

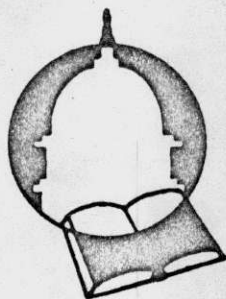
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COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE, 1968,



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## COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE

The concept of compensation by government to innocent victims of crimes of violence is gaining wide support both here and abroad. A growing number of lawyers, judges, legislators and others, are asking whether financial compensation for such injuries might not be the most practical aid to the "forgotten victim". Compensation schemes under which victims of crime are compensated by the state for personal injuries became effective in 1964 in New Zealand <sup>1/</sup> and in England. <sup>2/</sup> In the United States five States have adopted similar programs: California, <sup>3/</sup> New York, <sup>4/</sup> Hawaii, <sup>5/</sup> Massachusetts, <sup>6/</sup> and Maryland. <sup>7/</sup> At the Congressional level several bills have been introduced which would compensate victims of crimes of violence to the person, as distinguished from damage to property. These begin with Senator Yarborough's S. 2155 of the 89th Congress, which was followed by the introduction of several similar bills in the House of Representatives during the

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<sup>1/</sup> New Zealand Laws 1963, No. 134

<sup>2/</sup> Command No. 2323

<sup>3/</sup> Laws 1965, ch. 1549. Approved July 16, 1965; superseded by Laws 1967, ch. 1546, approved Aug. 30, 1967

<sup>4/</sup> Laws 1966, ch. 894. Approved Aug. 1, 1966

<sup>5/</sup> Laws 1967, Act 226. Approved June 6, 1967

<sup>6/</sup> Laws 1967, ch. 852. Approved Jan. 2, 1968

<sup>7/</sup> Laws 1968, ch. 455. Approved May 7, 1968

same session of Congress. In the 90th Congress, Senator Yarborough again introduced his compensation proposal with certain changes as S. 646 which, as stated by him, greatly improved the proposal as originally introduced. Several similar bills were again introduced in the House of Representatives.<sup>8/</sup> No action was taken on any of these bills of the 89th and 90th Congress. The Yarborough proposal, in most instances, has probably served as a guide for the State compensation legislation that has been adopted.

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<sup>8/</sup> A list of bills of the 89th and 90th Congress appear in the bibliography, post.

## Major Features of Compensation Schemes

## Great Britain

The scheme for compensating victims of crimes of violence was announced in both Houses of Parliament on June 24, 1964, and came into operation on August 1, 1964. By the end of March 1967<sup>9/</sup> over 6,000 persons had applied for awards and more than £1,200,000 had been paid out in compensation since the scheme was launched in 1964. Funds are provided through a grant-in-aid by the Home Office and the Scottish Home and Health Department.

Administration. Claims for compensation are sent to a body known as the Criminal Injuries Compensation Board, which consists of a chairman and five other legally qualified members appointed by the Home Secretary and the Secretary of State for Scotland after consultation with the Lord Chancellor.

Applications are sifted initially by the Board's staff, who are also responsible for making preliminary inquiries and dealing with any correspondence, but final responsibility in the individual case rests solely with the Board, whose decisions are not subject to appeal nor to ministerial review.

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<sup>9/</sup> Cmnd. 3427 (Criminal Injuries Compensation Board, Third Report, Accounts for the year ended 31st March, 1967).

Scope of Scheme. The Board will entertain applications for ex gratia <sup>10/</sup> payments of compensation to persons who have suffered personal injury as the direct result of a crime or while helping the police, arresting an offender or suspected offender or preventing or trying to prevent a crime being committed, provided that (a) the injury sustained has given rise to at least three weeks' loss of earnings or is one for which not less than £50 compensation would be awarded at common law, (b) the circumstances of the injury have been reported to the police without delay or have been the subject of criminal proceedings, and (c) the applicant is prepared, if necessary, to submit to a medical examination. If the injuries sustained result in the death of the victim, a husband or wife or dependent may apply.

The Board is directed to pay particular attention to all applications in respect of sexual offenses or other offenses arising out of a sexual relationship, in order to determine whether there was any responsibility, either because of provocation or otherwise, on the part of the victim, and to have special regard to any delay that has occurred in submitting the application.

10/ As a matter of grace, not legal obligation.

Provided, however, that the circumstances have been immediately reported to the police, the Board will consider applications for compensation arising out of rape and sexual assaults, both in respect of pain, suffering and shock and in respect of loss of earnings due to pregnancy resulting from rape and, where the victim is ineligible for a maternity grant under the National Insurance Scheme, in respect of the expense of childbirth. Compensation is not payable for the maintenance of any child born as a result of a sexual offense.

Claims are not admitted in respect of injuries resulting from offenses committed against a member of the offender's family living with him at the time, from motoring offenses (unless the vehicle has been used as a weapon - that is to say, in a deliberate attempt to run the victim down), or from breaches of statutory duties imposed by the Factory Acts or similar Acts.

Basis of Compensation. Compensation is assessed on the basis of common law damages and usually takes the form of a lump sum payment, rather than a periodic pension. In some cases, however, interim awards are made to relieve hardship - for instance, where final recovery is assured but there is some doubt about the length of time that will elapse meanwhile, or where the doctor's prognosis is uncertain. In assessing the amount payable the rate

of loss of earnings (or earning capacity) taken into account may not exceed twice the average of industrial earnings (as published in the Ministry of Labor Gazette), and no element of punitive or exemplary damages may be admitted.

If the victim receives payment as a result of his injuries from any other public source, or if he obtains damages in an action at common law, compensation is reduced by the amount of any such payments; it may also be reduced (or the claim rejected) if it is found that the victim is in any way to blame for his injuries.

Procedure. On receipt of an application, the staff of the Board make inquiries of the police, the hospital, the doctor, the applicant's employers and the National Insurance Office. When all the necessary information is obtained, the papers are submitted to a single member of the Board, who decides whether or not the claim should be allowed and, if allowed, what the amount of compensation should be, and communicates his decision to the applicant. If the applicant is dissatisfied with the decision, he is entitled to have the case heard before three other members of the Board - both he and the Board having the right to call witnesses. The hearings take place in private and the procedure is as informal as possible, but the applicant may be legally



represented if he wishes, at his own expense. The expenses  
of witnesses may be paid by the Board.<sup>11/</sup>

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<sup>11/</sup> Source: (1) Text of amended scheme as set forth in Hansard  
(Commons) 24th June 1964, Written Answers, Cols. 89-94,  
and (2) Central Office of Information, No. R S N. 5725,  
December 1965.

New Zealand

In 1963 the New Zealand Parliament enacted legislation providing for payment by the state for personal injuries suffered as a result of crimes of violence. This legislation, the Criminal Injuries Compensation Act 1963, came into force on January 1, 1964.<sup>12/</sup>

It seems apparent that the New Zealand statute was strongly influenced by the British scheme then under consideration, and later initiated in August 1964.<sup>13/</sup> Briefly, it establishes a Crimes Compensation Tribunal of three members to hear claims by persons injured as a result of acts which come within the description of certain crimes which may be broadly grouped under the headings of homicide, assaults and woundings, and sexual

12/ Laws 1963, No. 134

13/ Cmnd. 2323.

<sup>14/</sup> offenses of violence, and by the dependents of persons killed thereby. A claim may be presented and an award made whether or not any offender has been apprehended or convicted. The tribunal may make such award as it thinks fit within the limits prescribed by the Act. The basis of compensation is similar to that under the Workers Compensation Act 1956, except that up to £ NZ 1,000 (\$2,800) for pecuniary loss other than that caused by incapacity to work and up to £ NZ 500 (\$1,400) for pain and suffering may be awarded.<sup>15/</sup> The offender may be ordered to repay the Crown the whole or part of the sum awarded. There is an appeal to the Supreme Court from such an order, and the Tribunal may state a case for the Supreme Court on a point of law, but with these

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14/ Offenses to which act applies: Rape, attempt to commit rape, sexual intercourse with girl under twelve, indecency with girl under twelve, indecent assault on girl between twelve and sixteen, indecent assault on woman or girl, indecent assault on boy, indecent assault on a male, murder, attempt to murder, manslaughter, wounding with intent, injuring with intent, injuring by unlawful act, aggravated wounding or injury, aggravated assault, assault with intent to injure, assault on a child or by a male on a female, common assault, disabling, discharging firearm or doing dangerous act with intent, acid throwing, poisoning with intent, infecting with disease, endangering transport, abduction of woman or girl, and kidnapping. An amendment of 1966 compensates for loss or damage to real or personal property by any act or omission of an "escaper".

15/ The monetary figures in this sentence are based on the statute as enacted in 1963. Since then there has been a devaluation of money and a change in the monetary system of New Zealand.

exceptions the Tribunal's decision is final.

"Injury" means actual bodily harm; and includes pregnancy and mental or nervous shock; and "injured" has a corresponding meaning.

The Tribunal's chairman must be the holder or former holder of a judicial office or a barrister and solicitor of at least seven years' experience in practice. The two members other than the chairman need not have legal qualifications. Appointments are for terms of five years.

Proceedings are to be in public unless the Tribunal decides to hold them in private on the ground that an offender has not been convicted, or that public morality or the interest of a victim of a sex offense or her dependents requires it. Publication of the evidence may be prohibited on the ground of public morality. The name of the victim or offender, or any details likely to identify them, may be suppressed where the Tribunal thinks it necessary to protect the victim's interest, or where an offender has not been convicted.

The Tribunal may receive in evidence any matter which may assist it in dealing with a case, whether or not the evidence is otherwise admissible.

The act is so framed that compensation may be paid if the Tribunal is satisfied that the death or injury was caused by

an act coming within the description of one of the offenses scheduled. Presumably, failure to show that the doer of the act possessed <sup>16/</sup> mens rea, or the successful establishment by an accused person of a defense of insanity, will not bar the victim or his dependents from obtaining compensation.

The Tribunal is directed to consider any behavior of the victim which contributed directly or indirectly to his injury or death.

Claims must be made within one year after date of injury or death, provided that this period may be extended if the Tribunal thinks it just to do so.

Compensation may be awarded for (a) expenses actually and reasonably incurred as a result of the victim's injury or death, (b) pecuniary loss to the victim as a result of total or partial incapacity for work, (c) pecuniary loss to dependents as a result of the victim's death, (d) other pecuniary loss resulting from the victim's injury, and any expenses which, in the opinion of the Tribunal, it is reasonable to incur, (e) pain and suffering of the victim.

Compensation will not be awarded if the victim is a

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16/ knowledge of guilt.

relative of the offender, or was at the time of the injury living with the offender as his wife or her husband or as a member of the offender's household.

Awards may be by lump sum, or by periodical payments.

A victim is not to receive double benefits. In assessing compensation, payments received by the claimant as compensation or damages from the offender or under the compulsory third-party insurance provisions of the Transport Act of 1962 are deducted, as are payments under the Workers' Compensation Act of 1956, the Social Security Act of 1938, and the War Pensions Act of 1954.

The Tribunal may order the offender to refund all or part of the compensation paid or payable, together with all or part of the costs awarded depending on such factors as: (1) the financial position of the offender, (2) his employment, the possibilities of future employment, his liabilities to his family and otherwise, and any other relevant circumstances.

An amendment of 1966 (Laws 1966, No. 22) authorizes awards of not more than one thousand pounds for loss of or damage to real or personal property through or by means of any act or omission of an escaper that was intended to facilitate the flight of the escaper or the avoidance of his recapture or which occurred in

the course of his escaping or attempting to escape or while he was fleeing to avoid recapture.

## THE YARBOROUGH AND SOME SIMILAR PROPOSALS

Among the leaders in current efforts to provide legislation at the National level to compensate victims of criminal violence is Senator Ralph Yarborough of Texas. In an address before the convention of the Texas Association of Plaintiffs' Attorneys in Houston on July 2, 1964, Senator Yarborough commented that there is a field of Government responsibility to which Congress and the State legislatures should be directing attention in the years to come - the responsibility of the Government to citizens who have lost their lives or suffered bodily injury through crimes of violence. "Our governments," stated Senator Yarborough, "spend billions in protection of us from criminals. We all salute the fact that our governments take extraordinary pains to protect suspected criminals from punishment. But should not our governments owe an obligation to compensate innocent victims of crime, crimes inevitably resulting through the difficulty of providing perfect police protection?"<sup>17/</sup>

Senator Yarborough's proposed legislation was set forth, initially, in S. 2155 of the 89th Congress which he introduced on June 17, 1965.<sup>18/</sup> Later versions of his proposal were

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<sup>17/</sup> 110 Cong. Record 16391

<sup>18/</sup> 111 Congressional Record 14031



refinements of the original. An amendment in the nature of a substitute was introduced on Aug. 8, 1966, in the second session of the 89th Congress.<sup>19/</sup> In the 90th Congress the Senator's proposal was S. 646.<sup>20/</sup> The salient features of S. 646 are as follows:

S. 646 would compensate the victims of crimes of violence for injuries to the person. Property damage is not covered. On this point Senator Yarborough stated:

There are several compelling reasons for this limitation. It is widely believed that personal injuries should be compensable, because these unlike property damage are not the subject of general insurance coverage for loss. It is also reasoned that the victims of crime and the criminals themselves are generally among the poorest people within the society.

Consequently, the victim is not likely to have insurance and the criminal is not going to be able to provide compensation. It ought to be stressed, however, that the Criminal Injuries Compensation Act would allow the Commission to recover a part of or the entire amount of compensation from the criminal by initiating an appropriate action in a Federal court. On the other hand, the victim who has received compensation from the Commission might still, under the terms of this bill, seek to recover damages in a civil action against any person.

<sup>19/</sup> See 112 Cong. Record 18547 for remarks and text of substitute

<sup>20/</sup> See Daily Record of Jan. 25, 1967 for remarks and text of bill

The philosophical basis for this position although difficult to understand is extremely important. Since the Commission is limited to an individual maximum award of \$25,000, it can in no sense be said that the award will make the victim "whole." In most instances where the victim has suffered greivous harm, where his life expectancy has been affected, or where his earning capacity has been reduced, \$25,000 would clearly be incomplete and therefore unsatisfactory compensation.

The victim ought to be allowed, as he is under the terms of this bill, to recover damages in a civil action. The Commission is providing compensation in the nature of the fulfillment of a duty which runs between the victim and the State and which does not affect the rights and responsibilities which run between the victim and the criminal with respect to civil wrongs and remedies.

The proposal is applicable only to the special maritime and territorial jurisdiction of the United States, including the District of Columbia and, states Senator Yarborough, "it includes, besides the District of Columbia, American ships on the high seas and international waters, lands reserved or acquired for the use of the United States and under the exclusive or concurrent jurisdiction of the Federal Government - including forts, dockyards, and arsenals of our Armed Forces - and American aircraft over the high seas or international waters."<sup>21/</sup>

The bill would create a Federal Violent Crimes Compensation Commission which would be a three-man tribunal appointed by the President, by and with the advice and consent of the Senate, for 8-year staggered terms. The chairman, who would be a member of the bar of a Federal court or of the highest court of a State for at least eight years, would be designated by the President. Commission members would not be permitted to engage in any other business, vocation, or employment. The chairman and one other member would constitute a quorum; and if opinion should be divided when only one other member is present, the opinion of the chairman would prevail. However, the Commission, or any member thereof, or its duly authorized representative, may hold such hearings, sit and act at such times and places, and take such testimony as the Commission or such member may deem advisable.

Each member would be eligible for reappointment; and grounds for removal, by the President, are stated to be inefficiency, neglect of duty, or malfeasance in office. The commission may appoint necessary officers, attorneys, and employees, and fix their compensation in accordance with the Classification Act of 1949 to carry out its function.

The principal office of the commission would be in or near the District of Columbia, but Commission powers could be

exercised by an authorized representative in any place.

Injury or death resulting from eighteen offenses which possibly may be grouped under the headings of homicide, assaults, and sexual offenses of violence, occurring in areas where the Federal Government exercises general police power, <sup>22/</sup>would be compensable.

It is the Commission's function and duty to examine the evidence presented to it both to determine what level of compensation should be granted and whether, in fact, the person making the claim is truly an innocent victim.

The Commission may order the payment of compensation to three categories of persons: (1) to or on behalf of the injured person; or (2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person; or (3) in the case of the death of the victim, to or for the benefit of the dependents of the deceased victim, or any one or more of such dependents.

22/ Offenses to which act applies: (1) assault with intent to kill, rob, rape, or poison; (2) assault with intent to commit mayhem; (3) assault with a dangerous weapon; (4) assault; (5) mayhem; (6) malicious disfiguring; (7) threats to do bodily harm; (8) lewd, indecent, or obscene acts; (9) indecent act with children; (10) arson; (11) kidnaping; (12) robbery; (13) murder; (14) manslaughter, voluntary; (15) attempted murder; (16) rape; (17) attempted rape; (18) or other crimes involving force to the person

The absence of a criminal intent is not an essential factor for determining entitlement to compensation. A person shall be deemed to have intended an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent. The Commission may, however, consider any circumstances it determines relevant, including the behavior of the victim which contributes directly or indirectly to his injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender. The Commission must find that the act or omission complained of did occur, and that injury or death resulted therefrom.

The authority of the Commission to award compensation is not dependent on the prosecution or conviction of the accused or any other legal action for the offense giving rise to the injury. The Commission shall, however, upon application of the Attorney General or the person or persons alleged to have caused the injury or death, suspend proceedings until such application is withdrawn or until a prosecution for an offense arising out of the act or omission is no longer pending or imminent. The Commission may suspend proceedings in the interest of justice if a civil action arising from such act or omission is pending or imminent.

Payment of compensation may be ordered for: (a) expenses actually and reasonably incurred as a result of the injury or death of the victim; (b) loss of earning power; (c) pecuniary loss to the dependents of the deceased victim; (d) pain and suffering of the victim; and (e) other pecuniary loss resulting from the personal injury or death of the victim which the Commission determines to be reasonable.

Application for compensation must be made within two years of injury or death and compensation shall not be awarded in an amount in excess of \$25,000.

Compensation will not be awarded in two situations: if the victim was at the time of the injury or death living with the offender as his wife or her husband or in situations when the Commission at its discretion feels unjust enrichment to or on behalf of the offender would result.

Any order for the payment of compensation may be made on such terms as the Commission deems appropriate, and any payments received by the victim from the offender shall be deducted from any payments awarded by the Commission, but only to the extent that the sum of such payments and any award under this legislation are in excess of the total compensable injuries suffered by the victim as determined by the Commission.

The Commission may at any time vary any order for the payment of compensation in such manner as it thinks fit, whether as to terms of the order or by increasing or decreasing the amount of the award or otherwise.

The Commission may institute an action against a person convicted of an offense giving rise to an award for compensation for recovery of the whole or any part of such compensation. An order for the payment of compensation shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

In the matter of attorney's fees, generally, the Commission may allow whatever fee is justified under the circumstances.

Orders and decisions of the Commission are reviewable on appeal, except that no trial de novo of the facts determined by the Commission shall be allowed.

Injury is defined to include actual bodily harm, pregnancy and mental or nervous shock. While the inclusion of mental or nervous shock may be subject to criticism as being likely to give rise to undeserving claims which would be difficult to reject, injury resulting from mental or nervous shock is quite generally recognized as a proper ground for action.

The term "victim" means the direct and immediate victim of the offense - a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in the bill.

The heart of the proposal is found in section 301 which deals with the award of payments of compensation. Where any person is injured or killed by any act or omission of any other person which is within the description of offenses in the bill, the Commission may make an order for the payment of compensation to or for the benefit of the injured person or to any person responsible for the victim's maintenance. In the case of the death of the victim, the payments are to be to or for the benefit of his dependents or closest relative. The Commission has wide discretion in making awards, subject of course to the \$25,000 limitation.

The Commission's right to consider behavior of the victim which contributed directly or indirectly to his injury or death should provide insurance against unmeritorious claims.

It is not intended that any victim should receive double benefits or be better off by reason of the crime than he would otherwise have been, and therefore, in assessing the compensation to be paid, the Commission is required to deduct any payment received by the victim or by any of his dependents from



the offender or from any person on behalf of the offender, or from the United States (except those received under this bill), a State or any of its subdivisions, for personal injury or death compensable under this legislation, but only to the extent that the sum of such payment and any award under this legislation are in excess of the total compensable injuries suffered by the victim as determined by the Commission. While the bill also provides for the recovery, from the offender, of compensation paid by the Government, it is likely that the proportion actually obtained in this way will be small.

The several pertinent House bills are in general similar to S. 646 with two notable exceptions. H.R. 632 introduced by Mrs. Green of Oregon, and H.R. 684 introduced by Mr. Holland are quite broad in application in that they provide for payments "for personal injury or death which resulted from the commission of a criminal offense which is a felony under State or Federal law." (§302). Excluded, however, are claims of less than \$300. (§304[b]).

No authoritative statement on the estimated cost of programs under these bills is found. A limitation of \$25,000 on awards is imposed under each proposal. The Yarborough and similar House bills would compensate for injury or death re-

sulting from certain offenses within the "special maritime and territorial jurisdiction of the United States" as defined under 18 U.S.C. §7, or from offenses committed within the District of Columbia. Compensable offenses under the Yarborough bill and similar House bills would arise, presumably, principally in the District of Columbia.

With respect to H.R. 632 (Mrs. Green of Oregon), and H.R. 684 (Mr. Holland) the cost would appear to be much greater as they would compensate for personal injury or death which resulted from the commission of a criminal offense which is a felony <sup>23/</sup> under State or Federal law. There is a \$300 exclusion feature.

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23/ As defined by Federal law, means any offense punishable by death or imprisonment for a term exceeding one year. (18 U.S.C. §1).

BRIEF SUMMARY OF STATE COMPENSATION LAWS  
(For Text of Laws See Appendix)

California

On July 16, 1965, the Governor of California signed into law the first statute in this country providing compensation to victims of crimes of violence. Although this statute was superseded by more comprehensive legislation enacted in 1967,<sup>24/</sup> as a matter of historical background, a brief summary of both laws appears below.

Laws of 1965, Ch. 1549

This California program provided for payment of support aid to the family of any person killed and to the victim and family, if any, of any person incapacitated as the result of a crime, provided there was need of such aid. The State Department of Social Welfare was directed to establish criteria for the payment of aid substantially the same as those used in the program for aid to families with dependent children.<sup>25/</sup> Crime victims, however, did not need to meet the property qualifications of that program.<sup>26/</sup> Upon

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<sup>24/</sup> The first statute was Laws 1965, ch. 1549. The superseding statute was Laws 1967, ch. 1546 approved Aug. 30, 1967.

<sup>25/</sup> The Department, by regulation, determined amounts necessary to support families of varying sizes subject to statutory maximums which ranged from \$145 for one child to \$371 for nine children, plus \$5 for each additional child (Welfare and Institutions Code § 11450).

<sup>26/</sup> One who owns \$5,000 or more of real property, or \$600 or more of personal property is ineligible for aid. (Welfare and Institutions Code §§ 11255, 11257).

conviction of a person of a crime of violence resulting in the injury or death of another person, the court was to take into consideration the defendant's economic condition, and unless it found that such action would cause the family of the defendant to be dependent on public welfare, would in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. These fines were to be used to offset the cost of aid under the program.

A ceiling on expenditures for the 1965-1966 fiscal year was fixed at \$100,000.

Aid under this program was not to constitute part of the State's plan for participation in any aid program under the Federal Security Act, and was to be financed entirely by State and county funds.

#### Laws 1967, Ch. 1546

Jurisdiction to indemnify needy residents of California who are victims of crimes is vested in the State Board of Control. A "victim" is any person who sustains injury to himself, or pecuniary loss as a result of physical injury or death of another person on whom he is financially dependent, and which is the consequence of an act considered to be a public offense as defined by the Penal Code (§15) whether the actor is criminally liable

or not. The maximum award shall not exceed expenses for hospitalization or medical treatment, loss of wages, loss of support, or other expenses directly related to the injury.

Attorney's fees may be allowed, but not to exceed 10 percent of the award.

New York  
(Laws 1966, ch. 894)

A Crime Victims Compensation Board, consisting of three members, who have been admitted to practice law in the State of New York for not less than ten years next preceding their appointment, is authorized to administer the State's Compensation scheme. The Board is given discretionary authority to award compensation to the victim or his dependents where he has been injured or killed through the commission of a crime. "Victim" means a person who suffers a personal physical injury as a direct result of a crime. No schedule of crimes for which compensation is payable is set forth in the statute. No award shall be made unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars or has lost at least two continuous weeks' earnings or support. Crime victims and their families are eligible to receive compensation both for out-of-pocket costs and for loss of earnings and support. The maximum award is \$15,000. In determining awards the Board may disregard the responsibility of the

victim for his own injury where such responsibility was attributable to his efforts to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

Hawaii  
(Laws 1967, Act 226)

A Criminal Injuries Compensation Commission consisting of three members, one of whom shall be an attorney who has been admitted to practice before the State Supreme Court for at least five years, are authorized to administer the State's Compensation scheme.

The Commission may award compensation to the victim, or to those responsible for his maintenance if they have incurred expenses as a result of the injury and to his dependents when he has been injured or killed through the commission of a crime. "Victim" means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State which is within the description of any of the fifteen crimes set forth in the law. Compensation may be awarded for personal injury or property damage incurred in preventing the commission of a crime, in apprehending a person who has committed a crime or in assisting a peace officer engaged

in the prevention of crime or the apprehension of a criminal.  
The maximum award is \$10,000.

Massachusetts  
(Laws 1967, ch. 852)

Jurisdiction is conferred on the district courts of the Commonwealth to determine and award compensation to victims of crimes and in case of death to their dependents. "Victim" is a person who suffers personal injury or death as a direct result of crime. No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least one hundred dollars or has lost two continuous weeks of earnings or support. Any compensation paid shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury. The maximum award is \$10,000. The court may disregard the responsibility of the victim for his own injury where such responsibility was attributable to his efforts to aid a victim, or to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

Maryland  
(Laws 1968, ch. 455)

A Criminal Injuries Compensation Board consisting of three members, one of whom shall have been admitted to practice

law in Maryland for not less than five years next preceding his appointment, is created to determine and award compensation to victims of crime and to their dependents in case of death.

"Victim" means a person who suffers personal physical injury or death as a direct result of crime. Compensation may be awarded for personal injury or death sustained by an individual in preventing a crime occurring in his presence, apprehending a person who had committed a crime in his presence or had in fact, committed a felony. Awards shall be made in accordance with the schedule of benefits and degree of disability as provided in the State's Workmen's Compensation Law (Code, Art. 101, § 36).



## ARGUMENTS FOR AND AGAINST COMPENSATING VICTIMS OF CRIME

There are two principal arguments in support of such compensation proposals: (1) The State owes a duty to adequately protect a citizen, and (2) means of redress open to victim are inadequate. There seems, at this time, little opposition to the scheme as a whole. Opposition is voiced as to certain provisions. Selected areas are dealt with below.

(1) When the government fails to adequately protect its citizens, it has a duty to compensate them for crimes committed against them.

A statement frequently quoted in support of this proposition is that of former U.N. Ambassador Arthur J. Goldberg who in his James Madison lecture at New York University School of Law in February of 1964 said: "The victim of a robbery or an assault has been denied the 'protection' of the laws in a very real sense, and society should assume some responsibility for making him whole."<sup>27/</sup>

The theory underlying compensation for victims of crime may be briefly stated in the form of two questions: If society assumes responsibility for protecting citizens from criminals, should it not help innocent victims when that law enforcement fails?

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<sup>27/</sup> Equality and Governmental Action, New York University Law Review, April 1964, p. 224.

If the criminal is fed and sheltered at state expense while serving his prison sentence, should not the object of his assault receive aid too?

On introducing his bill Senator Yarborough commented that since the middle of the 19th century, we have turned away from the old concepts of an eye for an eye and a tooth for a tooth and every man his best protector as workable methods for punishing criminals and protecting law-abiding citizens. We have demanded that people no longer go armed on our streets in order to protect themselves. We have outlawed vigilante groups. We have left the punishment of the criminal to the State rather than to the victim's relatives or a lynching mob.

We have told our people that they will be best protected if law enforcement is left to the Government, not to the private person. Having encouraged our people to go into the streets unprotected, we cannot deny that this puts a special obligation upon us to see that these people are, in fact, protected from the consequences of crime.

In opposition it is contended that the government is not responsible when a criminal assaults a citizen. While the government does have a responsibility to protect citizens against crime, failure to protect does not imply negligence. Only if

police officers were mind readers could they be blamed for failing to anticipate a criminal's intention. Is a doctor responsible whenever one of his patients falls ill or dies?

The victim-compensation plan would introduce the government into a new area of responsibility which it should properly reject. At a time when government is entering into many areas that had been previously left to private concerns, one more act of government "intervention" is one too many.

(2) The existing means of redress open to a crime victim are wholly inadequate.

It has been the accepted view that separation in respect of an injury inflicted by one person upon another is a civil matter between the parties concerned, capable of settlement in the civil courts by way of damages.

The answer is that in many instances the assailant either is unknown or, if he is known, is without means, in which case a suit would be a futile proceeding. A judgment that cannot be collected is, in effect, no judgment at all.

(3) The proposals are not applicable to property.

The British scheme has been criticized because it does not apply to property, and this would apply to the Yarborough and similar proposals. The answer here is that criminally-caused

damage to property is never as disastrous as serious injury to the person.<sup>28/</sup> Property damage does not destroy a person's only indispensable asset, that is, the ability to earn a living. Moreover, compensation for theft or robbery might lead to filing of fraudulent compensation claims, with the victim and offender dividing the award.

Insurance against property loss is perhaps more widespread than personal accident insurance, and it seems reasonable to leave the individual, for the time being at least, to insure against this type of loss.

(4) The programs would encourage fraud.

It is contended that even with existing safeguards fraudulent claims for compensation will often go undetected. An example frequently pointed out here is that a woman who had willingly engaged in fornication or adultery might assert that she had been raped. Then, too, it is said that the victim in many criminal cases is partly responsible for the crime; sexual assaults sometimes result from deliberate or inadvertent enticement on the part of the victim, and many assaults and murders result from provocation. These flaws in the British scheme are avoided to

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<sup>28/</sup> Childress, Robert D., "Compensation for Criminally Inflicted Personal Injury", New York University Law Review, May, 1964, p. 460.

some extent at least by the administering agency, the Crime Compensation Board, which will accept an application only if a surviving victim promptly reports the offense to the police and submits to a medical examination. No awards are made in cases involving members of the same household or in cases where the victim shares responsibility for the crime. These objections are met by the Yarborough and related bills in authorizing the Commission to consider any circumstances it determines relevant, including the behavior of the victim which contributes directly or indirectly to his injury or death. This, of course, will enable the Commission to determine whether the injured party is in fact the innocent victim of crime. The Commission must find that the act or omission complained of did occur, and that injury or death resulted therefrom. Too, compensation will not be paid when the victim was at the time of injury or death living with the offender as his wife or her husband, or, in situations when the Commission feels unjust enrichment to or on behalf of the offender would result.

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H.R. 11291	Matsunaga (Judiciary).
H.R. 11552	Hathaway (Judiciary).
H.R. 11583	Rosenthal (Judiciary).
H.R. 11818	Mrs. Green (Oregon) (Judiciary).
H.R. 11894	Horton (Judiciary).
H.R. 12625	Bell (Judiciary).
H.R. 14887	Schweiker (Judiciary).
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H.R. 714	Horton (Judiciary).
H.R. 4869	Hathaway (Judiciary).
H.R. 5392	Bell (Judiciary).
H.R. 5931	Matsunaga (Judiciary).
H.R. 13208	Schweiker (Judiciary).
H.R. 16756	Brown (Calif.) (Judiciary)
H.R. 16864	Roybal (Judiciary)

90TH CONGRESS  
1ST SESSION

# S. 646

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1967

Mr. YARBOROUGH (for himself, Mr. BARTLETT, Mr. CLARK, Mr. DODD, Mr. GRUENING, Mr. HART, Mr. INOUE, Mr. MAGNUSON, and Mr. MONDALE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for the compensation of persons injured by certain criminal acts.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **TITLE I—SHORT TITLE AND DEFINITIONS**

4                               **SHORT TITLE**

5       SEC. 101. This Act may be cited as the "Criminal In-  
6       juries Compensation Act of 1967".

7                               **DEFINITIONS**

8       SEC. 102. As used in this Act—

9       (1) The term "child" means an unmarried person who

1 is under eighteen years of age and includes a stepchild or an  
2 adopted child;

3 (2) The term "Commission" means the Violent Crimes  
4 Compensation Commission established by this Act;

5 (3) The term "dependents" means those who were  
6 wholly or partially dependent upon his income at the time  
7 of his death or would have been so dependent but for the  
8 incapacity due to the injury from which the death resulted  
9 and shall include the child of such victim born after his  
10 death;

11 (4) the term "personal injury" means actual bodily  
12 harm and includes pregnancy and mental or nervous shock;

13 (5) The term "relative" means his spouse, parent,  
14 grandparent, stepfather, stepmother, child, grandchild,  
15 brother, sister, half brother, half sister, or spouse's parents;

16 (6) The term "victim" means a person who is injured  
17 or killed by any act or omission of any other person which  
18 is within the description of any of the offenses specified in  
19 section 302 of this Act.

20 **TITLE II—ESTABLISHMENT OF VIOLENT CRIMES**  
21 **COMPENSATION COMMISSION**

22 **VIOLENT CRIMES COMPENSATION COMMISSION**

23 **SEC. 201. (a)** There is established a Violent Crimes  
24 Compensation Commission which shall be composed of three  
25 members to be appointed by the President, by and with the

1 advice and consent of the Senate, solely on the grounds of  
2 fitness to perform the duties of the office. The President  
3 shall designate one of the members of the Commission who  
4 has been a member of the bar of a Federal court or of the  
5 highest court of a State for at least eight years, as Chairman.

6 (b) No member of the Commission shall engage in any  
7 other business, vocation, or employment.

8 (c) The Chairman and one other member of the Com-  
9 mission shall constitute a quorum, except as provided in  
10 section 205 (b) ; and where opinion is divided and only one  
11 other member is present, the opinion of the Chairman shall  
12 prevail.

13 (d) The Commission shall have an official seal.

14 TERMS AND COMPENSATION OF MEMBERS

15 SEC. 202. (a) The term of office of each member of  
16 the Commission taking office after December 31, 1967, shall  
17 be eight years, except that (1) the terms of office of the  
18 members first taking office after December 31, 1967, shall  
19 expire as designated by the President at the time of the  
20 appointment, one at the end of four years, one at the end of  
21 six years, and one at the end of eight years, after December  
22 31, 1967; and (2) any member appointed to fill a vacancy  
23 occurring prior to the expiration of the terms for which his  
24 predecessor was appointed, shall be appointed for the re-  
25 mainder of such term.

1 (b) Each member of the Commission shall be eligible  
2 for reappointment.

3 (c) A vacancy in the Commission shall not affect its  
4 powers.

5 (d) Any member of the Commission may be removed  
6 by the President for inefficiency, neglect of duty, or mal-  
7 feasance in office.

8 (e) Each member of the Commission shall be compen-  
9 sated at the rate prescribed for level IV of the Federal  
10 Executive Salary Schedule of the Federal Executive Salary  
11 Act of 1964 except the Chairman who shall be compensated  
12 at the rate prescribed for level III of such schedule.

13 ATTORNEYS, EXAMINERS, AND EMPLOYEES OF THE  
14 COMMISSION; EXPENSES

15 SEC. 203. (a) The Commission is authorized to appoint  
16 such officers, attorneys, examiners, and other experts as may  
17 be necessary for carrying out its functions under this Act,  
18 and the Commission may, subject to the civil service laws,  
19 appoint such other officers and employees as are necessary  
20 and fix their compensation in accordance with the Classifica-  
21 tion Act of 1949.

22 (b) All expenses of the Commission, including all nec-  
23 essary traveling and subsistence expenses of the Commission  
24 outside the District of Columbia incurred by the members  
25 or employees of the Commission under its orders, shall be

1 allowed and paid on the presentation of itemized vouchers  
2 therefor approved by the Commission or by any individual  
3 it designates for that purpose.

4 PRINCIPAL OFFICE

5 SEC. 204. (a) The principal office of the Commission  
6 shall be in or near the District of Columbia, but the Com-  
7 mission or any duly authorized representative may exer-  
8 cise any or all of its powers in any place.

9 (b) The Commission shall maintain an office for the  
10 service of process and papers within the District of Columbia.

11 POWERS AND PROCEDURES OF THE COMMISSION

12 SEC. 205. (a) Upon request made to the Commission  
13 after the filing of an application under the provisions of this  
14 Act, the Commission or its duly authorized representative  
15 shall have a hearing on such application, shall fix a time  
16 and place for such hearing, and shall cause notice thereof to  
17 be given to the applicant.

18 (b) For the purpose of carrying out the provisions of  
19 this Act, the Commission, or any member thereof, or its duly  
20 authorized representative, may hold such hearings, sit and  
21 act at such times and places, and take such testimony as the  
22 Commission or such member may deem advisable. Any  
23 member of the Commission may administer oaths, or affir-  
24 mations to witnesses appearing before the Commission or



1 before such member. The Commission shall have such  
2 powers of subpoena and compulsion of attendance and produc-  
3 tion of documents as are conferred upon the Securities and  
4 Exchange Commission by subsection (c) of section 18 of  
5 the Act of August 26, 1935, and the provisions of subsec-  
6 tion (d) of such section shall be applicable to all persons  
7 summoned by subpoena or otherwise to attend or testify or  
8 produce such documents as are described therein before the  
9 Commission, except that no subpoena shall be issued except  
10 under the signature of the Chairman, and application to any  
11 court for aid in enforcing such subpoena may be made only  
12 by said Chairman. Subpoenas shall be served by any person  
13 designated by the said Chairman.

14 (c) In any case in which the person entitled to make  
15 an application is a child, the application may be made on  
16 his behalf by any person acting as his parent or guardian.  
17 In any case in which the person entitled to make an applica-  
18 tion is mentally defective, the application may be made on  
19 his behalf by his guardian or such other individual authorized  
20 to administer his estate.

21 (d) Where any application is made to the Commission  
22 under this Act, the applicant, and any attorney assisting the  
23 Commission, shall be entitled to appear and be heard.

24 (e) Any other person may appear and be heard who

1 satisfies the Commission that he has a substantial interest  
2 in the proceedings.

3 (f) Where under this Act any person is entitled to  
4 appear and be heard by the Commission, that person may  
5 appear in person or by his attorney.

6 (g) Every person appearing under the preceding sub-  
7 sections of this section shall have the right to produce evi-  
8 dence and to cross-examine witnesses.

9 (h) The Commission or its duly authorized representa-  
10 tive may receive in evidence any statement, document, in-  
11 formation, or matter that may in the opinion of the Com-  
12 mission contribute to its functions under this Act, whether  
13 or not such statement, document, information, or matter  
14 would be admissible in a court of law, except that any evi-  
15 dence introduced by or on behalf of the person or persons  
16 charged with causing the injury or death of the victim, any  
17 request for a stay of the Commission's action, and the fact  
18 of any award granted by the Commission shall not be ad-  
19 missible against such person or persons in any prosecution  
20 for such injury or death.

21 (i) If any person has been convicted of any offense  
22 with respect to an act or omission on which a claim under  
23 this Act is based, proof of that conviction shall, unless an  
24 appeal against the conviction or a petition for a rehearing

1 or certiorari in respect of the charge is pending or a new  
2 trial or rehearing has been ordered, be taken as conclusive  
3 evidence that the offense has been committed.

4 (j) Except as otherwise provided in this Act, the Ad-  
5 ministrative Procedure Act shall apply to the proceedings  
6 of the Commission.

7 ATTORNEYS' FEES

8 SEC. 206. (a) The Commission shall publish regula-  
9 tions providing that an attorney shall, at the conclusion of  
10 proceedings under this Act, file with the agency the amount  
11 of fee charged in connection with his services rendered in  
12 such proceedings.

13 (b) After the fee information is filed by an attorney  
14 under (a) above, the Commission may determine, in ac-  
15 cordance with such published rules or regulations as it may  
16 provide, that such fee charged is excessive. If, after notice  
17 to the attorney of this determination, the Commission and  
18 the attorney fail to agree upon a fee, the Commission may,  
19 within ninety days after the receipt of the information re-  
20 quired by (a) above, petition the United States district court  
21 in the district in which the attorney maintains an office, and  
22 the court shall determine a reasonable fee for the services  
23 rendered by the attorney.

24 (c) Any attorney who charges, demands, receives, or

1 collects for services rendered in connection with any pro-  
2 ceedings under this Act any amount in excess of that allowed  
3 under this section, if any compensation is paid, shall be fined  
4 not more than \$2,000 or imprisoned not more than one year,  
5 or both.

#### 6 FINALITY OF DECISION

7 SEC. 207. The orders and decisions of the Commission  
8 shall be reviewable on appeal, except that no trial de novo  
9 of the facts determined by the Commission shall be allowed.

#### 10 REGULATIONS

11 SEC. 208. In the performance of its functions, the Com-  
12 mission is authorized to make, promulgate, issue, rescind,  
13 and amend rules and regulations prescribing the procedures  
14 to be followed in the filing of applications and the proceed-  
15 ings under this Act, and such other matters as the Com-  
16 mission deems appropriate.

### 17 TITLE III—AWARD AND PAYMENT OF 18 COMPENSATION

#### 19 AWARDING COMPENSATION

20 SEC. 301. (a) In any case in which a person is injured  
21 or killed by any act or omission of any other person which  
22 is within the description of the offenses listed in section 302  
23 of this Act, the Commission may, in its discretion, upon

1 an application, order the payment of compensation in ac-  
2 cordance with the provisions of this Act, if such act or  
3 omission occurs—

4 (1) within the “special maritime and territorial  
5 jurisdiction of the United States” as defined in section  
6 7 of title 18 of the United States Code; or

7 (2) within the District of Columbia.

8 (b) The Commission may order the payment of  
9 compensation—

10 (1) to or on behalf of the injured person; or

11 (2) in the case of the personal injury of the victim,  
12 where the compensation is for pecuniary loss suffered  
13 or expenses incurred by any person responsible for the  
14 maintenance of the victim, to that person; or

15 (3) in the case of the death of the victim, to or  
16 for the benefit of the dependents or closest relative of  
17 the deceased victim; or any one or more of such  
18 dependents.

19 (c) For the purposes of this Act, a person shall be  
20 deemed to have intended an act or omission notwithstand-  
21 ing that by reason of age, insanity, drunkenness, or otherwise  
22 he was legally incapable of forming a criminal intent.

23 (d) In determining whether to make an order under  
24 this section, or the amount of any award, the Commission  
25 may consider any circumstances it determines to be rele-

1 vant, including the behavior of the victim which directly  
2 or indirectly contributed to his injury or death, unless such  
3 injury or death resulted from the victim's lawful attempt  
4 to prevent the commission of a crime or to apprehend an  
5 offender.

6 (e) No order may be made under this section unless  
7 the Commission, supported by substantial evidence, finds  
8 that—

- 9 (1) such an act or omission did occur; and  
10 (2) the injury or death resulted from such act or  
11 omission.

12 (f) An order may be made under this section whether  
13 or not any person is prosecuted or convicted of any offense  
14 arising out of such act or omission, or if such act or omission  
15 is the subject of any other legal action. Upon application  
16 from the Attorney General or the person or persons alleged  
17 to have caused the injury or death, the Commission shall  
18 suspend proceedings under this Act until such application is  
19 withdrawn or until a prosecution for an offense arising out  
20 of such act or omission is no longer pending or imminent.  
21 The Commission may suspend proceedings in the interest of  
22 justice if a civil action arising from such act or omission is  
23 pending or imminent.

24 (g) Upon certification by the Commission, the Secre-

1 tary of the Treasury shall pay to the person named in such  
2 order the amount specified therein.

3 OFFENSES TO WHICH THIS ACT APPLIES

4 SEC. 302. The Commission may order the payment of  
5 compensation in accordance with the provisions of this Act  
6 for personal injury or death which resulted from offenses in  
7 the following categories:

- 8 (1) assault with intent to kill, rob, rape, or poison;
- 9 (2) assault with intent to commit mayhem;
- 10 (3) assault with a dangerous weapon;
- 11 (4) assault;
- 12 (5) mayhem;
- 13 (6) malicious disfiguring;
- 14 (7) threats to do bodily harm;
- 15 (8) lewd, indecent, or obscene acts;
- 16 (9) indecent act with children;
- 17 (10) arson;
- 18 (11) kidnaping;
- 19 (12) robbery;
- 20 (13) murder;
- 21 (14) manslaughter, voluntary;
- 22 (15) attempted murder;
- 23 (16) rape;
- 24 (17) attempted rape;

1 (18) or other crimes involving force to the person.

2 NATURE OF THE COMPENSATION

3 SEC. 303. The Commission may order the payment of  
4 compensation under this Act for—

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

7 (b) loss of earning power as a result of total or  
8 partial incapacity of such victim;

9 (c) pecuniary loss to the dependents of the deceased  
10 victim;

11 (d) pain and suffering of the victim; and

12 (e) any other pecuniary loss resulting from the  
13 personal injury or death of the victim which the Com-  
14 mission determines to be reasonable.

15 LIMITATIONS UPON AWARDING COMPENSATION

16 SEC. 304. (a) No order for the payment of compensa-  
17 tion shall be made under section 301 of this Act unless the  
18 application has been made within two years after the date of  
19 the personal injury or death.

20 (b) No compensation shall be awarded under this Act  
21 to or on behalf of any victim in an amount in excess of  
22 \$25,000.

23 (c) No compensation shall be awarded if the victim  
24 was at the time of the personal injury or death of the victim



1 living with the offender as his wife or her husband or in  
2 situations when the Commission at its discretion feels unjust  
3 enrichment to or on behalf of the offender would result.

4 TERMS OF THE ORDER

5 SEC. 305. (a) Except as otherwise provided in this  
6 section, any order for the payment of compensation under  
7 this Act may be made on such terms as the Commission  
8 deems appropriate.

9 (b) The Commission shall deduct from any payments  
10 awarded under section 301 of this Act any payments re-  
11 ceived by the victim or by any of his dependents from the  
12 offender or from any person on behalf of the offender, or  
13 from the United States (except those received under this  
14 Act), a State or any of its subdivisions, for personal injury  
15 or death compensable under this Act, but only to the extent  
16 that the sum of such payments and any award under this  
17 Act are in excess of the total compensable injuries suffered  
18 by the victim as determined by the Commission.

19 (c) The Commission may at any time, on its own  
20 motion or on the application of the Attorney General, or  
21 of the victim or his dependents, or of the offender, vary any  
22 order for the payment of compensation made under this Act  
23 in such manner as the Commission thinks fit, whether as to  
24 terms of the order or by increasing or decreasing the amount  
25 of the award or otherwise.

## 1 TITLE IV—RECOVERY OF COMPENSATION

## 2 RECOVERY FROM OFFENDER

3 SEC. 401. (a) Whenever any person is convicted of an  
4 offense and an order for the payment of compensation is or  
5 has been made under this Act for a personal injury or death  
6 resulting from the act or omission constituting such offense,  
7 the Commission may institute an action against such person  
8 for the recovery of the whole or any specified part of such  
9 compensation in the district court of the United States for  
10 any judicial district in which such person resides or is found.  
11 Such court shall have jurisdiction to hear, determine, and  
12 render judgment in any such action.

13 (b) Process of the district court for any judicial district  
14 in any action under this section may be served in any other  
15 judicial district by the United States marshal thereof.  
16 Whenever it appears to the court in which any action under  
17 this section is pending that other parties should be brought  
18 before the court in such action, the court may cause such  
19 other parties to be summoned from any judicial district of  
20 the United States.

21 (c) An order for the payment of compensation under  
22 this Act shall not affect the right of any person to recover  
23 damages from any other person by a civil action for the  
24 injury or death.

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TITLE V—MISCELLANEOUS

REPORTS TO THE CONGRESS

SEC. 501. The Commission shall transmit to the President and to the Congress annually a report of its activities under this Act including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded.

PENALTIES

SEC. 502. The provisions of section 1001 of title 18 of the United States Code shall apply to any application, statement, document, or information presented to the Commission under this Act.

APPROPRIATIONS

SEC. 503. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 504. This Act shall take effect on January 1, 1968.

11211. Aid shall be paid under this chapter, upon application, to the family of any person killed and to the victim and family, if any, of any person incapacitated as the result of a crime of violence, if there is need of such aid.

The department shall establish criteria for payment of aid under this chapter, which criteria shall be substantially the same as those provided for aid to families with dependent children, provided, however, that aid shall be paid regardless of whether or not the applicant meets the property qualifications prescribed for that program. In no event shall expenditures under this section for the 1965-1966 fiscal year exceed one hundred thousand dollars (\$100,000).

Upon conviction of a person of a crime of violence resulting in the injury or death of another person, the court shall take into consideration the defendant's economic condition, and unless it finds that such action will cause the family of the defendant to be dependent on public welfare, shall, in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. The fine shall be deposited in the Indemnity Fund, in the State Treasury, which is hereby established, and the proceeds in such fund shall be used for the payment of aid under this section.

This section shall not constitute part of this state's plan for participation in any aid program under the federal Social Security Act, and shall be financed entirely by state and county funds. In all other respects, it shall be administered in the same manner as any other provision of this chapter.

SEC. 3. Section 2 of this act shall become operative only if Assembly Bill No. 1682 is enacted by the Legislature at its 1965 Regular Session, and in such case at the same time as Assembly Bill No. 1682 takes effect; at which time Section 1500.02 as added to the Welfare and Institutions Code by Section 1 of this act is repealed.

California

Laws 1965, ch. 1549, Superse by Laws 1967 ch. 1546

CHAPTER 1549

*An act to add Section 1500.02 to the Welfare and Institutions Code and to add Section 11211 to Division 9 of the Welfare and Institutions Code as proposed by Assembly Bill No. 1682, relating to aid to families with dependent children.*

[Approved by Governor July 16, 1965. Filed with Secretary of State July 23, 1965.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 1500.02 is added to the Welfare and Institutions Code, to read:

1500.02. Aid shall be paid under this chapter, upon application, to the family of any person killed and to the victim and family, if any, of any person incapacitated as the result of a crime of violence, if there is need of such aid.

The department shall establish criteria for payment of aid under this chapter, which criteria shall be substantially the same as those provided for aid to families with dependent children, provided, however, that aid shall be paid regardless of whether or not the applicant meets the property qualifications prescribed for that program. In no event shall expenditures under this section for the 1965-1966 fiscal year exceed one hundred thousand dollars (\$100,000).

Upon conviction of a person of a crime of violence resulting in the injury or death of another person, the court shall take into consideration the defendant's economic condition, and unless it finds such action will cause the family of the defendant to be dependent on public welfare, shall, in addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. The fine shall be deposited in the Indemnity Fund in the State Treasury, which is hereby established, and the proceeds in such fund shall be used for the payment of aid under this section.

This section shall not constitute part of this state's plan for participation in any aid program under the federal Social Security Act, and shall be financed entirely by state and county funds. In all other respects, it shall be administered in the same manner as any other provision of this chapter.

SEC. 2. Section 11211 is added to Division 9 of the Welfare and Institutions Code as proposed by Assembly Bill No. 1682, to read:

## California

## Laws 1967, ch. 1546

Ch. 1546]

1967 REGULAR SESSION

3707

## CHAPTER 1546

*An act to add Chapter 5 (commencing with Section 13960) to Part 4, Division 3, Title 2 of the Government Code, and to repeal Section 11211 of the Welfare and Institutions Code, relating to victims of crimes.*

[Approved by Governor August 30, 1967. Filed with Secretary of State August 30, 1967.]

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 5 (commencing with Section 13960) is added to Part 4 of Division 3 of Title 2 of the Government Code, to read:

## CHAPTER 5. VICTIMS OF CRIME

13960. The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to indemnify those needy residents of the State of California who are victims of crimes committed in the State of California, and those needy domiciliaries of California who are injured as a consequence of an act committed while temporarily in another state or jurisdiction where such act, if committed in California, would have been a public offense, for the injuries suffered as a result of the commission of the crimes.

13961. A victim of a crime as used in this chapter is any person who sustains injury to himself, or pecuniary loss as a result of physical injury or death of another person on whom he is financially dependent, and which is the consequence of an act considered to be a public offense, as defined by Penal Code Section 15, whether the actor is criminally liable or not.

13962. (a) The victim of a crime of violence, his family, or any persons dependent upon the victim for their support may file a claim with the State Board of Control, provided that the crime was committed in California and the applicant was a resident of California, or provided the claimant is a domiciliary of California who was injured while temporarily in another state or jurisdiction.

(b) The State Board of Control shall provide indemnification claim forms for purposes of this section and shall specify the information to be included in such forms.

(c) The claim must be presented by the claimant to the Board of Control within a period of one year after the date of death or injury and no claim not so presented shall be considered by the Board of Control.

13963. Upon presentation of any such claim, the Board of Control shall fix a time and place for the hearing of the claim, and shall mail notices thereof to interested persons or agencies and to the Attorney General. Prior to the hearing, the Attorney General shall investigate the facts of each claim, including

the claimant's financial condition, filed pursuant to this chapter, and prepare a report thereof. The Attorney General shall at the hearing submit to the board, and the board shall receive the report, together with any evidence which he may have obtained as a result of his investigation. At the hearing, the board shall receive evidence showing

- (a) The nature of the crime committed and the circumstances involved;
- (b) That as a direct consequence, the victim incurred personal injury;
- (c) The extent of such injury;
- (d) The need of the claimant;
- (e) Such other evidence as the board may require.

If the board determines, on the basis of a preponderance of such evidence, that the state should indemnify the claimant for the injury sustained, it shall approve the claim for payment. The board shall determine that the state should indemnify a person who files a claim pursuant to this chapter if there is need for such indemnification, except that such a claim may be denied if the claimant has not cooperated with the police in the apprehension and conviction of the criminal committing the crime.

The maximum amount for which the board may approve a claim pursuant to this section shall not exceed the amount necessary to indemnify or reimburse the claimant for necessary expenses incurred for hospitalization or medical treatment, loss of wages, loss of support, or other necessary expenses directly related to the injury. If continued hospitalization or medical treatment is necessary, a partial award may be made and the claim subsequently reconsidered for the purpose of recommending an additional award.

In addition the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award.

A claim shall be reduced to the extent that the claimant has received indemnification from any other source. If a claim is paid under this chapter the state shall be subrogated to the rights of the claimant to whom such claim was paid against any person causing the damage or injury for which payment was made to the extent of the payment of the claim. The state may recover the amount of the claim paid in a separate action, or may intervene in an action brought by the claimant. In no event shall a claim be approved pursuant to this section in excess of five thousand dollars (\$5,000).

13964. Upon conviction of a person of a crime of violence committed in the State of California resulting in the injury or death of another person who was a resident of the State of California at the time the crime was committed, the court shall take into consideration the defendant's economic condition, and unless it finds such action will cause the family of the defendant to be dependent on public welfare, may, in

addition to any other penalty, order the defendant to pay a fine commensurate in amount with the offense committed. The fine shall be deposited in the Indemnity Fund in the State Treasury, which is hereby continued in existence, and the proceeds in such fund shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this chapter.

13965. (a) The district attorney of each county shall inform each person in the county who may be eligible to file a claim pursuant to this chapter of such eligibility. The district attorney of each county shall obtain from the board any forms which may be necessary in the preparation and presentation of such claims.

(b) If a victim of a crime does not cooperate with a state or local law enforcement agency in the apprehension and conviction of the criminal committing the crime, the agency shall immediately notify the board of such lack of cooperation.

13966. Claims under this chapter shall be paid from a separate appropriation made to the State Board of Control in the Budget Act and as such claims are approved by the board.

Sec. 2. Section 11211 of the Welfare and Institutions Code is repealed.

Sec. 3. The Board of Control shall not later than March 1, 1968, report to the Legislature its progress under, and recommendations regarding improvement of, the program of indemnifying victim of crimes.



New York

Laws 1966, ch. 894

2596

LAWS OF NEW YORK, 1966

[CHAP.

## CHAPTER 894

AN ACT to amend the executive law, in relation to the creation of the crime victims compensation board in the executive department, prescribing the powers and duties thereof and making an appropriation therefor

Became a law August 1, 1966, with the approval of the Governor. Passed on message of necessity pursuant to article III, section 14 of the Constitution by a majority vote, three-fifths being present

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

Section 1. The executive law is hereby amended by inserting therein a new article, to be article twenty-two, to read as follows:

## ARTICLE 22

## CRIME VICTIMS COMPENSATION BOARD

*Section 620. Declaration of policy and legislative intent.*

*621. Definitions.*

*622. Crime victims compensation board.*

*623. Powers and duties of the board.*

*624. Eligibility.*

*625. Filing of claims.*

*626. Minimum allowable claim.*

*627. Determination of claims.*

*628. Consideration of decisions by full board.*

*629. Judicial review.*

*630. Emergency awards.*

*631. Awards.*

*632. Manner of payment.*

*633. Confidentiality of records.*

*634. Subrogation.*

*635. Severability of provisions.*

§ 620. *Declaration of policy and legislative intent. The legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts. Such persons or their dependents may thereby suffer disability, incur financial hardships, or become dependent upon public assistance. The legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the legislature's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime.*

§ 621. *Definitions. For the purposes of this article:*

1. "Board" shall mean the crime victims compensation board.

2. "Claimant" shall mean the person filing a claim pursuant to this article.

3. "Crime" shall mean an act committed in New York state which would, if committed by a mentally competent criminally

responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by the penal law, provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purposes of this article unless the injuries were intentionally inflicted through the use of a vehicle.

4. "Family", when used with reference to a person, shall mean (a) any person related to such person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such person, or (c) any person residing in the same household with such person.

5. "Victim" shall mean a person who suffers personal physical injury as a direct result of a crime.

§ 622. Crime victims compensation board. 1. There is hereby created in the executive department a board, to be known as the crime victims compensation board. Such board shall consist of three members, no more than two of whom shall belong to the same political party, who shall be appointed by the governor by and with the advice and consent of the senate. The members of the board shall have been admitted to practice law in the state of New York for not less than ten years next preceding their appointment.

2. The term of office of each such member shall be seven years, except that the members first appointed shall serve for terms of seven years, five years and three years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

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

4. The members of the board shall devote their whole time and capacity to their duties, and shall not engage in any other occupation, profession or employment, and shall receive an annual salary to be fixed by the governor within the amount made available therefor by appropriation.

§ 623. Powers and duties of the board. The board shall have the following powers and duties:

1. To establish and maintain a principal office and such other offices within the state as it may deem necessary.

2. To appoint a secretary, counsel, clerks and such other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

3. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this article, including rules for the approval of attorneys' fees for representation before the board or before the appellate division upon judicial review as provided for in section six hundred twenty-nine of this article.

EXPLANATION — Matter in italics is new; matter in brackets [ ] is old law to be omitted.

4. To request from the division of state police, from county or municipal police departments and agencies and from any other state or municipal department or agency, or public authority, and the same are hereby authorized to provide, such assistance and data as will enable the board to carry out its functions and duties.

5. To hear and determine all claims for awards filed with the board pursuant to this article, and to reinvestigate or reopen cases as the board deems necessary.

6. To direct medical examination of victims.

7. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member or employee thereof. A subpoena issued under this subdivision shall be regulated by the civil practice law and rules.

8. To take or cause to be taken affidavits or depositions within or without the state.

9. To render each year to the governor and to the legislature a written report of its activities.

§ 624. Eligibility. 1. Except as provided in subdivision two of this section, the following persons shall be eligible for awards pursuant to this article:

- (a) a victim of a crime;
- (b) a surviving spouse or child of a victim of a crime who died as a direct result of such crime; and
- (c) any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime.

2. A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

§ 625. Filing of claims. 1. A claim may be filed by a person eligible to receive an award, as provided in section six hundred twenty-four of this article, or, if such person is a minor, by his parent or guardian.

2. A claim must be filed by the claimant not later than ninety days after the occurrence of the crime upon which such claim is based, or not later than ninety days after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing for a period not exceeding one year after such occurrence.

3. Claims shall be filed in the office of the secretary of the board in person or by mail. The secretary of the board shall accept for filing all claims submitted by persons eligible under subdivision one of this section and alleging the jurisdictional requirements

set forth in this article and meeting the requirements as to form in the rules and regulations of the board.

4. Upon filing of a claim pursuant to this article, the board shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within ten days after such notification, such district attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this article until such time as such criminal prosecution has been concluded and shall so notify such district attorney and the claimant. When such criminal prosecution has been concluded, such district attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to section six hundred twenty-nine of this article.

§ 626. Minimum allowable claim. No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars or has lost at least two continuous weeks earnings or support. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based.

§ 627. Determination of claims. 1. A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a crime, shall be considered together by a single board member.

2. The board member to whom such claim is assigned shall examine the papers filed in support of such claim. The board member shall thereupon cause an investigation to be conducted into the validity of such claim. Such investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which such claim is based.

3. Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.

4. The board member to whom a claim is assigned may decide such claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of such papers and such report, he shall order a hearing. At such hearing any relevant evidence, not legally privileged, shall be admissible.

5. After examining the papers filed in support of such claim and the report of investigation, and after a hearing, if any, the

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board member to whom such claim was assigned shall make a decision either granting an award pursuant to section six hundred thirty-one of this article or deny the claim.

6. The board member making a decision shall file with the secretary a written report setting forth such decision and his reasons therefor. The secretary shall thereupon notify the claimant and furnish him a copy of such report.

§ 628. Consideration of decisions by full board. 1. The claimant may, within thirty days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the board for consideration of such decision by the full board.

2. Any member of the board may, within thirty days after the filing of such report, make an application in writing to the board for consideration of such decision by the full board.

3. Upon receipt of an application pursuant to subdivision one or two of this section, the board shall review the record and affirm or modify the decision of the board member to whom the claim was assigned. The action of the board in affirming or modifying such decision shall be final. The board shall file with the secretary of the board a written report setting forth its decision, and if such decision varies in any respect from the report of the board member to whom the claim was assigned setting forth its reasons for such decision. If the board receives no application pursuant to subdivision one or two of this section the decision of the board member to whom the claim was assigned shall become the final decision of the board.

4. The secretary of the board shall promptly notify the claimant, the attorney general and the comptroller of the final decision of the board and furnish each with a copy of the report setting forth such decision.

§ 629. Judicial review. 1. Within thirty days after receipt of the copy of the report containing the final decision of the board, the attorney general may, if in his judgment the award is improper or excessive, commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board. Within thirty days after receipt of the copy of such report, the comptroller may, if in his judgment the award is improper or excessive, request the attorney general to commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board in which event the attorney general shall commence such a proceeding. Such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court. There shall be no other judicial review of any decision made or action taken by the board, by a member of the board or by the secretary of the board with respect to any claim.

2. Any such proceeding shall be commenced by the service of notice thereof upon the claimant and the board in person or by mail.

§ 630. *Emergency awards.* Notwithstanding the provisions of section six hundred twenty-seven of this article, if it appears to the board member to whom a claim is assigned, prior to taking action upon such claim, that (a) such claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, such board member may make an emergency award to the claimant pending a final decision in the case, provided, however, that (a) the amount of such emergency award shall not exceed five hundred dollars, (b) the amount of such emergency award shall be deducted from any final award made to the claimant, and (c) the excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the board.

§ 631. *Awards.* 1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to, or death of, the victim, and (c) police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury.

3. Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this article, be in an amount equal to the actual loss sustained, provided, however, that no such award shall exceed one hundred dollars for each week of lost earnings or support, and provided further that the aggregate award for such loss shall not exceed fifteen thousand dollars. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the board among the claimants.

4. Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the person who committed the crime, (b) under insurance programs mandated by law, (c) from public funds, (d) as an emergency award pursuant to section six hundred thirty of this article.

5. In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with

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such determination; provided, however, that the board or board member, as the case may be, may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

6. If the board or board member, as the case may be, finds that the claimant will not suffer serious financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this article to meet such loss of earnings, support or out-of-pocket expenses, the board or board members shall deny an award. In determining such serious financial hardship, the board or board member shall consider all of the financial resources of the claimant. The board shall establish specific standards by rule for determining such serious financial hardship.

§ 632. *Manner of payment.* The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

§ 633. *Confidentiality of records.* The record of a proceeding before the board or a board member shall be a public record; provided, however, that any record or report obtained by the board, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

§ 634. *Subrogation.* Acceptance of an award made pursuant to this article shall subrogate the state, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made.

§ 635. *Severability of provisions.* If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 2. The sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, is hereby appropriated to the crime victims compensation board in the executive department out of any moneys in the state treasury in the general fund to the credit of the state purposes fund, and not otherwise appropriated, for the purposes of such board pursuant to article twenty-two of the executive law. Such sums shall be payable on audit and warrant of the comptroller on vouchers certified by the chairman or secretary of such board, in the manner provided by law.

§ 3. This act shall take effect immediately, but the provisions of article twenty-two of the executive law, as added by this act, shall apply only to claims resulting from crimes committed on or after March first, nineteen hundred sixty-seven.



LRS-79

New York

Laws 1968, ch. 661

**Ch. 661 LAWS OF NEW YORK 1968**

**Crime Victims Compensation Board—Eligibility**

**CHAPTER 661**

An Act to amend the executive law, in relation to claimant before the Crime Victims Compensation Board  
Approved and effective June 16, 1968.

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

Section 1. Subdivision b of section six hundred twenty-four of the executive law, as added by chapter eight hundred ninety-four of the laws of nineteen hundred sixty-six, is hereby amended to read respectively as follows:

(b) a surviving spouse, parent or child of a victim of a crime who died as a direct result of such crime; and

§ 2. This act shall take effect immediately.

**Savings and Loan Associations—Cumulative Income Shares**

**CHAPTER 662**

An Act to amend the banking law, in relation to the issue of cumulative income shares by savings and loan associations.  
Approved and effective June 16, 1968.

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

Section 1. Subdivision four of section three hundred seventy-eight of the banking law is hereby amended by adding thereto a new paragraph, to be paragraph (e), to read as follows:

(e) Cumulative income shares upon which a single payment of dues of not less than one hundred dollars shall be paid at the time such shares are issued. The dividends on such shares may be credited thereto until such shares are matured, withdrawn or retired. Cumulative income shares may be issued which shall not be withdrawable without the consent of the board of directors, until the expiration of a fixed period, which shall be not more than ten years nor less than ninety days. Whenever cumulative income shares are issued which are not withdrawable until the expiration of a fixed period, a statement that they are not withdrawable until the expiration of such fixed period shall be printed upon the face of the certificate of shares or other evidence of ownership in such manner as to be clearly legible. Cumulative income shares which are not withdrawable until the expiration of a fixed period shall be termed "cumulative income shares, class two." Other cumulative income shares shall be termed "cumulative income shares, class one."

§ 2. This act shall take effect immediately.

LRS-80

Hawaii

Laws 1967, Act 226

# ACT 226

S. B. NO. 16

## A BILL FOR AN ACT

RELATING TO VICTIMS OF CRIMINAL ACTS, TO PROVIDE FOR COMPENSATION OF VICTIMS OF CERTAIN CRIMES OR DEPENDENTS OF DECEASED VICTIMS, AND FOR INDEMNIFICATION OF PRIVATE CITIZENS FOR PERSONAL INJURY OR PROPERTY DAMAGE SUFFERED IN PREVENTION OF CRIME OR APPREHENSION OF A CRIMINAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new chapter to be appropriately numbered and to read as follows:

### "CHAPTER \_\_\_\_\_

### CRIMINAL INJURIES COMPENSATION ACT

#### Part I. INTRODUCTORY

Section \_\_\_\_-1. Purpose. The purpose of this Chapter is to aid victims of criminal acts, by providing for compensation victims of certain crimes or dependents of deceased victims, and for indemnification of private citizens for personal injury or property damage suffered in prevention of crime or apprehension of a criminal.

Section \_\_\_\_-2. Definitions. As used in this Chapter, unless the context otherwise requires:

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

'Commission' means the Criminal Injuries Compensation Commission established by this Chapter;

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

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

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

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

'Victim' means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State which is within the description of any of the crimes specified in section \_\_\_\_\_-31 of this Chapter.

## PART II. ESTABLISHMENT OF COMMISSION

Section \_\_\_\_\_-10. Criminal Injuries Compensation Commission.  
There is hereby established a Criminal Injuries Compensation Commission which shall be composed of three members to be appointed and be removable in the manner prescribed by Section 14A-3. One member of the Commission shall be an attorney who has been admitted to practice before the Supreme Court of the State for at least five years. No officer or employee of the State or any political subdivision thereof shall be eligible for appointment to the Commission. The Commission is hereby placed within the Department of Social Services for administrative purposes.

Section \_\_\_\_\_-11. Tenure and Compensation of Members.  
The term of office of each member of the Commission shall be four years or until his successor is appointed except that (1) the term of office of the members first taking office shall expire as designated by the Governor at the time of the appointment, one on December 31, 1968, one on December 31, 1969, and one on December 31, 1970; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. Each member of the Commission shall be eligible for reappointment, subject to the provisions of section 14A-3. A vacancy in the Commission shall not affect its powers. If any member of the Commission is unable to act because of absence, illness or other sufficient cause, the Governor may make a temporary appointment, and such appointee shall have all the powers and duties of a regular member of the Commission for the period of his appointment.

Each member of the Commission except the Chairman shall be compensated at the rate of \$50 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$6,600 per year. The Chairman shall be compensated at the rate of \$55 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$7,200 per year. The members of the Commission shall be paid their necessary travelling and subsistence expenses incurred in the discharge of their duties.

Section \_\_\_\_\_-12. Powers and Procedures of Commission.  
Upon an application made to the Commission under the provisions of this Chapter, the Commission shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant. The Commission may hold such hearings, sit and act at such times and places, and take such testimony as the Commission may deem advisable. The Chairman and one other member of the Commission shall constitute a quorum; and where opinion is divided and only one other member is present, the opinion of the Chairman shall prevail. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission. The Commission shall have such powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as are conferred upon a circuit court. Subpoenas shall be issued under the signature of the Chairman. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required shall have power, upon the application of the Commission, to enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts, and shall be payable from funds appropriated for expenses of administration.

Section \_\_\_\_\_-13. Hearings and Evidence. Where any application is made to the Commission under this Chapter, the applicant and the Commission's legal adviser shall be entitled to appear and be heard. Any other person may appear and be heard who satisfied the Commission that he has a substantial interest in the proceedings. In any case in which the person entitled to make an application is a child, the application may be made on his behalf by any person acting as his parent or guardian. In any case in which the person entitled to make an application is mentally defective, the application may be made on his behalf by his guardian or such other individual authorized to administer his estate.

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

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

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

Section \_\_\_\_-14. Medical Examination. The Commission may appoint an impartial licensed physician to examine any person making application under this Chapter, and the fees for such examination shall be paid from funds appropriated for expenses of administration.

Section \_\_\_\_-15. Attorneys' fees. The Commission may, as a part of any order entered under this Chapter, determine and allow reasonable attorneys' fees, which if the award of compensation is more than \$1,000 shall not exceed 15 per centum of such award, to be paid out of but not in addition to such award, to the attorneys representing the applicant, provided that the amount of the attorneys' fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant.

Any attorney who charges, demands, receives, or collects

for services rendered in connection with any proceedings under this Chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000.

Section \_\_\_\_\_-16. Judicial Review. Any person aggrieved by a final order or decision of the Commission on the sole ground that the order or decision was in excess of the Commission's authority or jurisdiction, shall have a right of appeal to the Supreme Court, provided the appeal is filed within thirty days after service of a certified copy of the order or decision. Except as provided in the preceding sentence, orders and decisions of the Commission shall be conclusive and not subject to judicial review.

### PART III. COMPENSATION TO VICTIMS OR DEPENDENTS

Section \_\_\_\_\_-30. Eligibility for Compensation.

(a) In the event any person is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after the effective date of this Act, which act or omission is within the description of the crimes enumerated in Section \_\_\_\_\_-31 of this Chapter, the Commission may, in its discretion, upon an application, order the payment of compensation in accordance with the provisions of this Chapter:

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

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

(c) In determining whether to make an order under this section, the Commission may consider any circumstances it determines to be relevant, and the Commission shall consider

the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death, and the Commission shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.

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

- (1) such an act or omission did occur; and
- (2) the injury or death of the victim resulted from such act or omission.

Upon application from the prosecuting attorney of the appropriate county, the Commission may suspend proceedings under this Chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of such act or omission has been commenced or is imminent.

Section \_\_\_\_\_-31. Violent crimes. The crimes to which Part III of this Chapter applies are the following enumerated offenses and all other offenses in which any enumerated offense is necessarily included:

- (1) Arson - Sec. 263-2
- (2) Intermediate Assault or Battery - Sec. 264-5,
- (3) Aggravated Assault or Battery - Sec. 264-3 or any other aggravated assault offense enacted by law;
- (4) Use of dangerous substances - Sec. 264-4
- (5) Murder - Sec. 291-7
- (6) Manslaughter - Sec. 291-7
- (7) Kidnapping - Sec. 292-1
- (8) Child-stealing - Sec. 292-4
- (9) Unlawful use of explosives - Sec. 296-8
- (10) Sexual intercourse with a female under sixteen - Sec. 309-14

- (11) Assault with intent to rape or ravish -  
Sec. 309-16
- (12) Indecent Assault - Sec. 309-17
- (13) Carnal abuse of female under twelve -  
Sec. 309-20
- (14) Rape - Sec. 309-31
- (15) Attempted Rape - Secs. 248-1, 309-31

Section \_\_\_\_\_-32. Award of Compensation. The Commission may order the payment of compensation under this Part for:

- (1) expenses actually and reasonably incurred as a result of the injury or death of the victim;
- (2) loss to the victim of earning power as a result of total or partial incapacity;
- (3) pecuniary loss to the dependents of the deceased victim;
- (4) pain and suffering to the victim; and
- (5) any other pecuniary loss directly resulting from the injury or death of the victim which the Commission determines to be reasonable and proper.

Section \_\_\_\_\_-33. Relationship to Offender. No compensation shall be awarded, except for expenses specified in Section \_\_\_\_\_-32(1), if the victim:

- (1) is a relative of the offender; or
- (2) was at the time of his injury or death living with the offender as spouse or as a member of the offender's household.

Section \_\_\_\_\_-34. Recovery from Offender. Whenever any person is convicted of an offense that includes any crime enumerated in Section \_\_\_\_\_-31 and an order or the payment of compensation is or has been made under this Part for injury or death resulting from the act or omission constituting such offense, the Commission may institute a derivative action against such person and against any person liable at law on his behalf, in the name of the victim or such of his dependents as have been awarded compensation under this Part in the circuit court of the circuit in which any such person resides or is found, for such damages as may be recoverable at common law by the victim or such dependents without reference to the payment of



compensation under this Part. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. The time from the occurrence of such act or omission until conviction of such offense and, thereafter, as long as the offender is in confinement for conviction of such offense, shall not constitute any part of the time limited for the commencement of such action by the Commission under the applicable statute of limitations. Any recovery in such action shall belong to the State, provided that the Commission shall amend its order of compensation to provide for the payment of any portion of the recovery in excess of the amount of compensation prescribed in such order to any of the persons entitled to receive compensation under section \_\_\_\_\_-30 in such proportions and upon such terms as the Commission shall deem appropriate. If the Legislature fails to appropriate funds to pay all or any part of the award of payment made by the Commission and there is a recovery of money from the offender, the Commission shall pay all of such recovery to the Claimant or such portion thereof, to the claimant as to the commission appears just and equitable, but in no case shall any claimant be given an award in excess of both the recovery and the award.

#### PART IV. COMPENSATION TO PRIVATE CITIZENS

Section \_\_\_\_\_-40. Eligibility for Compensation. In the event a private citizen incurs injury or property damage in preventing the commission of a crime within the State, in apprehending a person who has committed a crime within the State, or in materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such a person, the Commission may, in its discretion, upon an application, order the payment of compensation in accordance with the provisions of this Chapter:

- (1) to or for the benefit of the private citizen; or
- (2) to any person responsible for the maintenance of the private citizen, where that person has suffered pecuniary loss or incurred expenses as a result of the private citizen's injury.

Section \_\_\_\_\_-41. Award of Compensation. The Commission may order the payment of compensation under this Part for:

- (1) expenses actually and reasonably incurred as a result of the injury of the private citizen;
- (2) pain and suffering to the private citizen;
- (3) loss to the private citizen of earning power as a result of total or partial incapacity, and
- (4) pecuniary loss to the private citizen directly resulting from damage to his property.

#### PART V. GENERAL PROVISIONS

Section \_\_\_\_\_-50. Terms of Order. Except as otherwise provided in this Act, any order for the payment of compensation under this Chapter may be made on such terms as the Commission deems appropriate. Without limiting the generality of the preceding sentence, the order may provide for apportionment of the compensation, for the holding of the compensation or any part thereof in trust, and for the payment of the compensation in a lump sum or periodic installments. All such orders shall contain words clearly informing the Claimant that all awards and orders for payments under this Act are subject to the making of an appropriation by the Legislature to pay the claim.

Section \_\_\_\_\_-51. Limitations upon Award of Compensation.

(a) No order for the payment of compensation shall be made under this Chapter unless the application has been made within eighteen months after the date of injury, death or property damage.

(b) No compensation shall be awarded under this Chapter in an amount in excess of \$10,000.

Section \_\_\_\_\_-52. Recovery from Collateral Source.

(a) The Commission shall deduct from any compensation awarded under this Chapter any payments received from the offender or from any person on behalf of the offender, or from the United States, a State, or any of its subdivisions, or any agency of any of the foregoing, for injury or death compensable under this Chapter.

(b) Where compensation is awarded under this Chapter and the person receiving same also receives any sum required to be, and that has not been, deducted under subsection (a), he shall refund to the State the lesser of said sum or the amount of the compensation paid to him under this Chapter.

Section \_\_\_\_\_-53. No Double Recovery. Application may be made by any eligible person for compensation under both Parts III and IV of this Chapter, but no order shall have the effect of compensating any person more than once for any loss, expense or other matter compensable under this Chapter.

Section \_\_\_\_\_-54. Legal Adviser. The Attorney General shall serve as legal adviser to the Commission.

Section \_\_\_\_\_-55. Exemption from Execution. No compensation payable under this Chapter shall, prior to actual receipt thereof by the person or beneficiary entitled thereto, or their legal representatives, be assignable or subject to execution, garnishment, attachment or other process whatsoever, including process to satisfy an order or judgment for support or alimony.

Section \_\_\_\_\_-56. Survival and Abatement. The rights to compensation created by this Chapter are personal and shall not survive the death of the person or beneficiary entitled thereto, provided that if such death occurs after an application for compensation has been filed with the Commission, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

Section \_\_\_\_\_-57. Rule-making Powers. In the performance of its functions, the Commission is authorized to adopt, amend and repeal rules and regulations, not inconsistent with the provisions of this Chapter, prescribing the procedures to be followed in the filing of applications and the proceedings under this Chapter and such other matters as the Commission deems appropriate.

Section \_\_\_\_\_-58. Commission Staff. Supervisory, administrative and clerical personnel necessary for the efficient

functioning of the Commission shall be appointed as provided in section 14A-4.

Section \_\_\_\_\_-59. Annual Report. The Commission shall transmit annually to the Governor and to the Director of Finance, at least thirty days prior to the convening of the Legislature a report of its activities under this Chapter including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded. The Director of Finance shall, within five days after the opening of the legislative session, transmit such report, together with a tabulation of the total amount of compensation awarded, to the Committee on Ways and Means of the Senate and the Committee on Appropriations of the House of Representatives (or any successor committee). The funds necessary to pay the compensation awarded shall be appropriated in the same manner as payment of other claims for legislative relief sought pursuant to Section 35-6. Compliance with this section shall be deemed compliance with Section 35-6."

SECTION 2. This Act shall take effect on July 1, 1967.

APPROVED this 6<sup>th</sup> day of June, 1967.

*James A. Burnell*  
GOVERNOR OF THE STATE OF HAWAII

LRS-91

Massachusetts

Laws 1967, ch. 852

**CRIMES AND PUNISHMENTS—COMPENSATION  
OF VICTIMS**

**CHAPTER 852.**

**An Act to provide for the compensation of victims of violent crimes.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Section 1. The General Laws are hereby amended by inserting after chapter 258 the following chapter:

**CHAPTER 258A.**

**COMPENSATION OF VICTIMS OF VIOLENT CRIMES.**

**Section 1.**

The following words as used in this chapter shall have the following meanings, unless the context requires otherwise:

"Crime", an act committed in the commonwealth which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or

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defense, would constitute a crime; provided that such act involves the application of force or violence or the threat of force or violence by the offender upon the victim; and provided, further, that no act involving the operation of a motor vehicle which results in injury to another shall constitute a crime for the purpose of this chapter unless such injury was intentionally inflicted through the use of a motor vehicle.

"Dependent", mother, father, spouse, spouse's mother, spouse's father, child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly or partially dependent for support upon and living with the victim at the time of his injury or death due to a crime alleged in a claim pursuant to this chapter.

"Family", the spouse, parent, grandparent, step-mother, step-father, child, grandchild, brother, sister, half-brother, half-sister, adopted children of parent, or spouse's parents of the offender.

"Offender", a person who commits a crime.

"Victim", a person who suffers personal injury or death as a direct result of a crime.

**Section 2.**

The district courts of the commonwealth shall, pursuant to the provisions of this chapter, have jurisdiction to determine and award compensation to victims of crimes.

Such claims shall be brought in a district court within the territorial jurisdiction in which the claimant lives. A judge who has heard a criminal case in which the crime alleged as the basis of such claim shall not sit in determination of such claim. A judge who has heard such a claim shall not sit in a criminal case arising from a crime alleged in such claim. Failure to prosecute, or to prosecute successfully an offender in a criminal case, shall not in any way prejudice the claim of an eligible claimant unless such failure is due to the provocation of the offender by the victim.

**Section 3.**

Except as hereinafter provided, the following persons shall be eligible for compensation pursuant to this chapter:

- (a) a victim of a crime;
- (b) in the case of the death of the victim as a direct result of the crime, a dependent of the victim.

An offender or an accomplice of an offender, a member of the family of the offender, a person living with the offender or a person maintaining sexual relations with the offender shall in no case be eligible to receive compensation with respect to a crime committed by the offender.

**Section 4.**

A claim for compensation may be filed by a person eligible for compensation or if he is a minor or is incompetent by his parent or guardian.

A claim shall be filed not later than one year after the occurrence of the crime upon which it is based, or not later than ninety days after the death of the victim whichever is earlier; provided, however, that upon good cause, the court may either before or after the expiration of said filing period extend the time for filing such claim.

Each claim shall be filed in the office of the clerk of the district court in person or by mail, and shall be accompanied by an entry fee of five dollars. Said clerk shall immediately notify the attorney general of the claim. Such notification shall be in writing, with copies of such material as is included in the claim or in support thereof. The attorney general shall investigate such claim, prior to the opening of formal court proceedings. Said clerk of court shall notify the claimant and the attorney general of the date and time of any hearing on such claim.

The attorney general shall present any information he may have in support of or in opposition to the claim. The claimant may present evidence and testimony on his own behalf or may retain counsel. The court may, as part of any order entered under this chapter, determine and allow reasonable attorney's fees, which shall not exceed fifteen per cent of the amount awarded as compensation under this chapter, which fee shall be paid out of, but not in addition to, the amount of

## 1967 REGULAR SESSION

## Ch. 852

compensation, to the attorney representing the claimant. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.

The person filing a claim shall, prior to any hearing thereon, submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the court, an examination of the injured victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the court may appoint a duly qualified impartial physician to make such examination and report.

**Section 5.**

No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least one hundred dollars or has lost two continuous weeks of earnings or support. Out-of-pocket loss shall mean unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. One hundred dollars shall be deducted from any award granted under this chapter.

No compensation shall be paid unless the court finds that a crime was committed, that such crime directly resulted in personal physical injury to, or the death of, the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the court finds said report to the police to have been delayed for good cause.

Any compensation paid under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury.

Any compensation for loss of earnings or support shall be in an amount equal to the actual loss sustained; provided, however, that no award under this chapter shall exceed ten thousand dollars. If two or more persons are entitled to compensation as a result of a death of a person which is the direct result of a crime, the compensation shall be apportioned by the court among the claimants in proportion to their loss.

**Section 6.**

For the purpose of determining the amount of compensation payable pursuant to this chapter, the chief justice of the district court and the chief justice of the municipal court of the city of Boston shall, insofar as practicable, formulate standards for the uniform application of this chapter. The court shall take into consideration the provisions of this chapter, the rates and amounts of compensation payable for injuries and death under other laws of the commonwealth and of the United States, excluding pain and suffering, and the availability of funds appropriated for the purpose of this chapter. All decisions of the court on claims heard under this chapter shall be in writing, setting forth the name of the claimant, the amount of compensation and the reasons for the decision. The clerk of the court shall immediately notify the claimant in writing of the decision and shall forward to the state treasurer a certified copy of the decision. The state treasurer without further authorization shall, subject to appropriation, pay the claimant the amount determined by the court.

Any compensation paid pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the offender, (b) under insurance programs, or (c) from public funds.

In determining the amount of compensation payable, the court shall determine whether because of his conduct the victim contributed to the infliction of his injury; and the court shall reduce the amount of the compensation or deny the claim altogether, in accordance with such determination; provided, however, that the court may disregard the responsibility of the victim for his own injury where such responsibility was attributable to efforts by the victim to aid a victim, or to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony.

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**Section 7.**

Acceptance of any compensation under this chapter shall subrogate the commonwealth, to the extent of such compensation paid, to any right or right of action accruing to the claimant or to the victim to recover payments on account of losses resulting from the crime with respect to which the compensation has been paid. The attorney general may enforce the subrogation, and he shall bring suit to recover from any person to whom compensation is paid, to the extent of the compensation actually paid under this chapter, any amount received by the claimant from any source exceeding the actual loss to the victim.

Section 2. The first paragraph of section 108 of chapter 231 of the General Laws is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: There shall be an appellate division of each district court for the rehearing of matters of law arising in civil cases therein and in claims for compensation of victims of violent crimes.

Section 3. Chapter 218 of the General Laws is hereby amended by inserting after section 43C the following section:

**Section 43D.**

The chief justice of the district courts shall make uniform rules applicable to all the district courts except the municipal court of the city of Boston, and the chief justice of the municipal court of the city of Boston shall make rules applicable to that court, providing for a simple, informal and inexpensive procedure for the determination of claims for compensation of victims of violent crimes, as provided under chapter two hundred and fifty-eight A.

Section 4. Section three of this act shall take effect conformably with law, and sections one and two shall take effect on July first, nineteen hundred and sixty-eight, and shall apply only to victims of crimes committed on or after said date.

Approved January 2, 1968.



Maryland

Laws 1968, ch. 455

Senate Bill No. 4.

Introduced by the President (Legislative Council).

Read and Examined by Proof Reader:

.....  
Proof Reader.

.....  
Proof Reader.

Sealed with the Great Seal and presented to the Governor, for his

approval this ..... day of .....

at ..... o'clock .....M.

CHAPTER.....455.....

MAY 7 '68

AN ACT to add a new Article 26A to the Annotated Code of Maryland (1966 Replacement Volume), to follow immediately after Article 26 thereof, and to be under the new title "Criminal Injuries Compensation Act," to institute an administrative procedure within the State to provide a means of compensating certain victims of crimes and certain citizens who assist in apprehending criminals or assist law enforcement officers in preventing crimes or apprehending criminals, to authorize the creation of a Board for the purposes of implementing these procedures, to provide for the appointment, duties and salary of members of said Board, to establish rules and regulations and procedures to be followed, and to provide generally for the compensation of victims of crimes and certain persons who assist in the prevention of crime.

- 1 SECTION 1. *Be it enacted by the General Assembly of Maryland,*
- 2 That new Article 26A, be and it is hereby added to the Annotated
- 3 Code of Maryland (1966 Replacement Volume), to be under the new
- 4 title "Criminal Injuries Compensation Act," and to follow immedi-
- 5 ately after Article 26 thereof, and to read as follows:

EXPLANATION: *Italics indicate new matter added to existing law.*  
 [Brackets] indicate matter stricken from existing law.  
 CAPITALS indicate amendments to bill.  
 Strike out indicates matter stricken out of bill.

## SENATE BILL NO. 4

1

## Article 26A.

2

## Criminal Injuries Compensation Act

3

## 1. Declaration of policy and legislative intent.

4 The legislature recognizes that many innocent persons suffer  
5 personal physical injury or death as a result of criminal acts or  
6 in their efforts to prevent crime or apprehend persons committing  
7 or attempting to commit crimes. Such persons or their dependents  
8 may thereby suffer disability, incur financial hardships or become  
9 dependent upon public assistance. The legislature finds and deter-  
10 mines that there is a need for government financial assistance for  
11 such victims of crime. Accordingly, it is the legislature's intent that  
12 aid, care and support be provided by the State, as a matter of  
13 moral responsibility, for such victims of crime.

1

## 2. Definitions.

2

For the purpose of this Article:

3

(a) "Board" shall mean the Criminal Injuries Compensation  
4 Board.

5

(b) "Claimant" shall mean the person filing a claim pursuant  
6 to this Article.

7

(c) "Crime" shall mean an act committed BY ANY PERSON  
8 in the State of Maryland which would, ~~if committed by a mentally~~  
9 ~~competent criminally responsible person who has no legal exemption~~  
10 ~~or defense,~~ constitute a crime as defined in Article 27 of the Anno-  
11 tated Code of Maryland (1967 Replacement Volume) OR AT COM-  
12 MON LAW, provided, however, that no act involving the operation of  
13 a motor vehicle which results in injury shall constitute a crime for  
14 the purpose of this Article unless the injuries were intentionally in-  
14a flicted through the use of a vehicle.

15

(d) "Family" when used with reference to a person, shall mean  
16 (1) any person related to such person within the third degree of  
17 consanguinity or affinity, (2) any person maintaining a sexual  
18 relationship with such person, or (3) any person residing in the  
19 same household with such person.

20

(e) "Victim" shall mean a person who suffers personal physical  
21 injury OR DEATH as a direct result of a crime.

1

## 3. Criminal Injuries Compensation Board.

2

(a) There is hereby created in the executive department a  
3 board, to be known as the Criminal Injuries Compensation Board, to  
4 consist of three members, no more than two of whom shall belong  
5 to the same political party. The members of the Board shall be  
6 appointed by the Governor, with the advice and consent of the  
7 Senate. One member of the Board shall have been admitted to  
8 practice law in the State of Maryland for not less than five years  
9 next preceding his appointment.

10

(b) The term of office of each such member shall be five years,  
11 except that the members first appointed shall serve for terms of  
12 five years, four years and three years respectively. Any member ap-  
13 pointed to fill a vacancy occurring otherwise than by expiration of  
14 a term shall be appointed for the remainder of the unexpired term.

15

(c) The Governor shall designate one member of the Board as  
16 chairman, to serve at the pleasure of the Governor.

17

(d) The members of the Board shall devote such time as is  
18 necessary to perform the duties imposed upon them. They shall  
19 receive an annual salary as may be provided in the annual Budget.

1 4. Powers and duties of the Board.

2 The Board shall have the following powers and duties:

3 (a) To establish and maintain an office and appoint a secretary,  
4 clerks and such other employees and agents as may be necessary,  
5 such employees to be subject to the provisions of Article 64A, titled  
6 Merit System, and prescribe their duties.

7 (b) To adopt, promulgate, amend and rescind suitable rules  
8 and regulations to carry out the provisions and purposes of this  
9 Article, including rules for the approval of attorneys' fees for rep-  
10 resentation before the Board or before the court upon judicial re-  
11 view as hereinafter provided.

12 (c) To request from the State's Attorney, State Police, county  
13 or municipal police departments such investigation and data as will  
14 enable the Board to determine if, in fact, a crime was committed  
15 or attempted, and the extent, if any, to which the victim or claimant  
16 was responsible for his own injury.

17 (d) To hear and determine all claims for awards filed with the  
18 Board pursuant to this Article, and to reinvestigate or reopen cases  
19 as the Board deems necessary.

20 (e) To direct medical examination of victims.

21 (f) To hold hearings, administer oaths or affirmations, examine  
22 any person under oath or affirmation and to issue summons requir-  
23 ing the attendance and giving of testimony of witnesses and require  
24 the production of any books, papers, documentary or other evidence.  
25 The powers provided in this subsection may be delegated by the  
26 Board to any member or employee thereof. A summons issued under  
27 this subsection shall be regulated by the Maryland Rules of Pro-  
28 cedure.

29 (g) To take or cause to be taken affidavits or depositions within  
30 or without the State.

31 (h) To render each year to the Governor and to the legislature  
32 LEGISLATIVE COUNCIL a written report of its activities.

1 5. Eligibility.

2 (a) Except as provided in subsection (b) of this Section, the  
3 following persons shall be eligible for awards pursuant to this Article.

4 (1) a victim of a crime;

5 (2) a surviving spouse or child of a victim of a crime who died  
6 as a direct result of such crime; and

7 (3) any other person dependent for his principal support upon  
8 a victim of a crime who died as a direct result of such crime.

9 (4) any person who is injured or killed while trying to prevent  
10 a crime or an attempted crime from occurring in his presence or  
11 trying to apprehend a person who had committed a crime in his  
12 presence or had, in fact, committed a felony.

12a (5) A SURVIVING SPOUSE OR CHILD OF ANY PER-  
12b SON WHO DIES AS A DIRECT RESULT OF TRYING TO  
12c PREVENT A CRIME OR AN ATTEMPTED CRIME FROM  
12d OCCURRING IN HIS PRESENCE OR TRYING TO APPRE-  
12e HEND A PERSON WHO HAD COMMITTED A CRIME IN  
12g HIS PRESENCE OR HAD, IN FACT, COMMITTED A FEL-  
12h ONY.

12k (6) ANY OTHER PERSON DEPENDENT FOR HIS PRIN-  
12n CIPAL SUPPORT UPON ANY PERSON WHO DIES AS A

## SENATE BILL NO. 4

12o DIRECT RESULT OF TRYING TO PREVENT A CRIME OR  
 12p AN ATTEMPTED CRIME FROM OCCURRING IN HIS PRES-  
 12q ENCE OR TRYING TO APPREHEND A PERSON WHO HAD  
 12r COMMITTED A CRIME IN HIS PRESENCE OR HAD, IN  
 12s FACT, COMMITTED A FELONY.

13 (b) A person who is criminally responsible for the crime upon  
 14 which a claim is based or an accomplice of such person or a member  
 15 of the family of such persons shall not be eligible to receive an award  
 16 with respect to such claim.

1 6. Filing of claims.

2 (a) A claim may be filed by a person eligible to receive an  
 3 award, as provided in Section 5 of this Article, or if such person  
 4 is a minor, by his parent or guardian. In any case in which the  
 5 person entitled to make a claim is mentally incompetent, the claim  
 6 may be filed on his behalf by his guardian or such other individual  
 7 authorized to administer his estate.

8 (b) A claim must be filed by the claimant not later than ninety  
 9 days after the occurrence of the crime upon which such claim is  
 10 based, or not later than ninety days after the death of the victim,  
 11 provided, however, that upon good cause shown, the Board may ex-  
 12 tend that time for filing for a period not exceeding one year after  
 13 such occurrence.

14 (c) Claims shall be filed in the office of the secretary of the  
 15 Board in person or by mail. The secretary shall accept for filing all  
 16 claims submitted by persons eligible under subsection (a) of this  
 17 Section and alleging the jurisdictional requirements set forth in  
 18 this Article and meeting the requirements as to form in the rules  
 19 and regulations of the Board.

20 (d) Upon filing of a claim pursuant to this Article, the Board  
 21 shall promptly notify the State's Attorney of the county, or Balti-  
 22 more City, as the case may be, wherein the crime is alleged to  
 23 have occurred. If, within ten days after such notification, the  
 24 State's Attorney so notified advises the Board that a criminal pros-  
 25 ecution is pending upon the same alleged crime, the Board shall  
 26 defer all proceedings under this Article until such time as such  
 27 criminal prosecution has been concluded and shall so notify such  
 28 State's Attorney and the claimant. When such criminal prosecution  
 29 has been concluded, the State's Attorney shall promptly so notify  
 30 the Board. Nothing in this Section shall limit the authority of the  
 31 Board to grant emergency awards as hereinafter provided.

1 7. Minimum allowable claim.

2 No award shall be made on a claim unless the claimant has in-  
 3 curred a minimum out-of-pocket loss of one hundred dollars or has  
 4 lost at least two continuous weeks' earnings or support. Out-of-  
 5 pocket loss shall mean reimbursed and unreimbursable expenses  
 6 or indebtedness reasonably incurred for medical care or other  
 7 services necessary as a result of the injury upon which such claim  
 8 is based.

1 8. Determination of claims.

2 (a) A claim, when accepted for filing, shall be assigned by the  
 3 chairman to himself or to another member of the Board. All claims  
 4 arising from the death of an individual as a direct result of a crime,  
 5 shall be considered together by a single Board member.

6 (b) The Board member to whom such claim is assigned shall  
 7 examine the papers filed in support of the claim and shall there-

8 upon cause an investigation to be conducted into the validity of  
9 the claim. The investigation shall include, but not be limited to,  
10 an examination of police, court and official records and reports con-  
11 cerning the crime and an examination of medical and hospital re-  
12 ports relating to the injury upon which the claim is based.

13 (c) Claims shall be investigated and determined, regardless of  
14 whether the alleged criminal has been apprehended or prosecuted  
15 for or convicted of any crime based upon the same incident, or has  
16 been acquitted, or found not guilty of the crime in question owing  
17 to criminal responsibility or other legal exemption.

18 (d) The Board member to whom a claim is assigned may decide  
19 the claim in favor of a claimant on the basis of the papers filed  
20 in support thereof and the report of the investigation of the claim.  
21 If the Board member is unable to decide the claim upon the basis  
22 of the said papers and report, he shall order a hearing. At the  
23 hearing any relevant evidence, not legally privileged, shall be admis-  
24 sible.

25 (e) After examining the papers filed in support of the claim  
26 and the report of investigation, and after a hearing, if any, the  
27 Board member to whom the claim was assigned shall make a decision  
28 either granting an award pursuant to Section 12 of this Article  
29 or deny the claim.

30 (f) The Board member making a decision shall file with the  
31 secretary a written report setting forth such decision and his reasons  
32 therefor. The secretary shall thereupon notify the claimant and  
33 furnish him a copy of such report, UPON REQUEST.

1 9. Consideration of decisions by full Board.

2 (a) The claimant may, within thirty days after receipt of the  
3 report of the Board member to whom his claim was assigned, make  
4 an application in writing to the Board for consideration of the deci-  
5 sion by the full Board.

6 (b) Upon receipt of an application pursuant to subsection (a)  
7 of this Section OR UPON ITS OWN MOTION, the Board shall re-  
8 view the record and affirm or modify the decision of the Board mem-  
9 ber to whom the claim was assigned. The action of the Board in  
10 affirming or modifying such decision shall be final. If the Board re-  
11 ceives no application pursuant to subsection (a) of this Section OR  
12 TAKES NO ACTION UPON ITS OWN MOTION the decision of the  
13 Board member to whom the claim was assigned shall become the final  
13a decision of the Board.

14 (c) The secretary of the Board shall promptly notify the claimant,  
15 the Attorney General and the Comptroller of the final decision of  
16 the Board and furnish each with a copy of the report setting  
17 forth the decision.

1 10. Judicial review.

2 (a) Within thirty days after receipt of the copy of the report  
3 containing the final decision of the Board, the Attorney General  
4 may, if in his judgment the award is improper or excessive, com-  
5 mence a proceeding in the Circuit Court of the county or the Supreme  
6 Bench of Baltimore City, as the case may be, to review the decision  
7 of the Board. Any such proceeding shall be heard in a summary  
8 manner and shall have precedence over all other civil cases in such  
9 court. The court may, however, take additional testimony, if it so  
10 desires. There shall be no other judicial review of any decision  
11 made or action taken by the Board, by a member of the Board or  
12 by the secretary of the Board with respect to any claim.

13 (b) Any such proceeding shall be commenced by the service  
14 of notice thereof upon the claimant and the Board in person or by  
15 mail.

1 11. Emergency Awards.

2 Notwithstanding the provisions of Sections 6 and 8 of this Article,  
3 if it appears to the Board member to whom a claim is assigned,  
4 prior to taking action upon such claim, that (a) such claim is one  
5 with respect to which an award probably will be made, and (b)  
6 undue hardship will result to the claimant if immediate payment  
7 is not made, the Board member may make an emergency award to  
8 the claimant pending a final decision in the case, provided, how-  
9 ever, that (1) the amount of such emergency award shall not exceed  
10 five hundred dollars, (2) the amount of such emergency award shall  
11 be deducted from any final award made to the claimant, and (3)  
12 the excess of the amount of such emergency award over the final  
13 award, or the full amount of the emergency award if not final  
14 award is made, shall be repaid by the claimant to the Board.

1 12. Awards.

2 (a) No award shall be made unless the Board or Board members,  
3 as the case may be, finds that (1) a crime was committed, (2) such  
4 crime directly resulted in personal physical injury to, or death of the  
5 victim, and (3) police records show that such crime was promptly  
6 reported to the proper authorities; and in no case may an award  
7 be made where the police records show that such report was made  
8 more than forty-eight hours after the occurrence of such crime  
9 unless the Board, for good cause shown, finds the delay to have been  
10 justified. THE BOARD, UPON FINDING THAT ANY CLAIMANT  
10a OR AWARD RECIPIENT HAS NOT FULLY COOPERATED  
10b WITH ALL LAW ENFORCEMENT AGENCIES, MAY DENY OR  
10c WITHDRAW ANY AWARD, AS THE CASE MAY BE.

11 (b) Any award made pursuant to this Article shall be made in  
12 accordance with the schedule of benefits and degree of disability  
13 as specified in Section 36 of Article 101 of the Code, excluding Sec-  
14 tion 66 entitled "Subsequent Injury Fund."

15 (c) If there are two or more persons entitled to an award as a  
16 result of the death of a person which is the direct result of a crime,  
17 the award shall be apportioned among the claimants.

18 (d) Any award made pursuant to this Article shall be reduced  
19 by the amount of any payments received or to be received as a  
20 result of the injury (1) from or on behalf of the person who com-  
21 mitted the crime, (2) from any other public or private source, in-  
22 cluding an award of the Workmen's Compensation Commission under  
23 Article 101, (3) as an emergency award pursuant to Section 11 of  
24 this Article.

25 (e) In determining the amount of an award, the Board or Board  
26 members, as the case may be, shall determine whether, because of  
27 his conduct, the victim of such crime contributed to the infliction of  
28 his injury, and the Board or Board Member shall reduce the amount  
29 of the award or reject the claim altogether, in accordance with  
30 such determination; provided, however, that the Board or Board  
31 member, as the case may be, may disregard for this purpose the  
32 responsibility of the victim for his own injury where the record  
33 shows that such responsibility was attributable to efforts by the  
34 victim to prevent a crime or an attempted crime from occurring in  
35 his presence or to apprehend a person who had committed a crime  
36 in his presence or had, in fact, committed a felony.

37 (f) If the Board or Board member, as the case may be, finds  
38 that the claimant will not suffer serious financial hardship, as a

## SENATE BILL NO. 4

7

39 result of the loss of earnings or support and the out-of-pocket ex-  
 40 penses incurred as a result of the injury, if not granted financial  
 41 assistance pursuant to this Article to meet such loss of earnings,  
 42 support or out-of-pocket expenses, the Board or Board members shall  
 43 deny an award. In determining such serious financial hardship,  
 44 the Board or Board member shall consider all of the financial re-  
 46 sources of the claimant. ~~The Board shall establish specific standards~~  
 46 ~~by rule for determining such serious financial hardship.~~

1 13. Manner of payment.

2 Any award made under this Article shall be paid in accordance  
 3 with the provisions of Section 36 and other applicable sections of  
 4 Article 101 of this Code, excluding Section 66 of that Article entitled  
 5 "Subsequent Injury Fund." No award made pursuant to this Article  
 6 shall be subject to execution or attachment other than for expenses  
 7 resulting from the injury which is the basis for the claim.

1 14. Confidentiality of records.

2 The record of a proceeding before the Board or a Board member  
 3 shall be a public record; provided, however, that any record or  
 4 report obtained by the Board, the confidentiality of which is pro-  
 5 tected by any other law or regulation, shall remain confidential  
 6 subject to such law or regulation.

1 15. Subrogation.

2 Acceptance of an award made pursuant to this Article shall sub-  
 3 rogate the State, to the extent of such award, to any right or right of  
 4 action occurring to the claimant or the victim to recover payments  
 5 on account of losses resulting from the crime with respect to  
 6 which the award is made.

1 16. Penalty.

2 Any person who asserts a false claim under the provisions of this  
 3 Article shall be guilty of a misdemeanor, and upon conviction  
 4 thereof, shall be subject to a fine of not less than \$500 or one year  
 5 imprisonment or both, and shall further forfeit any benefit received  
 6 and shall reimburse and repay the State for payments received or  
 7 paid on his behalf pursuant to any of the provisions hereunder.

1 17.

2 Where any person is convicted after July 1, 1968, of any offense  
 3 CRIME by any judge, or trial magistrate, with criminal jurisdiction,  
 4 there shall be imposed as additional cost, in the case, in addition to any  
 5 other costs required to be imposed by law, the sum of five dollars  
 6 (\$5). All such sums shall be paid over to the Comptroller of the  
 7 State to be deposited in the General Funds of the State. UNDER  
 8 NO CONDITION SHALL A POLITICAL SUBDIVISION BE HELD  
 9 LIABLE FOR THE PAYMENT OF THIS SUM OF FIVE DOL-  
 10 LARS (\$5.00). "Offense" CRIME as used in this subsection does not  
 11 include motor vehicle violations or violations of Article 66 of this  
 11a Code.

1 See 2. And be it further enacted, That there is hereby appropri-  
 2 ated for the administration of this Act the sum of two hundred  
 2 and fifty thousand dollars (\$250,000).

1 SEC. 2. AND BE IT FURTHER ENACTED, THAT THERE  
 2 SHALL BE AN AMOUNT APPROPRIATED TO COVER THE  
 3 ADMINISTRATION OF THIS ACT.

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1 SEC. 3. *And be it further enacted, That if any provision of*  
2 *this Article or the application thereof to any person or circumstances*  
3 *is held invalid, the remainder of this Article and the application of*  
4 *such provision to other persons or circumstances shall not be affected*  
5 *thereby.*

1 SEC. 4. *And be it further enacted, That this Act shall take effect*  
2 *July 1, 1968.*

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.