's compensation. Workmen's compensation has a worked out schedule of hospital expenses, and in our board we pay reasonable hospital expenses, and if they are in some institution in Vienna and they're paying \$250 a day, we're only going to pay our regular expenses set forth in the schedule of benefits, and if people want to do that over and above the regular benefits, they can do that, but we won't approve any fees that are unreasonable.

MR. HOGAN. Well, what I was getting at, Mr. Moyland, is that, you know, for instance, I suppose that in Maryland there would be some reason—there might not be a State hospital, let's say, in southern Maryland, whereas there would be one in Baltimore. Now, there might be some reason for keeping someone near his home in St. Mary's County, but here in the District of Columbia where you have D.C. General Hospital, and the occupancy rate tends to run somewhat low anyway, wouldn't it help to offset the costs of the District government if an individual who is going to file a claim could be cared for in the D.C. General Hospital?

Don't you think the same thing would apply, let's say, if someone were injured in Baltimore and the State hospital facilities were available, you could offset that by—

MR. MOYLAND. Yes. We think the person has an obligation to mitigate his losses, and unfortunately, we are never in the case at the inception.

What happens if someone comes to Maryland, he becomes a paraplegic. He ends up in basically two hospitals, one on the Eastern Shore, and one called Montebello, and it is usually from that hospital that the claim comes, and we get 100 percent of those massive injury cases.

MR. HOGAN. Perhaps I should ask this gentleman.

Were State hospital facilities available to the individual who had the \$100,000 medical claims?

MR. RILEY. No. One of them is about a 20-year-old man who died several months later. Now, the county freeholders did pay the majority of the medical bills. I don't know how. But there are no facilities available.

MR. HOGAN. The freeholders are similar to county commissioners?

MR. RILEY. That's right.

MR. HOGAN. As they have it in the State of Maryland.

MR. RILEY. That's right.

MR. HOGAN. So that that was compensated by the State through another means.

MR. RILEY. Yes.

MR. HOGAN. Even though the cost was \$100,000?

MR. RILEY. That's right.

MR. HOGAN. Just one further question.

You heard Mr. Goldfarb testify.

MR. MCCOY. Yes.

MR. HOGAN. On the question of need. I know the Federal bill calls for financial stress, and yours calls for—

MR. MCCOY. Serious financial hardship is the wording.

MR. HOGAN. Serious financial hardship.

He testified that he thought there shouldn't be any standard of need at all.



## GUIDELINES

Based on your experience, I gather, according to your earlier testimony, you would, if you were redrafting the Maryland bill, you would continue to go with the provision that is in there.

Is that right?

Mr. McCoy. Well, I think in answer to Congressman Fauntroy's earlier question, I indicated that I would go with the need requirement for victims of crime, but for people who are injured attempting to prevent a crime or help the police, I would say there should be no need requirement.

Mr. MOYLAND. Such as a good Samaritan.

We had a case in Maryland where a doctor came home one night and saw someone was burglarizing the next door home. So he pulled his car in front of the driveway of the next door neighbors and they backed up the truck and really mangled him in the car. He was a doctor and he had—was making approximately \$50,000 a year, but he was a good Samaritan.

Mr. HOGAN. But, as Mr. Ketchum stated to me, I gather that he cited the case of Senator Stennis. Senator Stennis, under the Maryland law, would not be entitled to compensation.

Is that right?

Mr. MOYLAND. Yes.

Mr. HOGAN. And I gather that he probably would not be entitled to compensation under H.R. 3264.

Mr. FAUNTROY. He would be.

Mr. HOGAN. Oh, he would be?

Mr. FAUNTROY. Yes. We have no hardship limitations.

Mr. HOGAN. I see. He was concerned about that.

Thank you.

Mr. FAUNTROY. Thank you.

The committee counsel, Mr. Daniels?

Mr. DANIELS. Mr. Hogan, I simply point out that the Federal law has a provision similar to the Maryland law which poses a financial stress requirement only with respect to the victims of crime. Good Samaritans and those aiding police officers are compensated without regard to financial stress.

A question for both the gentlemen from Maryland and the gentlemen from New Jersey.

## EMERGENCY PAYMENTS

Does your statute allow for emergency payments during the pendency of the claim?

Mr. McCoy. The Maryland statute does provide up to \$500.

Mr. RILEY. New Jersey, also.

Mr. DANIELS. Up to \$500?

Mr. RILEY. No specified amount. We can make emergency payments.

Mr. DANIELS. How long does it take to process the average, reasonably uncomplicated claim, if there is such a thing?

Mr. McCoy. I'm not sure there is such a claim. We have, under special circumstances, processed claims in as short a time as, what, 6 weeks?



Mr. MOYLAND. Twenty-eight days was our record. That was a death case, and death cases are very, very easy to process. The man is dead. It's just a matter of determining whether or not he was a victim and the financial problems, whereas we had a girl that was—her throat was cut, she was raped, and her wrist was slashed, and all her nerves were severed so she had to take physical therapy for the arm. She had to undergo plastic surgery for the neck. You know, consequently, that all takes time, and the medicals are continuing, but it may be 6 months before she reaches maximum recovery.

We have another rape victim who has suffered mental problems because of the incident, and that case is approximately a year old, but what we are doing there, we made an emergency award, and under the workmen's compensation schedule of benefits, we can make awards for their lost time on a temporary total award, so we made—she was off from work approximately 10 weeks, and we made an award for the lost time. We paid the medical bills that we know of, and we made an emergency award.

Mr. DANIELS. Mr. Riley, is your experience the same?

Mr. RILEY. Very similar. I would say on an uncomplicated case, 6 weeks to 2 months. Our biggest delays are when we're waiting for criminal prosecution before we make an award.

#### STATE RECIPROCITY

Mr. DANIELS. When Mr. Gude testified before the subcommittee, he indicated that he thought some sort of reciprocity would be highly desirable.

In your view, would simple enactment of the District statute be sufficient reciprocity or would some additional interjurisdictional agreement be necessary in order to cover all possible circumstances?

Mr. McCoy. Well, I certainly think it would have to depend on the wording of the District statute. We now cover any District of Columbia resident or resident from any place in the world that are injured in Maryland, but it seems to me to be grossly unfair if Maryland is going to pay up to \$45,000 to a District of Columbia resident who is injured one block over the line and at the same time, a Maryland resident who is injured one block from the District of Columbia side of the line can only be covered \$10,000, assuming equal injuries.

So, I don't know if there would be any legislation necessary in that regard, but as far as the coverage only, I would see nothing more being enacted that would be necessary.

Mr. MOYLAND. I can speak to that also, for New York, also. Anyone who is injured in New York, the New York Board does cover it, whether or not they are a resident.

We have gotten away from this reciprocity. If they are in Maryland or New Jersey or New York and they are injured, we make payment.

Mr. DANIELS. Is that also true in New Jersey?

Mr. RILEY. It is true in New Jersey. I think it's true in all States.

Mr. McCoy. I think California goes further, if I'm not mistaken. Perhaps the committee can correct me. I think California compensates injuries to their citizens no matter where they happen, plus to anyone else in California.



## FINANCIAL HARDSHIP

Mr. DANIELS. You indicated that you had defined your financial hardship standard that appears in the statute to, on the one hand, exclude a victim who had been on welfare and who returned to welfare, and on the other, also exclude the obvious case of Nelson Rockefeller or J. Paul Getty who might be injured by a crime in Maryland.

To what extent have your administrative definition of financial hardship provided recoveries for people, less affluent people who are not on welfare, may in fact be working, even at the minimum wage, which, after all, doesn't provide a very large income?

What happens when such a person is injured by crime, in fact, feels some financial hardship, but that financial hardship is not caused by the crime, but is caused by his underemployment?

Mr. McCoy. Well, of course, with this type of legislation, as with our laws generally, we have to find that the problem that the person is in now is a direct and proximate result of the crime, and we have had situations where—and it occurs rather frequently in the case of widows—where a man will be killed. We will make an award of \$27,500 to his widow to be paid out periodically, and the widow will then remarry—assume that there are no children in the picture—but the widow remarries and she remarries a man who was substantially poorer than her deceased husband. She now still has a financial hardship, but it is our finding that it is not a direct and proximate result of the crime but rather her selection of a second husband. So in that instance we discontinue the payment.

I'm not making light of the situation. I'm using it to—

Mr. DANIELS. What about the more common example of the low-income person not on welfare who is a—

Mr. McCoy. We cover those people with no problem at all. Generally, let's say, an average family of 2.4 children, whatever it is, could probably have an income of—I don't know, probably in the range of \$15,000 and still fall under our average, so that would certainly cover the people you're talking about.

Mr. DANIELS. What about on the lower end?

Mr. McCoy. Well, on the lower end, if they were not on this welfare cycle that I talked about, they would be covered.

Mr. DANIELS. You indicated that about 40 percent of the claims were disallowed for failure to demonstrate hardship.

Mr. McCoy. No; I said that about 40 percent of the claims that were disallowed were disallowed because of lack of financial hardship.

Mr. DANIELS. I stand corrected.

Of those claims disallowed, can you characterize them as being as a result of incomes that were too high?

Mr. MOYLAND. Too high, too high, yes, definitely. Very, very rarely do you have something at the bottom end.

## PAIN AND SUFFERING

Mr. DANIELS. Finally, I notice that the New Jersey statute does not contain a provision allowing for recovery for pain and suffering losses.

I'm quite certain about the Maryland statute because you are tied to workmen's compensation.



Mr. McCoy. No; it does not.

Mr. DANIELS. What problems do you gentlemen see based on your experience in the processing of these claims, what problems do you see cropping up in the event that in this legislation being considered by this subcommittee, pain and suffering is included as one of the principal items of loss.

Mr. McCoy. Certainly the predictability is the largest single problem. As a trial attorney, it has always amazed me as to how I convince juries that a person suffered so much and how somebody else convinces them that they didn't suffer at all. It is just so very difficult to arrive at a fair and adequate figure to compensate someone for pain and suffering.

That is not to say that we shouldn't try under the proper circumstances, but I think when you are talking about the expenditure of public funds, particularly when it is a completely new substantive rank that we're talking about, it's not an appropriate inquiry at this time.

Mr. DANIELS. As I understand the Maryland statute at this time, the way you interpret it, there are some recoveries for such things as disfigurement, for example.

Mr. MOYLAND. Yes.

Mr. McCoy. If that would cause financial hardship to the person, for instance, if it's a young girl—Marty, Mr. Moyland spoke before about the girl who had her throat cut, well, obviously her situation is not the same, and we've had people involved—involving, I remember one secretary that we had who was robbed and her hand was smashed, and as a result she had one finger that was bent back, and she couldn't type anymore.

Well, obviously, having one finger that's bent back is not a substantial anatomical disability, but when you are a secretary, it is a substantial disability, disfiguring to your appearance, and causing you a financial problem.

Mr. DANIELS. Would your law, as you interpret your law and your regulations, would it be possible for the victim to secure a recovery in that disfigurement in fact has not resulted in past or future injuries and does not result in continuing medical expenses?

Mr. McCoy. Generally not. Generally not.

Mr. DANIELS. Mr. Riley?

Mr. RILEY. We are hoping to have an amendment, but not at the present time. The example he gave of the finger, Mr. McCoy, that would be covered as an anatomical loss in New Jersey if she is a typist.

Mr. DANIELS. To the extent that her ability to earn a living is affected?

Mr. RILEY. That's right.

Mr. DANIELS. One final question.

#### PUBLICIZING CRIME VICTIM COMPENSATION

Mr. Goldfarb indicated that he thought that while programs across the country have generally worked reasonably well, one problem that he saw was that there was some difficulty in adequately publicizing the availability of benefits under the crime victim compensation program.



As I look at the number of awards and their amount given by the States that do have such a program, it strikes me that in fact that may be one reason why the awards are as low as they are.

Do you think that is true, first of all, and second, what efforts are you making in Maryland and in New Jersey to publicize the existence of the program, and would it be desirable to build into the legislation itself some system for adequately publicizing the availability of the benefits?

Mr. McCox. Well, I would have to say in Maryland that has been our greatest single problem. It is amazing to me. In 1970 we had an international conference of criminal injury boards in Baltimore that we sponsored. We had people there from Canada that were representatives of six Canadian provinces, and they indicated that when they make an award in Canada, not only is it publicized, but it is headline-type material, as it probably should be. It is good news.

But in Maryland, as in most States, I assume, it is very ho-hum, the attitude is so what, and the result is that many people do not file. About 90 percent of our claims are filed by attorneys for clients, which indicates to us that generally people who—only people who have an attorney doing something else for them at the time that they become involved in this criminal act, they are filing, but other people who don't know a lawyer, don't have enough sense to inquire, simply miss the boat.

We think it is grossly unfair. We try to publicize it. Mr. Moyland walks press releases around to the various papers and actually doubles as—there's three hats that he wears. He is also public relations man, and we speak perhaps on the average of one or two nights a week to the Rotary Club or anybody that will listen, any group of people. We lecture in high schools and colleges and sociology classes, and just try to spread the word.

We are not terribly effective, and I think there should be something built into Federal statute to provide for this.

Mr. DANIELS. Mr. Riley?

Mr. RILEY. We have the same experience. I think Marty can tell you better. We had a seminar Saturday of—what fraternity was it?

Mr. MOYLAND. Phi Beta Gamma.

Mr. RILEY. At Rutgers Law School. I think we had nine law schools represented there. This was in Cherry Hill, N.J., and Marty came up and participated in it.

Mr. DANIELS. Mr. Riley, as Mr. Fauntroy indicated, the Library of Congress did prepare a list of the analysis of the cost of the various State programs. At the time they prepared their analysis, there were no available costs for the State of New Jersey.

#### AWARDS

Do you have any information with you today indicating the number of awards made and the cost of those awards?

Mr. RILEY. I don't have the figures with me, but yes, we've made since January 1, 1972, about 74 awards, of which 16 or 18 have been for the maximum \$10,000.

Mr. DANIELS. Do you have any figures on the total cost of the program during 1972?



Mr. RILEY. No, I don't. Our budget for the fiscal year beginning 1973 was \$361,000, and we're going to use it all. Next year we have \$890,000.

Mr. DANIELS. Does that figure include both administrative and cost of the awards?

Mr. RILEY. Yes, it does.

Mr. DANIELS. Does New Jersey prepare an annual report?

Mr. RILEY. We will have as of the end of this fiscal year, June 30.

Mr. DANIELS. Thank you.

Mr. HOGAN. Mr. Chairman, could I ask just one question, please?

Mr. FAUNTROY. Mr. Hogan.

#### COSTS

Mr. HOGAN. Have you ever done a study as to what the effect, liberalizing the provisions, such as to cover everyone regardless of financial need, what effect that would have on your costs, either in Maryland or in New Jersey?

Mr. MCCOY. Well, we haven't done any formal studies, and it is reasonably impossible to do. The 48 or the 40-percent number that I mentioned is based only on claims that have been filed, you know, they're borderline cases. The incidences that are open and close, where the attorney of a claimant understands that they don't have a financial hardship, they don't come before us, so we really have no way to gage this. We sort of estimate—Mr. Moyland estimates that probably double it may be increased, or by something less than that. We wouldn't anticipate any more than double.

Mr. MOYLAND. Excuse me, if I could break your train of thought for one moment here.

There was some talk before about—with one of the witnesses about subrogation and the various other things. The Maryland board takes \$5 out of every criminal court fine, and if you will notice on page 10, you will see we collect that. It doesn't go to us. It goes to general funds, and the Federal bill has a \$10 provision and New Jersey has a \$10 provision also.

Mr. HOGAN. Those are just criminal——

Mr. MOYLAND. In other words, it helps us along.

Mr. RILEY. We don't have it yet.

Mr. MOYLAND. But you have a bill for it.

Mr. RILEY. Yes.

Mr. HOGAN. Mr. Riley.

What is your projection of the increase in cost if you liberalize the bill to give coverage regardless of financial handicap?

Mr. RILEY. Well, as I said earlier, we do not have financial need. Unfortunately, we have a \$10,000 limit, as of now. I don't know, frankly. At least double.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you, gentlemen, for a very enlightening and helpful testimony.

At this point the hearings will come to a close and we will resume at some time following the congressional recess.

[Whereupon, at 12:08 p.m., the subcommittee was recessed, subject to the call of the Chair.]



## COMPENSATE VICTIMS OF CRIMES OF VIOLENCE

THURSDAY, JUNE 14, 1973

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON JUDICIARY OF THE  
COMMITTEE ON THE DISTRICT OF COLUMBIA,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2:20 p.m. in room 1310, Longworth House Office Building, the Honorable Walter E. Fauntroy, chairman of the subcommittee, presiding.

Present: Delegate Fauntroy (presiding) and Representative Rees. Also present; Harley Daniels, subcommittee counsel; and John Hogan, minority counsel.

Mr. FAUNTROY. The committee hearing will come to order.

I have convened this meeting of the Judiciary Subcommittee today for the purpose of hearing testimony on H.R. 3264. This is our second hearing on the bill which would create a commission to compensate the victims of crimes of violence.

The plight of innocent victims of crime is of great concern to all of us. Traditionally the criminal justice systems have ignored the victim, so that he has had to bear a tremendous financial burden as a result of being injured.

The legislation which we are considering today recognizes the need for the community to take on this burden.

Therefore, by establishing a system of crime victim compensation we hope we can remedy this unfortunate situation.

At the outset of the hearings, and without objection, I shall insert into the record a report by the U.S. Department of Justice stating their views on H.R. 3264, and also a letter from the Mayor Commissioner Walter E. Washington likewise stating his view with that of the District government.

Mr. HOGAN. Mr. Chairman, does the counsel have a copy of the Department of Justice letter? We didn't get a copy.

Mr. FAUNTROY. Counsel will provide you with a copy.

[The further report from the District Government appears at p. 160 above.]

[The report from the Department of Justice follows:]

DEPARTMENT OF JUSTICE,  
*Washington, D.C., June 8, 1973.*

Hon. CHARLES C. DIGGS, Jr.,  
*Chairman, Committee on the District of Columbia, House of Representatives,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for our views on H.R. 3264, a bill "To compensate victims of crimes of violence in the District of Columbia."



The bill would establish a five member Commission which would be responsible for making monetary awards to the victims of violent crimes (or to their dependents if death results) when the crimes occur in the District of Columbia. The bill would make the award of compensation contingent upon cooperation by the victim with the police in the apprehension and prosecution of the assailant, and would provide that no awards be made if the victim and assailant were related, or if the injury to or death of the victim was entirely attributable to his wrongful act or resulted from his substantial provocation. The maximum amount of compensation would be set at \$10,000 per case; and to be eligible for compensation an applicant would have to show a pecuniary loss of \$50 or more.

"Pecuniary loss" would be defined to include medical and hospital expenses, loss of present and future earnings, and other actual expenses necessarily incurred as a result of the injury. The term specifically excludes, among other things, payments for pain and suffering or property damage.

The bill would also establish the procedure for submitting applications, as well as the procedures by which the Commission would hold hearings and make awards. Such awards could be made conditional on the applicant's subrogation to the District of Columbia of his right to collect damages from the assailant.

H.R. 3264 would authorize appropriations for the first fiscal year of \$250,000 for administrative expenses and \$1,750,000 for compensation awards. While it is impossible to estimate the cost of the program, it could be substantial.

The concept of compensating the victims of crime is one which has been receiving ever-increasing interest and consideration during the last several years. In fact, several states and foreign countries have already initiated compensation programs. In addition, a good deal of Congressional attention has been devoted to the subject. Extensive hearings have been held before the Senate Judiciary Committee on Criminal Laws and Procedures as well as before the House Committee on the District of Columbia. Moreover, the Senate has passed this session a bill—S. 300—to provide for direct payments to the victims of crime in federal jurisdictions and to authorize states to use grants from the Law Enforcement Assistance Administration to defray the costs of their compensation programs. (S. 300 was also re-passed as Title I of S. 800, and both bills are presently pending before the House Judiciary Committee.)

To date the criminal justice system has been almost totally concerned with the criminal. In this respect, we note that virtually all the expenses of processing an offender through the system, such as attorneys fees, and the costs of rehabilitation and training, are borne by the Government. On the other hand, scant heed has been paid to the plight of the victim. The victim does have a civil remedy available, but this has proved to be virtually meaningless. For the most part, therefore, the victim is forced to suffer his losses. For people of low or modest means this can sometimes result in financial ruin.

While the Department believes that there is no governmental obligation to compensate crime victims, we do believe that the use of public funds for such a purpose at the state and local level would not be inappropriate. With respect to the merits of H.R. 3264, however, we defer to the District of Columbia since the District is in the best position to evaluate the specific features of the legislation.

We would like to point out that the program contemplated in the bill is related to the criminal justice system only to the extent that it requires an applicant to cooperate fully with law enforcement authorities. We would like to suggest that the Committee consider the collateral benefits that could result if the program were structured in such a way as to relate to other problems within the system, such as criminal rehabilitation. For example, offenders convicted of crimes of violence could contribute, either individually or as a group, toward victim compensation. This might be accomplished by using a portion of the money recovered in fines or through a deduction from prison wages. Such a plan could give the offender a better appreciation of the harm he has caused through his criminal act.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Cordially,

MIKE McKEVITT.

Mr. FAUNTROY. It is my pleasure now to welcome Prof. Paul Rothstein of the Georgetown University Law Center, and Herbert Rosen-



thal of the Young Lawyers Section of the District of Columbia Bar Association. Both gentlemen have been distinguished advocates of the concept of crime victim compensation. And I am happy to have them here to share their views with us today.

I would like for Professor Rothstein to make his presentation first.

**STATEMENT OF PAUL ROTHSTEIN, PROFESSOR OF LAW,  
GEORGETOWN UNIVERSITY**

Mr. ROTHSTEIN. Thank you very much, Mr. Fauntroy.

As Mr. Fauntroy said, I am Paul Rothstein. I am professor of law at Georgetown. And I have been active in the drafting of several criminal injuries compensation plans.

I am reporter to the Uniform Law Commission in their efforts to draft a uniform act. I like to believe that I have had some influence on S. 300, which I worked with, which is the Criminal Injuries Compensation Act out of the Senate. And also I have had something to do with legislation in Massachusetts. And I would hope that I had some influence on perhaps some of the legislation in the other States.

The draft uniform law that I will mention in my comments is the fifth working draft of the commissioners on uniform State laws, the people who drafted the uniform commission code and other uniform State laws. And it has not been finally approved as yet.

At the outset I would like to compliment this committee and its staff for considering this timely topic and for producing an excellent piece of legislation. And any comments that I might have that might seem critical, or my suggestions about it, are not critical of the consent, for indeed on balance and on the whole, it is very good legislation, but I know we are all here to perhaps work on it and change it in some respects and do some other drafts.

I would like to address myself to what I regarded as the nine principal issues in criminal injuries compensation today, both here in the United States and abroad. I think they have certain issues in common.

I am a member of what has come to be a kind of trade group, comprised of administrators of these criminal injuries compensation plans from around the world, including the United States. And in talking to these people, and looking at their various acts, these following issues seem to me to be the principal areas of debate, the principal issues and the principal areas of differences among the various acts. And I would like to kind of line up the current bill that we are considering and see how it lines up on these various issues.

**FINANCIAL NEED**

The first great controversial issue is whether there should be a financial need test or criterion in the legislation. The question here is, is this compensation for the poor only, or should it be for rich and poor alike?

And H.R. 3264 before you today, in common with the English plan over in Britain, says that this compensation is for everyone, rich and poor alike, if they meet the criteria of the act.

New York, in common with many States, including Maryland, basically says that the compensation is for the poor only, or put another way, those who have financial need, financial hardship.



S. 300 and the Uniform Act take a median position. They have formulated the concept of financial stress, and compensation is forthcoming if a person is put into "financial stress."

As this phrase is defined, the section of S. 300 to look at is section 450, subsection 8, and the section in the Uniform Act is section 5(e) (1).

The concept of financial stress is more fully defined under the Uniform Act than it is under S. 300. Under the Uniform Act financial stress is geared to the customary level at which the injured victim has been living and educating his family, his customary level of health, education, and standard of living.

I must point out at this point that under the Uniform Act the issue is not entirely resolved. There are two alternative provisions under the current draft, one including this financial need criterion, and the other one not including it, in other words, the other one allowing compensation regardless of financial need on the part of the victim. And this is in response to the uniform law commissioners direction to our drafting committee that we prepare two alternative drafts so that they can decide whether there should be a financial need criterion or not.

[The material referred to is in the appendix.]

#### PAIN AND SUFFERING

The next great issue, as I will call it, the next principal issue that seems to divide the world of criminal injuries compensation plans is the issue of pain and suffering, should there be any compensation to the victim for pain and suffering.

Now, pain and suffering is really a term of art, and it doesn't just refer to pain and suffering. Maybe if it did just refer to pain and suffering everybody would agree that that ought to be tossed out and there not be compensation for it. But it really means something other than that or something more than that. It covers the loss of enjoyment of life, the impairment of functioning, the loss of the use of a bodily function or bodily member. In other words, it covers anything that is not a medical or other out-of-pocket expense, or a loss of past and future earnings, that covers anything other than those costs.

Let me give an illustration. Suppose that a housewife loses one eye and one arm. She admits that she never would have taken outside employment, she never did in the past, and they never would in the future. She still, after this injury, continues to do her own housework, only she does it, of course, with much more difficulty than before. And let us assume further that she has \$1,000 in medical bills. If we don't compensate for pain and suffering she gets nothing but the \$1,000. And yet isn't it clear that she has lost something more than just the medical expenses, there is some loss of bodily function, and some loss of ability to enjoy, to function. Certainly she seems to have lost something that is worth something.

Yet all three of the acts that I am addressing myself to today deny compensation for pain and suffering; that is, S. 300 does, the bill before you now does, and so does the Uniform Act.

England represents the school of thought that says that this should be compensated.



## PROPERTY LOSS

The next principal issue is the issue of property loss, should this be compensated. All three of the acts exclude compensation for property loss, property damage, except that S. 300 allows property damage, property loss, in the case of the intervenor who is injured.

An intervenor is a special class of person. S. 300 divides compensable persons into two classes, the direct victims of a crime who are hit on the head or shot or assaulted and the intervenors, people who intervened to help prevent a crime, or help stop a crime. And because intervenors are considered a special class, to be specially encouraged, and they have certain special equities, S. 300 allows them to be compensated for property loss as well as for personal physical injury.

## WORKMAN'S COMPENSATION AS MODEL

The next major issue confronting criminal injury compensators and drafters of criminal injury compensation plans is whether to adopt the workman's compensation model of compensation. And it seems to me that this involves two basic concepts. One, should the compensation be administered through existing workmen's compensation apparatus, existing workmen's compensation boards; and second, should there be a schedule of amounts payable for particular kinds of injuries set up in advance, like so many dollars for an arm and so many dollars for a finger as is typical of some workmen's compensation plans.

The workmen's compensation model for criminal injuries compensation has been tried in Canada. They seem reasonably satisfied with it. I personally do not find it a good idea, because I think workmen's compensation boards are overworked and understaffed. There are certain issues that are peculiar to criminal injuries compensation, and certain other issues that are peculiar to workmen's compensation in the industrial context. The whole scheme or method is different. Workmen's compensation is under private insurance, and criminal injuries compensation would come out of public funds.

Some of these things are more fully spelled out in some testimony I gave concerning S. 300. And that can be supplied to the committee without going into it more fully here.

## JUDICIALIZED PROCEDURE

The next major issue confronting us is the question of whether or not and to what extent, to quote, "judicialized" criminal injuries is compensation. And this involves the following questions:

One, to what extent should the function of advocacy and adjudication be combined in the board, in other words, should the criminal injuries compensation board combine the functions of not only presenting the case against compensation against the victim who is presenting a case for compensation, should the board have this function as well as the function of adjudicating, of deciding. And this presents certain obvious dangers.

Under the bill presently before us here there is such a combination of functions. The Uniform Act in section 6 has what I think is a solution worthy of examining. And that is to notify the Attorney General



when there is a claim that is regarded as controversial so that the Attorney General or someone from his office can oppose compensation, and therefore the case is presented independently of the agency that would have to make the decision, and therefore you avoid certain allegations and appearances of bias or commitment.

The next question brought up under this same issue of judicialization of the proceedings would be the right to cross-examination. And I think the bill before us today does adequately provide a right to cross-examination in section 10.

Also part of the subject of judicialization is, should there be a hearing. And the present bill says, yes. And it provides a fairly judicial type hearing.

What is to be the role of lawyers in the whole process? Well, the present bill, the bill before us today, gives them a partial role, not the full kind of role that they would have in judicial proceedings, that says, they may come in but only at the stage of hearings, they may not come in at the earlier stage of preparing applications.

What about a record under the subject of judicialization? The present bill says yes, there should be a complete record kept, and a decision should be based on the record, a good idea.

Judicialization also involves the concept of notice, at all stages adequate notice to the complainant. And I think that is adequately handled in the present bill.

What about the right to appeal? This is partly handled by the present bill. There is a right to appeal to the board if the decision of an administrator is not satisfactory, but there is no provision about the right to appeal beyond that to a court.

And finally, under the subject of judicialization, is the question of written findings and opinion. And under the present bill before us there is provision that findings and opinion should be written and should be in the record. And I think that is a good provision.

#### ADMINISTRATIVE PROCEDURE

Now, there is one question that is not dealt with in the present legislation. And that is this question, to what extent should the Administrative Procedure Act apply? It says nothing about that, and in the absence of a specific presentation on that it seems to me that there is a question about the applicability of the Administrative Procedure Act. And might I suggest for the committee's scrutiny that the Uniform Act be examined, because in the Uniform Act what we did was look at the Administrative Procedure Act and pick out those provisions of the Administrative Procedure Act that we thought were appropriate to the new context, and we left out those provisions that we did not think were appropriate to the new context. And this is sections 6 to 8 of the Uniform Act.

#### CRIMES COMPENSATED FOR

Switching now to the next page or issues that divides the world of criminal injuries compensation, that is the issue of whether specific crimes should be enumerated, in other words, that there will be compensation only for the listed enumerated crimes and not in the case of



other crimes. Various approaches have been used. Some of the plans and acts say, any crime. Others say, crimes of violence, for example, as in Britain. The Uniform Act says, crimes posing a substantial threat of injury. H.R. 3264, in common with many other acts, takes another approach. It enumerates particular itemized crimes, names them, manslaughter, murder, assault.

The problems as I see it with this approach, first of all, of enumerating particular crimes in the Criminal Injuries Compensation Act, is that often the crimes that are enumerated do not track the crimes that are in the jurisdictions criminal code. And some attention has to be given to that, the same descriptive terms for the crime are used in both the jurisdictions' criminal code and the Jurisdictional Criminal Injuries Compensation Act.

The second problem I see is this—and this is another problem with enumerating particular crimes. We as drafters cannot foresee all the crimes that might give rise to claims that we would want to compensate for. For example, one case comes to mind. Out in California a chiropractor was guilty of practicing medicine without a license. He advised a little girl and her family that he could cure cancer. And he treated her chiropractically, he treated the little girl. And the little girl died because he really couldn't. He kept her from legitimate medical treatment which could have saved her life.

At most he was guilty of practicing medicine without a license or perhaps fraud, criminal fraud. But in my examination of all the acts that enumerate particular crimes, none of the criminal injuries compensation acts list any of these crimes. And therefore, this girl would not have gotten compensation. And I think that illustrates the idea that when you list and enumerate particular crimes you are going to leave something out. Usually people are thinking in terms of assault and battery and murder and mayhem and those kinds of things. And the—and yet the kind of crimes that can lead to injury and death are manifold, they are many more than just the crimes that come readily to mind. Here, for example, criminal fraud and practicing medicine without a license, and there are others.

So I prefer an approach that says any crime posing a substantial threat of personal injury.

#### CONTRIBUTORY FAULT

Another major issue in the field today is whether contributory fault or contributory provocation on the part of the victim ought to defeat recovery, or whether it just ought to reduce the amount that he gets, in other words, whether he ought to be absolutely disentitled to get anything, or whether he just ought to reduce proportionately the amount he ought to get, the same debate which rages in tort work between the law of contributory negligence and comparative evidence that totally reduces it. And I tend to favor the approach in the bill before us today, which is that it just proportionally reduces the recovery.

#### DEFENSES A BAR TO AWARD?

The next major issue is this. Should defenses to crimes bar recovery, should they bar the award? What am I talking about? Defenses



like insanity, infancy, intoxication. These are defenses, defenses to crimes, and rightfully so. It seems to me that you might well want to say, where the question is, are you going to put a guy in jail, you might want to say, no, you shouldn't put him in jail, if he is a child, or he was insane, or perhaps if I was intoxicated in certain circumstances. So that there under the criminal law quite rightfully these things are defenses. But where the question is compensation—and that is the question we are currently concerned with—is it really fair and just that this kind of a defense should defeat compensation? Because here there is no question of putting anybody in jail or anything like that, that is not what we are talking about here, we are talking about compensation to a victim.

Let me highlight it with an example. The case came up in England in which one child was injured by a stone thrown by another child. And the child who threw the stone was just a few months short of the age of criminal responsibility, so he had the defense of infancy, although he was quite a big child, I think he was 11, and the age was 12 at that time in England, he was 11 and 9 months. So that he had the defense to a criminal charge.

Do you think that compensation to the injured child should be denied because of the injuring child, the thrower of the stone had this kind of a defense? I don't think so. And I think you can imagine the same kind of situation in the case of insanity.

#### INTERFAMILY DISPUTES

The next major issue is the question of excluding from compensation victims who are members of the same family as the offender, or relations of the offender, people who are relatives of the offender, people living in the household with the offender. Almost all the compensation acts have some provisions such as this. And the purpose is to prevent fraud, obviously, and to prevent the offender from benefiting from his own wrongdoing. So in order to do that you exclude these people who are related closely to the offender.

There is a controversy, however, as to how to trace this exclusion; under H.R. 3264 the way it is traced is that relations, relatives of the offender, and members of the household of the offender, are excluded from compensation.

The problems I see with this are these. First of all, most of the crimes, statistics show us that most of the crimes are intrafamily crimes, crimes committed by one relative against another, by one family member against another. And is it just to exclude these injured persons who might be totally innocent, to exclude them from compensation, and worse yet, to exclude the injured persons' dependents from compensation? In other words, if the injured person died from these acts, should the dependent, the family of the injured person get compensation? Should we prevent this family from getting compensation just because the killed person happened to be a relative, an innocent relative of the offender?

I don't think so.

The second problem I see is this: if you exclude relatives and family members, and that sort of thing, what about persons who maintain



sexual relations with the offender but are not married? It seems to me that they ought to be excluded too. If you are going to exclude any of these people, you ought to exclude them all.

But I think overall a better approach to the whole thing would be to just say that victims should not be compensated if compensation would unjustly benefit the offender, and give the board discretion to decide whether it would unjustly benefit the offender. And that would exclude the case where the money is going to go into the pocket of the offender's wife, and from her pocket really into the offender's pocket, or if it goes into the pocket of the offender's wife, who is the victim, the offender really indirectly benefits because he is relieved of his duty to support her and pay her bills to the extent that she has gotten compensated. If that is the case, why then I would say that that is a situation where he perhaps is unjustly benefitting from his own wrongs, and should be excluded. And it would also exclude cases where there is outright fraud or collusion between the husband and wife, for example.

#### REPORTING BY THE VICTIM

The next question is this. Most of the acts require as a condition of compensation that there be prompt reporting by the victim to the police, reporting of the crime, and that the victim fully cooperate with the police in discovering the crime and prosecuting the offender.

This is section 5, sub 3 and sub 4 of the present bill.

Now, I ask this question. What if there is a threat against the victim's wife or children? In other words, the reason the victim isn't cooperating, isn't reporting, isn't cooperating with the police, is because he has been threatened by the offender, or his wife and children have been threatened by the offender. It seems to me that there are circumstances that would keep the victim from cooperating in the prosecution of the offender, it would exclude the victim from cooperating with the police, because he is frightened. And it seems to me that the board ought to have discretion on this matter as to whether this victim who fails to cooperate is disentitled to compensation, and discretion ought to be exercised under the basis of, well, just why did this victim fail to cooperate, does he have a justifiable reason for failing to cooperate?

#### MISCELLANEOUS PROBLEMS

Now, as to certain miscellaneous problems—by the way, please stop me if I am running over my time—certain miscellaneous problems in H.R. 3264. First of all, let's take this case. Let's say that a police officer is attempting to arrest a person, but he is mistaken about whether a crime is being committed or not, but he acted on reasonable appearances, so that the police officer was acting perfectly legally. We all know that the police have the power to arrest on reasonable appearances of a crime being committed. But sometimes a mistake is made. Let's say in the course of an arrest a person is injured, a bystander or the person that is being arrested gets injured. No crime has been committed or even attempted.

The policeman made a mistake, but he acted quite reasonably, he acted on reasonable appearances. There is no crime involved at all in



the picture, no attempt at all in the crime involved in the picture. But should one be hurt. Shouldn't that someone be compensated?

This is illustrated by a recent case out in Maryland where the police invaded somebody's apartment on the reasonable ground that he was believed that he was committing some kind of a crime. And he, the inhabitant of the apartment, also reasonably believed that he was being assaulted illegally, that a crime was being perpetrated on him, and he fired—he was a gun collector or something—and people were injured. And nobody, committed a crime, both acted on their right on reasonable appearances. And yet someone was injured. Shouldn't they be compensated?

The bill as presently drafted does not allow compensation, because it requires a crime, or an attempt at a crime, and there is no such here.

Another example of another problem. Again, I will do it with a hypothetical case, but it is really not so hypothetical. Suppose that someone helps a police officer in this last case that I just talked about. The police officer asks someone to help the police officer in this last case I talked about, where the police officer is making an arrest on reasonable appearances, but he is mistaken, there is no crime being committed, and he asks a bystander to help him, and it is the bystander's duty to help. And let's say the bystander who is helping gets injured. There would be no compensation under the present bill, because there is no crime and no attempt at a crime. It is section 2(4) (c) that requires a crime actually having been committed or attempted. It seems to me that that person, his duty as a citizen is to help the police officer on request, and he ought to be compensated.

All right, another case. Supposing that there is no police officer in the picture, but there is a citizen walking down the street. And it reasonably appears to him that someone is in trouble, someone is being assaulted or some kind of a crime is being committed on that person. And he runs as a good citizen should to aid that person.

It turns out he is mistaken, no crime was being committed. OK. He is perfectly justified under the law in interceding, and he doesn't run any liability under the law. But suppose that he is injured. He won't get compensation under the present bill because section 2(4) (a) requires that a crime actually be in progress or be attempted. And there was no such here, because the person was mistaken.

All right, one kind of minor problem, section 2(5), section 3, section 4(4), and subsection 5, all refer to an outdated form of government that no longer exists in the District of Columbia, the Commissioner form. And it refers to the Commission of the District of Columbia, and that will have to be changed.

Section 3(a) calls for a physician on the board under the Criminal Injuries Compensation Board. I doubt whether for \$100 a day you can get a physician to do that. If you made him chairman, which would be a full-time job, he couldn't do anything else. Then he gets a GS-15 salary. But I don't think you would get a doctor to give up the practice of medicine for a GS-15.

#### SUBROGATION

On the issue of subrogation, which is section 14, I have several problems here.



First of all, this deals only with the situation where the victim first gets compensated by the board, and then later on he sues the offender, and the—and it says he has got a duty to give the board back some of that money that he gets from the offender. But it doesn't deal with the reverse of that situation. Suppose that the victim has gotten his recovery from the offender in a lawsuit first, and then he comes to the board. It seems to me he ought to have a similar duty that the board award ought to be reduced by the amount of his recovery, for symmetry we ought to deal with that situation.

A second problem, section 14 as currently drafted really discourages and prevents the injured victim from pursuing his remedy against the offender. And it seems to me he ought to be encouraged to pursue a remedy against the offender, for the good of the public coffers, because if he does pursue a remedy against the offender, he bears the cost of that litigation, of pursuing the remedy against the offender, and takes the burden of the State and the trouble of the State, and then he has a duty to reimburse the State in the amount of the award that the State has given him. So it seems to me that it would be a good idea to encourage private action on the part of the victim, rather than say, as you say in section 14, that the State takes the victim's action and the State prosecutes that against the offender. I don't think that is such an economically efficient way to do it.

#### PRIVATE ACTIONS

How would you encourage private action? Well, first of all, you should provide specifically that a private action is allowed. What you have provided here is basically private action is not allowed. The State picks up the right of action that the victim has against the offender, the State prosecutes it. OK. A second way to encourage the private action would be to allow the victim, if he does sue privately, to keep attorney's fees. In other words, he has got to reimburse the State, but he ought to be able to take his attorney's fees out of this.

And the third way to encourage private action would be to hold out a greater hope than this bill holds out, a greater hope that the guy can keep something, the victim can keep something, in other words, if his recovery is over and above what he owes the State, he ought to be able to keep it. And this isn't really fully spelled out here.

What I mean by that? Let's examine that a little bit more closely. It seems to me that the victim's damages are likely to be a heck of a lot greater than he is ever going to get from an award under this act, because there is an upward limit on how much he can get under this act, and that should be the case, that is rightfully so.

And furthermore, he is not entitled to pain and suffering under this act. Let's say that that is practical, too. So let's abide by those limitations.

All right, if this is the case, then he is going to get some fraction of his total damages from this award. So he might want to sue the offender and get the rest of it. All right. Let's say that he does follow this system, whether he gets part of it from the award, and then he wants to get the rest of it in suing the offender. There are three possible approaches to what his duty is to reimburse the State. And he will list



them in the order of the most liberal to the victim to the least liberal to the victim.

The first approach, let's call it the first view, let him collect from his lawsuit until he gets full compensation for his total damages, including pain and suffering. And let's say he has \$100,000 worth of damages, but he has only been able to get \$10,000 from the award because there is an upward limit. Let him keep collecting from his lawsuit until the total of his award from the State and from the lawsuit total his total \$100,000 worth of damages, and only after that point does he have to pay the State something back. That is one approach that is not adopted here.

The second approach would be—and this is the middle approach—he pays the State only that portion of his lawsuit recovery that represents pecuniary loss, because, don't forget, under this act the only thing he gets as an award from the State on is pecuniary loss, not pain and suffering or anything like that, just his out of pocket. In his lawsuit he gets a sum of money, and you can identify that so much is for out-of-pocket expenses, and so much is for pain and suffering, then he only has to reimburse the State for that part that is out-of-pocket loss. So that is the approach adopted by the Uniform Act. And it requires that in a lawsuit the verdict identifies which portion is for pain and suffering and which portion is for pecuniary loss.

The third approach is that adopted by the present bill before us. And that is that anything he receives from his lawsuit has to be paid back to the State, if he has already gotten an award, right from dollar No. 1 that he collects from his lawsuit, that has to go to the State. And it seems to me that that is the maximum discouragement to private action on his part, to a private lawsuit.

Section 13 is the Uniform Act's provision which adopts what I call the middle ground, view No. 2. Section 493(g) of S. 300 adopts the view No. 1, the most liberal for the applicant. And H.R. 3264 adopts view No. 3, the least liberal to the applicant.

Now, I have just a few more comments, and then I will wind up. And please stop me if I am running too long.

#### COMPENSATION LIMITS

The amounts, the figures for amount limits, and such like that, contained in the present bill are out of step with the amounts found to be desirable under the Uniform Act and under S. 300, for example, section 5(2) has a limitation of \$50, in other words, nothing is compensable unless the victim's losses have exceeded \$50, it is a minimum, he has got to have more than \$50 damage before he can come to this board for compensation.

I have two points to make here. First of all, the other acts, the Uniform Act in S. 300 provides \$100 as that floor. And furthermore, we have a question as to whether you really ought to have a minimum at all, because the facts and figures coming in from the various boards around the country show that the boards spend just as much time and money investigating a claim to find out whether it meets the minimum dollar figure or not, they spend just as much time and money as they



would if this were no minimum dollar figure and they just had to compensate all the small claims no matter how small, in other words, once they investigate to find out if the claim meets the minimum figure, then they have spent all the time and money and they might as well be compensated for it. So it is a question whether you ought to have a minimum figure.

Also on the question of amounts, dollar amounts and limits, section 6 provides a maximum ceiling on earnings that can be awarded \$500 per month, that is the maximum ceiling. Well, the Uniform Act in S. 300 has a much larger amount. S. 300 has \$150 per week, which comes out to something in excess of \$600 per month. And the Uniform Act has a figure of \$200 per week.

#### LOSSES COMPENSABLE

Now, no longer on the subject of amounts, but on other particular provisions, section 6 describes the kind of loss that is compensable to a victim. And it seems to me that the committee should look at S. 300, section 450-16, and should look at the Uniform Act, section 1-6, because it spells out more clearly and more fully the kinds of loss that are compensable. The problem basically seems to me to be these, that under section 6 of the bill before us today there is ambiguity about rehabilitation, occupational training. Is that an expense that is compensable, rehabilitation occupational training?

What about care rendered, not to cure the guy, but to make him feel a bit better? There is a case like that—you might have read about it in the newspapers—where Blue Cross and Blue Shield said that was not compensable under our plan, because he had a nurse living in to make him feel better, to alleviate the pain, it is only compensable under our plan if it progresses toward curing the guy. And it seems to me that it ought to be clarified as to whether that is compensable, a nurse's treatment to alleviate his pain.

Replacement of services lost is something that is not covered. And it is unclear. And that is, supposing that the victim is rendered unable to care for her house, or her kids, and they have to hire someone to look after the kids in the house, is that compensable, care of children while the person is in the hospital, and that sort of thing? That should be spelled out, and it is not clearly spelled out.

#### CONVICTIONS

Now, also under section 11(a) (1), it seems to me that it should be provided that a conviction of the offender is conclusive on the issue of whether there has been a crime or not. The way you have got it presently drafted, convictions and acquittals, the outcome of any court proceeding is totally irrelevant, the outcome of all court proceedings against the offender is totally irrelevant, the board has to make its own determination as to whether the crime was committed or not. And it seems to me if there has been a conviction in court of the offender, that ought to be conclusive on the issue that a crime has been committed. And that will save the board an awful lot of time and trouble.



## AWARDS

I might commend to you the Uniform Act's approach to collateral sources. There is a deduction from the award for any payments that the victim has obtained from private or public insurance of any kind, deduction from the award. The bill before us today makes a deduction only if it comes from a public award, like a fireman's or policeman's disability plan.

I have neglected to mention as to amount that the upward limit is \$10,000 under the bill before us. Nobody can receive more than \$10,000. Well, S. 300 and the Uniform Act provide a \$50,000 limit. And it seems to me that is more realistic in terms of today's spiraling cost; \$10,000 strikes me as basically not very much at all.

Now, finally, in section 15—this is the penultimate point—section 15 says that awards to the victim are not assignable, the victim cannot assign them. And they are not attachable, in other words, no credit agency can attach an award that the victim gets. And it seems to me that you might want to have an exception to the board, for example, where the creditor is the hospital that treated him, or where he has assigned his award pending the board's determination, the board hasn't decided yet, but he has assigned his prospective award to someone, to a grocer to get food, because he is laid up, or where the creditor against him is his wife or his children under a support or alimony award. It seems to me that in all of those cases you would want to have assignability, and you would want the creditor to be able to attach.

You don't want to disable this guy from obtaining necessities, room and board and food while he is laid up, and hospital care while he is laid up. And yet the only way he may be able to get those things is by assigning his award in advance, or by telling the hospital or the grocer or the landlady, look, if I get an award you can attach it, so that your provision here might prevent the victim from ever getting the necessities, if his award isn't attachable or assignable, at least in these narrowest instances.

## REPARATIONS

Now, what about this notion that we hear a lot about that the public coffers should be replenished by the offender himself? In other words, an award is given to the victim, but the offender ought to replenish the public coffers? Well, S. 300 does set up an indemnity fund out of which awards will be paid, and the indemnity fund is made up of fines collected from offenders. It is made up of collections—of amounts that the victim has been able to get from the offender in a lawsuit that he then has to turn over to the State, and it is also made up of appropriations directly from Congress, and any donations that anybody wants to give to it.

Now, this does present the problem, if you have an offender who has been driven to crime because of financial problems, and he has a family that is on the brink of welfare, it seems to me to add to his financial burdens prevents his rehabilitation, drives him further into crime, and furthermore, puts his family on welfare. So you have to



think about that. And if you are going to have a provision like this making the offender responsible, it should be confined to those kinds of offenders who can suitably handle this kind of a burden. And that involves a collection determination. But there ought to be somebody making that determination, something set up for making the determination.

There are many other things that I could say, but I will close with just one final section that you ought to look at in the Uniform Act. And that is section 9, which provides that the victim waives any medical privilege that he might have, in other words, he doesn't have to let his doctor testify and give things that pertain to is medical condition. He ought to waive that when he makes a claim for compensation.

And there is also a provision in section 9 of the Uniform Act for compulsory physical examination. It seems to me that the victim ought to have to submit to physical examination.

That concludes my comments. There are lots of other provisions that I do have comments on, but I think I can perhaps make them to the staff at another time.

Mr. FAUNTROY. Thank you very much, Mr. Rothstein. I want to express by sincere appreciation for the thoroughness with which you have gone through this legislation of ours, and the preciseness with which you have compared it with legislation generally, and with S. 300 particularly. You have raised a number of questions that have been on our minds as to the dire direction we should be taking with the bill. And you have answered a great many of our questions.

I just have two or three questions that I would like to have you respond to.

#### COVERAGE

Let me again by saying that you have suggested that perhaps we ought to broaden the coverage so as to include beyond what we have defined as crimes of violence. And you have suggested that we ought to remove the restriction on relatives and the like in the bill. You have, moreover, suggested that perhaps our limitation, our top of \$10,000 is not adequate. I wonder, given the projection which we have in the bill of \$1.7 million for an annual funding, what would you estimate to be the cost of a program such as you have suggested, given those three changes?

Mr. ROTHSTEIN. I think that it could still be done within the appropriation suggested. I do not think that it would significantly add to the cost, because while I am removing a lot of limits in my remarks, I am substituting certain other limits. For example, the board has discretion to disentitle a member of the family if the board thinks it would unjustly enrich the offender. And I think that that would take care of just as many cases, almost as many cases as if it is in there. I think this could still be done. Now, raising the ceiling to \$50,000, that would be, probably would increase the cost. But there is just no way to tell at the present time what in the District of Columbia would be the cost, and how much people would come forward, and that sort of thing.



## LOSS OF EARNINGS

Mr. FAUNTROY. Second, in our bill we have a method of computing the loss of earnings. And I was wondering if it satisfies you as being clear and adequate. I would refer more specifically to page 6 in the bill, lines 13 through 18 roughly, "Expenses and loss of support to dependents of victims," et cetera.

Mr. ROTHSTEIN. Yes. I mentioned this to Harley Daniels at one point, or he mentioned it to me, I cannot remember, but we did have a go-around on that. It is not clear. I think that should be straightened out. Because it is not clear as to that \$500 per month, whichever is less, it just is not clear as to how that actually should be done. Does that mean that he is limited to getting \$500 per month, or does that mean that it must be always assumed that he makes no more than \$500 a month? It is ambiguous.

Mr. FAUNTROY. We would hope, sir, that on the strength of your testimony that you might meet with our staff and assist in getting the kind of legislation which I think you are after and I am after.

Mr. ROTHSTEIN. Thanks. I would be glad to.

## JUDICIAL REVIEW

Mr. FAUNTROY. You may have touched on these in your testimony. But there are a number of items of concern. Did you mention whether or not you think the bill should contain the provisions for judicial review?

Mr. ROTHSTEIN. Yes, I think that it should. And it may be, although this is uncharted ground in constitutional law, it may be that we would have to have judicial review.

## TAXABILITY OF AWARDS

Mr. FAUNTROY. And should the compensation awarded under the act be taxable?

Mr. ROTHSTEIN. I think that should depend on what it is for. That part of the award that is for earnings past and future should be taxable, but that part that is for medical bills and the like should not be. Now, I know that there has been some debate on that. And I would like to say that it should all be nontaxable, because I basically, I think, have a human interest in the victims. But I think that I am forced in all honesty to say that that part attributable to earnings, since it would be taxed had the guy earned it, ought to be taxable.

Mr. FAUNTROY. I see. Very good.

## ATTORNEY'S FEES

Finally, should the attorney's fee be more clearly provided for now in the adjustment?

Mr. ROTHSTEIN. I do feel that you are going to have difficulty getting attorneys to take these cases if they do not know what they can be paid in advance, they have no idea. And I think it is good for the Board and food for the system to have attorneys in the picture, be-



cause I think they make the Board's task easier, they sharply focus the issues and they present it well. And I think in the long run attorneys in the picture make things easier. That may be just a bias toward attorneys, but I think it is true.

Mr. FAUNTROY. Thank you.

Mr. REES.

#### S. 300

Mr. REES. Senate bill 300 was approved by the Senate this year, and it has been referred to the House Judiciary Committee. Are there hearings that are being set up for Senate bill 300?

Mr. ROTHSTEIN. I do not know what is planned in the future on that.

Mr. REES. Probably it might be good to try to coordinate the district—in the Senate bill you set up a commission within the Department of Justice, would this commission have jurisdiction over all of the country?

Mr. ROTHSTEIN. The way it is set up is that there would be direct Federal plan for places like the District of Columbia that are within direct Federal jurisdiction, and Indian reservations, and maritime jurisdictions, and things like that. But the District of Columbia is the principal one. That would be directly administered by the Federal program. And then there is provision that the Federal Government will pick up 75 percent of the bill of State plans administered by State boards if those plans conform to Federal standards. But those would be administered by the States.

Mr. REES. There is no differentiation as to whether it is a Federal crime or a State crime, or what a Federal court jurisdiction might be or what a State jurisdiction might be? You are talking more of a physical jurisdiction?

Mr. ROTHSTEIN. That is right. If the crime happens within the jurisdiction, and it is a crime within that jurisdiction, either a Federal crime or a State crime, if the act constitutes a crime under some body of law applicable in that jurisdiction, then it would be a crime.

#### SUBROGATION

Mr. REES. In discussing subrogation, what is your experience concerning civil suits against a perpetrator of a crime? Are not most of them crimes of violence, where the person who perpetrates the crime has no money?

Mr. ROTHSTEIN. That is right. That is why we really need these public compensable plans like we have before us today, because usually you cannot find the offender, or if you do, he is penniless, so that the right of private action is really very small as a practical consequence. But nevertheless, there will be instances where there is some possibility of a private recovery. And I think that provision should be made for that, and that it should be encouraged to take the burden off the State coffers. And this is perhaps another answer to Mr. Fauntroy's question. Under what I propose I think you will have more private actions, you will encourage private actions, and, therefore, replenishment of the State coffers through these private actions.



## FAMILY DISPUTES

Mr. REES. A great many of the crimes are crimes within a family, such as homicide. Could one family member have a compensation for the crime of another family member?

Mr. ROTHSTEIN. Yes. I think that the Board should scrutinize those kinds of claims very closely for fraud, collusion, to see whether the injured party was really innocent. But I do not think we should foreclose the possibility that such a family member could be compensated, because there will be instances, albeit they are rare, where it is just and right where a family member should be compensated. So I would just say that the Board can exclude a victim if the Board feels that it would unjustly enrich the offender. But I would not have a blanket exclusion of family members, because there are going to be those instances, albeit rare, where a family member has a right to compensation, he is innocent, he did not provoke it, and he is not colluding with the offender, the offender is just a nut or something.

## WORKMAN'S COMPENSATION MODEL

Mr. REES. Has there been a conscious attempt to try to parallel this legislation—talking of both bills—with the experience which we have had in workman's compensation?

Mr. ROTHSTEIN. Yes. I am not as close to the drafting of H.R. 3264 as I am to the drafting of S. 300 and the Uniform Act. But under the two that I am close to, there has been constant attention to the workman's compensation situation.

Mr. REES. The legal fees, I think, are limited under workman's compensation, are they not?

Mr. ROTHSTEIN. Yes, under most—it varies from jurisdiction to jurisdiction.

Mr. REES. I suspect that they should be under this act.

Mr. ROTHSTEIN. They should be limited. But I think the attorney should know in advance what he can expect out of it because, so that he can rationally plan his efforts and his time. And attorneys will not take cases if they do not know in advance what the expectable fee is. I think there should be a limitation. I was not advocating an unlimited fee, but I was advocating that there be certainty in advance as to what an attorney can get, and that he be allowed to come in on the process not only in the hearing stage, but in the initial stage in preparing the applications if the victim wants an attorney at that stage. And under this bill the attorney would not come in at the earlier stage, and he might never come in because of the uncertainty.

## S. 300

Mr. REES. Senate Bill 300 is basically a consensus bill, a uniform act?

Mr. ROTHSTEIN. I am sorry, I missed the point.

Mr. REES. It is essentially a consensus bill like most uniform acts are?

Mr. ROTHSTEIN. You mean, the way it would be adopted is that the States would have their own accord subscribed to it?



Mr. REES. Yes.

Mr. ROTHSTEIN. That is right. The Uniform Law Commission is made up of officials appointed by State legislatures, the State legislatures appoint these officials, and they come to the central commission, and they kind of agree that they will recommend to their State legislatures these acts that are fashioned by the drafting committees of the Uniform Law Commission.

Mr. REES. So that S. 300 does conform as closely as possible to the District of Columbia bill?

Mr. ROTHSTEIN. That is right.

Mr. REES. And S. 300 might have jurisdiction over the District of Columbia bill?

Mr. ROTHSTEIN. S. 300 could totally preempt the District of Columbia Act, then, because as S. 300 is currently drafted, S. 300 provides a direct Federal program for the District of Columbia. But S. 300 could be amended so that the District of Columbia would be treated like a State, and then the District of Columbia could adopt its own statehood.

Mr. REES. Here in S. 300 you have a Federal Government paying a certain percentage of the expenditures to local governments for this purpose. Would not the local statute have to conform pretty well to S. 300, because I have limits, you have subrogation, and you have things that affect money?

Mr. ROTHSTEIN. Well, they have been very vague about that. The way it is set up is that it has to conform to standards which will be forthcoming—which will be set up administratively, in other words, it does not have to conform exactly to S. 300. And it will be up to the administrator to decide whether the plan conforms closely enough to S. 300 to get the money. And if it does not conform closely enough to S. 300, it can still get the money, and the State can still get the money, but only *pro rata*, in other words, a proportionate share. Insofar as awards are made that do conform to Federal statute, the State will get the money and insofar as they do not conform, the State will not. I do think the safest thing to do would be for a State to draw its act precisely to conform to S. 300 so that it would be sure to get all the money on all its awards.

Mr. REES. Could you give us any idea what chance S. 300 has in the House?

Mr. ROTHSTEIN. I think that the time is ripe. People are interested in criminal injuries compensation. I will go out on a limb, and this is only a guess, but I would think the chances are something better than 50 percent. But you guys are probably in a better position to know that than I am.

Mr. REES. A thousand percent, a favorable percentage last year.

What difference is there in the bill that this subcommittee heard last year by Congressman Mikva and these two bills?

Mr. FAUNTROY. They are substantially the same. I think there are one or two minor changes. As a matter of fact, I had hoped to have Mr. Mikva testify here on that, but he just could not make it this time. But it is essentially the same bill.

Mr. REES. Thank you.

Mr. FAUNTROY. Does minority counsel have some questions which the minority Members perhaps want to raise?



Mr. HOGAN. May I just ask a couple?

Pursuing this question of the Federal S. 300, all of the crimes here, of course, are basically Federal crimes, since they are all congressional enactments. How do they treat this in the other States? The Federal crimes are handled through the State board of the State commission also, is that correct?

Mr. ROTHSTEIN. That is right. If the act that the offender does is a crime under any law that is applicable within that territorial jurisdiction, then it is a crime, and against the law under the State act.

Mr. HOGAN. Now, does S. 300 set up a Federal commission that works in cooperation with the State board, is that it basically? Is it somewhat similar to drug abuse, the Federal drug abuse agency that works in coordination?

Mr. ROTHSTEIN. Yes. As presently drafted it is through LEAA funding. But the Federal board that actually did the compensating in Federal territories like the District of Columbia would be separate, would have separate functions.

Mr. HOGAN. I assume, then, that if you had the Federal commission, as it were, if that were established, then the local board here would probably interstitially, wherever the Federal had not acted as it related to the District of Columbia, then be filled in so that the compensation board would attack perhaps in a more limited way than perhaps it would in some States.

Mr. ROTHSTEIN. If they pass S. 300 in its present form, then there is no room for a separate District of Columbia board. But if S. 300 is changed so that it would treat the District of Columbia like a State instead of like a Federal enclave, then there would be just as much room for a District of Columbia Board as in any State.

#### COST OF S. 300

Mr. HOGAN. Do they have an estimate—they obviously have to on the Senate side—as to the cost of S. 300?

Mr. ROTHSTEIN. Yes. I can give that to you.

Mr. HOGAN. And is that based on the 75 percent contribution, or how?

Mr. ROTHSTEIN. They have figures for all of it, the direct Federal part and 75 percent contribution, and the total figure. I have got it here, and I could supply it to you. \$30 million per annum at full operational level is the estimate.

Mr. HOGAN. Is that benefits?

Mr. ROTHSTEIN. That is everything.

Mr. HOGAN. Operational cost?

Mr. ROTHSTEIN. Operational cost, benefits, and sharing the State cost, picking up the State cost.

Mr. HOGAN. Is this estimate here too high for the District of Columbia where you have got a cost of \$2 million for relatively three-quarters of a million people?

Mr. ROTHSTEIN. I do not think so, because I think under S. 300 a large portion of the cost is attributable to the District of Columbia, and S. 300 would pick up the District of Columbia.

Mr. HOGAN. Then, what you are suggesting is that, let us assume that if the cost here is correct for this, which is approximately



\$2 million, then the cost to the rest of the country approximately \$28 million, is that not correct?

Mr. ROTHSTEIN. That is correct, including the 75 percent funding of State programs; yes.

Mr. HOGAN. How do you account for the relatively higher cost here?

Mr. ROTHSTEIN. I personally was not in on compiling the cost figures. But I was apprised of them.

Hold on just a minute. I think there is a breakdown in the report.

Total cost would be approximately \$7 million for the first year of operation—you see, in different years the cost goes up, so the appropriation under the House bill before us now, H.R. 3264, is the appropriation for the first year.

Mr. HOGAN. What is the report number you are reading from there?

Mr. ROTHSTEIN. I am reading from Report No. 93-83. I think there is some more information. The estimated cost, more precisely, at full operational level, would be \$28 million, and it would cover both the direct Federal program and the block grant for the States. There would be a first year appropriation for just the Federal program of \$5 million.

It seems to me, just thinking about it now, without giving it a tremendous amount of study, that the figures are not inconsistent, the estimated figures under H.R. 3264 and the estimated figures under S. 300. But I could be wrong.

#### JUDICIAL REVIEW

Mr. HOGAN. You indicate that you think there should be court review of these cases, is that not correct?

Mr. ROTHSTEIN. Yes.

Mr. HOGAN. Now, are there any instances where workman's comp is subject to court review?

Mr. ROTHSTEIN. Yes. In many States workman's compensation is subject to court review as a matter of course, under the ordinary standards, and in almost every State it would be subject to court review for capriciousness or arbitrariness.

Mr. HOGAN. That is always the case, is it not? You are not suggesting that just arbitrariness and capriciousness is the basis for court review here, are you?

Mr. ROTHSTEIN. I am a little bit at a loss as to just how that standard is different from the standard that requires substantial evidence in any normal review standard.

Mr. HOGAN. But is there any review of workman's compensation cases here in the District of Columbia other than on the basis of arbitrariness and capriciousness?

Mr. ROTHSTEIN. No.

Mr. HOGAN. I have never heard of any.

#### WORKMEN'S COMPENSATION

Now, how about the possibility of using workman's comp standards? You said you did not agree with the Canadian experience. Has it been extensive?



Mr. ROTHSTEIN. Well, one of the problems—one of the smaller problems is the one that does it. There are several problems, and only one of them adopted the workman's compensation model, one of them with a small number of claims anyway, I am not talking about geographically.

Mr. HOGAN. Do you not think that as a matter of good procedure that ultimately any board, whether it is a State or Federal board, would try to establish a schedule of increase so that you would have some basis on which to have uniformity of claim? If you did not you would have chaotic conditions, would you not, or else an extremely great amount of work?

Mr. ROTHSTEIN. My rejection of the workman compensation model was really addressed to administering it through the same board as workman's compensation. Also, I do not think it is a good idea to use the same schedule that the workman's compensation uses. First of all, most of them are terribly out of date.

As to the notion of formulating specific schedules specifically for criminal injuries compensation, modern schedules, I would say this, that the idea is all right, but what tends to happen is that under workman's compensation they do get terribly out of date, and they do not get revised. Also, they do not take account of particularity of particular cases. It seems to me that what you really are trying to compensate here is a loss of work, past and future, and medical bills. And it seems to me that that is the better approach. And that depends on the particular person you are dealing with. And not everybody has the same earning power and same earning capacity and the same medical bills. And it seems to me that that is a better approach.

Mr. HOGAN. Now, as far as the workman's compensation is concerned, does that permit a lawyer to enter at the application stage?

Mr. ROTHSTEIN. Yes, I believe it does, although the practice is so varied from place to place—but I think usually, yes.

Mr. HOGAN. So what you are recommending here comports with what—you do not know what the situation is here?

Mr. ROTHSTEIN. I believe—you may correct me on this, but I believe here that the lawyer does come in at the application stage, I am virtually certain of that.

Mr. HOGAN. You also recommend findings and opinions?

Mr. ROTHSTEIN. That is in H.R. 3274.

Mr. HOGAN. But I assume that one reason you are recommending findings and opinions is that you also recommended the right of appeals to the courts, just as any administrative decision might if they follow the DC APA?

Mr. ROTHSTEIN. And also for another reason. H.R. 3274 provides for an intermediate appeal to the full Board, subject to the decision of the initial examiner. I think it is necessary for that, too. Constitutional law is very uncertain here, but it may very well be when you have an intermediate appeal the need for a judicial appeal is no longer a constitutional requirement. But we just cannot be certain at this stage.

Mr. HOGAN. Now, as far as excluding the compensation for members of the same family, could you not circumscribe that considerably by providing that this would include wives and unemancipated children? Would that not substantially circumscribe it and at the same time,



perhaps provide those cases which you are trying to make allowance for?

Mr. ROTHSTEIN. That wives and children could be compensated?

Mr. HOGAN. Would not be compensated.

Mr. ROTHSTEIN. I do not think that is a just rule, you could provide that, but I do not think that is just, because there might be a wife or child who is just victimized by a very bad sort of person who comes home drunk and injures them really seriously, and they bear no share of the blame, except that out of fear they may have stayed with the fellow in his house. I think the Board ought to have the power to scrutinize the particular power and award the compensation where it seems needed and just. And they would not compensate only where they thought there was some collusion or cooperation or fraud on the part of the victim, or if the compensation would benefit the offender by either relieving him of a financial burden or that the money would find its way into his pocket.

Mr. HOGAN. Almost invariably, whether you call it direct or indirect, it would benefit the offender, would it not?

Mr. ROTHSTEIN. Not in cases of low income, in most of the cases where the wife or child would incur medical bills that the father would avoid anyway.

Mr. HOGAN. But in those cases would not those individuals be covered by other form of medical treatment?

Mr. ROTHSTEIN. Of course, there is a problem of the interrelationship between this and welfare in general. But there are cases that fall within the interstices, it seems to me.

#### ARREST INJURIES

Mr. HOGAN. Now, you indicated also that you would cover injury during an arrest, as I recall it, right?

Mr. ROTHSTEIN. Yes, whether the arrest was for a natural crime or a probable appearance of a crime, which is also a legitimate arrest.

Mr. HOGAN. My recollection is that there is a District of Columbia statute in effect which permits an individual to use reasonable force in making an arrest.

Mr. ROTHSTEIN. It is the law everywhere.

Mr. HOGAN. Would not this apply in that case?

Mr. ROTHSTEIN. Reasonable is interpreted to mean the force is reasonably apparent to you as being requisite under the circumstances. And it is quite probable that both the arrestor and the resisters are using a reasonable amount of force, and somebody accidentally gets hurt.

Mr. HOGAN. But should not some such provisions be put in the bill directly related to the resistance to arrest so that you do not get situations where you are compensating someone who used unreasonable force in resisting arrest?

Mr. ROTHSTEIN. Yes, I think so, I would accept that as a necessary part of it. He would in fact be an offender. And this is implicit in this whole thing.

But it should be explicit that the offender cannot get compensation.

Mr. HOGAN. Did you indicate to the committee what S. 300 does in the way of encouraging private actions?



Mr. ROTHSTEIN. Yes.

Mr. HOGAN. Does it go generally further than H.R. 3274?

Mr. ROTHSTEIN. Yes.

Mr. HOGAN. I think that is all the questions I have.

Mr. FAUNTROY. Thank you.

#### COSTS

Mr. ROTHSTEIN. Getting back to the question of the authorization for S. 300 being set at about \$28 million, and to your assessment that that is adequate assessment for a year, and that the authorization limit here for the District of Columbia would be reasonable, is it not true that that figure was probably arrived at on the basis of the actual experience of the States which have in fact participated in such a program to date, and really is a projection of what might be the expenses over the course of the first year among the various States that might choose to participate? We submitted for the record on April 13 a hearing an account of the actual expenditures by States for compensation to victims under these programs. And we learned, for example, that in the whole State of California a total of \$385,000 was awarded, that in the State of Massachusetts only a total of \$45,000 was awarded, and in New Jersey, which is an enormous State, the budget for that period was \$2,637,000. And the average award here was about \$1,460 per case.

I just wanted to call that to your attention to support your position.

Now, the Chairman, Mr. Diggs, who is, of course, an *ex officio* member of all our subcommittees, has manifested a great deal of interest in this bill. And Mr. Freeman has some questions that he would like you to respond to. And then we will let you go. Some you have already responded to and I will not trouble you with them.

#### INNOCENT BYSTANDER

But since two of the bills defines a victim as one who is the target of violence against him. Do you think this covers the innocent bystander who is shot, for example, during a getaway, as a case in point?

Mr. ROTHSTEIN. Conceivably, you could bring him within the umbrella. But if your intent is to bring him within the umbrella, it ought to be more clearly stated.

#### RECIPROCITY

Mr. FAUNTROY. We had testimony in April from the Commissioners in Maryland who supported the measure being implemented here in the District of Columbia, for the reason that sometimes they cited several cases of this, victims who lived in Maryland but were injured just inside of the District line. Do you feel that this bill should cover the District citizens who are injured outside of the District of Columbia, for example, as is the case in California?

Mr. ROTHSTEIN. That would, I think, add to the cost, I do not know how substantially. I do not think it is necessary.

Mr. FAUNTROY. Mr. Diggs also wondered whether or not, because section 24(b) requires that the good samaritan be the proverbial



reasonable man, that would have a chilling effect against people coming to the aid of persons in trouble.

Mr. ROTHSTEIN. Well, it is the law anyway, because he runs the risk of civil liability if he does not act as a reasonable man. I think you could have such a thing. You do not want to encourage unreasonable action.

Mr. FAUNTROY. Section 24(c) requires that a police officer make a request for assistance in order that the victim may be compensated in this kind of case. Is this requirement too extended, do you think?

Mr. ROTHSTEIN. This, I think, is part of some of my earlier comments, that a person who aids not at the request of a policeman, and even if there is no policeman in the picture, ought to be compensated.

Mr. FAUNTROY. Thank you.

Does either counsel have additional questions that he would like to submit?

Mr. HOGAN. Mr. Chairman, I have just a couple of further questions, if I may.

The estimate in the District of Columbia, I think, is that there is something like 50 percent of the crime here that is unreported. I do not know whether you agree with that or not, but I believe I have read statements to that effect. I assume that it probably is not any higher here than it is in other cities of relatively the same size. We have had experience with these crime compensation acts enough to know whether that will have any effect on the number of reported crimes and recoveries, let us say. The statistics that I have seen do not show in any clear way that there is an effect. But what one hopes, or at least the drafters hope, is that people will be encouraged to report, because they will not be able to get compensation if they do not. And I wonder whether that would be a significant part of the motivation. But the statistics do not show one way or the other.

Which State has the longest history, let us say, of crime compensation?

Mr. ROTHSTEIN. New York has the most well-developed plan.

Mr. HOGAN. And how long has that been in effect?

Mr. ROTHSTEIN. Since 1967, I think.

#### AWARDS FOR THREAT

Mr. HOGAN. I was a little disturbed also by your testimony about where the individual should not be denied his claim because he was under threat. Do you not tend to lose the cooperation of individuals if you give them compensation whether or not they are under threat? Should they not go to the officials if they are under threat, and if you give them some exemptions under that, do you not lose their cooperation, and do you not permit the assailant to further their crime in effect, compound it by threatening individuals?

Mr. ROTHSTEIN. This objection to my position has been made by quite a few people that I have made the point to. First of all, I do not think that it is a significant part of the motivation. I do not think it would really encourage people to report to know that they are going to be disintitiled to compensation if they do not. I think they do not report for other reasons.



Let us assume that people are encouraged to report if they know that they will not be compensated. It seems to me that if the board is very strict about what it exempts as an excuse for not reporting, that then people will know that the board is not going to accept excuses for nonreporting very lightly, so I had better report. It is only in the case where there really is a demonstrable threatening.

Mr. HOGAN. I wonder if it should not be like permitting people to purge themselves of perjury, as it were, by having them come forward for something like that and explain it, but not necessarily to provide for an exemption.

Mr. ROTHSTEIN. It is a debatable point. But it does strike me as something awfully bad about a case where this guy is in the hospital, and they have made threats against his wife and his child, let us say organized crime has made threats against his wife and his child and his business, and he is in the hospital, so he is afraid, and he does not report, and you tell him he does not get compensated because of that.

Mr. HOGAN. I think that is an extreme example.

Mr. ROTHSTEIN. I am just advocating discretion in the board, and I confine it to, the board should only accept the excuse when it is this clear and it is this gross, that they should administer this with a tight rein.

Mr. HOGAN. Thank you.

Mr. FAUNTROY. Thank you.

I think Mr. Daniels has a couple of questions, and then we will move on.

Mr. DANIELS. I just have two questions, Professor Rothstein.

#### ADMINISTRATIVE PROCEDURE ACT

The testimony you gave today and the testimony we had at the earlier period indicates that there is some difficulty over drafting legislation that is consistent with the District Administrative Procedure Act, or at least in making it clear what the relationship of the provisions in the act are to the District of Columbia Administrative Procedure Act. One suggestion that has been made is, rather than dealing with the detailed procedure in the legislation itself, to set out some broad standards of fairness in the legislation and to direct the compensation board itself to develop detailed procedures in line with the Administrative Procedures Act. How would you feel about that approach to the administrative problems?

Mr. ROTHSTEIN. It does not seem satisfactory to me offhand here, because you are asking the people who would be hampered by Administrative Procedure Act-type procedures to draft those procedures. And I think there would be a tendency to be as loose as possible.

Mr. HOGAN. Counselor, what does S. 300 do on that? It does not require adherence to the Federal APA, I take it?

Mr. ROTHSTEIN. No; it does not. It has the same defect, it does not make it clear.

Mr. HOGAN. But does it incorporate any procedures at all of the Federal APA?

Mr. ROTHSTEIN. It does some, but not others, but I do not think it is satisfactory about that.



## STATE EXPERIENCE

Mr. DANIELS. One additional question. As Mr. Fauntroy indicated at the last hearing, there was put into the record as indication of what the States which have such a program have spent on it. And quite frankly, when I saw the figures I was quite surprised that the cost of the program has been as low as it is. If I had to speculate about that, I would say one reason is probably that the existence of the program is probably not as well publicized as it should be.

Mr. ROTHSTEIN. And that is particularly true in New York. I think. You sometimes wonder the cost would be if it were——

Mr. DANIELS. I know you followed this whole area very closely. What steps have other States taken who have such programs, either in the legislation itself or in the administering of the program, to insure that there is much broader public information about the program? And if no States adopt an adequate solution, do you have a solution that you would like to suggest to us?

Mr. ROTHSTEIN. Well, putting together both what States do and emergency room personnel with the plan, and have things posted what I would like to see, I think a good plan would be to acquaint around the emergency rooms, and have the policeman inform the victim—and I think it requires something like a *Miranda* warning—and the appraisement to the victim that he has got this right in newspapers, buses, public conveyances, and publicize it among doctors and hospitals.

Mr. HOGAN. Will the counselor yield for a moment?

Mr. DANIELS. Yes.

Mr. HOGAN. You are going to have this poor policer officer festooned with cardboard warnings, he will have to give warnings to the victim, to the Department, to everybody?

Mr. ROTHSTEIN. I said that somewhat facetiously. But I think it would be a good idea to apprise policemen and ask them if they would please inform the victims.

Mr. DANIELS. You think it would be sensible to build into the legislation itself some minimal programs for the public——

Mr. ROTHSTEIN. It would be enough to put a duty in there to mandate the Board to draft some regulations for effective publicity. And I think it would be well to do that, because it would be the legislatures which would try to keep it from being publicized, because they are trying to protect the public funds, I think. And the Board has no interest in keeping it from being publicized, I think they would want to publicize it everywhere.

Mr. DANIELS. Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you so much, Mr. Rothstein. We appreciate your very detailed and lengthy testimony.

Mr. ROTHSTEIN. Thank you very much.

Mr. FAUNTROY. Now, we will call Mr. Herbert Rosenthal, chairman of the Committee on Compensation to Victims of Crime, the Young Lawyers Section of the Bar Association of the District of Columbia.

Thank you, Mr. Rosenthal, for your patience.



STATEMENT OF HERBERT A. ROSENTHAL, ACCOMPANIED BY  
ANDREW S. KRULWICH, COCHAIRMAN, COMMITTEE ON COMPEN-  
SATION TO VICTIMS OF CRIME, YOUNG LAWYERS SECTION, BAR  
ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. ROSENTHAL. Mr. Chairman, thank you for having your subcommittee invite me here today.

I have distributed to your staff a copy of the statement. I will be glad to read it, or if you would rather I just run over a few things and then respond to questions, I will do that. It is your choice.

I will also leave with your staff for inclusion in the record, a copy of the bill that our committee drafted in 1972, and it got bar association approval, to submit to the various committees and members of the Congress last year, including this subcommittee. And I would ask that it be included in the record.

Mr. FAUNTROY. You may feel free either to read it or summarize it, as you wish.

Mr. ROSENTHAL. I think I will just highlight it.

We are concerned, as our statement indicates, with the administration of this bill, whether there will be a new bureaucracy, or whether it is going to be administered relatively efficiently. And the bar association's draft bill sets up a structure that we believe will help minimize the bureaucracy, and yet provide assistance to victims of crime, and hopefully to prosecute their applications without needing counsel. But we do provide in our draft that there would be provision for attorney's fees similar in terms of the hourly rates of the Criminal Justice Act. And we did suggest that one-half of that should come out of the victim's award as a contingency, and one-half of it to come out of the administrative funds of the Criminal Victim Compensation Board, or whatever agency.

#### EMERGENCY PAYMENTS

One thing that I think H.R. 3274 should have is an emergency provision that in dire need the victim of a crime can receive some immediate compensation. I believe S. 300 and the bar association bill contains that.

#### JUDICIAL REVIEW

Our draft bill does provide for judicial review in the District of Columbia Board of Appeals. And I guess we envision compliance with the District of Columbia APA. We view this bill as an integral part of the home rule, or statehood, or whatever comes out of Congress to give the District citizens a voice in the government.

I will be glad to respond to any questions.

Mr. FAUNTROY. Thank you.

[Mr. Rosenthal's statement follows:]

#### TESTIMONY OF HERBERT A. ROSENTHAL AND ANDREW S. KRULWICH

We are pleased to have the opportunity to appear before the Subcommittee today on the important subject of compensation to the victims of crime in the District of Columbia. We represent the Bar Association of the District of Colum-



bia which fully supports the principle of compensation to the victims of violent crimes. This is a program that has long been needed as an adjunct to our criminal justice system. It has been adopted with success in various jurisdictions, including the United Kingdom, Maryland, New York, California, Massachusetts, Hawaii, Nevada and other states; we support its adoption in the District of Columbia.

To this end, the committee of the Young Lawyers Section of the Bar Association of which we are Co-Chairmen has for more than two years been considering the various proposals to compensate victims of crime, and has drafted a proposed statute<sup>1</sup> which has been adopted by the Bar Association and which we submitted for the Subcommittee's consideration.

The bill we have submitted is based on our review of all enacted and pending legislation. Our committee has had some contacts with personnel in charge of the various state programs. While the Bar Association bill follows the same general scheme and approach as does H.R. 3264, it departs in several key aspects from the bills currently before the Subcommittee. We wish to take this opportunity to point out those differences and the reasons underlying the Bar Association's position.

We discovered that one of the more difficult problems faced by various states in implementing legislative schemes for compensation to victims of crime was encouraging full use of the program by the victims themselves. A number of jurisdictions have reported that use of the program is minimal at first. We were concerned to avoid this problem in the District of Columbia and believe that the police should be provided with information cards to be given to victims.

Furthermore, our committee felt that it was crucial that any bureaucracy needed to operate the plan be kept to a minimum. Accordingly, the Bar Association draft attempts to provide as streamlined a procedure as possible for applying for an award, processing and verifying applications, and making payment. Various safeguards were also added to minimize false claims. The basic principle was that, consistent with the above guidelines, persons should be paid their full out-of-pocket losses for personal injury resulting from violent crimes in the District of Columbia. Property damage would not be compensated. Specifically, we consider the following differences between H.R. 3264 and the Bar Association draft statute to be the most significant:

1. *Administration.*—Both the Bar Association bill and H.R. 3264 place the administration of this bill in the jurisdiction of the Commissioner or Mayor of the District of Columbia. This is good. However, while H.R. 3264 would create a five-man commission to administer the bill, the Bar Association bill places these functions with the staff of the Commissioner's office. The concept is that a victim should have only to fill out an application, attaching medical bills and possibly a statement from his employer, and any other evidence of out-of-pocket expenses. We feel that there would then be no need for an additional five-man commission and bureaucracy to administer the program, or for the applicant to engage a lawyer to file his claim. A commission, in our opinion, will only add to the difficulty in administering the program and discourage its use.

2. *Exclusions.*—H.R. 3264 contains a number of exclusions that are not adopted in the Bar Association bill, as follows:

a. H.R. 3264 has a minimum award of \$50 and a maximum limit of \$10,000. The Bar Association bill contains neither a minimum nor a maximum. As noted above, the Bar Association bill purports to pay everyone whatever they lose in unreimbursed out-of-pocket expenses to the extent possible. If the application process is inexpensive to the government, as we believe it will be under our approach, there is no reason not to pay an award of under \$50. Such a loss can be significant to many of the residents of the District of Columbia and, we believe, should be compensated.

On the same principle, we see no justification for an arbitrary \$10,000 limit. There obviously will be instances where \$10,000 will not suffice for the loss of earnings, medical expenses, and other out-of-pocket expenses. We also disagree with the \$500 per month limitation on lost wages. This is especially so because of the provision in H.R. 3264 which would divide the \$10,000 among dependents

<sup>1</sup> MESSRS. John H. Quinn, Jr. and Herbert A. Rosenthal were the initial draftsmen for this proposed statute. Other members of the committee were Anthony M. Lorusso, John H. Midlen, Thomas K. Moore, Frederick Moring, John S. Ransom, Donal B. Tobin, and Frederick S. Hird, Jr.



or other individuals entitled to compensation as a result of the crime. We can well envisage a number of situations where an individual who is disabled has three or four children plus a wife, and possibly even parents who are dependent upon him. In such a situation, \$10,000 to be divided amongst them comes nowhere near compensating for their loss.

We should add at this point that the Bar Association draft contains a limit on payments in the case of death which is inconsistent with what we have just said. This limitation was the result of much discussion within our committee, and after reflection, we are convinced it is unwise and that there should not be a limitation. Furthermore, our limit is far too low.

b. H.R. 3264 provides that an award shall not be made if the injury or death was not entirely attributable to his wrongful act or substantial provocation by him or his assailant. In addition, there will be no reward where the victim and his assailant are related or of the same household. We believe these provisions are unwarranted. In the first instance, a determination as to the fault of the victim and the amount his award should be reduced is a very difficult concept to deal with. We believe it will lead to much controversy in many cases, and needlessly complicate the procedure. Put simply, this is a very difficult standard to apply. Furthermore, a blanket exclusion of compensation where the victim and assailant are of the same household may result in injustices. For instance, innocent children may be deprived of awards.

As an alternative, the Bar Association bill contains provisions against unjust enrichment and a prohibition against an award which would benefit the offender. We believe that these two provisions, when applied sensibly, would cure the possibilities of misuse and fraud that most likely caused the inclusion of the various provisions limiting awards in H.R. 3264.

3. *Emergency award.*—The Bar Association bill also includes a provision for an emergency award not to exceed \$2,000. We believe this is a highly desirable and, indeed, necessary provision of any effective compensation bill. There will undoubtedly be situations where a person entitled to an award has insufficient funds at this disposal for his immediate needs. The emergency award, to be deducted from the final award in the end, will be crucial to him.

4. *Restitution.*—Finally, Title VI of the Bar Association bill proposes procedures for use of the concept of "restitution." After conviction, any party—including the victim—could request that the court order restitution as part of any penalty to be imposed. The bill would permit the court to stay a prosecution and order restitution to the victim as an alternative if it seemed preferable. If restitution is accomplished, the court has the power to dismiss the prosecution. We believe this approach to the administration of criminal justice, which is being applied in some of the states and in the United Kingdom, is deserving of consideration by your Committee. Alternatively a provision such as sec. 104 (page 24) of S.300 might be added to H.R. 3264.

5. *Other Suggestions.*—a. Section 2(3) defines crime of violence in legal terms. To insure that victims are entitled to compensation regardless of the mental state of the perpetrator, a paragraph such as Section 456(d) on page 21 of S.300 should be added.

b. Section 7 (a) (7) allows for reduction of awards if any form of governmental compensation is received. A similar reduction should be made for benefits from hospitalization insurance, sick leave, disability income insurance, etc. The purpose of this bill is compensation—not double compensation and enrichment the same applies to Section 11(a) (4) ).

c. On page 16, line seven, we suggest the following change:

"... incompetent, to his *parent, guardian, or conservator* . . ." Because the Act does not define guardian, the Commission might feel compelled to require a court appointed guardian for each minor beneficiary. This would entail unnecessary expense and delay.

In conclusion, we wish to reaffirm the Bar Association's support of the principle of compensation to victims of violent crime. We hope we can be of assistance to the Committee in the furtherance of that goal.

MR. FAUNTROY. Thank you very much.

And I do have several questions that I would like to ask. It is ground that was gone over in the questioning of Mr. Rothstein. But it would be very helpful for me to get your views specifically.



## ADMINISTRATION

You mentioned, on the question of administrative efficiency that you agree with the five-man commission, but that you feel that the staff should be assigned to the Commissioner's staff.

Mr. ROSENTHAL. I think I may have misspoken. We do not advocate in our bill the creation of a new commission. It would be administered by the staff of the Commissioners or the Mayor, or by the Governor. And it would be kind of within his staff. And we provide on a similar basis to your bill the initial level, at the intermediate administrative appellate level, and finally, review by the Commissioner, with ultimate judicial review by the District of Columbia Court of Appeals. We just took the position that it probably could be administered relatively efficiently with the existing structure of government without the creation of an entire new Board and all the staff that it would have to have.

## OFFENSES COVERED

Mr. FAUNTROY. Several of the standard questions we have been asking are as follows: First, should the Act be revised to include all crimes of violence, in your judgment, or should the offenses be specified as we have attempted to do here in this bill?

Mr. ROSENTHAL. Our draft also lays out the various named crimes. I would think that if we had thought about that question we would want any crime of violence. I think we may have had in mind making those any crimes of violence, even perhaps Professor Rothstein's example of the unlicensed chiropractor could sometimes be taken as assault by a prosecutor, therefore creating it into a crime, so it may be assault as a matter of criminal law. I think most everything could be broken down into an assault. If it is best not to limit it by naming specifics, we could certainly name all types of violence covered.

## COMPENSATION LIMITS

Mr. FAUNTROY. As you know, this bill contains no hardship crime, it is a compensation to any victim of crime no matter what his income or financial resources are. What are your views on that?

Mr. ROSENTHAL. We took a figure similar to that in this bill, that it is compensation to compensate people for their out-of-pocket losses regardless of need. We do provide for a reduction for collateral source payments, whether to private insurance, the employees sick leave, or any governmental-type insurance. So that there is a double compensation, if the man or woman loses wages or has to go out of pocket for hospital expenses that are not reimbursed by any form of insurance or otherwise, then he should be compensated regardless of need.

Mr. FAUNTROY. Is the minimum of \$50 as a damage requirement really high enough, or should it be lower?

Mr. ROSENTHAL. I believe we felt that everybody should be compensated, and we took the position that there should be no minimum, either in terms of a deductible or in terms of any threshold, upon the Commission.



## FAMILY INJURIES

Mr. FAUNTROY. What is your view on the question of denying compensation to a member of the household, someone who is injured by someone in the household?

Mr. ROSENTHAL. We recognize that that is a very serious problem. And our bill suggests that we leave it to the Commission to prevent unjust enrichment, which I realize is a legal term of art. And, of course, if you need certainty, then you have got to spell out a member of the household. But it seems to us that in too many cases that would work a very harsh burden, and we felt on balance that it would be better to leave it to the discretion of the person administering the bill, even though we recognize that there might be instances where it would be very hard to interpret them, but on balance justice should prevail.

Mr. FAUNTROY. So that you would not leave in the prohibition for compensation to persons who were victimized by members of the household?

Mr. ROSENTHAL. That is correct, we would not automatically bar that.

## PAIN AND SUFFERING

Mr. FAUNTROY. Should the bill include compensation for pain and suffering and for property loss as against the personal injury?

Mr. ROSENTHAL. We took the position quite easily that it should not include property loss. We felt that was too ripe for fraud. And very often it was insured. I know we debated a lot about pain and suffering, and we elected not to include it. And I know that it is one of the hot issues. But that is the position we took.

## AWARDS

Mr. FAUNTROY. Should not private health insurance be segregated under this plan? Should Blue Cross be able to go against the claimant to recover, or should the Commission deduct from any award it makes that portion of the out-of-pocket expenses that are covered by Blue Cross? The latter.

Mr. ROSENTHAL. In the latter we took the position that the person administering the Compensation Act should reduce the award by any form of insurance that the victim received from any other source, so that this would be no double compensation, so that the victim would receive his net out-of-pocket loss.

## ADMINISTRATIVE PROCEDURE ACT

Mr. FAUNTROY. Are the provisions of the Act consistent, do you think, with the District of Columbia Administrative Procedures Act? We have had some discussion of that.

Mr. ROSENTHAL. I do not believe we thought of that precisely at the time we were drafting it. We tried to provide for findings of fact, conclusions of law, at the various administrative levels, and then ultimately giving the claimant, or even perhaps the Government, the right to seek judicial review in the District of Columbia Court of



Appeals. And I would guess that we had in the back of our mind the District of Columbia Administrative Procedures Act. But I do not think we focused on it that precisely. And I would certainly favor the bill being subject to the District of Columbia Administrative Procedures Act, at least in terms of findings of fact, and the right to judicial review.

#### ATTORNEYS' FEES

Mr. FAUNTROY. I wonder if you would restate for me your position on compensation for attorneys.

Mr. ROSENTHAL. In our bill we took the position—it was kind of a compromise. We wanted people to be able to go to this Commission and make their own claims, and not have to need an attorney. On the other hand, we also believed that in many cases an attorney should be permitted to participate, and that they can be helpful. So our suggested mode of compensation is that the rate of compensation would be similar to that under the Federal Criminal Justice Act, so when you got the total bill from the attorney, assuming it were approved, one-half of that amount, I think up to a percentage limitation, would be deducted from the victim's payment or award, and the remaining half would be paid out of the administrative funds of the agency administering it. And that way it would have some flavor of contingent fee so that you would not be getting a free attorney. And on the other hand, we did not want to penalize the claimant in terms of actual dollars too much for seeking an attorney, and especially since he was the unwilling victim of crime. So we took the compromise where half of the fee would be paid by the victim out of his award and the other half out of the administrative funds of the agency.

Mr. FAUNTROY. There are several questions which the chairman of the committee asked that we tender you.

#### INNOCENT BYSTANDER

First, the bill defines a victim as one who is the target of violence against him. Does this cover, do you think, the innocent bystander who may be shot during a getaway, as an example?

Mr. ROSENTHAL. Offhand, I think he could raise an issue of construction. And I would suggest to this subcommittee our definition of victim as meaning a person who is injured or dies as a result of any act or omission of any other person constituting crime—something along that line should be very broad.

Mr. FAUNTROY. And you feel that something of that breadth would cover a person, say, shot by a policeman while the police were pursuing a criminal?

Mr. ROSENTHAL. Our definition might not cover that situation. I do not think we have ever thought about it.

Mr. FAUNTROY. This might be an innocent victim of a crime.

Do you feel that this bill should be written in a fashion that District residents injured outside of the District of Columbia might be covered?

Mr. ROSENTHAL. We took the position that it should cover anybody who was the victim of crime within the District of Columbia. I think



by our definitions the District of Columbia resident who is the victim of crime in another State would not be covered under this particular act.

Mr. FAUNTROY. Again, this is a question that was put to Mr. Rothstein. The bill requires that a police officer make an express request for assistance in order that the victim may be compensated. Is this requirement too stringent, in your judgment?

Mr. ROSENTHAL. I think our bill did not focus upon the Good Samaritan side. So I am not in a position to state a position on that.

#### ADMINISTRATION

Mr. FAUNTROY. Of course, you do not feel that a board should be set up, do I understand that?

Mr. ROSENTHAL. You mean a new agency?

Mr. FAUNTROY. A new agency.

Mr. ROSENTHAL. That is correct, that is our position.

Mr. FAUNTROY. Who would have the judgments?

Mr. ROSENTHAL. Initially you have an office, probably in the District Building, and a victim would go in there, and his or her attorney, and fill out a claim. And it would be initially processed. And it is at a relatively low staff level. And the result of the staff's finding would be submitted to the claimant. And if he or she were satisfied with it, they would not have to do anything else. And if the claimants were not satisfied, you could just merely in writing, I guess, simply ask for a hearing on all issues. And then you would have a hearing before one person, a person designated by the Mayor-Commissioner, whom I do not believe we intended had to be a full-time public servant, he could just be a person in private practice.

Mr. FAUNTROY. Why do you feel that this is superior, for example, to the board that operates in Maryland?

Mr. ROSENTHAL. It was just a matter of principle, we felt. We thought that this program could be administered within the Mayor-Commissioner's Office without having to create a whole new bureaucracy in the District Government. We just took that position.

Mr. FAUNTROY. Counsel for the minority, do you have any questions which the members may wish you to ask for us?

Mr. HOGAN. Yes, Mr. Chairman.

#### CLAIMS PROCEDURE

Would you envisage an adversary proceeding, then, such that the District of Columbia APA would apply to the proceeding? In other words, either a corporate counsel or someone obviously would have to represent, or certainly would represent the District?

Mr. ROSENTHAL. I do not believe we focused on the section in the District of Columbia APA that distinguishes between adversary proceedings and other proceedings. But we did provide that the Corporation Counsel or the U.S. Attorney could participate. I think either on his own request or at the request of the hearing commissioner, in some respects sort of as a punitive counsel, like many of the Federal administrative aid agencies have, to help elicit the facts.



Mr. HOGAN. You were here when Mr. Rosenstein was testifying. And he was asked about the question of extending this coverage here to immediate members of the family. If I understand your response to the chairman, it was that you do not believe that there should be an unjust enrichment of the standard, is that correct?

Mr. ROSENTHAL. We do believe that there should be an unjust enrichment standard, there should be not an absolute bar—did you mean a victim who is related to the offender?

Mr. HOGAN. This is what I said. I understand you to be saying it was an unjust enrichment standard rather than—do you think those words are a sufficient standard within the act itself, or do we need something more definitive? Or what did you use? Does the committee have your bill?

Mr. ROSENTHAL. They will. I know that we have it in here.

Mr. HOGAN. Let us pass on, then.

How about expanding the coverage, then, of that provision, as Mr. Rothstein, as I understand it, suggested extending it to members of the household rather than just members of the immediate family?

Mr. ROSENTHAL. Oh, yes.

Mr. HOGAN. In other words, people who live in the same household.

Mr. ROSENTHAL. Yes, we intended that to be covered also.

Mr. HOGAN. To apply more broadly?

Mr. ROSENTHAL. Yes, sir.

#### ATTORNEYS' FEES

Mr. HOGAN. Then, as far as the fee is concerned, how much of a fee are you talking about? You said the fee should be split half and half, but my recollection is, you did not indicate how much of a fee. Would you tell me what percentage?

Mr. ROSENTHAL. We suggested an upper limit of 20 percent of the claim.

Mr. HOGAN. I see. So that then 10 percent, or whatever that claim was, if the average runs \$1,400 or something like that, it would run around, let us say, \$280?

Mr. ROSENTHAL. Yes.

Mr. HOGAN. In other words, \$140 for each claim would come out of the administrative cost of operating the system?

Mr. ROSENTHAL. That is correct.

Mr. HOGAN. Which would obviously increase the cost of administering it.

Now, you were asked about the victim, the victim who is shot, let us say, in the commission of a crime. And you read your definition of victim. I wonder if your definition would not permit someone who is aiding and abetting a crime to recover if he were struck by someone else who was subsequently convicted?

Mr. ROSENTHAL. If those particular facts were proved, I think it would be our idea that the concept of unjust enrichment which applies not to just family members but to any award, would apply.

Mr. HOGAN. In other words, your definition in your bill applies across the board to unjust enrichment, not just to—

Mr. ROSENTHAL. I believe that is true.



## JUDICIAL REVIEW

Mr. HOGAN. Now, you are familiar with the court of appeals and review in the District, I take it?

Mr. ROSENTHAL. Yes.

Mr. HOGAN. Is it your proposal here, then, that something like the BAR would hear the appeal ultimately from this lower administrative official?

Mr. ROSENTHAL. I think it is our idea, we start out with the lower administrative official, and then a hearing office, if the first claimant asked for it, and after that the Mayor-Commissioner or his delegate, so that he could be a board of appeals and review-type situation, depending on what the Mayor-Commissioner wanted.

Mr. HOGAN. Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you.

Are there questions from counsel?

Mr. DANIELS. Mr. Chairman, one technical point.

Mr. Rosenthal, have you submitted your draft for the record and has it been accepted for the record?

Mr. ROSENTHAL. I am going to submit it. I only have one copy. I would ask that it be xeroxed and returned to me. We submitted them last year, and I neglected to bring additional copies.

Mr. FAUNTROY. Without objection, we will xerox that for the record.

Mr. DANIELS. Mr. Chairman, we may want to leave the record open for just a day or two.

Mr. ROSENTHAL. I am leaving it here with you today.

Mr. FAUNTROY. Thank you very much. You have been very kind and patient, and very helpful.

The hearing will come to a close.

[Whereupon, at 4:20 p.m., the hearing was concluded.]

[Subsequently, the following statement was filed for the record:]

DISTRICT OF COLUMBIA MODEL CITIES PROGRAM,  
*Washington, D.C., August 24, 1973.*

HON. CHARLES C. DIGGS, JR.,  
*Chairman, District of Columbia Committee, U.S. House of Representatives,*  
*Washington, D.C.*

DEAR CONGRESSMAN CHARLES C. DIGGS: This is to invite your attention to the attached statement on the need to include in our federal and state criminal justice system a provision of restitution for loss or injury to victims of crime. I presented this statement on July 22, 1973 at the Criminal Justice Seminar in New Orleans. A great deal of interest in the concept was generated there and a number of phone calls and requests for copies of the statement have followed the meeting.

I am sure the citizens of our nation and specifically the residents of the District of Columbia would like to see progress toward implementation of this concept. I hope, therefore, that you will provide leadership and support in carrying out the legislation and legal steps necessary to implement the concept in our federal and state criminal justice system. I will be glad to provide whatever further support which you feel might be useful.

Sincerely,

CHARLES RICHARDSON,  
*Board Member, Criminal Justice Coordinating Board.*

Enclosure.



## THE NEED FOR RESTITUTION

We urge each person to give attention and support to the growing demand for a breakthrough in our federal and state legal system for the inclusion of restitution for loss or injury to victims of crime. Numerous publications in legal periodicals as well as the crime indicators throughout the country should provide for us sufficient justification and motivation to remove the legal constraints of previous centuries so that our criminal justice system can assume a more relevant posture and deal more effectively with an updated analysis of the problems.

Current jurisdictional boundaries limit the criminal court system to punishment and rehabilitation of the criminal and separate the restitution of loss from it as a private, civil matter. Crime is a source of great loss to its victims, and the relegation of loss due to crime to tort law (which requires a civil suit) places a special hardship upon the victim, especially the poor.

A survey of the Model Neighborhood in Washington, D.C. revealed that fifteen percent of the residents were victims of crime between January and October of 1971, and six percent were victims two or more times. Property loss was high due to vandalism and burglaries. Robberies and assaults were of high frequency. While the Model Neighborhood made up 10.4 percent of the city's population, it composed 22 percent of the juvenile delinquency referrals and undoubtedly generates an even greater percentage of the city's crime. After the victims of crime serve as witnesses to help the prosecutor obtain a criminal conviction, they are neglected and forgotten by the criminal justice system. The system does nothing to insure that criminals remember or consider their debt to the victims.

For the perpetrator of crime, the criminal justice system does little more than define for him what the odds are against his apprehension and incarceration. The system simply establishes the arena in which the criminal is pitted against a vague impersonal law represented by policemen. The only element of respect which is fostered by this system is for the chances of being caught, certainly not respect for the well-being of people or concern about their loss or injury.

By incorporating restitution for loss or injuries due to crime into our criminal justice system we commit ourselves to viewing and dealing with crime as a loss or damage to its victims rather than to simply treat it as an affront to the laws of society.

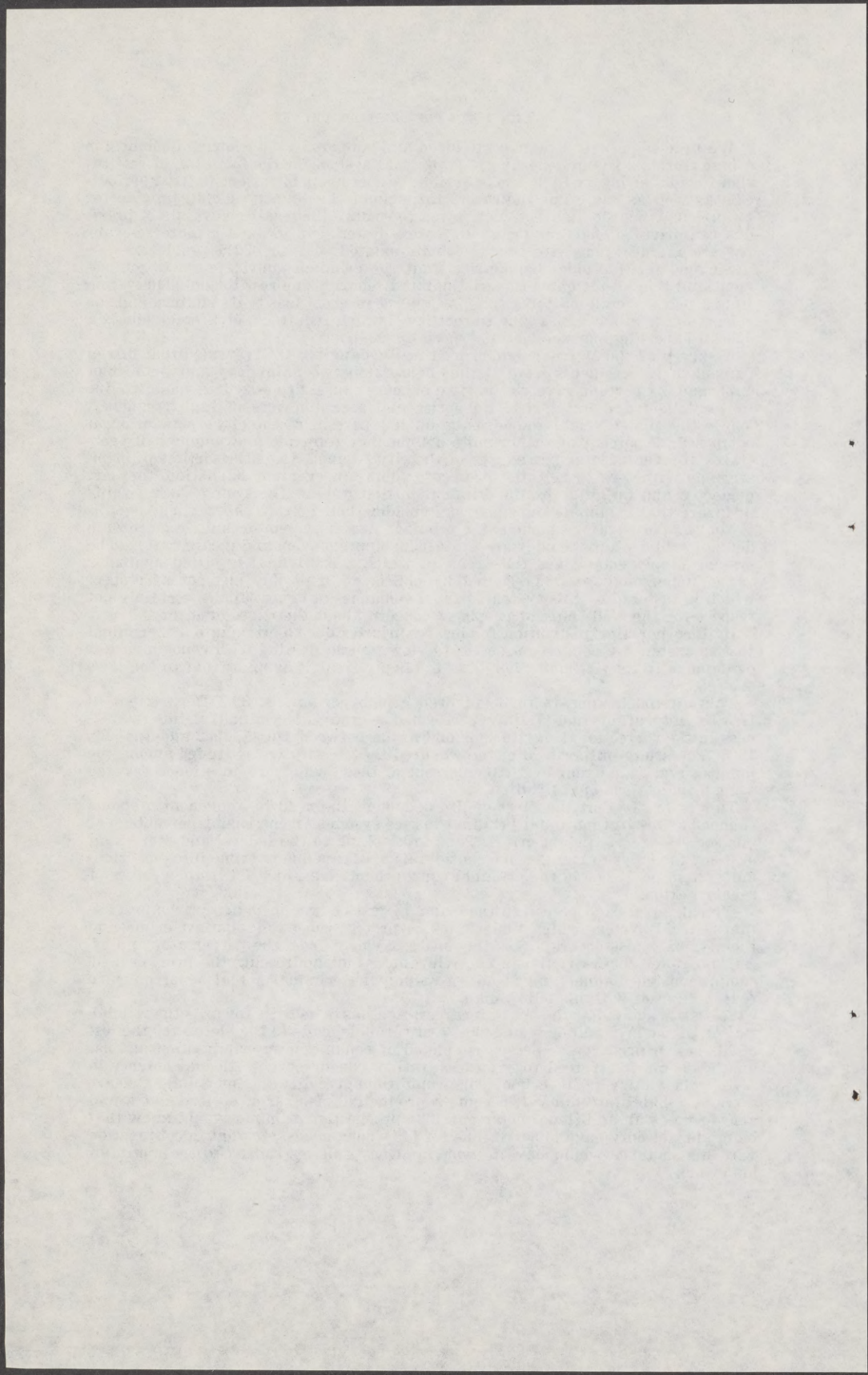
This approach appears to be favored also by criminals. The Department of Health, Education and Welfare performed a study of criminal/victim relatedness in the correctional institutions of Florida between July 1, 1962 and June 30, 1963. The study purports to have measured the "restitutive attitude" among the inmates and found that over fifty percent of those who were questioned favored some level or form of restitution.

This is to say that the facts of life document the need to implement a strong element of restitution in our criminal justice system. An increasing percentage of our society are victims of crime. They are looking to the federal and state legal systems for ways to merge some consideration of loss due to crime into our criminal system or, if not in the criminal courts themselves, at least in the process of rehabilitation.

We call upon each person in the criminal justice system to accept the premise that a legal system which undertakes to protect the public against crime and then, when a loss occurs, takes the entire payment from the perpetrator and offers no relief to the victim is not relevant, is not addressing the problem in a comprehensive manner and is not providing the criminal a real opportunity to redeem himself with his fellow man.

Statistics show that the act of incarceration has done little towards the rehabilitation of the criminal or seeing that restitution is made to the victim for the loss of his stolen property. A person convicted of committing a criminal act against another should be forced to make restitution, concurrently with his sentence in jail, to the victims of his crime. This would then give him an opportunity to learn a trade, rehabilitate himself, become a productive member of society and would also serve as an additional deterrent. The prospective criminal would know that he might not only have to serve time for his wrong deeds, but that in conjunction with his sentence would have to work and pay full restitution to the victim of his crime.







**APPENDIX**

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**STATE OF MARYLAND**

**Criminal Injuries**

**Compensation Board**

**THIRD ANNUAL REPORT**



**1972**





STATE OF MARYLAND  
CRIMINAL INJURIES COMPENSATION BOARD  
THIRD ANNUAL REPORT  
1972

JOSEPH PICKUS  
*Chairman*

GEORGE H. C. ARROWSMITH  
DENNIS C. MCCOY  
*Commissioners*

MARTIN I. MOYLAN  
*Executive Director*



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STATE OF MARYLAND  
CRIMINAL INJURIES COMPENSATION BOARD  
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JOSEPH PICKUS

*Chairman*

GEORGE H. C. ARROWSMITH

DENNIS C. MCCOY

*Commissioners*

MARTIN I. MOYLAN

*Executive Director*

TO:

HONORABLE MARVIN MANDEL  
*Governor of the State of Maryland*  
COLONEL ROBERT J. LALLY  
*Secretary*

Department of Public Safety  
and Correctional Services  
HONORABLE LEGISLATIVE COUNCIL  
State of Maryland

Gentlemen:

I have the honor to submit the third report of the Criminal Injuries Compensation Board for the fiscal year of 1972, rendered pursuant to the provisions of Article 26A of the Annotated Code of Maryland.

Respectfully,  
JOSEPH PICKUS  
Chairman

Baltimore

Dated: September 15, 1972



# THIRD REPORT OF THE CRIMINAL INJURIES COMPENSATION BOARD STATE OF MARYLAND

TO:

Honorable Marvin Mandel  
Governor of the State of Maryland  
Colonel Robert J. Lally, Secretary  
Department of Public Safety and  
Correctional Services

Honorable Legislative Council  
State of Maryland

Gentlemen:

We have the honor to submit this, our Third Report:

## I. ADMINISTRATIVE BACKGROUND

This report covers the period of July 1, 1971 through June 30, 1972. It is the third year of the Board's existence.

The Criminal Injuries Compensation Board was created on July 1, 1968. The State of Maryland was one of the first states in this country to create a program of compensation to crime victims. Since that time, several additional states have created similar programs and presently the federal government is considering a program. Numerous other states and Senator Mansfield's office, have called upon this Board for its experience looking forward to adopting some program to compensate innocent victims of crime. This Board has always cooperated with these inquiries and will continue to do so in the future.

On May 27th, 28th and 29th, 1970, this Board hosted the Second International Conference for Compensation to the Innocent Victims of Crime. The conference was well attended and as a direct result, an International Association of Criminal Injuries Compensation Boards was formed.

The new organization's primary goal will be the co-ordination and co-operation of the various Criminal Injuries Compensation schemes. The creation of this new organization, in itself, reflects the awakening of the social consciences of the people of the western world towards the compensation and rehabilitation of the innocent victims of crime.

We are cooperating and exchanging information and statistics with the Members of the organization and the benefits derived are invaluable.

On September 14, 15 and 16, 1972, the Board will attend the Third International Conference for Compensation To Innocent Victims of Crime in Toronto, Canada.



## II. CATEGORIES OF AWARDS

We shall set forth later in this report an analysis of the claims, together with the type of crime committed, as well as separate the claims generally into three categories:

- a. Lump sum payments—where the claimant returns to work with no diminution in earnings.
- b. Protracted claims—where the decision is made and then provides for periodic monthly payments during the continued disability and diminution in earnings, and lastly
- c. Death claims—where again the decision is made making an award up to the time of the decision and then providing for a monthly payment to the dependents.

Our awards are paid pursuant to Section 36 of Article 101 of the Annotated Code of Maryland, which is the Award Section of the Maryland Workmen's Compensation statute.

## III. RULES AND REGULATIONS

This Board, pursuant to the provisions of its statute, adopted Rules and Regulations, which were approved and duly filed with the Secretary of State, Clerk of the Court of Appeals, etc. The Board in these Rules and Regulations set up certain guidelines to determine serious financial hardship. Unless serious financial hardship is shown, no award can be made.

## IV. PUBLIC AWARENESS

The number of applications received last year increased dramatically over the number received in the prior year. Inasmuch as there has been and there continues to be an increase in public awareness of the legislation and of the Board, we anticipate similar substantial increases in the next fiscal year. Notwithstanding the increase in applications submitted to us, we note that not all of the victims of what appeared to be eligible crimes committed in Maryland are filing applications. For that reason, we will continue to discharge our responsibilities to advise the public concerning the benefits available under the statute. We consider this duty of advising and informing our citizenry to be an extremely important and continuing one.

The Board has been the subject of numerous newspaper releases and stories. We have also used and are indebted to various radio stations for allowing us public service time for spot announcements. Radio and television stations in Baltimore, New York, Washington, D. C., Hagerstown, and Salisbury have also conducted programs explaining the Criminal Injuries Compensation Board.

We have also contacted all the Social Service Departments, Police Departments, Workmen's Compensation Commission, various state departments, county departments, Legal Aid Societies and all hospital and similar



types of organizations, informing them of our Board. The Board also prepared a brochure explaining, in layman's terms, the statute. The Board has now distributed over 150,000 of these brochures in all parts of the State.

The Board recognizes that the public is not as yet well informed and we shall continue our efforts within our own limitations to make use of the news media, radio and television to accomplish this.

## V. TIME LIMITATIONS

In order to be eligible for an award, police records must show that the crime was reported to the police no more than 48 hours after the occurrence of such crime. This requirement can be waived by the Board in exceptional circumstances upon the showing of good cause. Claims must also be filed not later than 180 days after the occurrence of the crime, upon which claim is based or not later than 180 days after the death of the victim. The Board can for good cause shown extend the time for filing up to two years.

## VI. STATISTICAL EXPLANATIONS

The number of claims that were accepted and investigated were 339 and in addition to that, there were what shall be termed as inquiries, 1500. These inquiries were not processed by opening a file and starting an investigation because the Secretary of the Board, who is also the Executive Director, did not find the claimants to be eligible under our statute. We have had for example, a number of inquiries from citizens of this state, who were injured in crimes that took place in other states and in particular, the District of Columbia. We have also had inquiries from various creditors and distant relatives of the deceased victims who do not meet the eligibility of the statute. Crimes involving automobiles are also excluded by the statute unless intentionally committed and are likewise rejected by the Secretary. Sometimes it also becomes necessary for a preliminary investigation to be conducted to determine if the claim or inquiry was one that should be accepted for investigation. This is done to save the time of the investigative staff and save the costs of processing the claim. There were 266 decisions rendered, of which 150 awards were made and 116 were disallowed. The reasons for disallowance of the claims are as follows:

|                                        |    |
|----------------------------------------|----|
| No Crime .....                         | 1  |
| Did not meet minimum requirement ..... | 6  |
| No loss of support .....               | 25 |
| No serious financial hardship .....    | 48 |
| Failure to furnish information .....   | 17 |
| Provocation .....                      | 10 |
| No police report filed .....           | 2  |
| Ineligible .....                       | 3  |
| Member of a family .....               | 3  |
| Motor vehicle .....                    | 1  |



During this time there were 32 emergency awards made. There were 290 personal injury claims and 49 death claims. Attorney's filed the claims on behalf of 90% of the claimants. The type of crime is illustrated by the following:

|                     |    |
|---------------------|----|
| Assault .....       | 95 |
| Stabbed .....       | 71 |
| Murdered .....      | 49 |
| Shot .....          | 93 |
| Mugged .....        | 21 |
| Rape .....          | 4  |
| Miscellaneous ..... | 6  |

Of the 266 decisions which were rendered by the single Board Member, there were 28 Appeals to the full Board. Full Board Appeals are held in the Board's offices in Baltimore, Maryland. However, the Board Members and the Executive Director, who also functions as a hearing officer, conduct hearings throughout the State. The full Board has affirmed 17 cases on Appeal and 6 were reversed and 5 were allowed to be reopened for further investigation and/or further proof to be submitted.

The lump sum awards averaged \$1975. In the death claims, without taking into consideration the amount set forth in the decision but only for the periodic monthly payments, payments averaged \$2,400 per year per claim. In a protracted claim the average is \$2100 per year per claim. At the present time, 45 death claims and 38 permanent total claims are being paid monthly.

Since periodic payments are made monthly in protracted and death cases, periodic checks are made to determine if the payments should continue. In protracted cases, if there is a change in dependency, remarriage, emancipation or any other circumstances or contingency that would alleviate claimant's financial hardship, payments are then stopped.

## VII. PROCEDURES IN FILING AND HANDLING CLAIMS

1. Upon inquiry to the Board, a claim form is given or mailed to the prospective claimant, who is advised to submit the completed form together with medical reports, receipts and the material to support his claim.
2. When the executed claim form is filed with the Board it is reviewed by the Secretary to determine if the claimant is in compliance with statutory eligibility and jurisdictional requirements.
3. If the claim is accepted by the Secretary, it is docketed and a file is set up on the claim.
4. The Board then acknowledges the claim and contacts the appropriate police department for a copy of the police report.



5. An investigation is conducted to determine and verify various aspects of the crime and the injuries and expenses incurred thereby.
6. If a hearing is deemed necessary, the claim is scheduled for a hearing before a single Commissioner and all appropriate witnesses are notified and subpoenaed if necessary. These hearings are conducted throughout the State.
7. While the evidence is given under oath, the Board tries to develop an atmosphere of informality in the hearing room which is conducive to the obtaining of the required information in support of a claim.
8. If claimant is dissatisfied with the decision of the single Commissioner, he can request a reconsideration by the full Board.
9. The full Board's hearings are usually conducted in Baltimore.
10. When a final decision is made at either level and it is acceptable to the claimant, it is then sent to the Attorney General and Secretary of the Department of Public Safety and Correctional Services, who have 30 days to take an appeal to the appropriate court if they think the award is improper.
11. If no Appeal is taken, the award becomes final.
12. In protracted awards the Board pays each award as specified direct to the claimant.

The Board has investigated and rendered a number of decisions in less than 30 days. However, the average is 60 days. There are, of course, many reasons that delay the Board's decisions. The State's Attorney may request the Board to discontinue investigation until he advises that the Board can proceed. This generally means awaiting the disposition of the criminal matter. In other claims, there may be delays due to the fact that it is impossible to determine the degree of permanent disability until maximum physical improvement is reached.

It is also difficult in death claims to complete the investigation where there are Social Security benefits undertermined, as well as Workmen's Compensation claims undecided.

In other instances it is impossible to obtain the information from Blue Cross or Blue Shield because enough time has not elapsed from the time the claimant was discharged from the hospital, or he is still under the doctor's care and a final bill with Blue Cross and Blue Shield benefits is not available.

There is also delay experienced with respect to verification of the financial resources of the claimant.

It has been found that even where there are serious questions to be determined, and the claimant cooperates, a speedy conclusion can be rendered.



However, in claims where there is provocation which requires intensive investigation, there is delay experienced due to attempting to locate and interview reticent witnesses.

### VIII. EMERGENCY AWARDS

Emergency Awards are made in cases pending a final decision where undue hardship is evidenced. In the past year 32 emergency awards were made.

### IX. ATTORNEYS

The claimant is entitled to representation by an attorney from the time the claim is filed. Over 90% of the claimants are represented by attorneys.

### X. PROJECTIONS

The projected number of claims can be better estimated now that we have completed our second year of operation.

It is believed there will be at least 500 claims filed which will require investigations. This does not include the inquiries which we expect we will be able to handle in the same way as hereinabove outlined.

Not only is the public better informed and becoming more so continually, but the distribution of brochures and the publicity that has been given to the Board certainly are factors that should be considered.

Another factor is that the crime rate as reported by the Federal Bureau of Investigation, and particularly those crimes in which personal injuries are suffered, is on the rise again this year.

It should be noted that during the second year's activities there were 339 claims received and investigated and the growth and increase in the Board's work and activity is reflected in the number of claims in this report.

Based on this information, it is reasonable to expect that there will be at least 500 claims filed in fiscal year 1973.

### XI. COSTS

Section 17 of the statute imposes an additional \$5.00 in Court costs on all persons convicted of a crime by any Judge with criminal jurisdiction in the State. Since the inception of the statute, the following court costs have been collected by the Comptroller:

| <i>Fiscal Year</i> | <i>Collected</i>    | <i>Expended</i> | <i>Awards</i> |
|--------------------|---------------------|-----------------|---------------|
| 1969               | 118,948.60          | None            | None          |
| 1970               | 135,438.75          | 66,151.13       | 328,000.00    |
| 1971               | 121,969.93          | 215,000.00      | 614,283.39    |
| 1972               | Estimate 140,000.00 | 431,136.18      | 1,036,604.84  |
| 1973 Estimate      | 145,000.00          | 536,000.00      | 1,300,000.00  |



## **XII. PAYMENT OF AWARDS**

Our awards in the past fiscal year totalled \$1,036,604.84. Of that total, 251,316.13 was awarded in lump sum payments and 785,288.71 was awarded in protracted payments none of which vested to the claimant and in the event of a change in circumstances regarding the claimant, such as death, the unpaid portion will terminate and revert to the State. All protracted payments are paid monthly by the Board's staff. Currently, approximately \$15,000. is being paid monthly in protracted payments or annually. It is anticipated that in the current fiscal year these protracted payments will grow.

Attached hereto, Appendix A, is the summary of the decisions which have been made by this Board during the past year.

## **XIII. REDUCTION OF AWARDS**

The Board can reduce an award or deny it altogether if it determines that the claimant contributed to the infliction of his injury. It has been our experience that a thorough review of the crime, beyond that of the police and court records, is necessary in approximately 20% of our claims.

## **XIV. POLICY, INTENT AND PHILOSOPHY**

The reasons for compensating innocent victims of violent crime are expressed in the declaration of policy and the legislative intent in the statute, such as the failure of the state to insure the safety of its citizens and a sense of responsibility which a humane society feels for victims of crime. However, there are other compelling reasons to reimburse innocent victims of violent crimes. The worry that encompasses a victim while recovering from the injuries and without funds to pay his medical expenses, or to maintain his family is undoubtedly more harmful to his recovery than the pain that he suffers.

The traumatic impact upon the family of the victim who dies facing the future with uncertainty of not only how to pay the medical and/or funeral bill, but where they will turn to replace the support lost through death.

The State of Maryland, being one of the leaders in this field, reflects the awakening of the social consciousness of the people of the western world to the assisting of innocent victims of crime in somewhat the same manner that State mandated programs provide for illness, disability, old age and unemployment.

During the past year the Board has learned from police agencies that in many instances the victim is not interested in prosecution of his assailant because he has many more immediate and pressing problems. In addition, 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. However, since the innocent victim of crime in the State of Maryland may file a claim, it is hoped, and there has been some experience to indicate, that



he would be more willing to cooperate with the law enforcement agencies knowing someone cares about him. In this respect the victim who was an unwilling and uncooperative witness now becomes a willing and cooperative witness.

The Board has continued to treat each claimant not as an adversary, but rather to determine the full and true facts concerning each claim. We are dedicated to seeing that those people who are entitled to an award shall receive the same, but we are equally dedicated and vigorous in our investigation to deny an award to anyone who is not entitled to the same.

It is the feeling of the Board that the assistance afforded the innocent victim of a crime is helping and aiding in the administration of justice.

#### **XV. AMENDMENTS**

The statute was amended and liberalized to allow the Board to make disability awards to victims who were not employed at the time of the crime and who had no average weekly wage upon which to compute an award.

#### **XVI. INTER-AGENCY COOPERATION**

Finally, the Board acknowledges the cooperation of the State's Attorneys throughout the State in aiding in this program.

We also acknowledge the cooperation of each and every law enforcement agency and particularly the State Police who have been of great assistance and willingly have made the information available.

The Board expresses its thanks to the staff, which has not been increased since this program started for the handling of the paper work and the investigators for expediting the investigations. They have helped develop and invoke enthusiasm and energy in all matters.

The Board is sincerely appreciative of the continued support and counsel of Sec. Lally and Dep. Sec. Tully of the Department of Public Safety and Correctional Services; and the various members of the Governor's staff who somehow always manage to find time to consider problems and suggest advice.

#### **XVII. ANALYSIS AND FUTURE NEEDS**

As noted in prior paragraphs, it is anticipated that the work load of this agency will greatly increase every year for the next few succeeding years. Consequently, budget needs will increase yearly. To substantiate this position, we need only refer to continual public awareness, crime statistics and the experience of other States such as New York and Hawaii. Moreover, the need of additional staff as well as at least one or more full time Commissioners will arise in the very near future according to projections at this time. We shall continue our endeavors to implement the most effective and efficient administrative systems and methods to implement the statute at the least possible cost. Because of the new legalistic concept of



our statute as well as the newness of our physical operation, unique and complex legal problems are raised at almost every full Board hearing. For these reasons, we must constantly in our service to the public and State, be on guard with respect to the legal and constitutional needs of all parties. As a result of our experiences, we also intend to submit various amendments to the law through the Secretary of our Department which we believe will further implement the philosophy and spirit of the Criminal Injuries Compensation Act.

#### XVIII. ACKNOWLEDGEMENTS

As Chairman of this agency, I especially commend George H. C. Arrowsmith and Dennis C. McCoy, my brother Commissioners, and Martin I. Moylan, our Executive Director without whose tremendous efforts and cooperation, the program would not have progressed to its present status. Each year their duties have increased, and each year they have given of themselves unselfishly and with complete dedication. I consider it an honor to be associated with these gentlemen, and respectfully state that the success of the program is due in great part to the respective contributions of their efforts and enthusiasm.

All of which is respectfully submitted.

Dated: September 15, 1972

Baltimore, Maryland

MARTIN I. MOYLAN

Secretary to the Board and  
Executive Director

JOSEPH PICKUS, Chairman

GEORGE H.C. ARROWSMITH,

Commissioner

DENNIS C. McCOY, Commissioner



## SUMMARY OF CLAIMS

June 30, 1971 to July 1, 1972

**\*Claim #19-P-69**

Claimant, male, 27, was stabbed in the left hand through a car window while he was a passenger in a car in Baltimore City. His assailant was apprehended, tried and found guilty. Our investigation revealed that claimant lost 44 weeks from work as a result of his injuries. He received \$2,620 from insurance and welfare for his lost time. The bulk of his medical bills were reimbursed by insurance with the exception of \$530.00. Claimant has since returned to work with no diminution in earnings. We find the claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$530.00 for unreimbursed medical expenses, and \$3,208.50 for lost time (44 weeks), less \$2,620 payment from insurance and welfare for a net lost time award of \$588.50. Total award \$1,118.50, all subject to the further order of this Board.

**\*Claim #87-P-70**

Claimant, male, 50, was shot in both arms by an unknown assailant in front of his home in Prince George's County. Our investigation reveals that the bulk of claimant's medical expenses were paid by insurance with the exception of \$1,468.30. Claimant lost 26 weeks from work as a result of said injury. Claimant received sick pay benefits in excess of our benefits and, therefore, no award can be made by us for lost time. Claimant has since returned to work with a greatly reduced income. We find that the claimant is an innocent victim of a crime and that he meets all the necessary statutory criteria for the following award. We further find that claimant has a 60% permanent partial disability to his left arm and a 40% permanent partial disability to his right arm.

Award: \$1,468.30 for unreimbursed medical expenses and \$177 per month for permanent partial disability to his right and left arms starting July 1st, 1970. However, in no event may the total of all permanent partial disability payments exceed the sum of \$13,440.00. All subject to the further order of this Board. Eighteen retroactive monthly awards will be made in a lump sum payment and beginning January 1, 1972 \$172.00 per month.

**\*Claim #92-P-70**

Claimant, male, age 20, was stabbed in the stomach by a juvenile assailant on a public road in Anne Arundel County. Our investigation reveals that the juvenile assailant staggered in front of claimant's car and when claimant stopped to see if he could help the juvenile, the juvenile stepped forward and stabbed claimant. He incurred extensive medical bills as a result of the incident, portions of which were paid by insurance. Unreimbursed medical expenses are \$3,663.91.



We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award. We are unable at this time to determine if a serious financial hardship will exist as to any disability that the minor claimant may have. No disability award, therefore, is made with respect thereto, subject to reconsideration at a later time.

Award: \$3,663.91 for unreimbursed medical expenses, all subject to the further order of this Board.

**\*Claim #106-P-70**

Claimant, male, 52, and his step-daughter, Claim #107-P-70, were assaulted by his daughter's ex-suitor in their home in Princess Anne County. Out investigation reveals that the claimant and his family had retired for the night when the assailant forced his way into the claimant's home. When the claimant attempted to get assailant to leave, he was shot by assailant in the chest and mouth. The assailant was tried and found guilty of assault with intent to murder and given six years for assaulting the claimant, and six years for assaulting the step-daughter. The sentences are to run concurrent. The bulk of the claimant's medical expenses were paid by medical assistance with the exception of \$378.00. He lost 30 weeks from work as a result of the incident and has since returned to work part-time with a diminution in earnings. We further find that the claimant has a 40% permanent partial disability to his body as a whole as a result of the injury. Claimant received from Public Assistance \$336.20.

Award: \$378.00 for unreimbursed medical expenses, \$1,350.00 for 30 weeks lost time and \$10,680 for 40% permanent partial disability, payable at the rate of \$172.00 starting December 1, 1970. Ten retroactive monthly awards would be paid in a lump sum up to October 1, 1971. Beginning October 1, 1971 \$172.00 will be paid to claimant per month. The gross award of \$12,408.00 is reduced by \$336.30 received from Public Assistance, for a net award of \$12,071.70 all subject to the further order of this Board.

**\*Claim #112-P-70**

Claimant, male, 44, was assaulted in a bar in Baltimore and as a result thereof, lost four teeth and his hearing aid was broken. Our investigation reveals that claimant was unemployed at the time of the assault. Our investigation also reveals that claimant sued his assailant and was awarded a judgment in the amount of \$2,500 by the City of Baltimore, People's Court. The claimant has been unable to collect on his civil judgment however. Claimant has \$685.00 in unreimbursed medical expenses as a result of the incident.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$685.00 for unreimbursed medical expenses, all subject to the further order of this Board, as well as the State's right of subrogation on the above judgment to the extent of this award.



**Claim #116-O-70**

Claimant is a 21 year old, single, male, who supports his mother and who suffered a fractured skull when he was assaulted by two criminals and hit on the head with a pool stick. The incident occurred in St. Mary's County and he was treated in a local hospital and at University Hospital in Baltimore. He attempted to return to work on May 7, 1970 but was unable to perform the necessary duties and was discharged on June 4, 1970. His average weekly wage on the date of the injury was \$75.00. We find that there will be no permanent disability and that all other statutory requirements have been met.

Award: Unreimbursed medical expenses of \$656.90 plus temporary total disability at \$50 per week from April 17, 1970 to May 7, 1970 and from June 4, 1970 to September 3, 1970 for a total of \$800.00 for a gross award of \$1,456.90, all subject to the further order of this Board.

**\*Claim #120-P-70**

Claimant, male, 53, was assaulted on a public parking lot in Baltimore County by three men. Our investigation reveals that claimant sustained three broken ribs and injuries to his right eye as a result of being struck in the face by a hard object. We find claimant sustained \$1,915 in unreimbursed medical expenses and lost six weeks from work as a result of the incident. Claimant has since returned to work with no diminution in earnings and accordingly, no disability award will be made. We further find that claimant sustained an unsightly scar in the shape of a V on his forehead and another over his right eye. We further find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$1,500.15 for unreimbursed medical expenses, \$330.00 for 6 weeks temporary total disability, and \$250.00 for ten weeks disfigurement at \$25.00 per week for a gross award of \$2,080.15, all subject to the further order of this Board.

**Claim #121-P70**

This claim is filed by the father on behalf of his son, male, 23, who was shot to death in a bar in Baltimore. Our investigation reveals that the deceased was involved in a barroom brawl over a girl and had pulled a knife on one of his opponents when a gun was pulled on him. In the ensuing melee claimant was shot and killed.

We find that the claimant was not an innocent victim of a crime as required by the statute for an award by this Board. We feel it is inappropriate that public monies be spent on compensation to claimants in cases where the deceased was engaged in criminal activities at the time of his demise.

Assuming without deciding that the deceased was an innocent victim of a crime, we would still be unable to make an award to the claimant



because he was not dependent upon the deceased for his support, and as such does not have a serious financial hardship as required by Section 12(f) of the statute. Accordingly, this claim is denied.

**\*Claim #122-P-70**

This is an Appeal to the full Board from an award to the claimant on April 1st, 1971.

"Claimant, female, 51, sustained a broken hip during an attempted robbery in front of her home in Baltimore. We find claimant to be an innocent victim of a crime and that she meets all the necessary criteria for an award. We also find that she lost 52 weeks from work and that her average weekly wage is \$45.00. We further find that she sustained \$586.02 in unreimbursed medical expenses.

Award: \$1,560.00 for lost time, 52 weeks @\$30 and \$586.02 for unreimbursed medical expenses for a total of \$2,146.02."

Claimant asserts that she has a permanent partial disability to the body as a whole in excess of 30% and should be compensated for same. The Board has repeatedly held that an anatomical disability without the showing of serious financial hardship; such as a loss of or diminution in earnings or an actual out-of-pocket loss, is not compensable under the statute.

The decision is, therefore, affirmed by the full Board.

**\*Claim #174-P-70**

Claimant, female, 43, was struck repeatedly on the head with a baseball bat by an assailant on a public street in Baltimore. Assailant was apprehended and trial is now pending. Our investigation reveals that claimant incurred \$529.70 in unreimbursed medical expenses and lost 23 weeks from work as a result of the incident. Claimant is a practical nurse and worked on a part-time basis for 60 weeks until she returned to work on a full time basis. Claimant is presently working full time with no diminution in earnings.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$529.70 for unreimbursed medical expenses, plus \$1,698.67 for 23 weeks temporary total disability and \$1,800.00 for 60 weeks temporary partial disability at \$30 per week for a total award of \$4,028.37, all subject to the further order of this Board.

**\*Claim #205-P-70**

This is a Reconsideration Order from a decision dated May 12th, 1971.

"The Claimant was shot in the stomach during a hold-up as he was delivering meat to one of his customers in Baltimore. The Commissioner



found that the claimant was a victim of a crime and that a serious financial hardship did exist. However, the Commissioner found that the claimant was employed at the time of his injury and covered under Workmen's Compensation Law of Maryland, Article 101, of the Annotated Code of Maryland. The Commissioner stated in his decision, that the claimant must exhaust his remedy with the Workmen's Compensation Commission before being eligible for compensation under our statute. The Commissioner further found that if the Workmen's Compensation Commission denied claimant's award, then his decision would be subject to review.

Claimant appeared and testified that he was self-employed and not eligible for Workmen's Compensation. Claimant stated that he is a distributor for, and buys meats from a local packing plant and delivers them to his customers. Claimant also stated that this agreement between the packing company and himself was formalized in a contract and submitted a copy of same to this Board. Upon cross-examination, the claimant admitted that the meat packing company owns the delivery truck which claimant uses, and that said truck carries their trade name upon it. Upon cross-examination of claimant's witnesses, it was revealed that claimant is subject to service checks by representatives of the company and that he is restricted to certain areas of the city. It was further revealed that there is no limit on this contract and it can be cancelled by the company at any time.

We find that the company exercises a sufficient degree of control and supervision over the claimant to constitute an employer-employee relationship, and that claimant is in fact an employee of the company and covered under Workmen's Compensation Laws of Maryland. We are, therefore, affirming the single Commissioner's decision. Claimant, however, has a right to petition this Board for a reconsideration in the event the Workmen's Compensation Commission finds claimant to be ineligible for an award."

The record before us indicates that the claimant filed a claim with the Workmen's Compensation Commission as suggested by the full Board. Subsequent thereto the Workmen's Compensation Commission, passed an order of May 28th, 1971 finding that claimant was not an employee at the time of the incident, but was in fact, an independent contractor.

After due consideration of all the facts and testimony presented at the full Board Appeal and the reconsideration hearing, we are still firmly convinced that this claimant is an employee and not an independent contractor. We do not concur with the finding of the Workmen's Compensation Commission, but as a result thereof, are compelled to conclude that this is not a justifiable issue before this Board.

Of necessity, we conclude, that the claimant is an innocent victim of a crime and that he has a serious financial hardship as a result thereof, with an unsightly disfiguring scar twelve inches by one-half inch, plus



several small scars on his trunk. We further find that the claimant has a \$3,366.65 in unreimbursed medical expenses as a result of the incident. Claimant was reimbursed by insurance for his lost time and has since returned to work with no diminution in earnings. Unlike the Workmen's Compensation Commission, we are unable to make a disability award where there is no diminution in earnings, this causing claimant to have a serious financial hardship.

Award: \$3,366.65 for unreimbursed medical expenses, plus \$625.00 for 25 weeks disfigurement, for a total award of \$3,991.65, all subject to the further order of this Board.

**\*Claim #211-P-70**

Claimant, male, 65, sustained a gunshot wound to his right elbow and right hand when he was robbed by two assailants in Baltimore City. The bulk of claimant's medical expenses were paid by insurance with the exception of \$245.00. Claimant has since returned to work at no diminution in earnings. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award. We also find that claimant lost 12 weeks from work as a result of this incident.

Award: \$245.00 for unreimbursed medical expenses and \$813.06 for lost time, for a total award of \$1,058.06.

**\*Claim #213-P-70**

Claimant, male, 52, was stabbed in the chest by an acquaintance in an apartment in Baltimore City. The assailant was arrested, tried and found guilty. Our investigation revealed that claimant sustained substantial medical expenses in excess of \$8,000, all of which have been reimbursed by insurance. Claimant lost 19 weeks from work, however, he received disability benefits in the amount of \$1,330.00 for his lost time. Claimant has since returned to work with a \$1.41 per hour diminution in earnings.

We find that the claimant was an innocent victim of a crime and that he has a 10% permanent disability to his body as a whole as a result of the incident and that he meets all the necessary statutory criteria for the following award.

Award: \$109.25 for lost time plus \$1,250.00 for 10% permanent disability for a total award of \$1,359.25, payable in a lump sum, all subject to the further order of this Board.

**Claim #220-P-70**

This claim is filed by a mother on behalf of her 13 year old son who was shot in the leg while riding his bicycle on a public street in Baltimore. Minor claimant sustained a comminuted fracture to his right leg and has a bill of \$491.39 for medical expenses.



We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$491.39 for unreimbursed medical bills, less attorney's fee. We are unable at this time to determine if a serious financial hardship will exist as to any disability that the minor claimant may have. No disability award, therefore, is made with respect thereto, subject to reconsideration at a later time.

**\*Claim #221-P-70**

Claimant, male, age 39, was robbed and stabbed on a public street in Baltimore by an unknown assailant. Our investigation revealed that claimant sustained a stab wound to his spine, which injured the left half of the spinal column governing the anterior quadrant. Claimant was unemployed for an extended period of time due to his injuries. He has now returned to work part-time at a great reduction in earnings. We find that the claimant is the innocent victim of a crime and meets all the necessary statutory criteria for the following award. We also find that claimant has a 25% permanent disability to his body as a whole as a result of the incident. We also find that claimant lost 37 weeks from work as a result of the injury. All claimant's medical bills were reimbursed by insurance.

Award: \$4,375.00 for 25% permanent partial disability and beginning July 1, 1971, claimant will receive \$107 per month, and \$2,825.81 for 37 weeks lost time, for a total award of \$7,200.81, less prior emergency award of \$415.00, all subject to the further order of this Board.

**\*Claim #222-P-70**

Claimant, female, 40, was pushed to the ground in an attempt by three unknown assailants to snatch her purse. Claimant sustained injury to the left side of her face, left trimalar fracture, left zigome fracture, and an orbital floor blow-out. Our investigation reveals that claimant is the mother of six children and wife of a totally disabled man who was previously injured on a street assault. While she has returned to work, her appearance is obviously effected by indented area over and above her eye. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$181.00 for unreimbursed medical expenses, \$21.14 for lost time and \$875.00 for 15 weeks disfigurement at \$25, for a total award of \$577.14. All subject to the further order of this Board.

**\*Claim #228-P-70**

Claimant, male, 43, was stabbed by an unknown assailant on a public street in Baltimore when he went to the aid of another crime victim. Claimant sustained serious stab wounds to his heart and lung.



Our investigation reveals that claimant lost time from the date of the incident until November 1st, 1969. Claimant has since returned to work of a lighter nature with a resulting diminution in earnings. Claimant presently has \$1,474.53 in unreimbursed medical expenses. Our investigation further reveals that and we find that claimant has a 30% permanent partial disability to his body as a whole. We also find that the claimant was an innocent victim of a crime and that he meets all the necessary statutory criteria for the following award.

Award: \$1,474.53 for unreimbursed medical expenses, plus \$1,693.50 for 24 weeks lost time, less insurance of \$1,200.00 for a net award of \$493.50 and \$3,750.00 for 30% permanent partial disability for a total award of \$5,718.03, all subject to the further order of this Board.

**\*Claim #245-P-70**

Claimant, male, 65, was pistol-whipped about the face and head by two unknown assailants on a public highway in Prince George's County. Claimant lost two weeks from work and has since returned to work at no diminution in earnings.

We find the claimant to be an innocent victim of a crime and that he meets all the necessary statutory criteria for the following award.

Award: \$1,659.53 for unreimbursed medical expenses, and \$110.00 for two weeks lost time for a total award of \$1,769.53.

**\*Claim #258-P-70**

Claimant, male, 31, was shot six times during a robbery of his grocery store by two unidentified assailants in Baltimore. Our investigation revealed that claimant sustained serious injuries to the neck, chest and to his spine. The medical prognosis for the claimant is permanent paraplegia. Claimant sold his store and after applying the proceeds to his debts, has remaining \$26,000.00 in outstanding debts. We find that the claimant is an innocent victim of a crime and meets all the necessary statutory criteria for the following award. The bulk of claimant's medical bills were paid by insurance with the exception of \$1,483.97. Claimant began receiving \$214.50 per month from Social Security for his disability as of April 1, 1971. On June 1, 1971 his benefits were increased to \$236.00.

Award: \$1,483.97 for unreimbursed medical bills, plus \$3,980.00 for 14 retroactive monthly awards and beginning October 1, 1971 \$129.50 per month. However, in no event may the total of all payments to the claimant exceed the sum of \$45,000.00, all subject to the further order of this Board.

**\*Claim #271-P-70**

This is an Appeal from a decision of the Board dated March 10th, 1971.



The Commissioner below found as follows: "Claimant is the father of a 10 year old girl who was stabbed in the spine while she was walking home for lunch by a 15 year old male assailant in Cumberland. The victim is completely paralyzed from her waist down and the professional medical prognosis is permanent paraplegia. We find her to be an innocent victim of a crime and serious financial hardship is determined. We also find that she has a permanent total disability as determined under Maryland Law, Article 101, Section 36(1). Notwithstanding a finding that financial hardship will exist, there being no average weekly wage, no compensation for disability can be awarded. Award: Victim's unreimbursed medical expenses are of a continuing nature and they will be paid periodically by the Board when submitted and verified. However, in no event shall the total of all payments to the claimant exceed the sum of \$45,000.00. The Board reserves the right to reopen and reinvestigate this claim and, if warranted from the facts then existing, to issue a new order based upon a change in the victim's physical or financial condition."

Claimant appealed this decision to the full Board, maintaining that she was entitled to a disability award even though she had no average weekly wage at the time of the incident. We can now agree as the Maryland Legislature has since the ruling below, passed an amendment to our statute. The amendment states in essence that disability awards can be made by this Board, provided that all other requirements have been met, in cases where there is no average weekly wage. We believe the obvious intent of the Legislature was to protect and provide for citizens who suffer a disability as a result of a violent crime and do not have an average weekly wage merely by virtue of tender or advance years. We, therefore, find that claimant is eligible for a disability award in the amount of \$107.50 per month.

Award: \$2,266.67 for unreimbursed medical expenses and \$107.50 per month beginning March 1, 1971. Ten retroactive monthly payments (\$1075) will be paid in a lump sum. In no event, however, may the total of all payments to the claimant exceed the sum of \$45,000. All payments shall be made to trustee to be appointed in accordance with Article 93A of the Annotated Code of Maryland. The Board reserves the right to reopen and reinvestigate this claim and if warranted by the facts then existing to issue a new order based upon a change in claimant's financial condition.

**\*Claim #276-P-70**

Claimant, male, age 58, was injured when he slipped and fell off a roof while chasing a juvenile who was unlawfully in or about his premises and was either attempting to break and enter, or commit some other unlawful act. The claimant received a fractured ankle and was confined to the hospital although all medicals with the exception of \$25 were paid by private insurance. The claimant was unable to work for a total of 86 days, for which he was not reimbursed. His average weekly wage prior to the incident was \$124.00. All other statutory requisites have been met.



Award: \$25.00 for unreimbursed medical expenses, plus \$393.57 for lost time, 13 weeks temporary total disability, for a total award of \$918.57. All subject to the further order of this Board.

**Claim #279-D-70**

This is an Appeal to the full Board from a denial of an award to the claimant on August 11th, 1972. The Board below found "Claimant is the widow of a man who was shot to death outside an apartment building in Prince George's County. Our investigation reveals that the man who shot and killed the decedent was convicted of manslaughter and subsequently given a suspended sentence and placed on an inactive probation for five years. There were no eye witnesses to the incident. Several neighbors, who were all indoors, did hear, however, the word halt shouted just prior to the discharge of a pistol. The police records indicate that four days prior to the incident, the assailant fired three shots at a prowler who was outside his window.

The assailant's testimony, in essence was that, on the night of the incident, at approximately 2:15 A.M., he came home and saw the decedent on the lawn outside his window. The decedent, upon being confronted, charged towards him, and threatened his life and stated that he was going to kill him. He then stated that he fired his weapon once at the deceased, turned and ran and reported the incident to the police. Our investigation also determined that the deceased did not live in the apartment complex, but in fact, lived a distance away from the complex.

We find that the conduct of the deceased contributed to the infliction of his injuries, and his conduct completely precludes our making an award to the claimant. The facts indicate that the decedent was, at the time of the incident, outside the window of the assailant, a party unknown to him at the time, in the early morning hours. We feel that his conduct, in and of itself, was sufficiently reprehensible enough to terrify and shock a reasonable and prudent person to take desperate defensive measures, as in this incident.

The purpose of Article 26A of the Annotated Code of Maryland is to compensate innocent victims of crime and we do not believe that the deceased was an innocent victim of a crime.

Accordingly, therefore, this claim is denied."

At the full Board hearing the claimant objected to certain portions of the Board's file which contained a statement from the alleged assailant and a statement by an 81 year old minister. Claimant contends: 1. that the Board should not allow a guilty party's statement into evidence on moral, legal and constitutional grounds, 2. the Board is not a judicial court and cannot determine if a crime was committed and should not determine assailant's guilt, 3. that Section 8(c) of the statute should be construed by the Board in favor of the victim and not in favor of the assailant.



It should be noted that this Board has an investigative staff which conducts inquiries on all claims. The basic investigation starts with police records and is developed further by the staff itself. In the instant claim, the assailant was interviewed and a written statement was taken from him. An interview was conducted and a statement taken from an 81 year old minister who lives approximately one block from the assailant. He stated to our Investigator that his apartment was burglarized approximately two weeks prior to the incident. The mode of entry being a window screen. One week subsequent to this he and his granddaughter observed the decedent at the granddaughter's window. When the minister heard of the incident he took it upon himself to view the remains of the decedent at the funeral home and identified him as the prowler who was outside his granddaughter's window a week prior to the incident. Our investigation also revealed that there had been a number of burglaries in the neighborhood prior to the incident.

We find that the alleged assailant is a competent witness under Maryland law as set forth in Article 35, Section 1, Annotated Code of Maryland and that his statement was properly admissible by this Board. We also find that this Board can investigate and determine on an independent basis regardless of whether the alleged assailant is found guilty or acquitted. We further find that the language of Section 8(c) of the statute is clear and unambiguous and means exactly what it says, "claims shall be investigated and determined regardless of whether the alleged criminal has been apprehended and 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." Nowhere in this section can we find language which states that this Board shall apply this section only in favor of the victim.

It is our opinion after reviewing the file and the evidence submitted and after due deliberation that the findings of the Board below was correct. Assuming without deciding that this Board cannot determine if a crime was, in fact, committed, we feel that the conduct of the deceased contributed to the infliction of his injury and that the claim should be rejected altogether pursuant to Section 12(e) of the statute.

Accordingly, the decision of the Board is affirmed.

**\*Claim #283-P-70**

Claimant, female, 52, was injured when she attempted to stop two men from fighting with each other in a department store in Baltimore. Our investigation reveals that the claimant's right kneecap was fractured during the incident, and that a portion of claimant's medicals have been paid for by insurance. Claimant's total unreimbursed medical expenses are \$1,223.40.

We find that the claimant is an innocent victim of a crime and that she meets all the necessary statutory criteria for an award.



Award: \$1,223.40 for unreimbursed medical expenses and \$113.36 for lost time, 4 weeks at \$28.34 for a total of \$1,336.76.

**\*Claim #285-P-70**

Claimant, female, 61, was assaulted on a public street in Baltimore by four unknown assailants, who threw her to the ground and stole her purse. Claimant suffered a fracture of the right femur-hip. The bulk of claimant's hospital and medical expenses were paid by insurance with the exception of \$335.69. Claimant also incurred a \$600 bill for nursing care. Our investigation reveals that claimant lost 31 weeks from work and received \$325 in sick benefits from her employer. Claimant has since returned to work with no diminution in earnings. Claimant received a \$300.00 emergency award.

We find the claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award. We also find that a fair and reasonable cost for the nursing care is \$400.00.

Award: \$735.69 for unreimbursed medical expenses and \$2,130 less reimbursed sick benefits of \$325.00 for a net lost time award of \$1,805.00 less emergency award of \$300.00 for a net award of \$2,240.69, all subject to the further order of this Commission.

**\*Claim #286-P-70**

Claimant, male, 48, sustained the loss of his right eye in a robbery on a public street in Baltimore. The injury was caused by a broken wine bottle and claimant has a scar approximately 4 inches long and  $\frac{3}{4}$  of an inch wide which starts an inch and a half over the eye and extends through the eye and eyelid and below his eye.

Our investigation reveals that claimant lost one week from work and returned to the same job with no diminution in earnings. We also find that claimant has \$1,051.85 in unreimbursed medical expenses. We further find that claimant is an innocent victim of a crime and meets all the necessary statutory criteria for the following award.

Award: \$1,051.85 for unreimbursed medical expenses, plus \$55 for lost time and \$1,000.00 for disfigurement, 40 weeks at \$25 per week, for a total of \$2,106.85, all subject to the further order of this Commission.

**\*Claim #287-P-70**

Claimant, male, 31, was shot in the face by an unknown assailant while sitting on the front steps in Baltimore. Our investigation reveals that the unknown assailant was chasing someone else, fired his gun at the other party and missed and struck claimant. Bullet entered claimant's nose and still remains lodged in claimant's throat. Claimant has unreimbursed medical expenses of \$2,045.31. He also lost five weeks from work as a result of the incident and has since returned to work at no diminu-



tion in earnings. Claimant also has an unsightly scar on his nose where the bullet entered his head. We find the claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$2,045.31 for unreimbursed medical expenses, plus \$330 for lost time, 5 weeks at \$55 per week, and \$350.00 for ten weeks disfigurement at \$35 per week for a total award of \$2,725.31, all subject to the further order of this Board.

**\*Claim #290-P-70**

Claimant, male, 29, was stabbed in the chest when he attempted to break up a fight on a parking lot in Sykesville, Maryland. Claimant was stabbed in the main artery of the heart and incurred pneumonia and peritonitis during his hospitalization.

The bulk of claimant's medical bills were reimbursed by insurance. However, \$644.42 still remains unpaid. Claimant received \$700 from his employer for the 21 weeks he was off from work. He has since returned to work at no diminution in earnings. We find that claimant is the innocent victim of a crime and meets all the necessary statutory criteria for the following award.

Award: \$644.42 for unreimbursed medical expenses and \$1,095 for lost time (21 weeks), less \$700 received from insurance for a balance of \$395, for a net award of \$1,039.42.

**\*Claim #295-P-70**

Claimant, female, 35, was a victim of a rape and assault in her apartment by her landlady's grandson. Our investigation reveals that the claimant sustained multiple contusions and abrasions of the face, a fracture of the nasal bones and displacement of the nasal bone from left to right and several unsightly scars around her eyes and under her left cheek. The assailant was tried and found guilty and given eight years imprisonment.

Our investigation also reveals that the bulk of claimant's medical bills with the exception of \$813.50 were reimbursed by insurance. Claimant also received sick pay during her convalescence with the exception of the last two weeks for which she was not reimbursed. Claimant has since returned to work with no diminution in earnings.

We find claimant to be the innocent victim of a crime and that she meets all the necessary statutory criteria for an award.

Award: \$813.50 for unreimbursed medical expenses, and \$110 for two weeks lost time at \$55.00 per week and \$875.00 for disfigurement, 35 weeks at \$25.00 per week for a total award of \$1,798.50, less an emergency award of \$300.00, all subject to the further order of this Board.



**\*Claim #5-P-71**

Claimant is the mother of a fifteen year old boy who was shot in the spine by a mentally deranged neighbor. Our investigation reveals that the claimant is permanently paralyzed in both legs and that he lost one kidney and part of his liver. We find the victim to be an innocent victim of a crime and to meet all the necessary statutory criteria for the following award. We find that the claimant is permanently totally disabled. We further find that claimant's average weekly wage was \$30.00 at the time of the incident.

Award: \$860.00 for eight retroactive monthly awards to August 1st, 1971, and beginning August 1st, 1971 \$107.50 per month. Claimant's medical expenses are of a continuing nature and they will be paid periodically by the Board when submitted and verified. In no event shall the total of all payments to the claimant exceed the sum of \$45,000.00. All payments made to the guardian to be designated by the Supreme Bench of Baltimore City are reserved for the benefit of the minor pursuant to Article 93A of the Annotated Code of Maryland, all subject to the further order of this Board.

**\*Claim #13-P-71**

Claimant, male, 22, was shot in the left leg on a public street in Baltimore while awaiting a cab by an unknown New Year's celebrant. Our investigation reveals that claimant sustained \$231.08 in unreimbursed medical expenses and lost 12 weeks from work as a result of this incident. We find that claimant is an innocent victim of a crime and that he meets all the necessary statutory criteria for the following award. Claimant alleges that he has permanent disability as a result of his injury. We find that there has been no showing that a permanent injury if any will result in a serious financial hardship to the claimant.

Award: \$231.08 for unreimbursed medical expenses and \$765.96 for lost time for a total award of \$997.04, all subject to the further order of this Board.

**Claim #17-P-71**

Claimant, male, 48, alleges that he was beaten by three unknown assailants in an apartment building in Baltimore. Our investigation reveals that claimant lost \$48 in unreimbursed wages and \$4.50 in miscellaneous expenses as a result of the incident. We find that the claimant is not eligible to receive an award pursuant to Section 7 of the statute. Claimant has not incurred a minimum of \$100 in unreimbursed expenses and under the circumstances, this claim must be disallowed.

**\*Claim #18-P-71**

Claimant, male, 26, was shot in the left thigh on a public street in Baltimore. Our investigation reveals that claimant broke up a fight be-



tween the assailant and another man who were fighting in front of his home. Assailant departed and returned shortly thereafter and shot claimant. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award. We also find that claimant has sustained \$68.07 in unreimbursed medical expenses and lost two weeks from work as a result of the incident. Claimant has since returned to work at no diminution in earnings.

Award: \$68.07 for unreimbursed medical expenses and \$110 for two weeks temporary total for a total award of \$178.07, all subject to the further order of this Board.

#### **Claim #21-D-271**

This claim is filed by the widow on behalf of her husband who was shot to death by a friend in a bar in Montgomery County. Our investigation reveals that the deceased and his friend were playing with a revolver when it discharged and killed the decedent. Our investigation also reveals that the decedent was separated from the claimant and \$4,205 in arrears in his support payments to the claimant. Claimant was on welfare at the time of the decedent's death. We find from the record before us that there is no showing that the deceased contributed anything of substance to the support of the claimant and in point of fact, the claimant was not dependent upon the deceased for her support, but was dependent upon the Department of Social Services. Section 12(f) of the statute states that no award shall be made to a claimant unless the claimant will suffer a serious financial hardship as a result of loss of earnings, support and out of pocket expenses incurred as a result of the injury. We find that since the claimant was not being supported by the deceased, she cannot have a serious financial hardship for the loss thereof. The claim is, therefore, disallowed, all subject to the further order of this Board.

#### **\*Claim #42-D-71**

Claimant is the widow of a man who was shot to death by three unknown assailants on a public street in Baltimore when he refused one of his assailants' demand for 15¢. The victim was receiving a union pension in the amount of \$250 per month at the time of his death. The claimant was employed at the time of the incident and contributed her earnings to the household. Our investigation reveals that the funeral expenses were reimbursed by insurance. However, a \$1,496.43 unreimbursed hospital expense is still outstanding. Claimant is presently receiving a \$100 check per month. We find the deceased to be the innocent victim of a crime and claimant to have been partially dependent upon him for her support and to have met all the necessary statutory criteria for the following award.

Award: \$1,496.43 for unreimbursed medical expenses, and \$66.70 per month. However, in no event may the total of all payments to the claim-



ant exceed the sum of \$9,000.00. Ten retroactive monthly awards will be paid to the claimant in the lump sum of \$666.70, all subject to the further order of this Commission.

**\*Claim #43-P-71**

Claimant, male, 21, was assaulted on a public street by three assailants. After taking claimants' wallet, coat and sweater, he was told to run and as he was running away, he was shot in the back by the assailants. Our investigation reveals that the bulk of claimant's medical expenses were paid by medical assistance and claimant lost eleven weeks from work as a result of the incident. Claimant has since returned to work with no diminution in earnings.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$695.00 for eleven weeks temporary total disability, all subject to the further order of this Board.

**Claim #45-P-71**

Claimant, male, 37, was assaulted by several unknown assailants on a public street in Baltimore and as a result thereof sustained the loss of two front teeth. Our investigation revealed that claimant was a self-employed hairdresser and that his average weekly wage was \$400 and that he had assets of approximately \$20,000.00. Claimant's hospital bills were paid by insurance with the exception of \$945.00.

We find that claimant is the innocent victim of a crime. We do not find, however, that claimant meets the statutory requirements for an award as set forth in Section 12(f) of the statute which requires that claimants must sustain a serious financial hardship as a result of the incident. We find that claimant has ample assets to provide for his medical expenses.

Accordingly, this claim is denied.

**Claim #55-P-71**

This is an Appeal from a decision of this Board denying an award to the claimant on September 23rd, 1971.

The Board below found, "Claimant, female, 21, was struck on the head during an altercation with a suitor by a tire-jack. Our investigation reveals that claimant's unreimbursed medical expenses are \$16.25 and that she lost approximately 3 days from work as a result of the incident. Claimant is presently working with no diminution in earnings. We find that claimant has not met the minimum requirements for a claim with this Board as set forth in Section 7 of the statute, inasmuch as her unreimbursed medical expenses are less than \$100. Under the circumstances, pursuant to the provisions of the statute, this claim must be disallowed."



A full Board hearing was held and claimant stated that she returned to work three days after the incident for one day but was unable to continue with her employment and subsequently lost approximately three weeks from work and thereby meets the minimum requirement for a claim with this Board.

A subsequent investigation was conducted by this Board wherein it was determined that the claimant worked continuously following the date of the assault until she voluntarily quit and made application for unemployment insurance. This Board also contacted the Department of Employment Security and determined that the claimant, in her application, stated that she quit her job because she was not earning enough money.

We find, after reviewing the file, the testimony presented and the evidence submitted that the claimant's testimony is utterly lacking in credibility. Accordingly, therefore, the decision is affirmed by the full Board.

**\*Claim #57-P-71**

Claimant, male, 43, sustained a compressed fracture to the right upper tibia plateau, knee-cap when he apprehended a young vandal who was destroying outdoor Christmas decorations. The bulk of claimant's medical expenses were reimbursed by insurance with the exception of \$246.05. Claimant also lost three weeks from work as a result of the incident, and has since returned to work at no diminution in earnings.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$246.05 for unreimbursed medical expenses and \$165.00 for lost time for a total award of \$411.05, all subject to the further order of this Board.

**\*Claim #58-P-71**

Claimant, female, 42, was struck in the face with a metal object when her purse was stolen by an assailant on a public street in Baltimore. Her assailant was arrested and trial is pending. Our investigation reveals that claimant lost two weeks from work as a result of the incident and has since returned to work with no diminution in earnings. Claimant also incurred \$315.90 in unreimbursed medical expenses which includes a dental bill of \$155.00 which was paid direct by this Board. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$85.32 for two weeks temporary total disability at \$42.66 per week, plus \$315.90 for unreimbursed medical expenses, for a gross award of \$401.22, less \$155.00 paid by this Board to dentists, all subject to the further order of this Board.

**\*Claim #71-P-71**

Claimant, male, 54, was stabbed in the stomach on a public street in Baltimore by an unknown assailant for no apparent reason. Our investi-



gation reveals that all of claimant's medical expenses were paid by medical assistance. Our investigation also reveals that claimant was temporarily totally disabled for 24 weeks and temporarily partially disabled for 18 weeks as a result of the incident. Claimant has since returned to work with no diminution in earnings.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$1,830.12 for 24 weeks temporary total disability and \$720 for 18 weeks temporary partial disability for a total award of \$2,550.12, all subject to the further order of this Board.

**\*Claim #78-P-71**

Claimant, male, 49, returning home from a neighborhood store when he was accosted by four unknown assailants and shot. He sustained a gunshot wound to his abdomen which perforated his gall-bladder and colon. Our investigation reveals that claimant lost ten weeks from work as a result of the incident and that he received \$575.70 from insurance for his lost time. He also sustained \$586.84 in unreimbursed medical expenses. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$586.84 for unreimbursed medical expenses and \$74.04 for lost time for a total award of \$660.88, all subject to the further order of this Board.

**Claim #85-D-71**

This claim is made by a grandmother on behalf of her minor granddaughters for the death of their mother, who was shot to death during an altercation in an apartment in Baltimore. Our investigation reveals that the deceased, at the time of her death, was receiving Public Assistance and was unemployed, and was living with a boyfriend who was trafficking in narcotics. On the date of the incident, some persons came to the deceased's apartment to make a purchase and when the deceased's boyfriend increased his price, an altercation started which ultimately led to the death of the deceased.

We find the deceased was not an innocent victim of a crime in that she was involved in reprehensible illicit activities. We do not consider it appropriate to make an award of public monies to the deceased's dependents under the circumstances.

Assuming without deciding that the decedent was an innocent victim of a crime, the claimants were not dependent upon her for their support but were, in fact, dependent upon the State for their support and accordingly, no award can be made under the statute.

This claim is, therefore, disallowed.



**\*Claim #87-P-71**

Claimant, male, 38, was shot in the left frontal region of his head by an unknown assailant as he was coming out of a men's room in a bar in Howard County. Our investigation reveals that the claimant sustained \$1,417.00 in unreimbursed medical expenses and lost 35 weeks from work as a result of the incident. Claimant also received \$672 from insurance while he was off of work. Our investigation also reveals that claimant has since returned to work with no diminution in earnings. Claimant also sustained an unsightly scar over his left eye. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$1,417.00 for unreimbursed medical expenses, and \$2,269.14 for lost time, less \$672.00 from insurance for a net temporary total award of \$1,591.14, plus \$750 for 30 weeks disfigurement at \$25 per week for a gross award of \$3,758.14, all subject to the further order of this Board.

**Claim #88-P-71**

This is an Appeal to the full Board from the denial of an award to the claimant on June 17th, 1971.

"Claimant, male, 50, sustained a shotgun wound to his left leg during an altercation on a parking lot in Frederick County. Our investigation reveals that the claimant's assailant was his wife's sister's husband.

We find that the claimant is not eligible for an award because he is related to the assailant within the third degree of affinity and is thereby excluded by the statute."

This Board has repeatedly held that assailants related to their victims within the third degree of affinity are not eligible claimants under the statute as presently written. We further find the language of Section 5(b) of the statute to be clear and unambiguous and to mean exactly what it says.

Accordingly, the decision of the Board is affirmed.

**\*Claim #92-P-71**

This claim is filed by a father on behalf of his 20 year old daughter who was shot three times in the head and left for dead in an attempted rape in a cemetery in Anne Arundel County. Our investigation reveals that claimant has sustained severe and permanent brain damage.

The bulk of claimant's medical expenses were paid with the exception of \$521.79. We find claimant's daughter to have been an innocent victim of a crime and that claimant meets all the necessary statutory criteria for the following award. We also find that claimant is 100% permanently disabled as a result of this injury.

Award: \$521.79 for unreimbursed medical expenses and beginning November 1, 1971, \$86.00. However, in no event may the total of all



payments to claimant exceed the sum of \$45,000.00. All monthly award payments will be made to the trustee designated pursuant to Section 41 of Article 93A of the Annotated Code of Maryland, all subject to the further order of this Board.

**Claim #94-P-71**

Claimant, male, 30, received an injury to his hand when handcuffs were placed on him too tightly during his arrest as a result of a disturbance in a street in Baltimore. The police report indicates that the claimant was arrested because of his disorderly conduct. The claimant states that he was attempting to break up a fight at the request of the sister of one of the participants. Assuming, without deciding, the truth of the claimant's story and his good intentions, he was not justified in disturbing the public peace particularly after the arrival of the police and it was this conduct, not his attempt to prevent a crime, that caused his injury. Accordingly, we find the claimant to be responsible for his own injury to such an extent that compensation would not be appropriate.

The claim is, therefore, denied.

**\*Claim #99-P-71**

Claimant, female, 52, was mugged by an unknown assailant while going into a church in Baltimore. Our investigation reveals that the claimant was knocked down the church steps and kicked in the head by her assailant who also took her purse. Claimant lost nine weeks from work as a result of the incident and sustained \$58.40 in unreimbursed medical expenses. She has since returned to work with no diminution in earnings. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$58.40 for unreimbursed medical expenses, plus \$415.80 for nine weeks temporary total for a total award of \$474.20, all subject to the further order of this Board.

**\*Claim #101-D-71**

Claimant is the widow of a man who was shot to death on a parking lot in Calvert County when he was struck by a ricochet bullet. Our investigation reveals that the deceased had no connection with the shooting and was an innocent by-stander at the time. Our investigation also reveals that the assailant was tried and found guilty of manslaughter. We find that the deceased was an innocent victim of a crime and that the claimant meets all the necessary statutory criteria for the following award.

Award: \$368.52 per month beginning June 1, 1971. Ten retroactive monthly awards will be paid in a lump sum of \$3,685.20 and beginning March 1, 1972, \$368.52 per month. However, in no event may the total of all payments to the claimant exceed the sum of \$27,500.00.



**\*Claim #105-P-71**

Claimant, male, 60, was robbed and assaulted on a public street in Baltimore by four unknown assailants. Claimant sustained head injuries and crushed left elbow. Our investigation reveals that the bulk of claimant's medical expenses were paid by insurance. Claimant has not returned to work since the incident which occurred on December 30th, 1970. Claimant, however, received \$69 per week for a total of \$1,242 from his union insurance. Thereafter, claimant received and is presently receiving \$213 per month from Social Security for temporary disability. This Board made an emergency award to the claimant for the total amount of \$500. The bulk of claimant's medical bills have been reimbursed with the exception of a bill for \$50.00. We find that the claimant is an innocent victim of a crime and that he meets all the necessary statutory criteria for the following award. We also find that claimant has a 50% permanent disability to his left arm and that a serious financial hardship will exist if an award is not made.

Award: \$207.18 for lost time, which represents the difference between the total payments of \$1,449.18 and insurance received of \$1,242.00, plus \$50 for unreimbursed medical expenses, and beginning January 1st, 1972, claimant will receive \$150.50 per month for permanent total disability to his left arm. However, in no event may the total of disability payments to the claimant exceed the sum of \$5,250. The gross award is therefore, \$5,507.18 less \$500 emergency award for a net award of \$5,007.18. All subject to the further order of this Board.

**\*Claim #112-P-71**

Claimant, male, 47, was viciously assaulted with a tire-iron while he was sleeping in his car in Baltimore County. Assailant was apprehended, found guilty, and sentenced to two years imprisonment. Our investigation reveals that claimant lost two front teeth as a result of the beatings and also incurred \$143 in unreimbursed medical expenses. Claimant lost one week from work and has since returned to work with no diminution in earnings. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$143 for unreimbursed medical expenses, plus \$55 for one week's temporary total disability. We also find that \$210 to be a fair and reasonable price to replace claimant's false teeth and will pay this bill when properly submitted and verified, all subject to the further order of the Board.

**\*Claim #113-D-71**

Claimant is the wife of a man who was shot to death in a tavern in Princess Anne. Our investigation reveals that the deceased was involved in an argument with a young woman when a man came out of the crowd and shot and killed the deceased. Our investigation also reveals



that both claimant and the victim were employed and contributing to the household expenses. We further find that claimant has \$922.00 in unreimbursed medical expenses.

We find that claimant meets all the necessary statutory criteria for a partial dependency award of \$9,000.00. In our opinion Section 12(e) of the statute is applicable because of claimant's culpability and we will reduce the total award by 25% to \$6,750.00.

Award: \$922.00 for unreimbursed medical expenses, and \$249.02 per month beginning March 1st, 1972. Thirteen retroactive payments will be made in a lump sum award of \$3,237.26, all subject to the further order of this Board.

**\*Claim #115-P-71**

Claimant, female, 21 was shot in the chest during an altercation at an amusement park in Prince George's County by a juvenile assailant. Our investigation reveals that the assailant fired his pistol at another individual, however, he missed and shot the claimant. Claimant has \$1,085.00 in unreimbursed medical expenses as a result of the incident. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$1,085.00 for unreimbursed medical expenses, all subject to the further order of this Board.

**\*Claim #117-P-71**

Claimant, male, 42, was shot sitting in his car on a public street in Baltimore by an unknown assailant for no apparent reason. Claimant sustained six bullet wounds and had extensive medical bills. All his medical bills, however, were paid by insurance with the exception of \$92.50. Claimant lost twenty-two weeks from work, however, he was reimbursed by his employer at the rate of \$66 per week. Claimant has since returned to work with no diminution in earnings.

Accordingly, therefore, this Board will not make an award for disability since there is no showing of a diminution in earnings. We also find that claimant was an innocent victim of a crime and that he meets all the necessary statutory criteria for the following award.

Award: \$92.50 for unreimbursed medical expenses, plus \$248.80 for lost time which represents \$1,700.88 less \$1,452 paid by the employer for a net award of \$248.88, for a total award of \$341.38, all subject to the further order of this Board.

**\*Claim #121-P-71**

Claimant, male, 21, was shot in the neck during an altercation on a public street in Baltimore by an unknown assailant. Our investigation reveals that the claimant is a quadriplegic, and is currently residing



with his mother at home. Claimant presently receives \$174.50 from Social Security benefits. Claimant currently has \$5,198.26 in unreimbursed medical expenses, and these expenses are of a continuing nature.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award. We further find claimant to have a 100% permanent total disability to his body as a whole.

Award: \$5,198.26 for unreimbursed medical expenses, plus \$2,888.10 for 20 retroactive monthly awards and beginning July 1972, \$137.25 per month, for a lump sum total award of \$8,086.36. However, in no event may the total of all payments to the claimant exceed the sum of \$45,000.00. All subject to the further order of this Board.

**\*Claim #125-P-71**

Claimant, male, 45, was shot in the right eye during a robbery on a public street by three unknown assailants. Our investigation reveals that claimant sustained \$184.50 in unreimbursed medical expenses as a result of the incident. Claimant lost one week from work for which he was reimbursed by his employer and has since returned to work with no diminution in earnings. Our investigation also revealed that claimant sustained extensive damage to the posterior part of his right eye and he presently has multiple bullet fragments in the right frontal sinus, right ethmoid sinus, right maxillary sinus, and right orbit. Removal of the bullet fragments is not recommended by claimant's doctor. Claimant also sustained an unsightly scar to his right eye and his right eye now wanders as a result of the injury. We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$184.50 for unreimbursed medical expenses, and 15 weeks disfigurement at \$35 per week for a total award of \$709.50, all subject to the further order of this Board.

**Claim #132-D-71**

Claimant is the widow of a man who was shot to death in a public park in Baltimore. Our investigation reveals that narcotic paraphernalia was found on the deceased's body by the police. The medical examiner's report indicates that the deceased was under the influence of narcotics at the time of his death. The claimant and the deceased were separated at the time of the incident, and there is no showing in the record that the claimant was dependent upon the deceased for her income. We find that the deceased was not an innocent victim of a crime. It is clear from the record before us that the deceased was involved, at the time of the incident, in illicit activities, and it would be inappropriate to award public monies in the instant case.

Assuming without deciding that the deceased was an innocent victim of a crime, there is no showing of dependency by the claimant as required by the statute for an award. Accordingly, this claim is denied.



**\*Claim #133-P-71**

Claimant, female, 67, was assaulted by an unknown assailant in a parking garage in Baltimore while on the way to work. Claimant sustained a broken right shoulder as a result of this incident. The bulk of claimant's medical expenses were paid by insurance with the exception of \$107.80. We find that claimant lost two weeks from work as a result of said injuries and has since returned to work with no diminution in earnings. We also find that claimant is an innocent victim of a crime and meets all the necessary statutory criteria for the following award.

Award: \$107.80 for unreimbursed medical expenses, plus \$110 for lost time for a total award of \$217.80, all subject to the further order of this Board.

**\*Claim #137-P-71**

Claimant, male, 21, while making a phone call from a pay booth on a public street in Baltimore was shot twice in the left side, by two unknown assailants. Our investigation reveals that claimant lost ten weeks from work and returned to work with a diminution in earnings for approximately two months thereafter, and he is presently earning the same amount as prior to the incident. Claimant also sustained \$990 in unreimbursed medical expenses. This Board made an emergency award to claimant in the amount of \$250 at the inception of the claim. We find that the claimant is an innocent victim of a crime and that he meets all the necessary statutory criteria for the following award.

Award: \$900.90 for unreimbursed medical expenses, \$418.20 for lost time, \$301.00 for two months permanent partial disability at \$150.50 per month, for a gross award of \$1,620.10, less the prior emergency award of \$250.00 for a net award of \$1,370.10, all subject to the further order of this Board.

**Claim #139-P-71**

Claimant, female, 27, sustained several facial scars and other head injuries during a fight in a Baltimore bar. Our investigation reveals that the claimant and the alleged assailant were both employed in the same bar as barmaids. Claimant who was off duty at the time of the incident, was drinking at the bar subsequent to the incident when the alleged assailant entered the bar. An argument started and the claimant repeatedly pushed the alleged assailant until a fight began, whereupon the claimant was injured.

We find that the claimant is not an innocent victim of a crime as required by the statute for an award. We further find that the claimant did, in fact, provoke the incident and in a large measure was responsible for her injuries, which completely precludes her from any award by this Board.

Accordingly, this claim is denied.



**\*Claim #141-P-71**

Claimant, male, 22, was assaulted by four unknown assailants and struck on the head with a baseball bat in a schoolyard in Baltimore. Our investigation reveals that the bulk of claimant's medical bills were reimbursed by insurance with the exception of \$20.00. We find that the claimant was the innocent victim of a crime and meets all the necessary statutory criteria for the following award and that he lost twenty weeks from work as a result of the incident.

Award: \$20.00 for unreimbursed medical expenses, and \$1,457.14 for lost time for a total award of \$1,477.14, all subject to the further order of this Board.

**Claim #147-D-71**

This is an Appeal to the full Board from the denial of an award to the claimant on September 29th, 1971. The Board below found,

"This claim is filed by the widow of a man who was shot and killed in Prince George's County during an argument over a card game. Our investigation reveals that the deceased pulled a gun on the alleged assailant and a scuffle ensued wherein the deceased was shot with his own gun. We find the deceased was not an innocent victim of a crime, but was in fact, an unsuccessful assailant, and that his conduct was reprehensible under the circumstances. We further find that it would be inappropriate to spend public monies to compensate the claimant in this case.

Accordingly, this claim is disallowed."

Claimant on reconsideration avers that the deceased was enticed into and surrounded by a conspiracy, that he was legally and lawfully justified in trying to defend himself in an emergency situation.

We find after reviewing the information and testimony submitted, that the Board's decision below was correct. Claimant was not present at the incident, and we feel her view of the incident in question lacks credibility in view of surrounding facts.

Accordingly, this claim is denied.

**\*Claim #150-P-71**

Claimant, female, 50, was shot in the stomach by a purse snatcher on a public street in Baltimore. Our investigation reveals that the bulk of claimant's medical expenses were paid with the exception of \$343.75. Claimant received sick pay benefits through her convalescence and has since returned to work with no diminution in earnings. Accordingly, no award for disability will be made.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$343.75 for unreimbursed medical expenses. All subject to the further order of this Board.



**Claim #151-P-71**

Claimant, female, 50, was stabbed in the stomach during a fight on a public street in Baltimore. Our investigation reveals that claimant was on Public Assistance at the time of the incident and admitted that she was slightly intoxicated at the time of the incident while trying to prevent two other girls from fighting with one another. Claimant also states that after she was stabbed she continued to drink before going to the hospital. We do not find claimant to be the innocent victim of a crime nor do we find that she has a serious financial hardship as a result of this incident as required by Section 12(f) of the statute. The bulk of claimant's medical expenses were paid for by Medicaid and she continued to receive her Public Assistance checks.

This claim is, therefore, denied.

**\*Claim #160-D-71**

Claimant is the widow of a man who was shot to death in a convenience food store in Anne Arundel County. Our investigation reveals that the victim was present during an armed robbery of the store and attempted to prevent the robbery and lost his life as a result of the attempt. Our investigation also reveals that the claimant has \$564.25 in unreimbursed medical expenses as a result of the incident. We find the deceased was the innocent victim of a crime and the claimant to meet all the necessary statutory criteria for the following award.

Award: \$564.25 for unreimbursed medical expenses and beginning August 1971, \$306.62 per month. However, in no event may the total of all payments to the claimant exceed the sum of \$27,500. Eight retro-active monthly awards will be paid in a lump sum of \$2,452.96, and beginning April 1972, claimant will receive \$306.62 per month, all subject to the further order of this Board.

**Claim #161-P-71**

This is an Appeal to the full Board from a denial of an award to the claimant on October 1st, 1971. The Board below found, "Claimant, male, 38, was struck in the eye by an acquaintance in an apartment in Baltimore. Our investigation reveals that the claimant refused to swear out a warrant against the assailant. Claimant alleges that he feared bodily harm from his assailant if he prosecuted the assailant. We attach great importance to victims cooperating with the police in bringing offenders to justice. We find, therefore, that claimants refusal to cooperate fully as set forth in Section 12(a) of Article 26A of the Annotated Code of Maryland disentitles him to an award by this Board."

On reconsideration the claimant alleged that the claimant's failure to obtain a warrant and to pursue charges against the assailant was made for reasons of personal safety. In reviewing the record it reveals that this objection is without merit. This Board has repeatedly held



that a fear of reprisal is not a proper ground for the refusal of a claimant to fully cooperate with all law enforcement agencies as required by the statute.

The decision is, therefore, affirmed by the full Board.

**Claim #164-D-71**

Claimant is the mother of a man who was shot and killed during his employment as a cab driver on a public street in Baltimore. Claimant filed a claim with this Board and also with the Workmen's Compensation Commission.

Our investigation reveals that on April 21st, 1970, the claimant received \$9,000 for partial dependency, plus \$750 for funeral expenses from the Workmen's Compensation Commission, which is the maximum award for partial dependency.

We find the deceased to be the innocent victim of a crime and that claimant was partially dependent upon the deceased at the time of his death. Since our awards are based on the same schedule of benefits as those used by the Workmen's Compensation Commission, and our statute requires that any award made by this Board be reduced by any Workmen's Compensation award, we find that no award can be paid claimant.

Accordingly, this claim is denied.

**Claim #183-P-71**

Claimant, female, 33, made a claim with this Board alleging that she was assaulted on a public street in Baltimore by an unknown assailant. Our investigation reveals that no police report was made by the claimant, although she was specifically requested after the incident to file a police report. We find that the claimant has not complied with the statutory requirements concerning cooperation with the police department. We believe the object of Section 12(a)(3) which requires that a police report be made within 48 hours after the occurrence and that the claimant cooperate fully with the police department has not been met in the instant case. We believe that the object of this section of the statute is to make awards conditional upon claimants cooperation in bringing criminals to justice and also to afford law enforcement agencies an immediate opportunity to investigate circumstances of the crime.

Accordingly, therefore, this claim is denied.

**\*Claim #186-P-71**

Claimant, male, 63, sustained substantial injuries as a result of an assault and robbery on a public street in Baltimore. He was shot in the side and required hospitalization on two occasions and may require further medical and hospital treatment in the future. Part of the claimant's



medical bills were paid by private insurance. However, claimant sustained \$1,846.43 in unreimbursed medical expenses.

At the time of this injury the claimant was a real estate agent having an average weekly wage of \$100 per week and was unable to work from June 28th, 1971 through and including September 8th, 1971 and from December 12th, 1971 through and including February 5th, 1972 but has since returned to his previous employment with no diminution in earnings. The Commissioner finds that there is no permanent partial disability referable to this criminal injury existing at this time.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$1,846.43 in unreimbursed medical expenses, plus \$1,129.92 for 18 weeks temporary total disability for a gross award of \$2,976.35. All subject to the further order of this Board.

#### Claim #195-P-71

Claimant, male, 27, was shot in the head during an altercation on a public street in Baltimore. Our investigation reveals that the claimant's paramour was also dating the alleged assailant. Claimant had threatened to kill both of them on several occasions. Prior to the incident the claimant went to the bar where the alleged assailant worked and began threatening to kill the alleged assailant. Later that night the paramour and the alleged assailant were driving in a car when the claimant approached the car and put a gun to the paramour's head and told the alleged assailant to throw his gun out or he would kill the paramour. A scuffle ensued and the claimant was shot several times.

We find that claimant is not an innocent victim of a crime. It is apparent from the facts before us that the claimant instigated the incident and that he was the true assailant. Accordingly, this claim is denied.

#### \*Claim #210-D-71

Claimant is the widow of a man who was assaulted and robbed on a public street in Baltimore County. Our investigation reveals that the victim was struck from behind with a blunt instrument and received numerous lacerations to his head and fractured skull therefrom. As a result of said beating the victim died twelve days later. All of victim's medical and funeral expenses have been reimbursed by insurance. Claimant also received \$1,020 from Public Assistance.

We find that the deceased was an innocent victim of a crime and that the claimant meets all the necessary statutory criteria for the following award.

Award: \$278.76 per month beginning August 1971. However, in no event may the total of all payments exceed the sum of \$26,480.00. Eight retroactive monthly awards will be paid in a lump sum of



\$2,230.08, less eight welfare payments of \$1,020.00 for a net lump sum award of \$1,210.08, and beginning April 1972, claimant will receive \$278.76 per month, all subject to the further order of this Board.

**\*Claim #18-P-72**

Claimant, male, 20, was shot in the left temple by a young boy, approximately 13 years of age, when claimant was stopped for a traffic signal at an intersection in Baltimore. Our investigation reveals that claimant was driving an automobile at the time of the incident and was accompanied by his wife and five day old daughter, when several young boys approached his car and requested a ride. Claimant refused, and the boys attempted to open the car door. When claimant attempted to drive away, he was shot in the head and as a result thereof, it was necessary for his right eye to be removed. Claimant sustained \$410.00 in unreimbursed medical expenses. It will be necessary for him to purchase a new artificial eye every third year. Claimant also has a large unsightly scar on his face. We further find that claimant was reimbursed for his lost time by his company and has since returned to work with no diminution in earnings. Therefore, no award for permanent disability will be made by this Board.

We find claimant to be the innocent victim of a crime and to meet all the necessary statutory criteria for the following award.

Award: \$410.000 for unreimbursed medical expenses, and \$700.00 for 20 weeks disfigurement at \$35 per week for a total of \$1,110.00. This Board will also reimburse claimant for one artificial eye in the future, when presented with bill for same, all subject to the further order of this Board.



## SPECIAL COMMITTEE ON UNIFORM CRIMINAL INJURIES COMPENSATION ACT

Richard Cosway, University of Washington Law School, Seattle, Washington 98195, *Chairman*.  
 Frank E. Dully, 60 Washington St., Hartford, Connecticut 06106.  
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 Parham H. Williams, Jr., University of Mississippi School of Law, University, Mississippi 38677.  
 Dwight A. Hamilton, 900 Equitable Bldg., Denver, Colorado 80202, *Chairman*, *Division C*, *Ex Officio*.  
 Eugene A. Burdick, P.O. Box 757, Williston, North Dakota 58801, *Ex Officio*.

## UNIFORM CRIME VICTIMS REPARATIONS ACT

(Second Tentative Draft (Sixth Working Draft))

SECTION 1. [Definitions.] As used in this Act, the words and phrases in this section have the meanings indicated.

(b) "Board" means the Crime Victims Reparations Board established under Section 3.

(c) "Claimant" means any of the following claiming reparations under this Act: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them.

(d) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this Act which the victim or claimant has received, or which is readily available to him, from:

- (1) The offender;
- (2) The government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law authorizing or providing for the benefits or advantages makes them excess or secondary to benefits under this Act;
- (3) Social Security and Medicaid;
- (4) State required temporary non-occupational disability insurance;
- (5) Workmen's compensation;
- (6) Wage continuation programs of any employer;
- (7) Proceeds of a contract of insurance payable to the victim for loss which he alone would have avoided but for the criminally injurious conduct; or
- (8) A contract providing prepaid hospital and other health care.

(e) "Criminally injurious conduct" means conduct that (1) occurs or is attempted in this state, (2) is punishable by fine, imprisonment, or death, and (3) poses a substantial threat of personal injury or death. Criminally injurious conduct occurs notwithstanding that by reason of age, mental defect, intoxication, or otherwise, the person engaging in it lacked capacity to commit a crime. It does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, as defined by [                      ].

## COMMENT

The final bracket will be filled by a reference to the governing motor vehicle accident reparations statute. The effect of this exclusion is that whenever injury or death is reparable under a reparations statute such as the Uniform Motor Vehicle Accident Reparations Act, there will be no reparations under this Act. This is not the result which would be produced by application of the collateral source rule, for by application of that rule there still may be an award under this Act if economic loss exceeds that recoverable from the collateral source.

(f) "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.

(g) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, de-



pendent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.

(1) "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 \$500 for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless intensive care is medically required.

(2) "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.

(3) "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.

(4) "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 decedent's death.

(5) "Dependent's replacement services loss" means expenses 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.

(h) "Non-economic detriment" means pain, suffering, inconvenience, physical impairment, and other non-pecuniary damage recoverable under the tort law of this State;

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

SECTION 2. [*Awards of Reparations.*] The board shall award reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that requirements for reparations have been met.

SECTION 3. [*Crime Victims Reparations Board.*]

(a) A Crime Victims Reparations Board is created [in the executive branch]. The board consists of 3 members appointed by the governor [with the advice and consent of the Senate]. At least one member of the board shall be a person who is admitted to the bar of this state.

(b) The term of office of each board member shall be [6] years and until his successor is appointed and qualified; except that of the members first appointed one each shall be appointed to serve for terms of [2], [4], and [6] years. Any person appointed to fill a vacancy shall be appointed for the remainder of the unexpired term.

(c) The governor shall designate a member of the board who is admitted to the bar of this state to serve as chairman at the pleasure of the governor.

(d) Members of the board shall [serve full time, receive an annual salary prescribed by the governor within the available appropriation not exceeding [ ] dollars,] [serve part time, and receive [\$75.00] per diem,] and be reimbursed for actual expenditures incurred in performance of their duties in the same manner as state officials generally.

SECTION 4. [*Powers and Duties of the Board.*] (a) In addition to the powers specified elsewhere in this Act, the board has the powers and duties specified in this section.



(b) To establish and maintain a principal office and other necessary offices within this state, to appoint employees and agents as necessary, and to prescribe their duties and compensation.

(c) To adopt by rule a description of the organization of the board, stating the general method and course of operation of the board.

(d) 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 the provisions relating to these matters (Section 9). Rules adopted by the board shall be statements of general applicability which implement, interpret, or prescribe policy, or describe the procedure or practice requirements of the board.

(e) To prescribe forms on which applications for reparations may be made.

(f) To hear and determine all matters relating to claims for reparations, and to reinvestigate or reopen claims.

(g) 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.

(h) To subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence which contributes to the function of the board.

(i) To take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge.

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

(k) To publicize widely the availability of reparations and information regarding the filing of claims therefor.

#### COMMENTS

Because the persons affected by the rule making power of the board, namely crime victims, are not likely to be a class who are interested in the board rules prior to the time they sustain injury or death, there is no reason to apply the complex notice provisions of most administrative procedure statutes to the rule making powers of the board. On the other hand, due process is required in the determination of claims, but the details required are not precisely equivalent to those which would be required in a hearing on a license application. For that reason, this act contains provisions regarding disposition of claims and judicial review thereof. Some provision should be made in any state having a generally applicable administrative procedure act to exclude the operations of the board from that act. This exclusion is usually part of the administrative procedures act.

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

(a) An application for reparations shall be made in a writing which conforms substantially to the form prescribed by the board.

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

(c) Reparations may not be awarded to a claimant who was the offender or an accomplice of the offender, or which unjustly benefit either of them.

#### COMMENT

The final reference to unjust benefit is designed to enable a board to deny compensation where it is obvious that the real beneficiary of any award will be the offender. In many existing statutes, awards are denied to persons who are in some way related to the offender, but that kind of exclusion is likely to produce as many improper denials as it is to prevent improper payments. A victim and his dependents may suffer real loss at the hands of a relative, such as an estranged spouse, and the existence of the relationship ought not per se to preclude reparations.

(d) Reparations otherwise payable to a claimant under this Act shall be diminished to the extent that the economic loss upon which his claim is based is

(1) Proximately caused by wrongful conduct of the claimant or of a victim through whom he claims; or

(2) Recouped from other persons, including collateral sources.



## COMMENT

Subsection (d) (1) contemplates reduction of benefits in two situations: One, where the victim's wrongful conduct contributed to the injury or death, as would be the case if he had begun a fight without provocation. Two, where the victim's failure promptly to seek care increased the extent of his economic loss.

[(e) (1) Reparation may be awarded only if the board finds that unless the claimant is awarded reparations he will suffer financial stress as the result of economic loss otherwise reparable under this Act. A claimant suffers financial stress only if he cannot maintain his customary level of health, safety, and education for himself and his dependents without undue financial hardship. In making its determination of financial stress, the board shall consider all relevant factors, including:

- (i) The number of claimant's dependents;
- (ii) The usual living expenses of the claimant and his family;
- (iii) The special needs of the claimant and his dependents;
- (iv) The claimant's income and potential earning capacity; and
- (v) The claimant's resources.

(2) Reparations may not be awarded if the claimant's economic loss does not equal or exceed 10 percent of his net financial resources. A claimant's net financial resources do not include the present value of future earnings and shall be determined by the board by deducting from his total financial resources the value of:

- (i) One year's earnings;
- (ii) The claimant's equity in his home not exceeding \$30,000;
- (iii) One motor vehicle; and
- (iv) Any property which would be exempt from execution under [the general personal property exemptions statute of this state].

(3) Notwithstanding paragraph (2):

(i) The board may award reparations to a claimant who possesses net financial resources in excess of those allowable under subparagraph (ii) if, considering the claimant's age, life expectancy, physical or mental condition, and expectancy of income including future earning power, it determines that the claimant's financial resources will become exhausted during his lifetime; or

(ii) The board may (A) reject the claim finally, or (B) reject the claim and reserve to the claimant the right to reopen his claim if financial resources is probable, in which event the board may reopen pursuant to an application to reopen if it is satisfied that the resources available to the claimant from the time of denial of an award had been prudently expended for family needs.]

## COMMENT

At the Conference meeting in San Francisco, the special committee was directed to prepare alternative provisions respecting a financial stress or "needs" test. The draft submitted at that session included the above paragraph (e) as it appears here. Putting aside for the moment matters of style or details in that formulation, a major issue is presented—should the test be included at all? The special committee has concluded that the test ought not be included, because it injects a welfare concept into a system of compensation not dependent on welfare.

The primary argument for including a needs test is a cost argument—costs will be reduced if only needy persons are paid from the fund. Related to this is a feeling that without such a limitation on costs an act is politically not acceptable—there can be spectators of millionaires being paid for criminal injuries from state funds.

The committee does not have data on this cost issue. We have been informed that many administrators of state plans which include financial stress standards have great difficulty administering the test. We have been informed that in states, like New Jersey, where there is no needs test, the vast bulk of the cases involve claimants who are needy within any meaningful definition of that term. We have been informed of only one case, for example, where New Jersey compensated a comparatively wealthy person—a druggist with an income of something like \$27,000. We have been told that it is not unreasonable to conclude *a priori* that administrative costs in determining whether a claimant meets the needs test could well amount to more than any savings caused by the test.



On the other hand, we have been informed that there is no likelihood that a federal statute will be adopted without such a test. This means that states will be required to conform their programs to the federal standards, if and when adopted, in order to get reimbursement. The precise impact of such a requirement cannot be predicted, for the question turns on the methods adopted by federal administrators to limit reimbursement to those state expenditures which conform to federal standards. This may require case by case demonstration, or it may be done by some formula.

Weighting the uncertainties against the policy of the act—to pay victims who suffer losses because the state has failed to protect them—the committee strongly recommends against adoption of any financial stress requirement.

If, however, a financial stress requirement is to be adopted, we feel that the Act must be so worded as to provide reparations for persons who are above the needs test typically applied for welfare. Our test, though obviously quite elaborate, we feel accomplishes this goal.

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

(g) The board, upon finding that a claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw, or reduce an award of reparations.

(h) Reparations may not be awarded if the economic loss is less than [\$500.].

#### COMMENT

I hope you will recall that your chairman accounted for this provision (when challenged in San Francisco) as the contribution of habitual following the lead of others who really have not analyzed the outcome of what they say. Minutes, pg. 31

Should we not pioneer here, once again, and omit this?

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

[Alternative B: Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed the amount that the victim's income is reduced below \$200 per week.]

#### COMMENT

Alternative (A) should be adopted if subsection (e), supra, [the financial stress test] is not adopted. Alternative B is recommended where a financial stress requirement is adopted. It provides an additional maximum limit to reparations.

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

SECTION 6. [*Notice to Attorney General; Role of Attorney General*] Promptly upon receipt of an application for reparations, the board shall forward a copy of the application and all supporting papers to the [Attorney General], who in appropriate cases may investigate the claim, appear in hearings on the claim, and present evidence in opposition to an award.

SECTION 7. [*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 8. [*Contested Cases; Notice; Hearing; Records*]

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice of hearing shall include:

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved; and
- (4) A short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the



initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite statement shall be furnished.

(c) All interested persons shall be afforded an opportunity to appear and be heard to offer evidence and argument on the issues involved, and examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record.

(d) A record of the proceedings shall be made and include :

- (1) The application and supporting documents ;
- (2) All pleadings, motions, and intermediate rulings ;
- (3) Evidence offered, received, or considered ;
- (4) A statement of matters officially noticed ;
- (5) All staff memoranda or data submitted to the board in connection with

its consideration of the case ; and

(6) Offers of proof, objections, and rulings.

(e) Oral proceedings or any part thereof shall be transcribed on request of any party, who shall pay transcription costs unless otherwise ordered by the board.

(f) Determinations of the board shall be made in writing, supported by findings of fact and conclusions of law based exclusively on the record, and be mailed promptly to all parties.

#### SECTION 9. [*Evidence of Physical Condition.*]

(a) There is no privilege as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under this Act in which that condition is an element.

(b) If the mental, physical, or emotional condition of a victim or claimant is material to any 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 the order shall require the person to file with the board a limited detailed written report of the examination or autopsy.\*

(c) On request of the person examined, the board shall deliver to him a copy of the report. If the victim is deceased, the board, on request, shall deliver to the claimant a copy of the report.

(d) 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 10. [*Enforcement of Board's Orders.*] If a person refuses to comply with an order under this Act 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 a person in contempt. If necessary to carry out any of its powers and duties, the board may petition the 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 11. [*Award and Payment of Reparations.*]

(a) 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.

(b) Upon application by an appropriate prosecuting attorney, 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 15.

SECTION 12. [*Attorneys' Fees.*] As part of any order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. 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 ask for, contract for, or receive any larger sum than the amount allowed.

\*The report shall set out his findings, including results of all tests and diagnoses, prognoses, and other conclusions, and reports of -----



SECTION. 13. [*Subrogation; Actions; Allocation of Expense.*]

(a) If reparations are awarded, the claimant shall assign to the state for purposes of subrogation all his rights to receive or recover from any source benefits or advantages for economic loss owed to him for which the reparations were awarded.

(b) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct upon which reparations are claimed or awarded under this act, the claimant must give the Board prior written notice of the proposed action. After receiving the notice, the Board shall promptly (1) join in the action as a party plaintiff to recover reparations awarded, (2) require the claimant to bring the action in his individual name, as a trustee in behalf of the state, to recover reparations awarded, or (3) reserve its rights and do neither in the proposed action. If, as requested by the board, the action is brought by the claimant as trustee and he 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.

(c) If a judgment or verdict indicates separately economic loss and non-economic 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 award for non-economic detriment, punitive damages, if any, and the award for economic loss.

COMMENT

The provisions of paragraph (b) regarding suits against third persons by the claimant in his own name are designed to show that the caption of the action need not identify the claimant as trustee, though he does, in law, hold portions of the claim as trustee for the state. The claimant is the real party in interest for the entire claim, by virtue of the assignment to him. Whether or not the state's interest is disclosed is a matter of strategy, for it seems likely that a jury would be less inclined to return a verdict for the claimant if it knew that part of the amount so paid would redound to the state's benefit.

SECTION. 14. [*Manner of Payment; Non-assignability and Exemptions.*]

(a) The award shall be paid in a lump sum or in periodic payments, depending on the claimant's circumstances.

(b) 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 has provided products, services, or accommodations the costs of which are included in the award.

(c) An assignment or agreement to assign any right to reparations for loss accruing in the future is unenforceable, except (1) an assignment of any rights to reparations for work loss to secure payment of alimony, maintenance, or child support; or (2) an assignment of any 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 15. [*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 not exceeding [\$500] may be paid to the claimant and shall be deducted from the final award and repaid if a final award is not made.

SECTION 16. [*Reconsideration and Review of Board Decisions.*]

(a) The board, on its own motion or on request of the claimant, may reconsider a decision denying an award or determining its amount. The board shall reconsider at least annually every award upon which periodic payments are being made.

(b) The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

(c) A final decision of the board is subject to judicial review [by appeal in the same manner and to the same extent as the decision of a state trial court of general jurisdiction].

SECTION 17. [*Reports.*] The board shall prepare and 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 any reparations awarded, and a statistical summary of claims and awards made and denied.



SECTION 18. [*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 which enact it.

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

SECTION 20. [*Title.*] This Act shall be known and may be cited as the Uniform Crime Victims Reparations Act.

\* \* \* \* \*

To: Committee on Style.

From: Richard Cosway.

Re: Corrections in Sixth Working Draft of Second Tentative Draft.

The following changes have been suggested. Those marked by an asterisk are corrections of errors about which there should be no question. Those unmarked by asterisks represent changes which have been suggested to the special committee and are forwarded for your consideration.

\* On the unnumbered second page (the back of the title page): Prior to the name of Dwight A. Hamilton should be added the words "Ex officio", and after his name should be added the name of Eugene A. Burdick, P. O. Box 757, Williston, N. D. 48801, President, NCCUSL.

On page 1, section 1: Carl Everstine, Director of the Department of Legislative Reference of the state of Maryland has written:

"In Section 1, it seems to me preferable to have each word or phrase in the definitions included in a separate subsection and lettered rather than numbered. What you could do in subsection (a) would be to provide essentially as follows:

"As used in this Act, unless the context otherwise requires, the words and phrases listed below in this section have the meanings therein provided."

"Under this arrangement, you then could define 'board' in subsection (b), 'claimant' in subsection (c), etc. This arrangement would make it much easier to pick out one of these definitions in a later year and amend it without repeating all of Section 1."

On page 1, section 1 (2) [the definition of claimant] in line 7, *change* and to or, so that the line reads: "than a collateral source, or an authorized person acting on behalf of any"

\* On page 1, section 1 (3) [the definition of collateral source] in line 11, *change* are to is, so that the line reads: "or claimant has received, or which is readily available to him, from:"

On page 1, section 1 (3) [the definition of collateral source] in line 13, *change* "and its public agencies" to or any agency thereof, so the line reads: "(ii) the government of the United States or any agency thereof."

In the same definition, in line 14, delete the first word, "or" to complete the change referred to immediately above.

\* In the same definition, correct line 16 by adding words omitted so that the line reads: "the benefits or advantages makes them excess or secondary to benefits under this Act;"

\* On page 2, line 26, the sixth word is state, not dtate as it is typed in the draft.

On page 2, line 28 change "may be considered to have occurred" to occurs, to make the line read: "death. Criminally injurious conduct occurs"

On page 2, line 32, insert a comma before the last two words, so that the last three words read: "vehicle, as a"

On page 2-4, lines 34 through 75, two amendments have been suggested in regard to the way in which the definitions are shown. The most basic and simplest suggestion is to re-order the terms in alphabetic order, so that they would be listed:

- (i) "Allowable expense . . .";
- (ii) "Dependent's economic loss . . .";
- (iii) "Dependent's replacement service loss";
- (iv) "Replacement services loss . . ."; and
- (v) "Work loss . . .".

Mr. Everstine has suggested a different approach: "On page 2 of the definitions under the definition of the term 'economic loss,' you have definitions for a series



of words and phrases appearing in the definition of 'economic loss.' It seems to me preferable to pick out these several words and phrases and to define them in the regular alphabetical series in the entire section."

[It seems to me that Mr. Everstine's suggestion is very good. The only argument against it is that the system used in this act borrows heavily from UMVARA, and the style used is essentially similar.]

On page 3, the following changes should be made in the lines identified:

Line 54, the line should read. "person would have performed had he not been injured, and expenses"

Line 63 (to make the same change as was made in line 54), should read: "for the benefit of himself or his family, had he not been injured."

\*Line 64, change "menas" to means.

\*Line 67, first words should read: "decedent had he not suffered. . . ."

On page 4, Section 2, in line 3 the suggestion has been made that the words, "a preponderance of" be omitted. *I recommend against this change*, for the committee's intent was to incorporate in this section the burden of proof standard the board is to follow, to make sure that no carry over from criminal law standards of "beyond a reasonable doubt" results.

On page 4, Section 3, in line 3, change so that it reads: "Crime Victims Reparations Board. The board consists of 3 members"

[This change is designed to eliminate the word "shall," and seems desirable.]

On page 5, line 14, it has been suggested that a comma be inserted after state, so that the line reads, "mitted to the bar of this state, to serve as chairman at the pleasure of the"

On page 5, Section 4, there are the following changes:

\* (1) The lines should be renumbered, beginning with 1 (for line 21), etc.

(2) Mr. Everstine suggests: "In Section 4 listing the powers and duties of the Board, I would suggest also using subsections rather than the enumeration. In this case, subsection (a) could read essentially as follows:

"In addition to the powers specified elsewhere in this Act, the Board has the powers and duties listed below in this section."

"What is now paragraph (1) would then become subsection (b), and what is now paragraph (2) would become subsection (c), etc."

[This suggestion, too, seems to commend itself!]

(3) Lines 25 and 26 should be changed by eliminating the word "to" in both lines and adding "and" at the end of line 25, thus: "offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation."

\* Page 6, line 44, delete the comma after "oaths," so that the line reads: "ster oaths or affirmations, . . ."

\* Page 6, lines 46 and 47, delete the words "in addition, to take notice" so the lines will read: "(8) to take notice of judicially cognizable facts and of general, technical, or scientific facts within their"

\* Page 6, after line 53, in the second line of the comments, delete "who are", so the line reads: "namely crime victims, are not likely to be a class interested in the" [Incidentally, this corrects the spelling of victims in that line.]

\* Page 7, in the Comment after line 8, the word "victim" is misspelled in the third from the last line of the comment.

\* Page 7, line 14: Begin the line with a bracket and rewrite to read: "[ (e) (1) Reparations may be awarded only . . . ."

Page 7, line 15, change the fourth word from "granted" to "awarded".

Page 8, line 37, delete the comma.

Page 8, line 40, change the second word from "it" to "the board".

\* Page 8, line 42 delete "it may" following (B)

Page 8, line 44, change the second word from "whenever" to "if".

\* Page 9, . . . Mr. Everstine has corrected several obvious errors in the Comment, and to assist your committee and the typist, I enclose at this point a copy of his corrections. . . .

\* \* \* \* \*

financial resources is probably, in which event the board may reopen pursuant to an application if satisfied the resources available to the claimant from the time of denial of an award had been prudently expended for family need.]



## COMMENT

At the Conference meeting in San Francisco, the special committee was directed to prepare alternative provisions respecting a financial stress or "needs" test. The draft submitted at that session included the above (e) as it appears here. Putting aside for the moment matters of style or details in that formulation, a major issue is presented—should the test be included at all? The special committee has concluded that the test ought not be included, because it injects a welfare concept into a system of compensation not dependent on welfare.

The primary argument for including a needs test is a cost argument—costs will be reduced if only needy persons are paid from the fund. Related to this is a feeling that without a limitation on costs an act is politically not acceptable—there can be *specters* of millionaires being paid for criminal injuries from state funds.

The committee does not have data on this cost issue. We have been informed that many administrators of state plans which include financial stress standards have great difficulty administering the test. We have been informed that in states like New Jersey, where there is no needs test, the vast bulk of the cases involve claimants who are needy within any meaningful definition of that term. We have been informed of only one case, for example, where New Jersey compensated a *comparatively wealthy* person—a druggist with an income of something like \$27,000. We have been told that it is not unreasonable to conclude *a priori* that administrative costs in determining whether a claimant meets the needs test could well amount to more than any savings caused by the test.

On the other hand, we have been informed there is no likelihood that a federal statute will be adopted without such a test. This means that states will be required to conform their programs to the federal standards, if and when adopted, in order to get reimbursement. The precise impact of such a requirement cannot be predicted, for the question turns on the methods adopted by federal administrators to limit reimbursement to those state expenditures which conform to federal standards. This may require case by case demonstration, or it may be done by some formula.

Weighing the uncertainties against the policy of the act—to pay victims who suffer losses because the state has failed to protect them—the committee strongly recommends against adoption of any financial stress requirement.

If, however, a financial stress requirement is to be adopted, we feel that the Act must be worded to provide reparations for persons who are above the needs test typically applied for welfare. Our test, though obviously elaborate, we feel accomplishes this goal.

Memorandum to Committee on Style, Page 6 [Page 5 is a reproduction of pg. 9 of the draft]

Page 10, lines 51 and 54: Mr. Everstine suggests that standards may be needed with respect to both (f) and (g). The drafting committee did not, as I recall, address itself to that issue, which is something more than style. The probable reason is that this language stems essentially from a draft Federal enactment or bill. Judge Burdick has suggested that *line 55* be changed to add a standard, as follows: "reduce any award of reparations, as justice may require."

[I am not confident that this is a "standard."]

\*Page 10, after line 56: Delete the Comment. [This was a comment for the use of the committee and has served its purpose.]

Page 11, Section 6, lines 4 through 6: The suggestion has been made that these lines read:

"[Attorney General]. The [Attorney General] in appropriate cases may investigate the claim, appear in hearings on the claim, and present evidence in opposition to an award."

Page 11, Section 8, lines 5, 6, 8 and 10: change Roman numerals to arabic.

Page 12, Section 8, lines 21, 22, 23, 24, 25 and 27: Change Roman numerals to arabic.

\*Page 12, Section 8, line 34, delete the first two words, "shall be".

Page 13, Section 9, line 8, add the word "it" after "and," so that the line begins, "and it may order . . ."

Page 13, Section 10, line 3, delete the final comma.



Page 13, Section 10, line 4, correct to read: "including denial of the claim, but it may not find the person in contempt . . ."

\*Page 14, Section 11, line 5 should read: "committed, unless an application for rehearing . . ."

Page 14, Section 11, line 9, add "it" between the last words, so that the line concludes: ". . . but it may"

Page 15, line 11, change the comma after awarded and before (2) to a semicolon.

Page 15, line 13, change the comma after awarded and before or to a semicolon. Memorandum to Committee on Style, Page 7.

\*Page 15, line 17, last word should be "recovery."

\*Page 15, line 18, changed to read: "(c) If a judgment or verdict indicates separately"

\*Page 15, line 24, the final word is "loss."

Page 16, Section 14 (a) [lines 2 and 3]. Here again, Mr. Everestine raises a question of whether standards are necessary. Would it help if the language in line 3 were changed to: "depending on the financial needs of the claimant."?

\*Page 16, line 9, the fifth word is "future."

## DISTRICT OF COLUMBIA VICTIMS OF CRIME COMPENSATION ACT OF 1972

### TITLE I. TITLE AND DEFINITIONS

#### *Section 101. Short Title*

This Act may be cited as the "District of Columbia Victims of Crime Compensation Act of 1972".

#### *Section 102. Definitions*

As used in this Act the term—

(1) "Child" includes a stepchild, an adopted child, and a child conceived prior to but born after the death of the victim;

(2) "Commissioner" means the Commissioner of the District of Columbia as defined in \_\_\_\_\_, or his delegate;

(3) "Crime" means an act or omission occurring within the District of Columbia which constitutes:

- (a) Arson;
- (b) Assault;
- (c) Assault with intent to kill, rob or rape and attempt to poison;
- (d) Assault with intent to commit mayhem or with a dangerous weapon;
- (e) Indecent act with children;
- (f) Kidnapping;
- (g) Lewd, indecent or obscene acts;
- (h) Manslaughter;
- (i) Murder;
- (j) Rape;
- (k) Robbery; and
- (l) or any other crime which visits personal injury upon the victim.

*Provided, however,* For purposes of this Act, an offender shall be deemed to have intended the act or omission notwithstanding that by reason of age, insanity, drunkenness or otherwise he was legally incapable of forming a criminal intent.

(4) "Dependent" means a child or any other person who was wholly or partially dependent upon the income or services in the household of the victim or anyone for whom the victim was legally responsible at the time of the crime;

(5) "Guardian" means one who is entitled by common law or by appointment by a competent court to care for and manage the person or property or both of a child or an incompetent person;

(6) "Incompetent" means a person who is incapable of managing his own affairs because of age or physical or mental disability;

(7) "Offender" means a person whose act or omission constitutes a crime as used herein; provided, however, that the apprehension or conviction of the offender is not a condition precedent to an award under this Act;



(8) "Personal injury" means the actual bodily or emotional harm visited upon a person because he is a victim of crime; the term also includes pregnancy and the termination thereof;

(9) "Relative" means the spouse, parent, grandparent, stepfather, stepmother, child, grandchild, siblings of the whole or of the half blood and the spouse's parents;

(10) "Service of process" means any service authorized by the Civil Rules of the Superior Court of the District of Columbia; and

(11) "Victim" means a person who is injured or dies as a result of any act or omission of any other person constituting a crime.

## TITLE II. PAYMENT OF COMPENSATION

### *Section 201. Findings*

Except as otherwise provided in this Act, compensation shall be awarded hereunder if it is shown by substantial evidence that:

- (1) An act or omission constituting a crime as defined herein did occur; and
- (2) The victim suffered personal injury or died as a result of that act or omission.

### *Section 202. Compensation for Medical Expenses*

(a) Compensation shall be awarded for all reasonably incurred medical and hospital expenses attributable to personal injury and not otherwise reimbursed or paid by any federal, state or District of Columbia funds (either directly or indirectly) or through hospital, medical or accident insurance covering the victim. Compensation shall be payable for the abortion or delivery of a child conceived as a result of forcible rape. Upon request of the applicant, compensation awarded under this section shall be paid directly to the physicians, hospitals, or others who supply hospital or medical services to the victim.

(b) No insurer against hospital and medical expenses shall be entitled to reimbursement under this Act for payments made to or in behalf of the victim pursuant to the terms of any insurance agreement.

### *Section 203 Compensation for Loss of Income*

(a) Compensation shall be awarded to reimburse victims for loss of income due to personal injury. Monies received by or on behalf of the victims from any "sick leave" or similar program, unemployment or workmen's compensation, or from disability insurance shall be deducted from any award made herein.

(b) The rate of compensation for loss of income reimbursable under subparagraph (a) hereof shall be computed as follows:

(1) The amount of the victim's average lost weekly earnings based on the year next preceding the personal injury; or

(2) The amount of weekly unemployment compensation which the victim would receive but for his incapacity as a result of a crime.

(c) If the personal injury to the victim requires the hiring of one or more persons to provide domestic services for him or his dependents during his periods of permanent or partial disability, additional compensation at the weekly rate of no more than the product of fifty times the minimum hourly wage set by the District of Columbia Code.

### *Section 204. Compensation if the Victim Dies*

If the death of a victim is the direct causal result of a crime, compensation shall be awarded to his estate as follows:

(1) Compensation to which the victim is entitled under sections 202 and 203 for the period between the time the personal injuries are inflicted and death; and

(2) The sum of six thousand dollars.

### *Section 205. Restrictions on Awards of Compensation*

(a) No compensation shall be awarded so as to accrue to the benefit of the offender.

(b) Compensation shall be denied or reduced in any situation in which unjust enrichment would occur.

### *Section 206. Payment of Awards*

(a) In making awards under this Act, payments may be made in—

(1) Lump sums; or



- (2) Periodic payments.
- (b) Payments may be made, as their interests may appear, to—
  - (1) The victim;
  - (2) A parent, spouse or child of the victim;
  - (3) Any person or institution providing hospital or medical services to the victim;
  - (4) The guardian or personal representative of any of the above; or
  - (5) The attorney for the victim or applicant.

#### *Section 207. Emergency Awards*

Upon request by the applicant or by the Commissioner on his own motion, the Commissioner may award compensation on an emergency basis if a prima facie case for such compensation under this Act is made and it appears that the situation of the victim or his dependents requires emergency relief. Such award shall not exceed \$2,000. An emergency award shall be deducted from any final award under this Act or shall be recovered by the Commissioner as provided in section 408(d) if compensation less than the emergency award is finally awarded.

#### *Section 208. Attorneys' Fees*

(a) The Commissioner shall establish a schedule of and approve all attorneys fees for prosecution of applications under this Act. One half of the allowable attorneys fees shall be deducted from any award made under this Act; the other half shall be paid by the Commissioner but shall not be deducted from any award made under this Act. Total attorneys fees (including expenses) for any one claim shall not exceed 20% thereof. The Commissioner shall post his rules and regulations pertaining to attorneys fees in his offices and publish them in the District of Columbia Register at least once a year.

(b) The attorney may petition the Superior Court of the District of Columbia for review of the fee fixed by the Commissioner and a determination of a reasonable fee within the limits imposed by this section.

### TITLE III. ADMINISTRATION

#### *Section 301. Powers*

This Act shall be administered by the Commissioner. The Commissioner shall establish procedures and regulations, which are not inconsistent with other provisions of this Act, for the prompt, efficient processing of applications under this Act; in doing so, the Commissioner shall be mindful of the need to adopt procedures and forms which can readily be understood and used by applicants for compensation. The Commissioner shall utilize the powers conferred by sections 907(e), 907(f), 911, 916, 919, 923, 924, 925, 927, 928, 931, 939, 940 and Title 33 of the United States Code in administering this Act, and those sections, except where the context requires otherwise, shall be deemed a part of this Act.

#### *Section 302. Cooperation with Prosecutors and Police*

The Commissioners shall establish liaison with the United States Attorney for the District of Columbia, the Corporation Counsel for the District of Columbia, and the various police forces having jurisdiction in all or part of the District of Columbia to effect the purpose of this Act. The Commissioner shall formulate a program with these persons for maximum publicity on a continuing basis of the compensation available under this Act.

### TITLE IV. PROCEDURE

#### *Section 402. Requirements for Filing*

(a) Applications for awards of compensation under this Act may be filed by the victim or, if he is a minor or otherwise unable to file his application, may be filed by his dependents or guardian on his behalf; if the victim is deceased, the claim may be filed by his dependents or by the executor or administrator of his estate.

(b) Applications must be filed within 180 days of the commission of the crime or the discovery thereof; applications may be amended at any time thereafter.

(c) No award of compensation will be made unless the victim or someone on his behalf has reported the crime to a law enforcement agency in the District



of Columbia. Such report must have been made within seven days after the crime occurred or its discovery, whichever is later.

(d) An applicant may be represented by an attorney.

(e) All applications or amendments thereof shall be verified.

#### *Section 402. Action by Staff Member*

(a) (1) After an application is filed it shall promptly be assigned to and reviewed by a member of the staff of the Commissioner. The staff member shall review the application for completeness and sufficiency and may request additional information or supporting documentation. The staff member may also order the victim to submit to a physical or mental examination by a physician selected and compensated by the Commissioner.

(2) Within seven days after the filing of the application, a notice of the application shall be sent by the Commissioner to the United States Attorney for the District of Columbia or the Corporation Counsel for the District of Columbia or both and to the appropriate police department; these agencies shall report in writing to the Commissioner if the victim refuses to cooperate with said agencies in the apprehension and prosecution of the offender, setting forth in detail the reasons for justifying said report.

(3) Within ninety days after the filing of an application or within thirty days after the receipt of any requested additional information, whichever shall last occur, the staff member shall issue an initial decision containing findings of fact and a determination of how much compensation, if any, should be awarded and the manner in which it should be paid. A copy of the decision shall be served upon the applicant by certified mail.

(b) The initial decision of the staff member shall become the final decision of the Commissioner unless:

(1) Within 15 days after service, the applicant files a written request that the Commissioner review the initial decision; the request for review may also be accompanied by a request for an evidentiary hearing on any issue of the claim; or

(2) Within 20 days after service, the Commissioner determines on his own motion to review the initial decision.

(c) If the initial decision is reviewed by the Commissioner, he may require an evidentiary hearing on any issue of the claim.

#### *Section 403. Hearing before Commissioner*

(a) If a hearing is requested in the review proceedings initiated under section 402(b), the Commissioner or a hearing officer designated by him shall hold a hearing. Notice of the time and place of the hearing shall be served personally or mailed by certified mail at least fifteen days in advance upon the applicant and the United States Attorney for the District of Columbia, or the Corporation Counsel for the District of Columbia, or both. Hearings held pursuant to this subsection shall commence within thirty days after review proceedings are initiated pursuant to section 402(b).

(b) The hearing officer designated by the Commissioner pursuant to subsection (a) shall be an attorney with at least five years experience as a practicing attorney but who shall be neither the United States Attorney for the District of Columbia nor the Corporation Counsel, nor an assistant of either of them. He shall not be the person who rendered the initial decision.

#### *Section 404. Procedure at Hearing*

(a) At a hearing the applicant shall have the right to present evidence, including the testimony of witnesses, to subpoena witnesses, and to confront and cross-examine witnesses. All proceedings shall be recorded by a stenographer or by other appropriate means approved by the Commissioner. The Commissioner or hearing officer may take oaths or affirmations of witnesses and issue subpoenas for the attendance of witnesses or the production of documents.

(b) Any person showing a substantial interest in the outcome of the claim may be permitted by the Commissioner or hearing officer to participate as a full party at the hearing and the subsequent proceedings. An Assistant United States Attorney or an Assistant Corporation Counsel shall participate at the hearing at the request of the Commissioner or the Hearing Officer to assure the development of a full record.

(c) The Commissioner or the hearing officer upon request or upon his own motion may order any form of pretrial discovery permitted by the Civil Rules of the Superior Court of the District of Columbia. The Commissioner or the hearing



officer may apply to the Superior Court of the District of Columbia or to any United States District Court have venue for enforcement of these orders. Within forty-five days after the conclusion of the hearing, the Commissioner or the hearing officer shall serve his written decision; said decision shall contain ultimate and subsidiary findings of fact and a determination of how much compensation, if any, should be awarded and how it should be paid. A copy of the decision shall be served personally or by certified mail on the applicant and all other parties.

#### *Section 405. Judicial Review*

The opinion of the Commissioner or hearing officer shall be final unless, within the time prescribed by law, the applicant petitions the District of Columbia Court of Appeals for review.

#### *Section 406. Reopening and Reconsideration*

(a) At any time after a compensation award becomes final, the applicant may file a petition with the Commissioner to reopen the proceeding.

(b) A proceeding may be reopened if the victim dies as a result of the personal injuries inflicted by the offender; if the victim is receiving long term treatment and the period covered by the compensation order is within forty-five days of expiring or has expired; if unforeseen compensable expenses are incurred; or if later discovered evidence so requires.

(c) The Commissioner may cause the proceeding to be reopened at any time if it appears that an award was obtained through fraud, through the submission of false or fraudulent documents, or through the use of materially false testimony; upon such reopening the Commissioner or a hearing officer shall hold a hearing upon five days notice to determine whether the compensation order should be modified, amended, or revoked and the compensation recovered from any person to whom it was awarded or any person found to have defrauded the Commissioner. The judicial review procedures established by this Act shall apply to any order issued under this subsection.

#### *Section 407. Inspection of Records*

(a) Except as provided herein, all applications, pleadings, transcripts, records and opinions in any proceeding under this Act are public records and shall be open to inspection and copying by anyone during normal business hours.

(b) Upon the request of the United States Attorney for the District of Columbia or the Corporation Counsel for the District of Columbia, all proceedings, records and transcripts in a particular case may be temporarily withheld from the public by the Commissioner. The grounds under which a temporary withholding may be imposed are that public access to the records will interfere with the apprehension or the prosecution of the offender. The temporary withholding of the record shall not prohibit the victim or his attorney from examining the record nor shall the payment of compensation be suspended during that period. A temporary withholding of the record shall last no more than one year; however, if exceptional circumstances exist, the temporary withholding may be extended for no more than one additional year.

(c) Nothing in this section shall deprive the offender of his rights to discover or use statements to which he is entitled pursuant to Title 18 U.S.C. § 3500.

#### *Section 408. Stay of Proceedings*

(a) Upon a clear and convincing showing by the United States Attorney for the District of Columbia or the Corporation Counsel for the District of Columbia, the Commissioners may temporarily stay a compensation award proceeding. The sole grounds for a temporary stay are that the apprehension or prosecution of the offender will be substantially prejudiced if the compensation proceeding continues. Within ten days of service of a request for a temporary stay of the compensation proceeding upon him, the applicant may file a response thereto.

(b) In deciding whether to grant the request for a temporary stay, the Commissioner may consider the need of the victim for compensation as having a higher priority than the apprehension and prosecution of the offender.

(c) The compensation proceedings under this Act may be temporarily stayed if the United States Attorney for the District of Columbia certifies to the Commissioner that the victim or his dependents are not cooperating with the police or the prosecuting attorneys in the apprehension and prosecution of the offender. After granting a temporary stay, the Commissioner may issue an order to show cause why the compensation proceedings should not be terminated with



prejudice. The applicant shall be served with copies of these documents and allowed no less than fifteen days to respond to any temporary stay or order to show cause issued under this subsection.

(d) If a compensation proceeding has been completed or if any compensation has been awarded when the non-cooperation of the victim or his dependents is certified under subsection (c), the Commissioner shall issue an order to show cause why the compensation proceeding should not be reopened and why the compensation previously awarded not be repaid the government. The applicant or his dependents shall be served with such order to show cause and allowed no less than fifteen days to respond thereto. Upon request of the victim or the applicant, no order to show cause under this subsection shall be made final without a hearing thereon. After the Commissioner issues a final order hereunder, he or the Attorney General of the United States may bring an action in the name of the District of Columbia for the recovery of compensation already paid, plus interest at 6% per annum from the date of the award in the Superior Court of the District of Columbia or any District Court in the United States in whose district the victim, applicant, or other recipient of compensation is a citizen, resides, has property or is found.

#### *Section 409. Penalties for False Statements and Perjury*

(a) The provisions and penalties of section 1001 of Title 18 of the United States Code shall apply to any statement, document or information presented to the Commissioner or a hearing officer under this Act. In addition to the penalties prescribed in said section 1001, a court of the United States may order repayment of all compensation awarded under this Act plus interest at 6% per annum from the date of the award.

(b) The giving of false or perjured testimony before the Commissioner or a hearing officer shall constitute a felony subject to a penalty of up to five years in prison, a fine of up to \$10,000, or repayment to the United States of all compensation awarded under this Act plus interest at 6% per annum from the date of the award or any combination thereof.

### **TITLE V. CIVIL ACTIONS**

#### *Section 501. Preservation of Civil Actions*

Nothing in this Act shall deprive the victim, his guardian, heirs, dependents, or estate from instituting a civil action against the offender for damages or restitution. If compensation has been awarded under this Act, notice of any such civil action shall be given by the plaintiff to the Corporation Counsel for the District of Columbia. The District of Columbia may intervene in any such civil action and shall have a lien upon any recovery in any such civil action in the amount of the award made hereunder plus attorneys fees paid hereunder.

#### *Section 502. Right of District of Columbia to Bring Civil Action Against Offender*

(a) Within four years from the date of the last payment of compensation under this Act, the Corporation Counsel may institute a civil action in the Superior Court in the District of Columbia or any United States District Court against the offender for repayment of compensation and attorneys fees awarded under this Act. Venue for this action shall lie in a judicial district in which the offender is a citizen, resides, has property or is found. The court may retain jurisdiction and modify from time to time any order requiring repayment so as to reflect any additional awards made pursuant to this Act.

(b) The Corporation Counsel shall give the victim, his guardian, heirs, or estate notice of the filing of a civil action under subsection (a) within thirty days thereof. Within sixty days thereafter, the victim, his heirs, guardian, or estate may intervene in said civil action and assert any claims arising out of the crime.

(c) The right of the victim, his guardian, heirs, or estate to assert claims pursuant to the terms of subsection (b) shall not be barred by any statutory or common law limitation of action or laches. The failure of the victim, his guardian, heirs or estate to file a claim pursuant to subsection (b) shall not bar him from pursuing his civil remedies independently thereof under the substantive and procedural law of the forum chosen.



## TITLE VI. RESTITUTION TO VICTIMS OF PROPERTY CRIMES

*Section 601. Definitions for Title VI*

For purposes of this title of this Act, the term—

(1) "Crime" shall mean any act or omission involving the unlawful taking, obtaining, destruction or conversion of property of any kind whatsoever from the ownership, control, or other lawful possession of another;

(2) "Offender" shall mean any person who by plea of guilty or trial by jury or court is convicted of a crime as defined in this section;

(3) "Victim" shall mean any person or other entity which owned, controlled, or was in lawful possession of property immediately prior to being deprived thereof by the offender;

(4) "Parties" shall mean the person accused of a crime, the United States Attorney for the District of Columbia or the Corporation Counsel of the District of Columbia, and the victim.

*Section 602. Restitution Orders, Stay of Criminal Proceedings*

(a) In addition to the other penalties provided by law, the United States District Court for the District of Columbia and the Superior Court of the District of Columbia may require an offender to repay the victim for the loss of or the loss of the use of the victim's property. Any party may request the Court to utilize the provisions of this title.

(b) (1) When agreed to by all parties, the United States District Court for the District of Columbia or the Superior Court of the District of Columbia may stay the prosecution of any person charged solely with a crime and order the accused to make restitution to the victim.

(2) In formulating the terms and conditions of restitution, the court may impose additional terms and conditions designed for the rehabilitation of the accused.

(3) If the accused violates or does not satisfactorily fulfill any of the terms and conditions of the restitution order, the court, after notice to all parties and hearing, may, in its discretion, restore the case to the calendar.

(4) If the offender satisfactorily complies with the terms of the order of restitution, upon the expiration thereof or prior thereto, by order of the court, the criminal charges temporarily stayed may be dismissed with prejudice.

(c) Subsequent to the conviction of an offender, at the request of any party, the Court shall hold a hearing to determine whether the offender shall restore the property unlawfully stolen or converted to the victim or shall repay the victim the value of the property. Notice of the restitution hearing shall be served upon all parties. If the offender has pleaded guilty to one or more crimes and if the United States or the District of Columbia has elected not to prosecute other pending property offenses against the offender, the court may enlarge the scope of the restitution hearing to include those offenses. Notice of such hearing shall be served upon all the victims who shall be parties thereto.

(d) Restitution hearings shall be held before a single judge sitting without a jury; the decision of the judge shall be based upon substantial evidence. Evidence introduced in the criminal proceeding for which the offender is to be sentenced may be judicially noticed in determining the terms and conditions of restitution or repayment.

(e) Any final order of restitution or repayment issued under this subsection may be enforced by the victim as though it were a final civil judgement in an action instituted by the victim.

## TITLE VII. MISCELLANEOUS

*Section 701. Annual Report*

The Commissioner shall submit an annual report to Congress on his administration of this Act. Such report shall include the number of claims filed, the number paid, the aggregate amount of awards, and the cost of administering the compensation to victims of crime programs.

*Section 702. Promulgation of Rules and Regulations*

In accordance with the District of Columbia Administrative Procedure Act, the Commissioner shall promulgate rules and regulations for the administration of title I through VI of this Act.



*Section 703. Separability*

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

*Section 704. Compensation of Employees and Hearing Officers**Section 705. Authorization of Appropriations**Section 706. Effective Date*

This Act shall become effective on the first day of July, 1972, and shall apply to all crimes as defined in this Act committed on or after that date.

GOVERNMENT OF THE DISTRICT OF COLUMBIA,  
*Washington, D.C., June 13, 1973.*

HON. WALTER E. FAUNTROY,

*Chairman, Subcommittee on the Judiciary, Committee on the District of Columbia, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in response to your request for further information relative to the position of the District of Columbia Government with respect to H.R. 3264, a bill "To compensate victims of crimes of violence in the District of Columbia." I refer to three principal questions raised at the hearing before your Subcommittee on April 17, 1973. These questions were as follows:

1. Whether the definition of "crime of violence" contained in D.C. Code, section 23-1331 would be appropriate for the bill;

2. Whether the procedures provided in the bill are consistent with the Administrative Procedure Act; and

3. In regard to S. 300 (a bill to establish a Federal program for crime victim compensation) the preference, if any, of the District Government for coverage under part A as now provided in that bill, or under part B which was drafted to cover State governments.

With respect to the first question, I recommend that the definition of "crimes of violence" as contained in D.C. Code, section 23-1331(4) be substituted for the definition of "crimes of violence" contained in H.R. 3264, provided that certain crimes (against property or not involving the use of force) be excluded from the definition.

Specifically, I recommend that paragraph (3) of section 2 of H.R. 3264 be amended to read as follows:

"(3) 'crime of violence' includes murder, forcible rape, forcible taking or attempting to take immoral, improper, or indecent liberties with a child under the age of sixteen years, mayhem, kidnapping, robbery, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, arson, assault with intent to commit any criminal offense, or assault with a dangerous weapon;"

With respect to the second question, it was stated in my report of April 17th that the procedures referred to in sections 8, 9, and 10 of the bill do not conform in every instance to the procedures of the District of Columbia Administrative Procedure Act and this statement apparently is the basis of the question which I now address.

In passing, I note that both S. 300 and S. 800, relating to a Federal program for compensation of victims of crime, expressly state that the Administrative Procedure Act "shall not apply to adjudicatory procedures to be utilized before the Board" (proposed subsection (d) of section 455 to be added to the Omnibus Crime Control and Safe Streets Act of 1968).

It may be that the Committee will consider the wisdom of inserting an analogous provision in H.R. 3264 stating that the District of Columbia Administrative Procedure Act shall not apply in the conduct of this program. A consideration of the nature of the problems to be confronted by the Compensation Commission suggests that they are very unique and require an approach to their solution which may not be consistent with the administrative processes that are most satisfactory for other agencies. If the only question were the amount of damage suffered by the victim of a crime, the answer should not be difficult to obtain, and in any case the maximum would be \$10,000. But great difficulties can be



foreseen in deciding whether a particular injury resulted from one of the specified crimes or whether it was self-inflicted or the result of reckless intervention by the victim. Interrogation of the victim, and interrogation of police officers, witnesses, and suspects may often be necessary to ascertain the truth.

The "right" of the victim to compensation which would be conferred by the enactment of this bill is not a constitutional right and it is limited. Awards result from "legislative grace". It may be in the public interest to provide procedures which will enable a more expeditious determination by the Commission than could be achieved if the procedures of the Administrative Procedure Act are required. The procedures should insure against undue harassment of innocent persons, and this may not be consistent with the Administrative Procedure Act.

Interference with orderly operation of the criminal justice system should not result from zealous pursuit of the truth by the Commission or the victim.

The bill (H.R. 3264) now provides in paragraph (6) of section 4 that the Commission "shall promulgate and amend such rules and regulations as are consistent with this Act and necessary to its administration." The bill also provides in subsection (c) of section 9:

"(c) The Commission may adopt regulations governing the conduct of hearings under this Act. The hearings shall be conducted in a manner provided by those regulations whether or not they prescribe a procedure which conforms to the common law or statutory rules of evidence or other technical rules of procedure. No informality in the manner of taking testimony in the hearings nor the admission of evidence contrary to the laws of evidence affects the validity of a determination by the Commission."

Furthermore the bill provides that the Commission shall issue subpoenas to witnesses on the motion of the applicant for examination or cross examination by applicant or his counsel at the hearing.

Thus the bill does give the victim of crime a fair chance to prove his case.

If the application of the District of Columbia Administrative Procedure Act (D.C.A.P.A.) is not expressly excluded by an amendment to the bill, then its provisions will also govern with at least the following consequences:

1. The Commission's procedures will be established in accordance with the D.C.A.P.A.

2. Such procedures will include requirements of practice before the Commission.

3. Publication in the District of Columbia Register of any proposed rules before their adoption, amendment, or repeal with opportunity for interested persons to submit data and views.

4. A person adversely affected or aggrieved by an order or decision of the Compensation Commission would be entitled to a judicial review thereof upon filing in the District of Columbia Court of Appeals a written petition for review.

The significant inconsistency between the requirements of the District of Columbia Administrative Procedure Act and the procedure set out in H.R. 3264 may be explained as follows.

The D.C.A.P.A. defines a "contested case" as a proceeding before any agency in which the "privileges" (such as compensation) of specific parties (such as the victim of a crime) are required by any law (such as here proposed) to be determined after a hearing before an agency (such as the proposed Compensation Commission) (D.C. Code, sec. 1-1502(9)). The D.C. Administrative Procedure Act provides that the parties be given reasonable notice of the afforded hearing, stating the time, place, and issues involved and, after setting forth a number of requirements regarding the conduct of the hearing, states:

"Every decision and order adverse to a party to the case rendered . . . by an agency in a contested case shall be in writing and shall be accompanied by findings of fact and conclusions of law . . ."

I interpret the D.C.A.P.A. to mean that the decision shall follow and not precede the hearing. On the other hand H.R. 3264 provides that the applicant (or victim) is only entitled to a hearing if he requests it within twenty days after receiving an adverse decision in which three of the five members of the Commission have concurred. After the hearing provided for in H.R. 3264 the victim may possibly receive a final adverse decision from the same three members of the Commission who decided against him initially. To conform to the objectives of the bill and at the same time eliminate what appears to be an inconsistency with the D.C. Administrative Procedure Act, sections 8 and 9 of H.R. 3264 could be



modified by providing for an initial review and tentative recommendations by an examiner, to be followed by a hearing, after notice to the parties of the issues that are involved.

The third question developed at the hearing from a brief consideration of S. 300, recently passed by the Senate, and dealing with compensation to victims of crime. It was pointed out by counsel for the Subcommittee that under part A of S. 300, 100 per cent financing would be provided by the Federal Government in cases arising in the District of Columbia under a system that would be administered by the Department of Justice with members of the Crime Victim Compensation Board being appointed by the President. Part B of S. 300 would amend the Omnibus Crime Control and Safe Streets Act of 1968 to add to the list of possible grants by the Law Enforcement Assistance Administration "[t]he cost of administration and that portion of the costs of State programs, other than in the District of Columbia, to compensate victims of violent crime which are substantially comparable in coverage and limitations" (to the provisions of part A of S. 300). Such grants are limited by law to 75% of the cost of the program.

The question posed by counsel for the Subcommittee was whether the District Government would rather be treated as a State under part B and receive 75% funding, if S. 300 were amended, or accept the provision for Federal administration and 100% funding for District of Columbia cases. The answer to this hypothetical question requires a balance of interests between a degree of local autonomy in carrying out the program to compensate victims of crime at some expense, versus no local control over a Federal program that would not represent any out of pocket cost to the District Government.

In accord with an overall development of local self-government, I believe that the District Government should assume the same share of the cost as the several States do, i.e. 25%, if a bill such as S. 300 were thus amended and enacted, providing that the program would be administered locally.

Thank you for this opportunity to comment further on H.R. 3264. Should your Subcommittee desire additional views from the District Government in its consideration of the bill, please advise.

Sincerely yours,

WALTER E. WASHINGTON,  
*Mayor-Commissioner.*



