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## Crime Victims' Compensation- Title I of the Proposed Victims of Crime Act of 1973: An Analysis

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## Comments

# CRIME VICTIMS' COMPENSATION—TITLE I OF THE PROPOSED VICTIMS OF CRIME ACT OF 1973: AN ANALYSIS

### I. Introduction

[I]n directing our full attention to how we can best combat the alarming crime rise we have ignored, unfortunately, certain aspects of the problem. The point has been reached, for example, where we must give consideration to the victim of crime. . . . For him, society has failed miserably. Society has failed to protect its members adequately. To those who suffer, society has an obligation.<sup>1</sup>

The concept that society has an obligation to help meet the needs of victims of criminal violence arose almost 4,000 years ago.<sup>2</sup> The Code of Hammurabi provided that if the criminal was not apprehended "the man who has been robbed, shall . . . make an itemized statement of his loss, and the city and the governor . . . shall compensate him for whatever was lost."<sup>3</sup> However, modern law has been more concerned with the offense against society than with the compensation of the victim; the criminal is thought to owe a debt to society which must be paid.<sup>4</sup> Since the offense is deemed to be against the state, it is the state which prosecutes the offender. The victim is not a party to the proceeding; his recourse against the offender is to initiate a private action in tort. Unfortunately, the expenses of litigation, the difficulties of apprehending the alleged offender and the judgment-proof status of many of those apprehended are factors which militate against the adequacy of the victim's civil remedy.

The inadequacy of the victim's remedy in tort led Margery Fry, an English penal reformer, to propose the first practical scheme of governmental compensation to victims of crime in modern times.<sup>5</sup> In 1963,

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1. 117 Cong. Rec. 2633 (1971) (remarks of Senator Mansfield).

2. Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y. U.L. Rev. 444 (1964) [hereinafter cited as Childres].

3. Code of Hammurabi §§ 22-24 (c. 2250 B.C.) quoted in Harper, *The Code of Hammurabi* 19 (1904).

4. 118 Cong. Rec. 15087 (daily ed. Sept. 18, 1972) (remarks of Senator McClellan).

5. *Id.* See Childres, *supra* note 2, at 451-55. A compensation scheme was published in a report of a distinguished committee of justice—the British Section of International Commission of Jurists—in *Justice, Compensation for Victims of Crimes of Violence* 2 (1962); Childres, *supra* note 2, at 446 n.12, 451 n.39.

nine years after Fry's proposals, New Zealand enacted the first crime victims compensation statute.<sup>6</sup> The New Zealand statute established a crime compensation tribunal which had discretionary power to award public compensation from an indemnity fund to the victim or his dependents, when he had been injured or killed through the commission of certain specified offenses, including homicides, assaults and woundings, and sexual offenses of violence.<sup>7</sup> Compensation was authorized for out-of-pocket expenses, loss of earnings, and pain and suffering, and the tribunal was empowered to order the victim to refund all or part of an award if he subsequently recovered damages from the wrongdoer.<sup>8</sup>

In 1964, Great Britain put into operation a program somewhat similar to the New Zealand statute.<sup>9</sup> In the United States, the first jurisdiction to adopt a compensation scheme for the victims of crime was California<sup>10</sup> in 1965. Subsequently, crime victims compensation statutes were enacted in New York<sup>11</sup> in 1966; Hawaii<sup>12</sup> and Massachusetts<sup>13</sup> in 1967; Mary-

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This report has been favorably discussed in Griew, *Compensation for Victims of Crimes of Violence*, 1962 *Crim. L. Rev. (Eng.)* 801. See also *Compensation for Victims of Criminal Violence: A Round Table*, 8 *J. Pub. L.* 191 (1959), which consists of reactions and criticism from commentators to Fry's proposal for governmental compensation to victims of crimes of violence.

6. Pub. Act No. 134 [N.Z. 1963]. For a commentary on the New Zealand program see Cameron, *Compensation for Victims of Crime: The New Zealand Experiment*, 12 *J. Pub. L.* 367 (1963) [hereinafter cited as Cameron].

7. Cameron, *supra* note 6, at 370-71 n.16.

8. *Id.* at 373-74.

9. Home Office and Scottish Home & Health Dep't, *Compensation for Victims of Crimes of Violence*, Cmnd. No. 2323 (1964). For commentary on this compensation scheme see Samuels, *Compensation for Criminal Injuries in Britain*, 17 *U. Tor. L.J.* 20 (1967); Note, 78 *Harv. L. Rev.* 1683 (1965). Criminal victims compensation legislation has also been proposed and enacted in a few Canadian provinces and Australia. See generally Chappell, *Compensating Australian Victims of Violent Crimes*, 41 *Aust. L.J.* 3 (1967); Note, *Awards of the Crimes Compensation Board*, 33 *Sask. L. Rev.* 209 (1968).

10. Cal. Gov't Code §§ 13960-66, 13970-74 (West Supp. 1972). Sections 13960-66 provide for indemnification of private citizens who are victims of crime. Sections 13970-74 grant compensation to citizens who are victimized when they attempt to prevent the commission of crime, apprehend a criminal or rescue a person in immediate danger, on the theory that these citizens are benefiting the public.

11. N.Y. Exec. Law §§ 620-35 (McKinney 1972), as amended, (McKinney Supp. 1972).

12. Hawaii Rev. Stat. §§ 351-1 to -70 (1968), as amended, (Supp. 1972).

13. Mass. Ann. Laws ch. 258A §§ 1-7 (1968).

land<sup>14</sup> in 1968; Nevada<sup>15</sup> in 1969; New Jersey<sup>16</sup> in 1971; and most recently, Rhode Island<sup>17</sup> and Alaska<sup>18</sup> in 1972.

There are three main theories upon which these modern compensation statutes have been based.<sup>19</sup> At one extreme is the social welfare theory of compensation. This theory is not based on any "inherent" obligation on the part of the sovereign, but rather rests upon the idea that the "twentieth century conscience cannot tolerate the suffering" which befalls the victim of crime.<sup>20</sup> At the other extreme is a theory of compensation which assumes that there is an inherent duty of the sovereign to indemnify those members of its society whom it fails to protect from criminal victimization.<sup>21</sup> This might be termed the legal right theory which is founded on an implied contract between the state and its citizens.<sup>22</sup> The citizen undertakes to pay his taxes; the state undertakes to protect him from criminal violence.<sup>23</sup> Thus, in failing to protect the victim from criminal violence the state breaches the implied contract and is obligated to compensate the victim for injuries resulting from the breach. A third theory, which might be called one of legislative grace—lying somewhere between the extremes—is that the sovereign has a moral obligation to deal "mercifully with individuals" who are the innocent victims of crime.<sup>24</sup> While all compensation statutes rest on one of the aforementioned theories, in practice the statutes can best be distinguished by (1) the presence or absence of a requirement of financial need, and (2) the nature of the proceeding through which the claimant receives his award—*i.e.*, administrative or judicial.

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14. Md. Ann. Code art. 26A §§ 1-17 (Supp. 1971), as amended, (Interim Supp. 1972).

15. Nev. Rev. Stat. §§ 217.010 to .260 (1971).

16. N.J. Stat. Ann. §§ 52:4B-1 to -21 (Supp. 1972).

17. R.I. Gen. Laws Ann. §§ 12-25-1 to -12 (Supp. 1972) [effective one hundred twenty days following enactment of the federal statute].

18. Alaska Stat. §§ 18.67.010 to .180 (Supp. 1972).

19. Report of the Special Comm'n on the Compensation of Victims of Violent Crimes, Mass. H. Doc. No. 5151, 10-14 (1967) [hereinafter cited as 1967 Mass. Report].

20. *Id.* at 11.

21. *Id.* at 10-11.

22. Kutner, *Crime-Torts: Due Process of Compensation for Crime Victims*, 41 *Notre Dame Law.* 487, 497-98 (1966).

23. *Id.*

24. 1967 Mass. Report at 12.

## II. Proposed Federal Legislation

In the United States, proposals for legislation in this area have also been made on the federal level.<sup>25</sup> Unfortunately, none of these proposals has been enacted.<sup>26</sup> Title I of the proposed Victims of Crime Act of 1973,<sup>27</sup> which is based upon the legislative grace or moral obligation theory,<sup>28</sup> is the latest and most comprehensive in scope of the federal proposals. It possibly could become law in the first session of the Ninety-Third Congress.<sup>29</sup>

The purpose of this comment is to analyze and explain the operation of the major provisions of Title I. The provisions discussed are those relating to the scope of compensation, limitations and requirements for

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25. E.g., S. 2994, 92d Cong., 1st Sess. (1971); S. 750, 92d Cong., 1st Sess. (1971); H.R. 3963, 92d Cong., 1st Sess. (1971); S. 4576, 91st Cong., 2d Sess. (1970); S. 9, 91st Cong., 1st Sess. (1969); S. 646, 90th Cong., 1st Sess. (1967); S. 2155, 89th Cong., 1st Sess. (1965); H.R. 11818, 89th Cong., 1st Sess. (1965); H.R. 11552, 89th Cong., 1st Sess. (1965); H.R. 11291, 89th Cong., 1st Sess. (1965); H.R. 11211, 89th Cong., 1st Sess. (1965); H.R. 10896, 89th Cong., 1st Sess. (1965).

26. Opposition to these proposals has centered around the belief that these proposals will quickly grow in expense, that the indemnity fund (see notes 133-36 *infra* and accompanying text) will in no way provide sufficient monies, and that the problem can best be left to the states. 118 Cong. Rec. 15092 (daily ed. Sept. 18, 1972). See generally Hearings on S. 16, S. 33, S. 750, S. 1946, S. 2087, S. 2426, S. 2748, S. 2856, S. 2994 and S. 2995 Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary, 92d Cong., 1st Sess. (1972) [hereinafter cited as Hearings].

27. S. 800, 93d Cong., 1st Sess. (1973). The Victims of Crime Act of 1973 contains five titles. In addition to Title I [hereinafter cited as Title I], Title II establishes a federal-state group life and disability insurance program for state and local public safety officers, including policemen, firefighters, and correctional guards. Title III establishes federal minimum death or disability benefits for public safety officers, their families or dependents, for death or disability in the line of duty as a result of a criminal offense. Title IV strengthens the procedural implementation of the civil remedies available to victims of racketeering activity under the Organized Crime Control Act of 1970. Title V [hereinafter cited as Title V] includes provisions for effective dates and authorization for appropriations for the other titles of the bill. 119 Cong. Rec. 2263-71 (daily ed. Feb. 7, 1973). Title I consists of §§ 101-07. Section 102 incorporates §§ 450-60 into Title I. *Id.* at 2263-66.

28. Statement of Findings and Purpose, S. 800, 93d Cong., 1st Sess. (1973).

29. The Victims of Crime Act of 1972 passed the Senate September 18, 1972 by a vote of 74 to 0, 118 Cong. Rec. 15148 (daily ed. Sept. 18, 1972). By the close of the 2d Session of the 92d Congress, the bill had not been presented on the House floor.

recovery, and procedures for the disposition of claims. Where useful, the federal proposal will be compared with existing statutes in New York,<sup>30</sup> Hawaii<sup>31</sup> and Massachusetts.<sup>32</sup> These laws are representative of the various state compensation statutes in that New York employs an administrative proceeding and requires financial need;<sup>33</sup> Hawaii utilizes an administrative proceeding but does not require financial need;<sup>34</sup> and Massachusetts uses a judicial proceeding.<sup>35</sup> [See chart pages 426-31.] Where the comparison indicates that improvements can be made in Title I, they will be suggested.

Title I may be grouped with those crime victim compensation statutes which require a showing of financial need and have a proceeding which is administrative in nature.<sup>36</sup> It establishes a federal program of compensation for victims and intervenors where the crime takes place within the federal jurisdiction<sup>37</sup> and also grants reimbursement of up to 75 per cent of the costs to those states which have victim compensation statutes that are "substantially comparable in coverage and limitations"<sup>38</sup> to Title I. While the analysis that follows is limited to the program of direct federal compensation to those victimized by crime within the federal

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30. N.Y. Exec. Law §§ 620-35 (McKinney 1972), as amended, (McKinney Supp. 1972).

31. Hawaii Rev. Stat. §§ 351-1 to -70 (1968), as amended, (Supp. 1972).

32. Mass. Ann. Laws ch. 258A §§ 1-7 (1968).

33. N.Y. Exec. Law §§ 620, 622-23, 631 (McKinney 1972). See also Cal. Gov't Code §§ 13960, 13962-63 (West Supp. 1972); Md. Ann. Code art. 26A §§ 3, 12(f) (Supp. 1971).

34. Hawaii Rev. Stat. § 351-11 to -13 (1968). See Hawaii Rev. Stat. § 351-31 (Supp. 1972). See also Alaska Stat. §§ 18.67.020, 18.67.080(c) (need is to be considered with other relevant circumstances) (Supp. 1972); Nev. Rev. Stat. §§ 217.030, 217.100, 217.160, 217.200 (1971); N.J. Stat. Ann. §§ 52:4B-3 to -10 (Supp. 1972).

35. Mass. Ann. Laws ch. 258A § 2 (1968). See also R.I. Gen. Laws §§ 12-25-2(2) to -3 (Supp. 1972).

36. See notes 30, 33 *supra* and accompanying text.

37. Title I §§ 456(a) -(b). See 119 Cong. Rec. 2262 (daily ed. Feb. 7, 1973) (remarks of Senator McClellan).

38. Title I § 105. See 119 Cong. Rec. 2262 (daily ed. Feb. 7, 1973) (remarks of Senator McClellan). It remains to be seen whether certain features of existing state statutes that are in conflict with the corresponding provisions in Title I i.e., no financial need requirement in Hawaii and Massachusetts, and compensation for pain and suffering in Hawaii, will prevent these statutes from meeting the test of substantial comparability. S. 2994, a predecessor of S. 800 provided specific criteria for determining whether a state's program qualified for the federal grant. S. 2994, § 106 92d Cong., 1st Sess. (1971), 117 Cong. Rec. 21334 (daily ed. Dec. 11, 1971).

## FEDERAL and STATE CRIME COMPENSATION STATUTES: MAJOR FEATURES\*

## 1. GENERAL

| Government    | Authority  | Administration   | Jurisdiction  |
|---------------|--|--|---|
| United States | Victims of Crime Act of 1973 [Proposed].               | 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. |
| Hawaii        | Criminal Injuries Compensation Act of 1967.            | Criminal Injuries Compensation Commission (independent).   | Coextensive with jurisdiction to prosecute crimes giving rise to the claim.   |
| 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.  |
| 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.   |

2. SCOPE OF COMPENSATION

| Government    | Claimants recognized  | Losses recognized                              | Need requirement                     | Maximum compensation  |
|---------------|---|--|--------------------------------------|---|
| United States | (1) Victim;   | (1) Pecuniary losses of victims;               | Victim must show "financial stress". | \$50,000 as to victims. Not applicable to intervenors.  |
|               | (2) Intervenor or their surviving dependents.                 | (2) Net losses of intervenors.                 | Not applicable to intervenors.       |   |
| Hawaii        | (1) Victim  | (1) Pecuniary losses;                          | None.                                | \$10,000 plus any recovery from criminal.   |
|               | —dependents, —individual bearing loss;                        | (2) earning power; and (3) pain and suffering. |                                      |   |
|               | (2) "Private citizen" (intervenors) —individual bearing loss. |  |                                      |   |
| Massachusetts | Victim  | (1) Out of pocket expenses;                    | None.                                | \$10,000.   |
|               | —dependents,  | (2) earnings;                                  |                                      |   |
|               |   | (3) support.                                   |                                      |   |
| New York      | Victim  | (1) Out of pocket expenses;                    | "Serious financial hardship."        | \$15,000 as to support or income. No ceiling on out of pocket expenses, including medical expenses. |
|               | —spouse,  | (2) loss of earnings; or                       |                                      |   |
|               | —child, —dependents.  | (3) support.                                   |                                      |   |



## 3. LIMITATIONS

| Government    | Crimes covered   | Period of limitations (Filing)                            | Members of Household   | Deductible feature (Minimum)   | Collateral recovery  |
|---------------|--|---|--|--|--|
| United States | 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 if person is member of the family or household or maintaining continuing unlawful sexual relations with offender or accomplice. | Loss must be over \$100 or equivalent to 2 weeks' earnings or support. | "Net losses" reduced by amounts recovered or recoverable from "public or private means." "Pecuniary losses" are derived from net losses." If suit gives rise to collateral recovery, amount is first deducted from "gross losses." |
| Hawaii        | Lists specific offenses.   | 18 months.  | No claim allowed if person is relative or member of household of offender.   | None.  | Compensation reduced by money received from offender or agency of State or Federal Government.   |
| 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.      | 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 "insurance, amounts received from offender and other public funds."  |
| New York      | Crimes under State law. Motor vehicle crimes are covered if intentional.                             | 90 days. Extended to 1 year upon showing of "good cause." | 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 collateral recovery.   |

4. REQUIREMENTS

| Government    | Duty to report  | Duty to cooperate  | Responsible claimant  |
|---------------|---|--|---|
| United States | Must be reported within 72 hours, but not necessarily by victim or claimant. Waived upon showing of "good cause."       | May reduce, deny, or withhold compensation if claimant does not substantially cooperate with law enforcement officials 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. |
| Hawaii        | Must be arrest or report of crime to trigger statute. No personal duty for claimant.                                    | None.  | Compensation may be reduced or denied in proportion to responsibility of claimant for act giving rise to claim.   |
| Massachusetts | Crime must be reported within 48 hours, but not necessarily by victim or claimant.                                      | None.  | Compensation may be reduced or denied in proportion to responsibility of claimant for act giving rise to claim.   |
| New York      | Crime must be reported within 48 hours, but not necessarily by victim or claimant. Waived upon showing of "good cause." | None.  | Compensation may be reduced or denied in proportion to responsibility of claimant for act giving rise to claim.   |

## 5. PROCEDURES

| Government    | Hearings   | Burden of proof   | Attorneys' fees  | Standards of review                                      |
|---------------|--|---|--|--|
| United States | Initially determined by 1 member. Hearing en banc (of record) is a 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. |
| Hawaii        | Hearing (not of record) is a matter of right.  | None set forth in statute.  | Up to 15 per cent of award, but subject to maximum. Do diminish recovery.                                | None.  |
| Massachusetts | Proceeds as civil action in which state attorney general defends suit.   | None set forth in statute.  | Up to 15 per cent of award, but subject to maximum. Do diminish recovery.                                | None.  |
| New York      | Hearing optional with disposition by individual member. Matter of right if claimant requests subsequent hearing en banc. | None set forth in statute.  | Not authorized.  | None.  |

6. MISCELLANEOUS FEATURES

| Government    | Emergency payments  | Subrogation   | Indemnity fund  |
|---------------|---|---|---|
| United States | Maximum of \$1,500 which is subsequently deducted from final award or repaid if award is denied. Repayment may be waived. | Claim of victim against offender to extent of compensation paid 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. |
| Hawaii        | Commission must have determined claim and immediate need must exist. Deducted from final award.                           | Claim of victim against offender may be pursued by the State to extent compensation is paid and recovery is to the State.     | Fund established from which emergency payments are made.  |
| Massachusetts | Not authorized.   | Claim of victim against offender shall be pursued by the State to extent compensation is paid and recovery is to the State.   | None authorized.  |
| New York      | Maximum of \$500 which is subsequently deducted from final award or repaid if claim is denied.                            | Claim of victim against offender shall be pursued by the State to extent compensation is paid and recovery is to the State.   | None authorized.  |

\* This chart, with the exception of some minor changes, appears in 118 Cong. Rec. 15088-91 (daily ed. Sept. 18, 1972).

jurisdiction, it is clear that in light of the requirement of substantial comparability,<sup>39</sup> Title I will serve as a model for states which have not yet enacted compensation statutes.

### III. Title I of the Victims of Crime Act of 1973

#### A. Scope of Compensation

It is the declared purpose of Congress in this title to promote the public welfare by establishing a means of meeting the financial needs of the innocent victims of violent crime or their surviving dependents and intervenors acting to prevent the commission of crime or to assist in the apprehension of suspected criminals.<sup>40</sup>

While Title I compensates the innocent victim and the intervenor, it makes three significant distinctions between the two classes of claimants, each of which favors the intervenor. The distinctions concern (1) the type of loss each may recover, (2) the requirements of financial stress for victims and (3) the existence of a maximum recovery for victims. Although the proposal is silent as to the purpose of these distinctions, one must conclude that Congress has set out to encourage third parties to assist fellow citizens and to aid law enforcement officials. Each of these distinctions shall now be examined.

The first significant distinction is that a victim can recover "pecuniary losses"<sup>41</sup> whereas an intervenor can recover "net losses."<sup>42</sup> "Pecuniary losses" are those net losses "which cover" the list of enumerated damages. They are generally all reasonable and necessary medical, hospital and rehabilitation expenses, actual loss of past earnings, anticipated loss

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39. Title I § 105.

40. Id. § 101. Section 450(18) defines a victim as "a person who is killed or who suffers personal injury where the proximate cause of such death or personal injury is—(A) a crime enumerated in section 456 . . . or (B) the not reckless actions of an intervenor in attempting to prevent the commission or reasonably suspected commission of a crime enumerated in section 456 . . . or in attempting to apprehend a person reasonably suspected of having committed such a crime." Section 450(7) defines dependent as "(A) a surviving spouse; (B) an individual who is a dependent of the deceased victim or intervenor within the meaning of section 152 of the Internal Revenue Code of 1954 (26 U.S.C. 152); or (C) a posthumous child of the deceased intervenor or victim . . ." Section 450(11) defines intervenor as "a person who goes to the aid of another and is killed or injured while acting not recklessly to prevent the commission or reasonably suspected commission of a crime enumerated in section 456 . . . or while acting not recklessly to apprehend a person reasonably suspected of having committed such a crime . . ."

41. Id. § 453(b)(2).

42. Id. § 453(b)(1).

of future earnings and reasonable and necessary child care expenses enabling either the victim or his or her spouse to continue gainful employment.<sup>43</sup> "Net losses" are gross losses, excluding pain and suffering.<sup>44</sup> Since "gross losses" are defined as "all damages, including pain and suffering and including property losses,"<sup>45</sup> it appears that, despite clumsy language, the significant distinction is that net losses include property losses whereas pecuniary losses do not. While Title I does not define "property losses," the words are probably used in the traditional sense, *i.e.*, damages other than personal injury.

The definition of pecuniary losses creates some confusion as to whether they include *only* those losses enumerated or whether the list is intended to be merely illustrative. If the prior meaning is the intended one, the ambiguity can be removed by changing the word "cover" to "cover exclusively;" if the latter meaning is intended, the word "cover" can be replaced by "cover, but not limited to."

The second significant distinction between intervenors and victims is that a victim must establish "financial stress" as a result of his pecuniary loss, whereas an intervenor's net losses are recoverable without such stress.<sup>46</sup> "Financial stress" is defined as:

the undue financial strain experienced by a victim or his surviving dependent or dependents as the result of pecuniary loss from an act, omission, or possession giving rise to a claim . . . .<sup>47</sup>

Failure of the Board to find such financial stress will result in a denial of the victim's claim.<sup>48</sup> While New York also requires a showing of financial need, its test is "serious financial hardship."<sup>49</sup> Whether any

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43. *Id.* § 450(16). Anticipated loss of future earnings and child care expenses are recoverable up to \$150 and \$30 per week, respectively.

44. *Id.* § 450(15).

45. *Id.* § 450(9).

46. *Id.* § 454(a).

47. *Id.* § 450(8).

48. *Id.* § 454(a). However, the statute lists the following items, ownership of which will be disregarded in determining whether or not financial stress exists: a residence, normal household items and personal effects, an automobile, tools of trade, and liquid assets not in excess of one year's gross income or \$10,000 in value, whichever is less. *Id.* §§ 450(8)(A)-(E). Whether or not there should be a requirement of a showing of financial need in a crime victims compensation statute has been discussed in Childres, *supra* note 2, at 462; Wolfgang, *Victim Compensation in Crimes of Personal Violence*, 50 *Minn. L. Rev.* 223, 234-35 (1965); Comment, *Victims of Violent Crime: Should They Be an Object of Social Effection?*, 40 *Miss. L.J.* 92, 120 (1968).

49. *N.Y. Exec. Law* § 631(6) (McKinney 1972). The term "serious financial

difference will develop between the federal and New York tests of financial stress and serious financial hardship cannot be determined at this time. Hawaii<sup>50</sup> and Massachusetts<sup>51</sup> have no such requirement since recovery in these states is a matter of legal right.<sup>52</sup>

It is noteworthy that Hawaii is the only state that compensates the victim for pain and suffering.<sup>53</sup> New York and Title I do not, presumably "hardship" is not defined by the statute. However, "[t]he board shall establish specific standards by rule for determining such serious financial hardship." *Id.* For such standards, see Crime Victims Compensation Board [hereinafter cited as CVCB], Rules Governing Practice and Procedure [hereinafter cited as CVCB Rules] § 525.8 Rule VIII(8) (Nov. 1968, amending Rule VIII(8) of Sept. 1967). Under the New York rules the following are not considered in computing financial resources: a homestead, personal property consisting of clothing and strictly personal effects, household furniture, appliances and equipment, tools and equipment necessary for the claimant's trade, occupation or business, a family automobile, and life insurance, except in death claims. *Id.* The Amendments of May, 1971 have lessened the strictness of the need requirement somewhat and now provide that the "Board . . . shall exempt . . . [a]n amount not exceeding the victim's annual income." Furthermore, the Board may in its discretion consider the lowering of the victim's individual standard of living in determining "serious financial hardship." CVCB Rules § 525.8 Rule VIII (8(g)), (9) (May 1971, amending Rule VIII (8(a)), (9) of Nov. 1968). There is a "need" requirement in Md. Ann. Code art. 26A § 12(f) (Supp. 1971), and one for "victims" only, in Cal. Gov't Code §§ 13960, 13963 (West Supp. 1972). However, there is no "need" requirement in California for "private citizens" (intervenor). See Cal. Gov't Code § 13972 (West Supp. 1972).

50. See Hawaii Rev. Stat. §§ 351-31 (Supp. 1972).

51. See Mass. Ann. Laws ch. 258A §§ 3, 6 (1968).

52. "Need" is a consideration, but not a requirement for compensation, in Alaska Stat. § 18.67.080(c) (Supp. 1972) and Nev. Rev. Stat. § 217.180(1) (1971). The Nevada statute compensates only intervenors. See Nev. Rev. Stat. §§ 217.070 & 217.160 (1971). The statutes in New Jersey and Rhode Island require no showing of "need" for recovery. See N.J. Stat. Ann. §§ 52:4B-1 to -21 (Supp. 1972); R.I. Gen. Laws Ann. §§ 12-25-1 to -12 (Supp. 1972).

53. Hawaii Rev. Stat. §§ 351-33(4) & 351-52(2) (1968). Rhode Island is the only other enacted statute which allows recovery for pain and suffering. See R.I. Gen. Laws Ann. § 12-25-5(c) (Supp. 1972). However, the statute is not yet in operation. See note 17 *supra*. For a more complete discussion on whether or not recovery for pain and suffering should be granted, see Childres, Compensation for Criminally Inflicted Personal Injury, 50 Minn. L. Rev. 271, 278 (1965); Starrs, A Modest Proposal to Insure Justice for Victims of Crime, 50 Minn. L. Rev. 285, 306-08 (1965); Comment, Compensation for Victims of Crime—Some Practical Considerations, 15 Buffalo L. Rev. 645, 653 (1966); Comment, Compensation for Victims of Crimes of Violence, 30 Albany L. Rev. 325, 332 (1966); Comment, Crime Victim Compensation: The New York Solution, 35 Albany L. Rev. 717, 731 (1971).

because pain and suffering, no matter how great, do not cause "serious financial hardship" or "financial stress."

The third and final distinction between the victim and the intervenor in the federal proposal is the provision for a \$50,000 maximum on any claim by a "victim" or his surviving dependents.<sup>54</sup> Since this section mentions only "victims" it would appear that, on its face, the statute permits an intervenor to recover all his net losses up to and exceeding the maximum otherwise applicable to victims. The state statutes have a lower maximum recovery schedule than does the federal legislation. In New York the maximum recovery for losses of support and income is \$15,000,<sup>55</sup> although significantly, there is no ceiling on the amount of compensation the Board will grant for out-of-pocket expenses.<sup>56</sup> Hawaii and Massachusetts limit recovery to \$10,000 for all losses.<sup>57</sup> Since Title I provides for direct grants to the states of up to 75 per cent of the costs of their compensation statutes,<sup>58</sup> it is submitted that the states can raise their maximums on awards to reduce still further the possibility of hardship to a victim and his dependents.

The federal proposal, New York and Massachusetts require a minimum loss in order to exclude frivolous claims that would otherwise consume a substantial part of the Board's time.<sup>59</sup> The federal minimum is the equivalent of a week's earnings or support.<sup>60</sup> New York and Massachusetts require the claimant's loss to exceed \$100 or two weeks' earnings or support.<sup>61</sup> Hawaii has no such minimum.<sup>62</sup>

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54. Title I § 454(e).

55. N.Y. Exec. Law § 631(3) (McKinney 1972). The highest maximum recovery authorized among the states is \$25,000 in Rhode Island. R.I. Gen. Laws Ann. § 12-25-6(b) (Supp. 1972).

56. N.Y. Exec. Law § 631(2) (McKinney 1972).

57. Hawaii Rev. Stat. § 351-62(b) (1968); Mass. Ann. Laws ch. 258A § 5 (1968).

58. See note 38 *supra* and accompanying text. See also Title V, *supra* note 27, at §§ 501-02.

59. Title I § 454(c); Mass. Ann. Laws ch. 258A § 5 (1958); N.Y. Exec. Law § 626 (McKinney 1972). For similar provisions, see Md. Ann. Code art. 26A § 7 (Supp. 1971); N.J. Stat. Ann. § 52:4B-18 (Supp. 1972). For application of this provision in New York see CVCB 3d Annual Rep. 35, N.Y. Leg. Doc. No. 97 (1970) (hereinafter cited as 1969 N.Y. Report).

60. Title I § 454(c).

61. Mass. Ann. Laws ch. 258A § 5 (1968); N.Y. Exec. Law § 626 (McKinney 1972).

62. See Hawaii Rev. Stat. §§ 351-1 to -70 (1968), as amended, (Supp. 1972). Similarly see Alaska Stat. §§ 18.67.010 to .180 (Supp. 1972); Cal. Gov't Code



Recovery of an award by the claimant under Title I would result in double recovery if the claimant has been or will be compensated by collateral sources. Accordingly, Title I provides for set-offs of such recoveries,<sup>63</sup> as do all state statutes in varying ways.<sup>64</sup> Collateral sources under Title I include monies recovered or recoverable:

- (A) under insurance programs mandated by law;
- (B) from the United States, a State, or unit of general local government for a personal injury or death otherwise compensable under this part;
- (C) under contract or insurance wherein the claimant is the insured or beneficiary; or
- (D) by other public or private means . . . .<sup>65</sup>

However, the effects of the set-offs are often alleviated by the fact that collateral source recovery is "first used to offset gross losses that do not qualify as net or pecuniary . . . ."<sup>66</sup> The above language will permit a victim to use collateral sources to compensate for his property losses and pain and suffering, the two most important non-compensable losses. New York and Massachusetts simply set-off any collateral payment from the award.<sup>67</sup> Hawaii permits a claimant to add to the award any sum recovered from the criminal to the extent his losses exceed the maximum award.<sup>68</sup> Perhaps the best scheme is a recently proposed, but unsuccessful, amendment in Massachusetts which offsets compensation from collateral sources, "but only to the extent that the sum of such payments and any award . . . are in excess of the total compensable injuries suffered by the victim . . . ."<sup>69</sup> The Massachusetts proposal would prevent double recovery and, unlike the other statutes,<sup>70</sup> would permit a victim to recover under these circumstances the full amount of his losses. Thus the Massachusetts proposed amendment more simply and consistently accomplishes the desired result, *i.e.*, preventing double recovery

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§§ 13960-66, 13970-74 (West Supp. 1972); Nev. Rev. Stat. §§ 217.010 to .260 (1971); R.I. Gen. Laws Ann. §§ 12-25-1 to -12 (Supp. 1972).

63. Title I § 453(g).

64. E.g., Hawaii Rev. Stat. § 351-63(a) (Supp. 1972); Mass. Ann. Laws ch. 258A § 6 (1968); N.Y. Exec. Law § 631(4) (McKinney 1972).

65. Title I § 450(15).

66. *Id.* § 453(g)(1).

67. Mass. Ann. Laws ch. 258A § 6 (1968); N.Y. Exec. Law § 631(4) (McKinney 1972). The collateral payments must have come from sources specified in the statutes.

68. Hawaii Rev. Stat. § 351-35 (1968).

69. Mass. H. Act No. 2854 (1972).

70. See note 64 *supra*.

and excessive drain on the government's funds, while at the same time permitting the claimant to, as nearly as possible, be made whole.

There remain two further provisions that affect the scope of compensation. The first seems reasonable enough in that it gives the Board discretion to consider the claimant's behavior and contribution to the crime,<sup>71</sup> and to reduce the award "in accordance with its assessment of the degree of" that contribution<sup>72</sup> or deny altogether any award if his behavior was a "substantial contributing factor."<sup>73</sup> However, the second provision provides that "[n]o order for compensation . . . shall be made to . . . a member of the family or household" of the wrongdoer.<sup>74</sup> While the rationale for both exclusions is to prevent one from profiting from his own wrongdoing and to prevent fraud and collusion, the second is not only unnecessary but can also result in significant hardship:

Those family members who provoke, or are in part responsible, for the violence should of course be dealt with as [provided]. But I would suggest no more is needed. If a father shoots and disables a small child, surely that child is as deserving as a child who lives next door.<sup>75</sup>

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71. Title I § 454(g).

72. *Id.* § 454(g)(1). In the three states, as in Title I, the amount of compensation may be reduced or denied in proportion to the degree of the claimant's responsibility for the crime giving rise to the claim. See Hawaii Rev. Stat. § 351-31(c) (Supp. 1972); Mass. Ann. Laws ch. 258A § 6 (1968); N.Y. Exec. Law § 631(5) (McKinney 1972).

73. Title I § 454(g)(2).

74. *Id.* § 454(h). Despite this limitation, nowhere in Title I is the term "family" defined. New York and Massachusetts have similar family member exclusions, but define the term "family." See Mass. Ann. Laws ch. 258A §§ 1, 3 (1968); N.Y. Exec. Law §§ 621(4), 624(2) (McKinney 1972). See also Alaska Stat. §§ 18.67.130(b)(1)-(2) (Supp. 1972); Md. Ann. Code art. 26A §§ 2(d), 5(b) (Supp. 1971); Nev. Rev. Stat. § 217.220(1)(a), (b) (1971); N.J. Stat. Ann. §§ 52:4B-2 (Supp. 1972). There is no such restriction in Hawaii and California. See Cal. Gov't Code §§ 13960-66, 13970-74 (West Supp. 1972); Hawaii Rev. Stat. §§ 351-1 to -70 (1968), as amended, (Supp. 1972).

75. Hearings, *supra* note 26, at 1005. The statute in Hawaii avoids this hardship. See Hawaii Rev. Stat. § 351-31(c) (Supp. 1972). For criticism of the family member exclusion see Comment, New York Crime Victims Compensation Board Act: Four Years Later, 7 Colum. J.L. & Soc. Prob. 25, 41 (1971). However, in New York during the period 1968 to 1970, only a comparatively small number of claims have been disallowed because of the family member exclusion. The figures are compiled from CVCB 2d Annual Rep. 7-8, N.Y. Leg. Doc. No. 100 (1969) [hereinafter cited as 1968 N.Y. Report]; 1969 N.Y. Report, *supra* note 59, at 10-11; CVCB 4th Annual Rep. 10-11, N.Y. Leg. Doc. No. 95 (1971) (hereinafter cited as 1970 N.Y. Report), and are as follows:

### B. Requirements and Limitations

The threshold requirement to recovery under any compensation statute is that there be a nexus between the sovereign and either the crime or the victim. New York requires simply that the crime occur within the state;<sup>76</sup> no distinction is made between residents and non-residents. California, on the other hand, will grant compensation to a "domiciliary" wherever the crime occurs, and to a "resident" only if the crime occurs within the state.<sup>77</sup> While neither "domiciliary" nor "resident" is defined in the statute it appears that California would not compensate "transients" injured in the state. Hawaii compensates a victim for injury resulting from conduct "within the criminal jurisdiction of the State . . . ."<sup>78</sup> Thus, Hawaii will only compensate the victim if it could have prosecuted the assailant. Massachusetts, like New York, requires that the crime occur within the state;<sup>79</sup> and by requiring that "claims shall be brought in a district court within the territorial jurisdiction in which the claimant lives," it limits compensation to residents of the state.<sup>80</sup> Title I follows the New York approach in that it requires the crime to occur within the federal jurisdiction—the District of Columbia, the maritime or territorial jurisdiction of the United States and Indian country.<sup>81</sup>

The second fundamental requirement to recovery under any compensation statute is that the crime be a violent one. Hawaii lists the specific crimes to which its statute applies.<sup>82</sup> Massachusetts requires only that

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| <i>Year</i> | <i>Total Awards</i> | <i>Total<br/>Disallowed<br/>Claims</i> | <i>Disallowed Claims for<br/>Family Membership</i> |
|-------------|---------------------|--|--|
| 1968        | 220                 | 202                                    | 2  |
| 1969        | 336                 | 490                                    | 9  |
| 1970        | 458                 | 632                                    | 6  |

Yet the growing number of claims makes the exclusion a bar to compensation for a potentially large number of innocent, injured people. "The claims have increased each year since the inception of the Board." 1970 N.Y. Report 5.

76. N.Y. Exec. Law § 621(3) (McKinney 1972).

77. Cal. Gov't Code § 13962 (West Supp. 1972).

78. Hawaii Rev. Stat. § 351-2 (1968).

79. Mass. Ann. Laws ch. 258A § 1 (1968).

80. *Id.* § 2.

81. Title I § 456(a)(1)-(3).

82. Hawaii Rev. Stat. § 351-32 (1968). These crimes are: (1) arson; (2) intermediate assault or battery; (3) aggravated assault or battery or any other aggravated assault offense enacted by law; (4) use of dangerous substances; (5) murder; (6) manslaughter; (7) kidnapping; (8) child-stealing; (9) unlawful

the crime involve "the application of force or violence or the threat of force or violence. . . ."<sup>83</sup> New York requires merely that the victim suffer "personal physical injury"<sup>84</sup> from a crime "proscribed by the penal law. . . ."<sup>85</sup> Title I lists specific crimes<sup>86</sup> and adds a catch-all provision—"any other crime, including poisoning, which poses a substantial threat of personal injury . . . ."<sup>87</sup> This is perhaps the preferable approach in that it avoids the vagueness that can result from a broad and general definition of crimes; and at the same time, the use of a catch-all provision overcomes the disadvantages inherent in a closed-end listing of specific crimes which cannot deal with changes in the criminal law. It is interesting to note that while victims injured inadvertently by an intervenor may recover under Title I, a victim injured by a would-be intervenor who acts recklessly will not.<sup>88</sup> This results from Congress' intent to deny recovery to those who act recklessly.<sup>89</sup> But while this intent is equitable when applied to the reckless would-be intervenor, it is inequitable to deny recovery to the victim of such recklessness. This result could be avoided by expanding the definition of victim to include those injured by would-be intervenors.

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use of explosives; (10) sexual intercourse with a female under sixteen; (11) assault with intent to rape or ravish; (12) indecent assault; (13) carnal abuse of female under twelve; (14) rape; and (15) attempted rape. The Alaska statute also specifies the crimes covered. See Alaska Stat. § 18.67.100(2) (Supp. 1972).

83. Mass. Ann. Laws ch. 258A § (1968).

84. N.Y. Exec. Law § 621(5) (McKinney 1972).

85. *Id.* § 621(3).

86. Title I § 456(b)(1)-(18) specifies the following acts, omissions, or possessions: "(1) aggravated assault; (2) arson; (3) assault; (4) burglary; (5) forcible sodomy; (6) kidnapping; (7) manslaughter; (8) mayhem; (9) murder; (10) negligent homicide; (11) rape; (12) robbery; (13) riot; (14) unlawful sale or exchange of drugs; (15) unlawful use of explosives; (16) unlawful use of firearms; (17) any other crime including poisoning, which poses a substantial threat of personal injury; or (18) attempts to commit any of the foregoing." Section 456(c) reads: "For the purposes of this part, the operation of a motor vehicle, boat, or aircraft that results in an injury or death shall not constitute a crime unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft or unless such vehicle, boat, or aircraft is an implement of a crime to which this part applies."

87. *Id.* § 456(b)(17). N.J. Stat. Ann. § 52:4B-11(b) (Supp. 1972) and R.I. Gen. Laws Ann. § 12-25-4 (Supp. 1972) are similar to Title I, in that in addition to listing the crimes, these statutes provide a catch-all clause which includes generally any other violent crime resulting in a personal injury or death.

88. Title I § 450(18)(B).

89. By definition, one who acts recklessly is not an intervenor. See *id.* § 450(11), *supra* note 40.

Under Title I, the victim must also comply with three additional requirements. The crime must be reported "to law enforcement officials within seventy-two hours after its occurrence."<sup>90</sup> Moreover, the claimant must have "substantially cooperated with all law enforcement agencies."<sup>91</sup> If the claimant breaches this duty the Board is empowered to "reduce, deny or withdraw any order for compensation."<sup>92</sup> Finally, unless otherwise justified by good cause, the claim must be filed within one year of the date of the occurrence.<sup>93</sup> California<sup>94</sup> and Maryland<sup>95</sup> also require cooperation with law enforcement officials, and New York,<sup>96</sup> Hawaii<sup>97</sup> and Massachusetts<sup>98</sup> have similar filing provisions, ranging in time from ninety days to eighteen months.

### C. Procedures

Title I establishes an administrative body within the Department of Justice, to be known as the "Violent Crimes Compensation Board"<sup>99</sup>

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90. Title I § 454(d). Failure to report within the specified time may be waived if good cause is shown. *Id.* Also the report does not necessarily have to be made by the victim or claimant. *Id.* For similar provisions see Mass. Ann. Laws ch. 258A § 5 (1968) (48 hours); N.J. Stat. Ann. § 52:4B-18 (Supp. 1972) (3 months); N.Y. Exec. Law § 631(1) (McKinney 1972) (48 hours). There is no such requirement in California, Hawaii or Rhode Island. See Cal. Gov't Code §§ 13960-66, 13970-74 (West Supp. 1972); Hawaii Rev. Stat. §§ 351-1 to -70 (1968), as amended, (Supp. 1972); R.I. Gen. Laws Ann. §§ 12-25-1 to -12 (Supp. 1972).

91. Title I § 454(f). For similar provisions see Cal. Gov't Code § 13963 (West Supp. 1972); Md. Ann. Code art. 26A § 12(a)(3) (Supp. 1971). There is no such duty in most of the states. See Alaska Stat. §§ 18.67.010 to .180 (Supp. 1972); Hawaii Rev. Stat. §§ 351-1 to -70 (1968), as amended, (Supp. 1972); Mass. Ann. Laws ch. 258A §§ 1-7 (1968); N.J. Stat. Ann. §§ 52:4B-1 to -21 (Supp. 1972); N.Y. Exec. Law §§ 620-35 (McKinney 1972), as amended, (McKinney Supp. 1972).

92. Title I § 454(f).

93. *Id.* § 454(b).

94. Cal. Gov't Code § 13963 (West Supp. 1972).

95. Md. Ann. Code art. 26A § 12(a) (Supp. 1971).

96. N.Y. Exec. Law § 625(2) (McKinney 1972) (90 days or up to one year for good cause shown).

97. Hawaii Rev. Stat. § 351-62(a) (1968) (18 months).

98. Mass. Ann. Laws ch. 258A § 4 (1968) (1 year from occurrence or 90 days from death, whichever is earlier). See also Alaska Stat. § 18.67.130(a) (Supp. 1972) (2 years); Md. Ann. Code art. 26A § 6(b) (Supp. 1971) (180 days or up to 2 years for good cause shown); N.J. Stat. Ann. § 52:4B-18 (Supp. 1972) (1 year).

99. Title I § 451(a).

which "shall order the payment of compensation"<sup>100</sup> in appropriate cases. The Board is authorized to "promulgate such rules and regulations as may be required"<sup>101</sup> and to "establish a program to assure extensive and continuing publicity [of the Title's existence] . . . including information on the right to file a claim, the scope of coverage, and procedures . . ."<sup>102</sup>

The statute in New York creates an autonomous administrative body within the Executive Department, known as the Crime Victims Compensation Board,<sup>103</sup> which has the power "[t]o adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes" of the statute.<sup>104</sup> The Hawaii statute establishes an independent administrative agency, the Criminal Injuries Compensation Commission,<sup>105</sup> which may adopt rules and regulations to aid in the performance of its functions.<sup>106</sup> In Massachusetts, on the other hand, the "district courts of the commonwealth shall . . . have jurisdiction to determine and award compensation to victims of crimes."<sup>107</sup>

Title I has some distinct procedural advantages over a statute that looks to the judiciary for its administration. For example, the Board will have the freedom to relax some of the formalities that ordinarily attend a judicial proceeding. The Board may likewise avoid the delays of the crowded courts of our larger cities, where presumably most victims would be found. Since the Board is independent and is intended to deal with only one problem, *i.e.*, crime victim's compensation, it need not be burdened by extraneous rules as it might be if it were part of a larger, pre-existing agency.

The authority of the Board to promulgate its own rules and regula-

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100. Id § 453(a) reads: "(1) in the case of the personal injury of an intervenor or victim, to or on behalf of that person; or (2) in the case of the death of the intervenor or victim, to or on behalf of the surviving dependent or dependents of either of them." Since the compensation provided for under Title I is based on a moral obligation rather than on a legal right, there is a requirement that "need" be shown before compensation will be granted. See notes 24, 46-52 *supra* and accompanying text. The administrative functions of the board are detailed in Title I § 452(1)-(11).

101. Id. § 452(3).

102. Id. § 452(11).

103. N.Y. Exec. Law § 622 (1) (McKinney 1972).

104. Id. § 623(3). There are similar rule making powers in other compensation statutes. See, e.g., Md. Ann. Code art. 26A § 4(b) (Supp. 1971).

105. Hawaii Rev. Stat. § 351-11 (1968).

106. Id. § 351-68.

107. Mass. Ann. Laws ch. 258A § 2 (1968).

tions<sup>108</sup> helps to assure that any expertise gained in administering the statute will be tangibly implemented in the form of substantive and procedural guidelines. The power of the Board to establish a program of extensive and continuing publicity of the statute's existence, operation, and coverage<sup>109</sup> is clearly desirable since the usefulness of any such statute is predicated upon the people's knowledge of its existence.<sup>110</sup>

Under Title I, when the claim is filed, the Chairman of the Board may assign one member to evaluate the claim.<sup>111</sup> If the claimant is not satisfied with the evaluation he is entitled, as a matter of right, to a de novo hearing by the full three-man Board<sup>112</sup> where he must prove his claim by a "preponderance of the evidence."<sup>113</sup> Once the Board renders a final order, the claimant may obtain judicial review<sup>114</sup> in the United States Court of Appeals for the District of Columbia.<sup>115</sup> "No finding of fact supported by substantial evidence" will be set aside on review.<sup>116</sup>

At the conclusion of the Board's proceeding, an attorney may file with the Board a statement for a fee for services rendered.<sup>117</sup> The Board will award a fee on substantially similar terms as provided in the Criminal Justice Act.<sup>118</sup> The payment of a fee to an attorney does not diminish the claimant's award.<sup>119</sup> Hawaii and Massachusetts permit payment of attorney fees up to 15 per cent of the award,<sup>120</sup> but the fees diminish

108. Title I § 452 (3).

109. Id. § 452(11).

110. In New York, for example, it has been commented that the public is not yet well informed as to the existence and operation of the New York statute. See Comment, Crime Compensation: The New York Solution, 35 Albany L. Rev. 717, 730 & nn.109 & 110, 730-31 & n.111, 731 & n.112. See also N.Y. Times, Mar. 15, 1973, at 45, col. 1 - 3, at 86, col. 1-3.

111. Title I §455(e)(1).

112. Id. § 455(e)(2).

113. Id. § 455(f)(1).

114. Id. § 455(h).

115. Id.

116. Id.

117. Id. § 455(g)(1).

118. Id. § 455(g)(2). The section of the Criminal Justice Act referred to is found in 18 U.S.C. § 3006A (1970). It deals with the rates and qualifications for payment of attorneys' fees for indigent clients. The rates are not to exceed \$30 per hour for an attorney's time expended in court, and \$20 per hour for his time expended out of court. Id. § 3006A(d)(1).

119. See Title I, § 455(g)(2); 118 Cong. Rec. 15089 (daily ed. Sept. 18, 1972).

120. Hawaii Rev. Stat. § 351-16 (1968); Mass. Ann. Laws ch. 258A § 4 (1968). In Hawaii, the 15 per cent maximum applies only to awards greater than

the claimant's award.<sup>121</sup> In New York, the Board is authorized to adopt "suitable rules . . . for the approval of attorneys' fees . . ." <sup>122</sup>

Prior to final action, the Board may authorize emergency compensation not to exceed \$1,500 if it determines that the claim "probably" will result in an order of compensation.<sup>123</sup> The amount of the emergency payment is deducted from the final award;<sup>124</sup> and if the claimant is ultimately denied compensation, he is liable to the Board for its repayment<sup>125</sup> unless the Board waives it.<sup>126</sup>

New York<sup>127</sup> and Hawaii<sup>128</sup> also provide for emergency payments, whereas Massachusetts<sup>129</sup> does not, presumably because it employs a judicial proceeding rather than an administrative one.

Once compensation has been awarded to a victim, both the federal

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\$1,000, "provided that the amount of the attorneys' fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant." Hawaii Rev. Stat. § 351-16 (1968).

121. Hawaii Rev. Stat. § 351-16 (1968); Mass. Ann. Laws ch. 258A § 4 (1968). See Title I § 455 (g)(1)-(3). See also 118 Cong. Rec. 15090 (daily ed. Sept. 18, 1972).

122. N.Y. Exec. Law § 623(3) (McKinney 1972).

123. Title I § 453(e)(1).

124. Id. § 453(e)(2).

125. Id. § 453(e)(3). If the emergency payment was greater than the amount of the final order, the recipient is liable only for the excess. Id.

126. Id.

127. N.Y. Exec. Law § 630 (McKinney 1972). In New York, "if it appears to the board member to whom a claim is assigned, prior to taking action upon such claim that, (a) such claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, such board member may make an emergency award to the claimant . . ." Id. However, the award may not exceed \$500. Id. The amount of the emergency award will be deducted from the final award; and in the event the claim is denied, the emergency payment must be refunded to the board. Id.

128. Hawaii Rev. Stat. § 351-62.5 (Supp. 1972). The conditions for these emergency payments are that the Commission must have made an award and it then "determines that there is an immediate need of funds in order to meet expenses incurred as a direct or indirect result of injury or death . . ." Id. The amount of the emergency payment is deducted from the amount of the final award and the amount deducted is redeposited in the emergency payment fund. Id. The only other states that provide for emergency payments are Alaska and Maryland. See Alaska Stat. § 18.67.120 (Supp. 1972); Md. Ann. Code art. 26A § 11 (Supp. 1971).

129. Mass. Ann. Laws ch. 258A §§ 1-7 (1968).



proposal<sup>130</sup> and the state statutes<sup>131</sup> provide for subrogation to the rights of the recipient of the award. The Attorney General of the United States may, within three years from the date the order of compensation was made, institute an action against the offenders.<sup>132</sup>

Title I provides for a Criminal Victim Indemnity Fund<sup>133</sup> which will be funded by subrogation recoveries,<sup>134</sup> and in addition:

[T]he Fund shall be the repository of (1) criminal fines paid in the various courts of the United States, (2) additional amounts that may be appropriated to the Fund as provided by law and (3) such other sums as may be contributed to the Fund by public or private agencies, organizations, or persons.<sup>135</sup>

The state statutes differ from Title I in that in all but two there is no separate indemnity fund established into which subrogation recoveries, criminal fines, additional appropriations, and public or private contributions may be deposited.<sup>136</sup>

#### IV. Conclusion

Title I is more comprehensive in scope and coverage than any presently existing crime victims compensation statute. The drafters of Title I, to be sure, have benefited from the experience gained by the other jurisdictions in administering their own respective statutes.

130. Title I § 457(a).

131. Alaska Stat. § 18.67.140 (Supp. 1972); Cal. Gov't Code § 13963 (West Supp. 1972); Md. Ann. Code art. 26A § 15 (Supp. 1971); Mass. Ann. Laws ch. 258A § 7 (1968); Nev. Rev. Stat. § 217.240 (1971); N.J. Stat. Ann. § 52: 4B-20 (Supp. 1972); N.Y. Exec. Law § 634 (McKinney 1972); R.I. Gen. Laws Ann. § 12-25-10(a) (Supp. 1972). In Hawaii, the Commission may institute a derivative action in the name of the victim and recover such damages as may be recoverable at common law by the victim, without reference to the payment of compensation by the Commission to the victim. Hawaii Rev. Stat. § 351-35 (1968).

132. Title I § 457(a).

133. Title I § 458(a).

134. Id. § 457(a).

135. Id. § 458(a). Further, "[i]n any court of the United States . . . upon conviction of a person of an offense resulting in personal injury, property loss, or death, the court," after considering the financial condition of such person "may, in addition to any other penalty," order such person to be fined \$10,000 or less. Id. § 104.

136. Such a fund is authorized under the California, Hawaii and Rhode Island statutes. See Cal. Gov't Code § 13964 (West Supp. 1972); Hawaii Rev. Stat. § 351-62.5(a) (Supp. 1972); R.I. Gen. Laws Ann. § 12-25-12 (Supp. 1972). See also 118 Cong. Rec. 15091 (daily ed. Sept. 18, 1972).

The federal statute is salutary, necessary, and long overdue. If and when it does become law, an initial problem for the Board will be to inform the public of the statute's existence. Once this is accomplished, it appears that the statute can effectively and efficiently accomplish its purpose—compensating the victims of crime.