

LOUISIANA -
STAFF ANALYSIS OF VICTIM COMPENSATION

GOVERNOR'S PARDON, PAROLE AND
REHABILITATION COMMISSION

October 13, 1978

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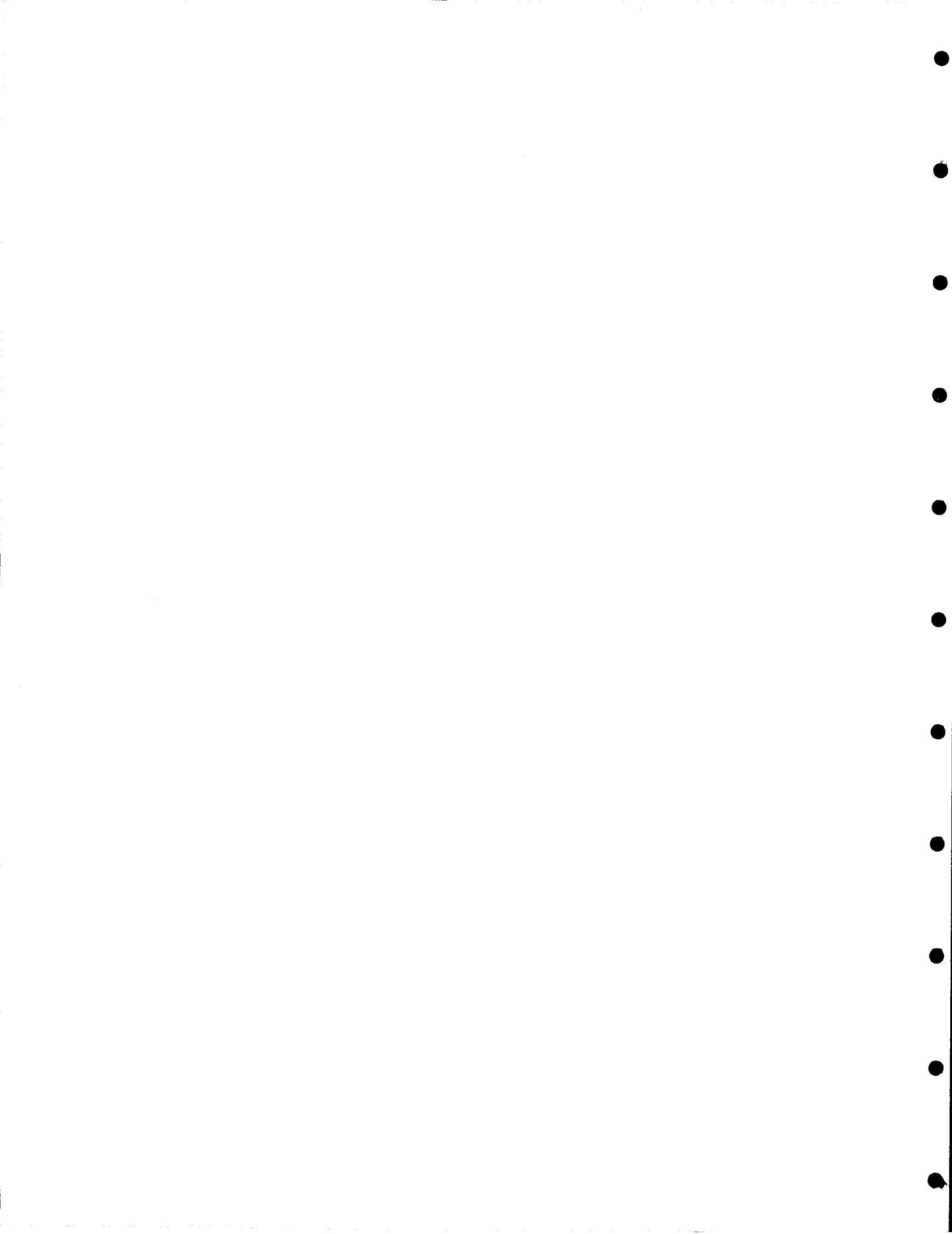
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VICTIM REPARATION
INTRODUCTION TO THE PROBLEM AND TWO SOLUTIONS

The concept of reparation for a wrong done is at least as old as the Hammurabic prescription "an eye for an eye"--and more probably dates back to the evolution of the reflexive response.

In addition to reparation exacted via physical retaliation, however, civilization's history provides evidence of early steps taken in another direction as well. As primitive nomadic tribes settled into stable communities, an inventory of economic goods developed, and these goods were ascribed values by which the goods could be used to recompense physical injuries.¹

While this development is often treated, implicitly if not explicitly, as an example of uncivilized man's enlightened approach to criminal behavior and its effects² (usually in contrast to modern man's benighted willingness to close away the criminal while leaving the victim and his kin to confront their own losses alone), it more likely represents not a humanitarian concern for the victim's loss but an early acknowledgement that survival of the tribal unit required cooperative behavior and that retaliatory behavior was destructive.³ Thus the tribal authority's insistence that a tribesman be compensated for his loss was the result of concern for the group's wellbeing rather than the individual's. Nevertheless, whatever their rationale, the "old ways" satisfied a need that has been only periodically acknowledged in modern times. While debating the effective and fair treatment of the criminal offender according to insights offered by psychologists,

sociologists, criminologists, and the judiciary, modern debaters seemed to have forgotten a significant component of the criminal justice equation--the individual by whose existence the criminal offender earns his label "criminal offender"; the individual whose person or property has been violated by another's activity--i.e., the victim.

Concentration on the victim and the needs created by his victimization reveals immediately two concepts, each the basis of currently operative programs, each offering recompensatory payments to the victim, but one typically much better suited than the other for restoring the victim as closely as possible to his pre-victimization state. These basic program concepts, restitution and compensation, must be defined before either is examined and the two, compared.

The Law Reform Commission of Canada (1974) defined restitution as "the responsibility of the offender to the victim to make good the harm done"⁴ and compensation as "assistance by the state where the offender is not detected or where he is unable to assume responsibility for restitution."⁵ According to this distinction, restitution and compensation flow from different sources but are both channeled toward the victim.⁶ To note that similarity without further qualification, however, is to leave the waters muddied. While both schemes restore to the victim some of what he has lost, the two approaches are not equally well suited to this task, especially if restoration is identified as a primary task. Although one author notes that "a compensation scheme places the emphasis on the victim, while a restitution plan would place emphasis on both the victim and the offender,"⁷ most

who address the subject caution that the achievable objectives of the two programs are clearly different--and often conflicting. In pure restitution programs the victim's losses and needs are necessarily subordinated to the offender's ability to pay;⁸ if the victim's interests are of primary concern, these "can better be served by victim-compensation programs, which rely on State resources rather than those of offenders."⁹ One authority summarizes the situation in this way:

Much of the current interest in restitution has been triggered by new developments in the field of victim compensation, and indeed there is often considerable confusion between these two types of programs. The political impetus for restitution programs is thus victim-oriented while the programs that are actually established invariably focus on correction or rehabilitation of offenders. No restitution program has come to my attention that had the delivery of benefits to victims as its primary or even very important operational goal./10/

This observation is not to imply that restitution and compensation programs strive to serve contrary ends or that the programs cannot function in complementary unison: the observation does remind one that it is necessary to determine the primary goal (that is, in terms of the pure forms projected here, choose the offender's "rehabilitation" or the victim's return to his prior condition) before planning a recompensatory program. The following pages will make further commentary with regard to the rationale for and potential of victim compensation. A subsequent report will analyze and evaluate restitution.

NOTES TO INTRODUCTION

¹Bruce Jacob, "The Concept of Restitution: An Historical Overview," Restitution in Criminal Justice, Joe Hudson and Burt Galaway, eds. (Lexington, Mass.: D.C. Heath and Company, 1975), p. 45.

²See, e.g., Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence," 50 Minnesota Law Review 223, 226 (1965):

"Have we not neglected overmuch the customs of our earlier ancestors in the matter of restitution?" asked the late Margery Fry. "We have seen that in primitive societies this idea of 'making up' for a wrong done has wide currency. Let us once more look into the ways of earlier men, which may still hold some wisdom for us." Similarly, American criminologists suggest: "It is perhaps worth noting that our barbarian ancestors were wiser and more just than we are today, for they adopted the theory of restitution to the injured, whereas we have abandoned this practice, to the detriment of all concerned"

³Jacob, Restitution in Criminal Justice, n. 1 supra at 45; Wolfgang, n. 2 supra at 225.

⁴Alan D. Gold, "Working Papers 5 & 6: Restitution and Compensation and Fines," 7 Ottawa Law Review 301, 301 (1975).

⁵*Id.* These definitions are repeated, in their essence, throughout the literature. See, e.g., Jacob, Restitution in Criminal Justice, n. 3 at 51; Laura Nadar and Elaine Combs-Schilling, "Restitution in Cross-cultural Perspective," Restitution in Criminal Justice, Joe Hudson and Bert Galaway, eds. (Lexington, Mass.: D.C. Heath and Company, 1975), pp. 27-28; Stephen Schafer, "Compensation of Victims of Criminal Offenses," 10 Criminal Law Bulletin No. 7, 605, 609-610 (1974).

⁶Gold, n. 4 supra at 301.

⁷Jacob, Restitution in Criminal Justice, n. 1 supra at 52.

⁸*Ibid.*, p. 63.

⁹*Id.*

¹⁰*Ibid.*, p. 64.

VICTIM COMPENSATION

A. A Brief Contemporary History

Though persuasive bursts of support for the concept of victim compensation have sounded sporadically over the last two centuries,¹ only during the last two decades has there evolved articulate and insistent support for acknowledging and then ameliorating the needs of victims of criminal actions. In 1959 the Journal of Public Law published "Compensation for Victims of Criminal Violence: A Round Table." The seminal document³ in this (and in many another) discussion of victim compensation was an article written in 1957 by Miss Margery Fry, long an advocate for the reform of criminal law in Great Britain.⁴ ". . . the logical way of providing for criminally inflicted injuries," Miss Fry wrote, "would be to tax every adult citizen . . . to cover a risk to which each is exposed."⁵ The participants in the round table commented on and analyzed this proposal.

In 1965 the Minnesota Law Review published "An Examination of the Scope of the Problem,"⁶ a symposium on the subject of victim compensation and restitution. This action, the editor hoped, would "add impetus to further study and eventual solution of this topical issue."⁷ Also in 1965 the U.S. Congress first broached the subject of victim compensation, though it was not accorded serious consideration until 1972.⁸ Between 1965 and 1969 California, Hawaii, Georgia, Maryland, Nevada, New York, and Massachusetts launched programs designed to restore victim losses.⁹

The seventies have seen a notable increase in the number of

programs that would satisfy at least partially the personal losses that accrue to the victims of criminal violence. By June 1976, 17 states had operational victim compensation programs, three other states had passed enabling legislation for such programs, and still 8 other states had victim compensation legislation pending.¹⁰ By May 1977, victim compensation programs were operational in 20 states.¹¹ At present about 30 states have some form of program to compensate injury or death resulting directly from criminal violence.¹² Also indicative of the influence gained by proponents of assistance to the victims of crime are the emergence in 1976 of a quarterly periodical entitled Victimology: An International Journal and the broadly supported Forgotten Victims Week, created by gubernatorial proclamation in California in April 1977, pursuant to a joint resolution of that state's legislature.

B. Rationale--Pro and Con

Also part of the recent history of victim compensation are the arguments as created by proponents and opponents in order to support or to resist the momentum toward creating victim compensation schemes.

The most obvious argument in favor of compensation to the victims of criminal violence is one best illustrated by example, and the bitter observation made in 1895 by a Belgian professor is one example frequently cited:

The guilty man lodged, fed, clothed, warmed, lighted, entertained, at the expense of the State in a model cell, issued from it with a sum of money lawfully earned, has paid his debt to society; he can set his victims at defiance; but the victim has his consolation; he can think that by taxes he pays to the Treasury, he has contributed towards the paternal care, which has guarded the criminal during his stay in prison./13/

That there were many "model cells" available to the criminal offender in 1895 is doubtful; certainly most strides toward guaranteeing the rights of the accused and convicted criminal offender have been taken in the U.S. during the last 25-30 years.¹⁴ Nor does society necessarily treat the released offender as one whose debt has been paid. Nonetheless, the professor's point is well taken: there is something that strikes most observers as essentially unfair, unjust, in giving careful attention to the rights and needs of offenders while simultaneously seeming to dismiss the rights and needs of victims. An excerpt from the press release of a California state senator offers the same point in simpler and more familiar dress:

When, for instance, a woman is struck down by a robber on a city street, her assailant, when apprehended and convicted, is sent to prison where he is fed, housed, clothed, and given any necessary medical treatment--all at state expense. The victimized woman, however, must bear any hospital and other medical expense on her own, and may suffer additional economic hardship from temporary or even permanent loss of employment./15/

And the point is persuasive because it can be and is made repeatedly, from jurisdiction to jurisdiction and, most often, with factual examples that vary only in sex, age, and severity of physical injuries and economic loss.¹⁶

In addressing the injustice inherent in the hundreds of such available instances, many proponents of victim compensation look beyond fairness and point toward a state's moral obligation to its citizens.¹⁷ That clearly is one rationale cited in the majority report attached in the U.S. Judiciary Committee to H.B. 7010 of 1977 before forwarding it to the full House for their consideration:

If it seems that we step over the body of the victim to give medical and other services to the criminal, it also seems that we step over the victim's fundamental right to life, liberty, and the pursuit of happiness to grant constitutional rights to the one who took the victim's rights away.

The Federal Government, then, like the State governments, finds itself officially, and constitutionally committed to act in this field of criminal justice. It is-- perhaps not in the legal sense, but in the moral sense-- a denial of equal protection for it to ignore the victims of crime./18/

A related observation comes from Arthur J. Goldberg, ex-Justice of the U.S. Supreme Court:

. . . As our criminologists have amply demonstrated, poverty and crime are inextricably intertwined. The ranks of the economically deprived produce the great bulk of our prison population as well as many of the victims of crime. Attempts to understand the roots of crime take us into a complex of factors, including economic deprivation, alienation, racial discrimination, and ignorance. In a fundamental sense, then, one who suffers the impact of criminal violence is also the victim of society's long inattention to poverty and social injustice. It is only right that society, through a program of public compensation, recognize its obligation toward these victims./19/

Others consider the same set of circumstances and support victim compensation as an action reflecting enlightened self-interest. What will happen if society doesn't help to make the victim whole? Again Mr. Goldberg is among those who address the question: "Ultimately, of course, society pays the cost in terms of lost job, unemployment compensation, welfare, and a dangerous feeling of insecurity."²⁰ Approaching the question from the perspective of systems theory, another author explains that an individual's satisfaction with the output of a particular system will determine, at least partially, the degree of his support. Translated into specific terms, this suggests that

" . . . being victimized will cause the victim to question the legitimacy and usefulness of the criminal justice system . . . /because/ the individual will consider his/her victimization a consequence of the system's failure to serve its protection function" and, therefore, unworthy of support.²¹ The only way to regain such lost support, the author theorizes, is to adopt some way to make the victim "whole" again.²² Still other observers, gazing through jaundiced eyes, suggest that concern for recompensing victims of crime arises from a desire to deflect attention from, if not to camouflage altogether, "'a rising tide of aggressive criminal activity.'"²³ These programs, in their view, deal with a symptom while ignoring the cause.²⁴

In investigating the reasons to compensate or not to compensate the victims of criminal activity, one finds "deserve as much as" to be a reiterated phrase, but it is not always completed with the words "criminal offender." Many who use the phrase compare losses via criminal victimization with losses incurred as a result of other forms of misfortune,²⁵ and some question the morality of giving preferential treatment to the victims of crime.²⁶ One observer answers the question "why?" by saying, essentially, "why not--we have to start somewhere." Victims of natural forces, negligence, and accidents do have needs, he concedes, but, he adds, "there is little society can do to prevent such injuries," and "as long as the resources of society are limited, it would seem appropriate to devote primary allocation to persons injured by forces which society has undertaken to control."²⁷ According to Arthur Goldberg, crime victims are in a position analogous to

that of the victims of natural disaster: "crime . . . strikes without warning, calamitously, and often inflicts ruinous financial and physical harm. The very considerations which give rise to disaster relief amid floods or hurricanes require that relief also be available to the victims of crime."/28

Another observer, who concedes readily that there are numerous analogous services provided by government, argues against continued following and compounding of precedent:

Upon moralistic considerations it can certainly be said that most persons who fall victims to crimes of violence are no more at fault than the persons in the groups just mentioned. Moreover, precautionary measures against the possibility of being the victim of a violent crime may be considerably less available to most individuals than safeguards against these other types of hurts and harms. Nevertheless, to say that since we have cared for or compensated the other groups we should therefore proceed to compensate victims of violent crimes is to indulge in the kind of thinking that could lead us into an abandonment of all notions of individual responsibility and a resort to complete dependence upon governmental paternalism./29/

Others who have studied the plight of the victim compare the injured victim and the injured workman and find victim compensation to be analogous with workman's compensation:

In the case of workmen's compensation, the employee receives compensation because of his membership in a collective laboring group. It is assumed that there are certain risks inherent in his occupation and his employer is obliged to compensate him for injuries sustained while working. The victim similarly is a member of a collective group--society. As a productive member of this group he financially supports the law enforcement machinery designed to protect him and his fellow citizens. The entire social institution of the law--statutes, the police, courts, prisons--helps to reduce the risks of criminal assault. Nevertheless, the presence of other members of this same society who violate the law and commit criminal assaults on others means there are tangible risks inherent in collective life. Society is therefore obliged to compensate him for criminal injuries sustained during the period of time he is placed within the social circle of risk./30/

In fact, workman's compensation statutes, notes one observer, emerged out of a situation similar to that confronting the victims of crime: "the potential victims formed a large but identifiable group, the industrial workers of the nation . . ./and/ there was a nexus between the potential victims as a group and another identifiable group, those who would have to make compensation, the nation's industrial employers . . ./and/ the factual nexus which had always existed between the two groups was made the basis of liability."³¹ The intended parallels are obvious: crime victims are "a large but identifiable group"; a nexus exists between that group and "another identifiable group"--society at large--which in effect "makes/ possible the conditions under which crimes are committed."³²

Another series of justifications for compensating the victims of criminal attack goes beyond the issues of fairness, morality, and wisdom to approach the citadel of legal obligation. Modern society has reserved for its component self the role of protecting its members. The governing authority, through the imposition of law, seeks to curtail certain behaviors that are inimical to society's well being. In doing so it has formalized procedures to handle these behaviors, designating specific units within society to control and punish them; it has forbidden its citizens to go armed into the streets to exact their own penalty for another's injurious actions. Consequently, when the appointed mechanisms fail, the governmental authority has failed to sustain its part of the contract and must somehow make reparation for this failure--i.e., in this case, at least indemnify the victims of its inability.³³

While this is perhaps philosophically persuasive, it is a situation that has been held true in law only sporadically and within narrowly defined boundaries.³⁴ For the most part, ". . . the state has retained its sovereign immunity from the claims of violence victims The common law view is that negligence by the state in protecting its citizens is not actionable. In the absence of statute there is no right to compensation from the state."³⁵

The result of the state's generally acknowledged lack of legal liability is a rationale akin to earlier described appeals to society's sense of morality:

Even though I cannot with propriety postulate that the U.S. Constitution requires compensation for victims of violence, I can state my opinion that the victim of the crime has, in a fundamental sense, been denied the "protection" of the laws, and that society should assume some responsibility for making him whole. What the equal protection clause of the Constitution does not command it may still inspire./36/

A member of the U.S. House Judiciary Committee found himself taking a similar position. He agreed with the dissenting members that the federal government is without responsibility for a state's enforcement of its criminal laws and is therefore also without responsibility for compensating that state's victims; he nevertheless voted in favor of H.R. 7010 out of an apparent sense of what seemed just:

However, I am persuaded to support H.R. 7010 by the fact that the federal government provides assistance to purely State criminals, not only by way of constitutional protection of their trial rights, but also in the form of positive action aimed at improving their housing and facilitating their rehabilitation.

I feel that criminal victims deserve as much./37/

Tangential to the implication that the governing authority is somehow liable for victim loss is the counter argument that the government has already provided a means by which the victim of criminal activity can reclaim his loss: the victim or his dependents may bring a civil suit against the criminal offender.³⁸ The successful pursuit of this remedy, however, is contingent upon several unlikely conditions. First of all, a large number of crimes go unreported. Once a crime is reported the perpetrator must be apprehended. Subsequently, he must be convicted if not of a particular crime, at least of criminal negligence or of having caused intentional personal injury. Those conditions alone exclude the majority of criminal offenders. Statistics indicate that up to 51 percent of all crimes go unreported.³⁹ Of those reported even fewer are cleared, and only 28 percent of the individuals arrested are eventually convicted.⁴⁰

If those barriers are somehow scaled, the victim's further progress depends upon the convicted offender's having sufficient resources to satisfy a civil judgment, and that again is unlikely⁴¹--if not before the offender's conviction then certainly after incarceration, when earning ability is curtailed to an almost negligible level.⁴² Finally, not only are many convicted criminal offenders impecunious; so are many of the criminally victimized, who, consequently, cannot afford to initiate a civil suit.⁴³ And finally, while a victim's financial crisis is likely to be immediate, the civil action by which he hopes to satisfy his claim may be long in getting to court;⁴⁴ once in civil court, the simple fact of the defendant's conviction in a criminal proceeding may not be admissible evidence in the civil proceeding;

thus a long and complicated process has the potential to convolute still more.⁴⁵

A related complaint, usually raised in the literature by legal academicians, is that victim compensation schemes represent further erosion of the field of tort law. ". . . the conventional view /is/ that a crime is an offense against the state and that a tort is an offense only against the individual . . ."⁴⁶ Yet "every crime by which a citizen suffers a loss is also a tort"⁴⁷ and consequently basis for bringing civil suit. Victim compensation schemes, in their address to personal injury, appear to cross a primary boundary.

Some participants in this debate disagree that victim compensation schemes interfere with legitimate boundaries of tort law.

". . . the object of civil liberty /as established by tort law/is not to spread the loss /as in victim compensation programs/, but to fix it," writes one debatant about the proper role of tort law.

"The current predilection for "loss spreading" may be pseudo-sociology," he continues, "but it is respectfully submitted that it is both doubtful economics and just bad law."⁴⁸ The aim of tort law, echo others, is "not primarily compensatory but rather preventive and deterrent . . ."⁴⁹ Thus it is not intended to do what victim compensation professes to--i.e., repair the victim's loss by spreading it among the citizens of a particular jurisdiction.

One writer, who perceives a clear overlap, notes that current tort options are ineffective.

The present law is quite inadequate to cope with the primary demands of contemporary society for compensation and security rather than punishment, and more comprehensively, tort law is irrational, wasteful, inequitable and inefficient in its attempts to compensate victims and distribute the burdens of losses./50/

By logical extension, overlap or not, victim compensation offers an efficient adjunct, if not a total replacement. In any case--whether victim compensation statutes violate significant boundaries or establish important new ones--their introduction "has effectively collapsed the conceptual distinction between a criminal and a tortious act of violence against the person,"⁵¹ and in many of the jurisdictions that have victim compensation schemes those schemes provide "a near-perfect substitute for an action for damages in tort."⁵²

The description of victim compensation schemes as "a near perfect substitute for an action for damages in tort" is the reason that many who address the subject complain that "victim compensation" is a misnomer; such schemes, named accurately, would be referred to as "tort loss insurance."⁵³ That phrase, in fact, points to a final and closely related area of debate among proponents and opponents of programs to compensate victims of criminal violence.

Gerhard O. W. Mueller, a professor at New York University School of Law, states the issue directly:

At first glance the idea of crime loss insurance appears utterly absurd. Every crime which can conceivably result in injury to a specific person, or group of persons, is also a tort, and crimes which do not result in injury or damage to any specific person, treason for example, are not torts. We are therefore really talking about tort loss insurance. Since anybody can purchase protection against any imaginable tort injury from a local insurance broker by simply consulting the "yellow pages," dialing the right number and sending a check, the sole remaining question seems to be whether we should have socialized, i.e., government operated, insurance, or whether we should continue to rely on free enterprise./54/

While Mueller's statement identifies the basic question clearly, he obviously overstates the simplicity of alternatives. Not just "anybody"

can purchase insurance against tort loss. While some are doubtless careless in not purchasing it, many others presumably cannot afford to do so. According to an article prepared in 1970, "between forty and fifty million Americans have annual incomes that provide less than marginally adequate housing, medicine, food, and opportunity . . ."⁵⁵ Though understandably these people are not normally covered adequately--if at all--by insurance, they most need it because "persons with incomes under \$6,000 per year are more likely to be victims of crimes than those with higher incomes."⁵⁶ More recent figures reflect much the same situation--inadequate incomes for millions and a strong correlation between income and likelihood of victimization.

A logical question at this point is how many of the individuals reflected in these statistics already participate in or are eligible for government assistance programs as a result of their low income. To phrase the question a little differently, is a victim compensation program, especially one directed toward "insuring" the losses of those whose economic status generally prevents their purchasing insurance--a duplication of effort and function carried out by other social welfare programs? While this, as a rhetorical question, doubtless points toward partial truth, data cited in a 1970 article indicate that the answer is not an unqualified yes: eight million of the 22 million people living in poverty in January, 1969, were classified in that category in spite of the fact they were receiving social security or charity payments; 75 percent of the 22 million living in poverty received no help from

federal public assistance programs (though some of that number were receiving various forms of assistance from state or local programs.)⁵⁷ In other words, all who seem to need some form of public assistance do not receive it; all who receive it are not necessarily removed thereby from poverty; thus some form of publicly funded tort loss insurance would not necessarily be duplicative.

While Professor Mueller has seemed to dismiss these circumstances with a shrug, most others who describe private insurance as the more desirable approach toward compensating victims of crime take a broader perspective. One author, who devotes his entire article to explaining the desirability of working through existing private insurance schemes, emphasizes that these schemes offer "almost infinite variations in the kinds, amounts and terms of coverage";⁵⁸ they aim "to fill the need of everyone, leaving the decision as to which areas are those of gravest and most immediate need to individual judgment";⁵⁹ they allow "payments more commensurate with the losses actually sustained . . ."⁶⁰ than do most victim compensation schemes with their limitations on the maximum compensable amount and their various exclusionary clauses. Simultaneously, he acknowledges that changes are necessary to "broaden the payment structure and the insurable class of all crime victims . . ."⁶¹

Reprise: What then is to be done with or about programs to compensate victims of criminal injury? Should the task be left as much as possible within the realm of tort law, where personal injuries have traditionally been litigated? Should it be removed from that realm and transferred to the jurisdiction of legislated entities, as has been much within the area of workmen's injuries? Should the task of

compensation be handled by state subsidized insurance, or is private insurance the proper realm of occupancy?

These issues along with the lengthy debates about rationales for victim compensation programs have not really been resolved; rather they have been put aside, or, perhaps, gone around. Whether or not their existence in general is justifiable is a moot point: to date there are more than 30 operational victim compensation programs. Thus, to a large extent, we are no longer talking about what should be but about what is; and whether the programs were implemented out of a sense of fairness, duty, political astuteness, or, as is more likely, a combination of these motives is no longer to the point. Whatever the raison d'etre, they are "probably the wave of the future."⁶²

C. Wave of the Future in the Present

Introduction: Though one still finds occasional references in the emerging literature to the rationale behind victim compensation, these references normally appear within debate accompanying proposals for particular state or federal statutes. More frequently now discussions about rationale revolve around program characteristics: What function will this program that we have decided to implement serve? Who are the target population? What are the limitations on compensation? What administrative arrangements can be made? And, on the bottom line, what are the fiscal realities that must be faced and handled? Our task at this point is to consider these kinds of questions.

Victim Compensation in Louisiana: In 1972 the Louisiana Legislature, carried no doubt by the wave of the future, passed into law a

program to compensate the victims of criminal violence. The program was never funded, but its effective date was not made contingent upon funding; consequently the law was on the books and in effect but at the same time obviously and precariously inoperable.

Under this set of circumstances, problems, not surprisingly, arose. Some who recall Act 721 of 1972 recall it but hazily as one of any number of unworkable laws from the past, and speak vaguely of "law suits." There may have been several or many suits, but one appeared twice before Louisiana's Fourth Circuit Court of Appeals.⁶³ According to that record, most of the turmoil occurred not because the law was on the books but because there was no contingency clause providing that the statute would go into effect only when monies were available. In 1976 to correct the problem the legislature repealed the entire law.⁶⁴

During the 1978 legislative session, victim compensation again received serious attention: five bills were introduced--four in the House, one in the Senate--in support of the concept of state compensation to the innocent victims of personal criminal violence. Four of these bills proposed coverage for the public in general;⁶⁵ one proposed only to compensate individuals 60 years old and older for hospital and other medical expenses related to criminal victimization.⁶⁶ One bill, S.B. 1, passed the Senate--but was deferred "for further study" in the House Committee on the Administration of Criminal Justice. Reportedly, the primary reservation about S.B. 1, as well as about a number of the other generically related bills cited above, was the same: money.

A Comparison-S.B. 1 of 1978 and the Uniform Crime Victims

Reparations Act: Though S.B. 1 did not successfully negotiate this year's legislative rapids, it nevertheless represents the most recent and most agreed upon form of transport for a victim compensation program in Louisiana. Consequently, it is also a useful carrier for definition and analysis of the subject. Apparently modeled closely after the Uniform Crime Victims Reparations Act (hereinafter cited as the Uniform Act),⁶⁷ the re-engrossed version of S.B. 1 (i.e., the version that reached the house committee) delineates rather clearly the functions to be fulfilled by a victim compensation scheme.

Organizationally, the bill's intent is to use an existing body to administer the new program it proposes. The version originally introduced gave that responsibility to the Board of Review of the Office of Employment Security. When that connection was judged unsatisfactory and when the state Indigent Defender Board expressed a willingness to assume administrative responsibility for the program, the bill was adjusted accordingly.⁶⁸ Since that arrangement was agreed upon, the State Indigent Defender Board has expired as a result of sunshine legislation. At the point when S.B. 1 was deferred, its administrative intent remained, but another suitable body had not been identified.

The administrative provision of S.B. 1 embodies its most marked divergence from the Uniform Act, which creates a three-member board, appointed by the governor to six-year terms, and chaired by a member of the state bar association.⁶⁹ On the other hand, S.B. 1 concedes the possible need for specialized assistance by allowing the administrative

board to appoint an advisory committee to assist them.⁷⁰ Many of the carefully delineated administrative rules and procedures included in the Uniform Act are made implicit if not explicit in S.B. 1 by this state's Administrative Procedures Act;⁷¹ this arrangement is, in fact, recognized in the Uniform Act with the notation that both Sections 4 and 8 "contain details which are redundant in a state having an adequate Administrative Procedures Act."⁷²

The only significant procedural omission apparent in S.B. 1 is its failure to charge the administrative board to publicize its existence. Unlike the Uniform Act's stipulation that one duty is "to publicize widely the availability of reparations and information regarding the filing of claims therefor,"⁷³ the closest approach of S.B. 1 appears in Sec. 1819(A): "Each law enforcement agency shall keep forms provided by the board and make them available to any person upon request."

Beyond these differences one finds that the actual purposes and tasks set out in the two bills are often quite similar. According to its title, S.B. 1 is designed "to provide for payment of compensation for personal injury or death of innocent victims of violent crime" The same general function is also stated in Section 2 of the Uniform Act. In both instances the term "victim" is defined to include an individual injured or killed while making an effort to prevent the criminal behavior of another or to apprehend someone suspected of such behavior.⁷⁴

The statement of S.B. 1 regarding the particular criminal activities that enable a victim to apply for compensatory payment is

broadly drawn. Section 1807 allows reimbursement for pecuniary loss "for personal injury or death which resulted from any act or omission to act that is defined as a crime under Louisiana law and involves the use of force." This is consistent with the example of the Uniform Act, which makes awards to a broadly defined group identified as victims of "criminally injurious conduct"⁷⁵ rather than enumerates a list of particular qualifying crimes, as do some jurisdictions.⁷⁶ In addition both S.B. 1 and the Uniform Act exclude claims based on physical injury or death resulting from a motor vehicle, unless the vehicle was used deliberately to injure or kill,⁷⁷ and both disallow legal incapacity of the offender (e.g., age, insanity, drunkenness) from disqualifying a claimant.⁷⁸

Other stipulations regarding eligibility are also similar: application must be made within one year of the qualifying criminal activity;⁷⁹ the criminal act must have been reported to authorities within 72 hours of its occurrence, unless the board finds good cause for a longer delay;⁸⁰ once the crime has been reported, the claimant(s) must cooperate fully with law enforcement authorities or risk having the claim denied, reconsidered, and/or reduced.⁸¹ Both statutes also allow reduction or denial of the claim for contributory misconduct by the victim.⁸²

Some eligibility requirements differ. S.B. 1 does not allow exception to the "minimum pecuniary loss of one hundred dollars";⁸³ the Uniform Act allows but does not recommend a minimum loss requirement.⁸⁴ More significantly, S.B. 1 disqualifies without exception several categories of possible claimants, among these "a member of

the family of the criminal, /and/ a person living in the household of the criminal⁸⁵ The Uniform Act presents two alternatives to the total exclusion; both options are less restrictive. After excluding the offender himself and his accomplice, as does S.B. 1, the Uniform Act simply omits "any claimant if the award would unjustly benefit the offender or accomplice."⁸⁶ The slightly more specific alternative is to prohibit awards to the spouse, the direct blood relatives, and persons living in the household of the offender or his accomplice "unless the Board determines the interests of justice otherwise require in a particular case"⁸⁷ noting that these three categories include a large percentage of the victims of criminal violence, the authors of the Act acknowledge that policy decisions about "the cost of the program, the possibility of fraud and collusion, and other social judgments" will be the primary determinates of which option is selected.⁸⁸

The sharpest divergence is caused by the financial stress requirement. S.B. 1 specifies that the board shall not order compensation unless it "finds that the applicant will suffer undue financial hardship from pecuniary loss incurred as a result of the injury or death of the victim if the order for the payment of compensation is not made."⁸⁹ The subsection further orders that the board consider "all the financial resources of the applicant" in making this determination, then leaves the board to establish particular criteria by which to determine financial hardship.⁹⁰

Authors of the Uniform Act indicate a preference that there be no such requirement: "/it/ appears to be accountable only as a cost-reduction factor . . . /and/ reads a welfare concept into a program

not related to welfare.⁹¹ Additionally, they speculate, the costs of investigating claimants' economic situations would likely offset most of the amount saved by the exclusion.⁹² Conceding, however, that some jurisdictions will insist on some form of needs requirement, the authors present, as an alternative, a couple of carefully detailed sets of criteria by which financial stress may be judged without posing the "real threat to the integrity of the program," which would result from a "strict 'needs' requirement."⁹³ If too narrow a definition were adopted, the authors observe, the program would benefit only persons already on welfare, and the program itself would be reduced to "merely an exercise in bookkeeping."⁹⁴ (See Appendix A for the definition of need in the Uniform Act.)

Both statutes stipulate that claims for compensatory payments may be made by the victim or, in the instance of the victim's death, by the dependent(s) of the victim,⁹⁵ or in the case of a child or an incompetent, by his legal representative.⁹⁶ Additionally, S.B. 1 includes an oversight clause requiring the legal guardian of a child or an incompetent to file with the board each January an accounting of funds received during the previous year.⁹⁷

Other stipulations of S.B. 1 embody the characteristics that make victim compensation a unique remedy for restoring pecuniary loss. Awards are not contingent upon the apprehension, prosecution, or conviction of an offender,⁹⁸ though there must be "substantial evidence" that an act or omission did occur and did proximately cause injury or death.⁹⁹ The corresponding qualification in the Uniform Act does not address directly evidence but instead gives a concrete

example of evidence: "Proof of conviction of a person whose acts give rise to a claim" will usually be conclusive evidence that the crime was committed.¹⁰⁰

At the point a claimant is determined eligible for an award, other conditions engage that influence the amount of the award. First, the award allowed by S.B. 1 covers only "pecuniary loss actually and necessarily incurred as a result of the personal injury or death of the victim."¹⁰¹ Personal injury includes

- (i) medical expenses, including psychiatric care;
- (ii) hospital expense;
- (iii) loss of past earnings; and
- (iv) loss of future earnings because of a disability resulting from the personal injury . . .^{102/}

Pecuniary loss resulting from death includes "(i) funeral and burial expenses; and (ii) loss of support to the dependents of the victim . . ."¹⁰³ Clearly, property losses are not compensable, though replacement costs for various corrective and prosthetic items normally are. As has been true in some other areas, the Uniform Act provides basically the same but in greater detail. Section 2 of that act states that awards will be for economic loss, which elsewhere is defined as "economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement service loss."¹⁰⁴ Then those five terms are delineated. Though neither psychiatric treatment nor replacement costs for corrective equipment are mentioned specifically, both seem to fit within the broadly defined categories. In fact, the result of describing categories of economic detriment instead of enumerating particular instances of it is a wider range of the reimbursable.

For example, the conditions of the Uniform Act presumably would allow a bachelor temporarily disabled by a criminal action to claim the amount he had to pay another person to feed, water, and milk the small herd of dairy cattle he himself normally cared for after his own working hours.

Both S.B. 1 and the Uniform Act establish \$50,000 as the maximum award allowable.¹⁰⁵ For jurisdictions without a financial hardship requirement, the Uniform Act also suggests a ceiling of \$200 per week for work and service losses.¹⁰⁶ If there is a hardship clause, the Uniform Act proposes that the weekly limit on work and service loss be "the amount by which the victim's income is reduced below \$200 per week."¹⁰⁷ Thus, if the victim temporarily has an income of \$70.00, his maximum award, per week, would be \$130. It is not clear what should happen if the victim does not normally have a weekly income of \$200. While hearing procedures are included in both bills, S.B. 1 provides that the amount of the award is not reviewable but only the decision to grant or to deny a claim.¹⁰⁸

Double recovery is also prohibited. Section 1814(B) of S.B. 1 reads in full as follows:

The board shall deduct from any payments ordered under R.S. 46:1806 of this Chapter any payments received by the applicant from the criminal or from any person on behalf of the criminal; from the United States, this state, or any of their agencies for a personal injury or death otherwise compensable under this Chapter; and under contract of insurance wherein the applicant is the insured or beneficiary, but only to the extent that the sum of such payments plus any payment ordered under this Chapter would be in excess of the total compensable injuries suffered by the applicant as determined by the board.

This statement does not address specifically the possibility of a

victim's receiving partial or full reimbursement from other sources after the board has made a grant. Presumably, the successful claimant would then repay the criminal victim indemnity fund in the amount that he had been reimbursed doubly. That requirement is not, however, present in the language of the bill.

Neither does Section 1814 prevent a victim or his dependent(s) from bringing civil suit against an offender to recover damages. If, however, an individual receives an award from the board and subsequently gains recovery in a civil suit, that individual "shall reimburse the criminal victim indemnity fund for the amount of the award, if the amount of the recovery is equal to or greater than the award."¹⁰⁹ The conditional clause seems to create the possibility of double recovery: presumably, if the victim recovers from the civil suit an amount less than that awarded by the board, he may keep it. Whether this was an oversight or tacit acknowledgment that tort actions can be costly is unclear.

The language of the Uniform Act as it covers the possibility of double recovery leaves few questions:

If reparations are awarded, the State is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is or, if readily available to the victim or claimant would be, a collateral source./^{110/}

Both S.B. 1 and the Uniform Act allow emergency awards when it seems likely that a claim eventually will be granted. Both provide that the tentative award be deductible from the total amount granted and both provide for the recovery of such funds in the amount that the board's final award exceeds the emergency grant or in the case

that a claim is ultimately denied.¹¹¹ S.B. 1 further allows waiver of the repayment clause if the board judges that repayment would result in "severe financial hardship."¹¹²

Both statutes provide for attorneys' fees. S.B. 1, however, indicates that a claimant shall himself pay the attorney out of his award,¹¹³ while the Uniform Act allows "a reasonable attorney's fee" in addition to the award and forbids an attorney to negotiate privately for a larger amount.¹¹⁴ The fee limit in S.B. 1 is 20 percent of the award, not to exceed \$5,000.¹¹⁵

S.B. 1 and the Uniform Act consider civil suits but establish different procedures for reporting and bringing such suits. Both statutes require that a claimant give notice to the board and the attorney general of his intent to file suit in civil court to recover damages. The language of S.B. 1 instructs that such notice must be filed only if the claimant has already been granted an award;¹¹⁶ the Uniform Act also requires notice by an applicant whose claim before the board has not yet been decided.¹¹⁷ The Uniform Act further stipulates that the compensation board may join the suit in order to recover reparations granted, may require the claimant to bring suit in his own name as a trustee of the state to recover reparations awarded, or may do neither. If the claimant files as trustee for the state, he may deduct reasonable expenses for doing so.¹¹⁸

While there is no corollary provision in S.B. 1 by which the board may recover from a convicted offender the amount of the claim awarded his victim, that bill does allow the state's attorney general to bring civil suit in the appropriate district court against a

convicted offender for recovery of all or a specified portion of the award granted the claimant by the board. The suit must be brought within one year.¹¹⁹

However carefully administered a proposal for compensating victims of criminal injury, however carefully delineated its functions, requirements, and limitations--there is a more fundamental consideration than these. Funds. Appropriations. Is money somewhere available? If not, there is little reason to believe that S.B. 1--or any victim compensation statute--can be more than the practice exercise in law-making that Act 721 of 1972 turned out to be.

S.B. 1 provides for the creation of a criminal victim indemnity fund, constituted primarily of state and federal monies dedicated to it.¹²⁰ The indemnification fund will be supplemented--or perhaps reimbursed--via damages awarded from civil suits against convicted offenders¹²¹ and from a fine imposed by the trial court on any offender convicted of "a crime resulting in the personal injury or death of another person."¹²² After considering the financial conditions of the defendant, the court of jurisdiction may order a fine "commensurate in amount with the personal injury or death . . . " of the defendant's victim.¹²³ And, there is a contingency clause: "The provisions of this Chapter shall take effect if, as, and when . . ." monies are provided.¹²⁴ Thus the potential is created to place this law on the books without also creating the liability included in Act 721 of 1972, when it became law without the stipulation that funds precede its implementation.

The Uniform Act offers little assistance by way of example with regard to funding. The first sentence of the prefatory note accompanying the act states in part that "the Act establishes a state financed program of reparations . . ."¹²⁵ And that comment may identify the unavoidable reality--i.e., governmental funding. Within the bill an indemnification fund is simply assumed. The subject of fines is never introduced.

Obviously, S.B. 1, as well as the Uniform Act, contains other provisions; however, the immediate need is to understand the definitional characteristics of a legislative victim compensation scheme; consequently, the discussion of basic provisions need go no further at present. What does seem necessary is to consider victim compensation legislation pending in the U.S. Congress, since federal conditions imposed in awarding matching funds to the states will doubtless be a relevant consideration should victim compensation be identified as a feasible approach to satisfying some of the needs of Louisiana's citizenry. As one author concedes, even if the federal plan allows the states to cover whatever expenses they wish while reimbursing only costs that fit within federal guidelines, the resultant bookkeeping problems would be "gargantuan" and would probably in themselves "provide inducement for states to follow the federal plan."¹²⁶

Federal Victim Compensation Legislation: Presently two victim compensation bills have passed part way through the U.S. Congress. H.R. 7010 passed in the House of Representatives by 192-173 on September 20, 1977, and was sent to the U.S. Senate.¹²⁷ On

September 11, 1978, the Senate voted to replace all of H.R. 7010 beyond the enacting clause with its own version of a victim compensation statute. Thus H.R. 7010 has become, in effect, S. 551, and the Senate has requested a conference with the House.¹²⁸

In the form that it passed the House Committee on the Judiciary, H.R. 7010 authorized 50 percent matching federal funds for money awarded by a state as reparation for personal injury or death resulting from criminal victimization. (State reimbursement for federal crimes committed within its boundaries would be 100 percent; administrative costs were to be assumed by the state.) Within those limitations, H.R. 7010 also imposed relatively few specific requirements regarding state qualification for federal funds. By the time H.R. 7010 left the House, matching funds had been reduced to 25 percent (except for federal crimes, which remained 100 percent reimbursable; administrative costs still were not covered). And several program requirements had been added. As it now stands H.R. 7010 creates nine eligibility criteria for a state's receipt of federal funds:

Sec. 4. A State program for the compensation of victims of crime qualifies for grants under this Act if the Attorney General finds that such program is in effect in such State on a statewide basis during any part of the Federal fiscal year with respect to which grants are to be made and that such program meets the following criteria:

(1) The program offers--

(A) compensation for personal injury to individuals who suffer personal injuries which were the result of qualifying crimes; and

(B) compensation to the surviving dependent or dependents of individuals whose deaths were the result of qualifying crimes.

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

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

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

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

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

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

(6) The program does not require claimants to seek or accept any benefits in the nature of welfare, unless such claimants were receiving such benefits prior to the occurrence of the qualifying crime which gave rise to the claim.

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

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

(9) There is in effect in the State a law or rule requiring any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article relating to such crime to deposit any proceeds owing to such individual under the terms of the contract into an escrow fund for the benefit of any victims of such qualifying crime or any surviving dependents of any such victim, if such individual is convicted of that crime, to be held for such period of time as the State may determine is reasonably necessary to perfect the claims of such victims or dependents./129/

Again using S.B. 1 as a reference point, one finds that its proposed program of victim compensation clearly satisfies most requirements created by H.R. 7010. In accordance with the mandate of the federal bill, S.B. 1 creates a program to compensate individuals or their dependents for personal injury or death which is the result of specified criminal behavior.¹³⁰ (What exactly a state specifies as a "qualifying crime"--i.e., a crime the commission of which allows its victim to make a claim--is for each state to decide.)¹³¹

H.R. 7010 requires that claimants have the right to a hearing as well as the option of administrative or judicial review; S.B. 1 mandates that the board hold hearings as it deems advisable /Sec. 1803, Sec. 1806(D)/ and stipulates that orders of the board to pay or to deny compensation are reviewable according to terms of the Administrative Procedures Act (Sec. 1812).¹³² The further provision of S.B. 1 that the amount of the award is not judicially reviewable (Sec. 1812) is not clearly a violation of the federal requirement.

S.B. 1 also requires, as H.R. 7010 states it must, that claimants cooperate with the appropriate law enforcement officials investigating the qualifying crime,¹³³ and that a claim may be reduced or denied if the victim is found to have contributed to his own injury or death.¹³⁴ The sixth condition of H.R. 7010 is satisfied by omission: there is no requirement in S.B. 1 that a claimant involve himself with welfare programs.

The four remaining federal conditions, however, represent more of a problem, when "compliance" is judged according to the requirements of S.B. 1. S.B. 1 is without a specific subrogation clause,

though it does allow the state's attorney general to bring civil suit against a convicted offender whose criminal activity was the basis for an award,¹³⁵ and it does require that any claimant who has received an award and subsequently recovers damages via a civil suit must reimburse the criminal victim indemnity fund for the amount of the award, "if the amount of the recovery is equal to or greater than the award."¹³⁶ As noted elsewhere, the language of the conditional clause appears to allow the litigant to retain the amount awarded in a civil action should that amount be less than the board's award; this situation would allow partial double recovery and would thus seem not to be in strict compliance.

The federal requirement that a participating state also have available a mechanism for requiring a convicted offender to make restitution to his victim or the victim's dependents (Condition 8) points to another area in which Louisiana would find itself in partial compliance. Presently, the court may impose restitution as a condition of probation,¹³⁷ and the parole board may impose restitution as a condition of parole release.¹³⁸ Probation and parole are, however, disallowed for certain specified crimes; consequently, there is no mechanism for requiring an offender to make restitution if he has committed a disqualifying crime, or if he is eligible for probation or parole but is not granted these dispositions.

Two other conditions imposed in H.R. 7010 at present would be wholly unsatisfied. Rather than require the active involvement of law enforcement officials in informing victims of the existence of the program and its procedures, as the federal bill mandates, S.B. 1

states only that officials shall keep application forms and provide them "upon request."¹³⁹ The last condition of H.R. 7010--that a state require monies received by an offender who tells about his crime for profit be placed in an escrow fund for the benefit of his victim(s) --also is without parallel. A bill to this effect (H.B. 360) was introduced in the 1978 session of the Louisiana Legislature but was deferred in committee.

In addition to the eligibility requirements it attaches to federal funding, H.R. 7010 also states limitations on what is included in figuring the amount, of which it will reimburse 25 percent. Already it has been established that administrative costs are excluded in figuring awards to the state. To this should be added that attorneys' fees are an administrative cost, unless the fee is paid out of the award rather than in addition to the award.¹⁴⁰ S.B. 1 provides that such fees must be paid by the claimant out of his award (Section 1810); thus such fees are partially reimbursable.

There are other considerations in determining the amount for which 25 percent is returnable to the state in federal funds. The state must not include the following awards in determining reimbursable program costs: (1) amounts awarded for pain and suffering, (2) amounts awarded for property loss, (3) any amount awarded above \$25,000, (4) any amount awarded that was compensable through another source or person, (5) amounts less than \$100 or the equivalent of less than five days' work, (6) amounts representing lost earnings of more than \$200 per week, amounts awarded a claimant (7) who fails to report the qualifying crime to law enforcement officers within 72 hours or

(8) who files a claim more than one year after the occurrence of the qualifying crime--both omissions subject to exception for good cause.¹⁴¹ (See Appendix B for exact language.)

There are probably two, but possibly more, discrepancies between these limitations and the proscriptions of S.B. 1. The maximum award allowable according to the terms of S.B. 1 is \$50,000; H.R. 7010 establishes the maximum at \$25,000. S.B. 1 includes "mental distress" in its definition of personal injuries,¹⁴² a term that sounds like something excludable under the disallowance of "pain and suffering."

At three other points the limitations of H.R. 7010 and the provisions of S.B. 1 are very close, but not identical. S.B. 1 imposes \$100 as the minimum loss limit for a claim but does not state H.R. 7010's equivalent exclusion of less than five days' pay. S.B. 1 includes no statement equivalent to the one in H.R. 7010 that imposes a maximum award limit of \$200 per week in lost earnings. Possibly the hardship clause of S.B. 1 makes a maximum unnecessary; in any case, the point is not specifically resolved. Finally, and again a concern, is the ambiguity of Section 1814, which appears to allow a claimant to make double recovery, within bounds. (See discussions above, pp. 26-27). That possibility would seem contrary to limitation (4) of the federal statute.

Having moved laboriously through the maze of qualifications and conditions that emerge in one partially accepted version of a program to grant federal funding to states that compensate victims of criminal violence, we have done only that--i.e., moved laboriously through one federal proposal. There is, you will recall, another; and, not

surprisingly, it is a little different. Though all of the stipulations of that other federal bill, S. 511, are not immediately relevant, several points at which it differs from H.R. 7010 need to be noted in order to understand the range of possible federal actions, actions that would certainly impact any plan Louisiana might consider or adopt.

S. 551, like H.R. 7010, provides 25 percent funding for approved program costs, with 100 percent reimbursement for qualifying federal crimes, administrative costs excluded, and attorneys' fees defined as an administrative cost unless paid from the amount awarded for personal injury or death.¹⁴³ Beyond this, S. 551 lists only six conditions that a state must satisfy in order to receive federal funds. Four of the six conditions (those numbered 1, 2, 4, and 5--see Appendix B) appear also in H.R. 7010; five conditions included in H.R. 7010 (those numbered 3, 4, 5, 8, and 9) are excluded from S. 551.

Two other conditions are unique to S. 551, at least insofar as they appear under the heading "Qualifications of State Programs." One such participatory requirement is that a state program not require that an individual be "apprehended, prosecuted, or convicted" of the crime that occasioned the claim.¹⁴⁴ While this is not stated specifically in H.R. 7010, it is a concept found at the core of all proposals for state indemnification of innocent victims and can be assumed from the bill's language. S.B. 1 satisfies this condition by direct statement.¹⁴⁵

The significant difference between H.R. 7010 and S. 551 is the latter's mandate that program participation precludes "a limitation based on the financial means of the victim or any surviving dependent."¹⁴⁶

More importantly, that condition of S. 551 would serve to disqualify Louisiana, if the state were to accept the terms of S.B. 1, which makes an award contingent upon the "undue financial hardship" that would exist if the claim were not granted.¹⁴⁷

The limitations on awards imposed by S. 551 are nearly identical to those included in H.R. 7010,* with two significant exceptions. As indicated above the Senate bill imposes the maximum award limit at \$50,000 instead of \$25,000. The figure of S. 551 coincides with the maximum limit established in S.B. 1.¹⁴⁸ Another modification included in S. 551 is to allow states to report and claim partial reimbursement on amounts of less than \$100 or for less than five days' work loss awarded to claimants "sixty-two years of age or older . . ."¹⁴⁹ A final variation is that S. 551 includes its requirement that a claimant cooperate with law enforcement authorities as a program limitation rather than as a qualification for participation, as it is labeled in H.R. 7010.

D. A Critique of Program Features

At this point we know what the model legislation projects and what two pending federal statutes propose; what seemed acceptable to the Louisiana Senate in the spring of 1978 and how their version of acceptable compares to nationally promulgated definitions. We have not, however, evaluated any of the particular conditions or provisions.

* See Appendix C for conditions and limitations of S. 551; see Appendix D for a comparison of conditions for participation included in S. 551 and H.R. 7010.

Neither have we assessed the requirements or the experiences of the approximately 30 states that have operational victim compensation programs. To Louisiana, which has not cast a program in permanent mold, their accumulated experience is invaluable. According to one scholar, whose comments apply to most program features though they are directed toward direct program costs, Louisiana's is an advantageous position:

. . . the legislators of the 1970's need not rely on theory and conjecture regarding the costs of extending benefits to various types of victims. The experiences of existing programs, which vary greatly in scope of coverage, provide a firm basis for reasoned experimentation in expansion of benefits to victims not presently covered./150/

From a survey of the literature, there appear to be three basic models for the administration of a victim compensation program: a new board may be created; the program can be assigned to decision-makers in an existing agency; the program can be administered through the courts.

States that have established a new board to administer their victim compensation programs usually cite the program's uniqueness as their rationale. When victim compensation is linked to another program, the original program's administrators bring with them experiences, attitudes and perspectives, many of which are not likely to be directly transferable to victim compensation.¹⁵¹ The new program's development is thus impeded. Even with a specially created board, care still needs to be taken to find the proper department under the auspices of which to place it. Alaska, for example, has transferred its board from the Department of Health and Social Services to the Department of Public Safety as a way "to further promote the program."¹⁵²

A state that does administer its victim compensation program via a separate board would do well to require among the board members an attorney¹⁵³ and a physician.¹⁵⁴ As society becomes more legally circumscribed, including an attorney on such a body marks an evolving tradition; and considering the legal issues involved, one can more easily understand the inclusion. A physician's medical expertise is also needed because most claims involve physical injury. Also because many boards have the option of ordering a claimant to undergo a physical or a psychiatric exam, a doctor's judgment of when that is an appropriate action would be useful.

States that opt to administer their victim compensation programs through existing bodies have other considerations. A primary need is to find an agency whose functions are at least compatible with those of a victim compensation program. This dilemma, faced by the author of S.B. 1, has yet to be resolved. In Washington and Wisconsin the board that administers workmen's compensation was deemed the logical choice. ". . . the Worker's Compensation Division /in Wisconsin/ is experienced in the determination of liability and disability and this expertise is readily transferable to problems arising under the Crime Victim Compensation Act,"¹⁵⁵ writes the Secretary of the Department of Industry, Labor and Human Relations. Analyzing the similar situation in Washington, a professor of law adds that "entrustment of the new program to employees within the Department /of Labor and Industries/ who are not responsible for other Industrial Insurance cases will protect the scheme's integrity from nuances of workmen's compensation ill-adapted to the administration of a crime compensation program."¹⁵⁶

A further advantage, adherents to this approach explain, is that workmen's compensation schemes not only involve similar determinations but also include a carefully worked-out system of payments for injury and work loss, expenses most often also occasioned by criminal victimization. There is pleasing equity in this approach, implies one proponent of the pairing: ". . . an employed worker will receive the same amount of compensation whether he is injured during the course of a crime or while on-the-job."¹⁵⁷ Obviously, all those injured by criminal activity are not employed; some--most often women--have never been employed; consequently, adjustments must be made in the scheme. Wisconsin's approach has been to amend its statute to include a "homemaker's clause."¹⁵⁸ (Even some states that do not treat victim compensation as so close a relative of workmen's compensation find the pecuniary reimbursements defined by the latter a sound basis for determining related victim compensation awards. This is the pattern adopted by Florida and Maryland.)¹⁵⁹

In Illinois, Massachusetts, and Tennessee victim compensation is administered through the courts. In Illinois a claimant files an application, under oath, with the Clerk of the Court of Claims; with the application he must include whatever documentation is necessary to substantiate the facts stated. Prior to this, notice must be given to the office of the attorney general.¹⁶⁰ In Massachusetts, as in Tennessee,¹⁶¹ one files a claim in the office of the clerk of a district court. In Massachusetts he also pays "an entry fee of five dollars. It becomes the attorney general's responsibility to investigate and, if appropriate, oppose or support the claim."¹⁶²

Though these statutes make no reference to support staff for the courts, certainly the added tasks occasioned by the new program must have required additional personnel. In fact additional staff likely will be necessary whether a state creates a new decision-making body (i.e., a board) or employs an existing one. Before the assigned decision-makers can take action, someone must have compiled and verified a potentially extensive file of material--police reports of the qualifying crime; determinations regarding possible relationship to the offender, possible provocation of attack, and eligibility of dependents; medical reports; employment information; records of collateral sources of indemnification, etc. The number of such tasks, the amount of correspondence frequently associated with the process, and the fact that victim compensation, to be really useful, must be awarded as soon as possible indicate the need for additional staff.

But how many must be added? The range of examples is wide. In California, where a Victims of Crime Unit operates under the Board of Control, there is a current staff of 27--one program manager, four staff analysts, 21 claims specialists and 11 typists. That jurisdiction also reports that during fiscal 1977 there were 7,504 claims filed; 6,525 claims accepted; and 5,791 claims disposed of. "At this time, only 5% to 8% of all claims heard are with a personal appearance. This has allowed us to dispose of between 250 to 350 items per meeting."¹⁶³ In Hawaii the Criminal Injuries Compensation Commission operates with a staff of two, an administrator and a secretary. Of 561 claims considered in 1977, they were able to dispose of 223.¹⁶⁴ A third proposition, that of investigator, has been authorized; meanwhile the Commission

reports "a backlog of approximately 500 pending claims."¹⁶⁵ The Crime Victim Compensation Bureau of Wisconsin employs a staff of three and a half--a director, a field investigator, an administrative assistant, and a part-time stenographer. In 1977, the first year of its operation, the bureau received 322 claims, closed 88, and listed another 114 as "pending."¹⁶⁶ The Crime Victims Reparations Board of Minnesota, apparently supported by a staff of two, reports receiving 426 claims in FY 1976-77, disposing of 291, having 135 pending, and clearing most claims within 8-18 weeks.¹⁶⁷ One scholar summarizes the matter of additional staff with this observation:

/Even/ those jurisdictions utilizing the courts and existing administrative agencies have found, contrary to apparent expectations, that new personnel must be employed to handle the specialized crime victim compensation programs Thus inevitably a bureaucracy must be established to administer the program, but it need not be large./^{168/}

An additional concern for programs administered by the court is the danger of distinctly defined and different procedures involved in criminal and civil law overlapping to the detriment of both systems. Cognizant of this, Massachusetts and Tennessee provide that a judge who has heard a criminal case should not subsequently hear a compensation claim made on the same case, and vice versa.¹⁶⁹ In Illinois, where compensation claims are handled by the Court of Claims rather than in the district courts with criminal jurisdiction, the danger of conflict is less likely. In fact, the precaution embodied in statute there applies in all jurisdictions, however their programs are administered. "No part of the transcript of any hearing before the Court of Claims may be used for any purpose in a criminal proceeding

except in the prosecution of a person alleged to have perjured himself in his testimony before the Court of Claims."¹⁷⁰ In fact, Minnesota, where victim compensation is administered by a separate board, includes essentially the same provision in its statute.¹⁷¹

In summary of the need to keep criminal and non-criminal proceedings separate one man makes this observation: "For best protection of all the interests involved--the victim's, the defendant's, and the state's--board action should not be permitted to influence the court, and the court action should not be permitted to influence the board."¹⁷² It is considerations such as these that also lead states to allow a delay in board hearings if a criminal suit involving the same action is pending.

Another administrative matter that has been given a great deal of attention is the need to make the public aware of the existence of victim compensation programs and of their limitations and stipulations. Many observing the evolution of victim compensation during the last decade were initially surprised by the relatively few applications for benefits received. On closer scrutiny the limited response was understood to reflect "a lack of knowledge about the availability of benefits."¹⁷³ As recently as 1975 one researcher described the existence of these indemnification programs as "virtually unknown."¹⁷⁴ A biennial report issued by Illinois echoes this complaint. Indeed, a survey of program administrators identifies one of their chief difficulties as "familiarizing the general public and eligible victims with the provisions of compensation plans and . . . making the existence of compensation programs known."¹⁷⁵

While low program costs are ordinarily desirable, to the degree that they are based on public ignorance, they reflect ineffectiveness. In the opinion of one informed observer ". . . legislators seriously

concerned with meeting the needs of crime victims . . . certainly should provide funds for publicity regarding the programs."¹⁷⁶ And this seems, more or less, what is happening. Various state statutes instruct the board to educate the public and subsequently require various law enforcement officials,¹⁷⁷ and/or hospital employees,¹⁷⁸ to inform the victim with whom they come into contact.

Questions about organization, administration, staffing, and duties are obviously important, but they are peripheral to the heart of the matter. A set of questions will lead us to that point: who shall be compensated, under what conditions, for what, and to what extent? Many existing programs provide answers that are quite similar, their differences seeming nuances rather than clearly defined unlikenesses. The exception occurs as one confronts the issues of victim need as a condition of compensation and indemnification of direct relatives or others who live with the offender. In these instances one finds few nuances.

Washington and Massachusetts perceive compensation as "a substitute for the civil liability of the State."¹⁷⁹ That assumption obviously precludes financial need as a basis for determining eligibility for compensation. There are other states, however, that accept no such liability but that nevertheless do not include a financial needs clause. This is the practice, for example, in Illinois, Alaska, Delaware, Hawaii, Minnesota and New Jersey.¹⁸⁰

The obvious alternative to not imposing a financial need clause is to impose one. A reviewer in Washington complains that such clauses introduce a "welfare concept" into victim compensation statutes.¹⁸¹

His equation is not wholly accurate, though , in that the definition of financial hardship can be broad enough to include not only the traditionally needy but also the mythical middle class citizen, whose life style is threatened by costs beyond those covered by insurance and by income lost from time away from the job because of other than a job-related injury. S.B. 1 includes a typical hardship clause:

No order for the payment of compensation shall be made under this Chapter unless the board finds that the applicant will suffer undue financial hardship from pecuniary loss incurred as a result of the injury or death of the victim if the order for the payment of compensation is not made. In determining undue financial hardship for the purposes of this Subsection, the board shall consider all of the financial resources of the applicant including any insurance payment received. The board shall establish standards by rule for determining such undue financial hardship./182/

Obviously, there is at present no board and therefore no standards, in Louisiana, but Wisconsin has both, and an excerpt from the Rules of Practice established by the Wisconsin Crime Victim Compensation Bureau can complete the point: "If a person filing a claim for compensation, medical or funeral expense as provided by Chapter 949 Wis. Stats. sustains a wage loss or diminution of other sources of income or savings and which would adversely affect the applicant's standard of living not fully reimbursed by any of eight specifically designated sources . . ." 183 his claim will be accepted.

Thus, whether a state speaks of "serious," "severe," or "undue" financial hardship, the programs using these phrases are not necessarily setting themselves up to compete with or duplicate the efforts of already existing welfare organizations. More likely, in trying to limit program costs, many jurisdictions simply find that ". . . the desirability of limiting costs outweighs any need to compensate a wealthy person who

is criminally injured";¹⁸⁴ as a result, the program is designed to protect against catastrophic losses.

Assuming that an applicant crosses the barrier of "need"--if it has been erected in his jurisdiction--he may well find another hurdle, this one presided over by an official who asks, "Are you a relative of the one who inflicted the injury, and/or do you live with that offender?" The implications of the question are many and, often, subtle. The range of possible responses to the question is also a little wider than that associated with the needs requirement and consequently presents greater complexity. The considerations are, again, cost and also collusion and, more subtly, moral judgment. At one extreme are states that disallow, without exception, claims by a relative or the spouse of the offender or his accomplice and by anyone sharing the household of the offender or his accomplice. Moving from that end of the spectrum one finds increasing flexibility until he reaches its other end, embodied in one alternative of the Uniform Act, which states that awards may not be granted to anyone whose award would somehow unjustly benefit the offender.¹⁸⁵ Discussions about the exclusion tend to settle toward the latter end of the spectrum; practice tends to fall much further toward the alternate extreme.

The connection between group exclusions and the cost of a particular indemnification program is obvious. Stated succinctly, "the cost of the program is directly proportional to the scope of coverage."¹⁸⁶ Exclusions need have some other, less arbitrary, basis, and the basis most often cited for excluding those related to or closely interactive with the offender himself are the possibility

of collusion and the likelihood of unfairly benefitting the offender. These are not, according to one source, so convincing reasons as they sound on first hearing. Consider: "First, fact-finding complexity is not confined to these cases; other cases, not excluded, present situations in which the facts are just as difficult to determine. For example, boards accept claims from persons injured by strangers in cases in which there are no witnesses and the attacker is not apprehended. Second, admittedly the offender should be prevented from sharing the award, but this poses no more than a technical problem, and various solutions have been suggested. For example, the award could be limited to the payment of expenses; and unpaid creditors, such as doctors and hospitals, could be paid directly. Arbitrary exclusion penalizes the innocent members of the family."¹⁸⁷ This attitude is reiterated convincingly by the creators of Illinois' compensation scheme:

The policy of preventing fraudulent or collusive claims can be achieved by less drastic means . . . If a victim is willing to sign a complaint, and cooperate in the prosecution of the assailant to whatever extent the officials deem necessary, these facts alone should raise a presumption that there is no fraud or collusion between victim and assailant. A victim's need is no less when the assailant is a relative or someone sharing the household of the offender./^{188/}

Dogmatically imposed clauses that allow no exception do seem to create a situation where the proverbial baby may well go out with the bath. In fact, it is most often literally the babies that are a source of concern. Consider the plight of the children of an estranged wife who "is shot by a no-good husband who has not been supporting the family."¹⁸⁹ In Wisconsin the babes would not suffer, for that state's

statute orders that no award be made if the victim "(a) is the child, parent, brother, sister or spouse of the offender and resides in the same household as the offender."¹⁹⁰ Emphasis added.⁷ If mom had been killed while "foolin' around," though, they would again be out in the cold, in Wisconsin, for the statute disallows awards to a victim who was at the time of the personal injury or death "maintaining a sexual relationship with such person i.e., the offender" or with any member of the family of such person . . ."¹⁹¹ Were these events to have occurred in Massachusetts, however, the situation would have been hopeless from the beginning, for there one "shall in no case be eligible to receive compensation . . ." if he is ". . . a member of the family of the offender, a person living with the offender or a person maintaining sexual relations with the offender . . ."¹⁹²

In Hawaii not only the climate but the atmosphere seems different. That state's statute includes a clause allowing awards to be made to cover "expenses actually and reasonably incurred as a result of the injury or death of the victim," even 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."¹⁹³ More congenial still would be Minnesota, which follows the example of the Uniform Act, allowing payments to relatives and spouses when the board determines that "the interests of justice" so dictate and disallowing others only if "an award to the claimant would unjustly benefit the offender or an accomplice. . ."¹⁹⁴

Another group unfailingly mentioned and never excluded in state compensation statutes consists of individuals identified as "good

samaritans," individuals who are injured or killed while making a good faith effort either to prevent a crime or to apprehend one believed to be a criminal. Nowhere are questions raised about the inclusion of good samaritan clauses or about their desirability.¹⁹⁵ However, the language of some statutes gives implicit warning against the possibility of accidental exclusion.

All state statutes incorporate a clause that allows the victim compensation board to reduce an award or to deny it altogether, if there is evidence that the victim's actions contributed to his subsequent injury or death. While good samaritans are not the point of this stipulation, their actions clearly fall within the range described. In apparent concession to potentially contradictory requirements, some jurisdictions state directly that good samaritans are outside the circle of those excluded for contributory negligence. The statement appearing in Delaware's statute is perhaps the most general. In determining the amount of an award, the board may consider whatever it deems relevant, "including the behavior of the victim which directly or indirectly contributes 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."¹⁹⁶

Massachusetts¹⁹⁷ and Wisconsin¹⁹⁸ write more specific and nearly identical clauses toward the same end. Hawaii goes further. That jurisdiction not only ensures equality for those combatting criminal activity; it allows additional claims. Thus property loss, not ordinarily covered by the statute, is compensable for these victims.¹⁹⁹

Having decided what individuals and groups are eligible or ineligible for indemnification, a jurisdiction must also decide what the award covers. There is general agreement that compensation will include basically medical costs associated with injury and death, burial costs, and other pecuniary losses related to temporary or permanent disability to work. The finer points of these categorical coverages are painstakingly set out in the definitional sections of some statutes.

In addition, some losses are not covered by state victim compensation schemes. One nearly universal exclusion is property loss. Hawaii's conditional exception of good samaritans is the only exception. During the debates of the 1960's, the legality of this exclusion was questioned on the basis of its arbitrariness. How can the state tacitly acknowledge some sort of responsibility for failure to prevent physical injury to an innocent victim but not acknowledge a responsibility to prevent theft of an equally innocent victim's possession? The complaint has the ring of oppositional nay-saying, and a rapid survey of the case law emerging from victim compensation litigation reveals that the exclusion of property loss has never been challenged. Nor are the reasons for its exclusion difficult to accept. Property loss does not occasion the kind of disruption that physical injury often does; fraudulent claims would be much harder to identify; the allowance of property loss would also likely be prohibitively expensive.²⁰⁰

Whether to compensate for "pain and suffering" is another question with a nearly unanimous response. Most jurisdictions seem to exclude pain and suffering.²⁰¹ Some jurisdictions treat it like Hawaii's

exceptional award for property loss: they make an award for pain and suffering conditional upon something else. Tennessee, for example, allows an applicant to claim pain and suffering if she is the victim of a rape or other sex crime.²⁰² Hawaii, citing its example as the only one, includes it as a routine basis for appeal. In 1977, in fact, awards for pain and suffering represented 39.2 percent of the total awards granted by the board.²⁰³

Wider divergence appears when one surveys the states to determine whether they award attorneys' fees separately or require that a claimant pay them from the amount awarded him by the board. There seems a slight illogic at work in a system that strives to cover serious financial losses and consequently to relieve one source of stress on the victim, then requires that he take the money earmarked for medical expenses or salary loss and give part of it to an attorney-- often as much as 15 percent of his total award²⁰⁴ and occasionally as much as 20 percent.²⁰⁵ A survey of 11 programs operating in 1975 revealed 6 states that required the fee be paid out of the award, 4 states that used supplemental funds, and 1 state with a silent statute.²⁰⁶ If that suggests a trend, it's a trend likely to be nurtured by the decisions in Congress to reimburse partially costs of attorneys' fees only if the fees are included in the victim's award; to award fees separately is to make of them an administrative expense, which the federal government indicates it will not cover.

Perhaps it is more to the point, though, to question the need for an attorney. If, as a couple of annual reports insist, the claimant is not to be looked upon as adversary, but as a "person who is seeking

help for serious problems violently thrust upon that person by forces over which he/she had no control";²⁰⁷ and if the procedures for making application and documenting claims are provided in writing in simple, direct language, as statutes ought to mandate, the reasons for requiring the assistance of an attorney are not clear. The claim made in the Second Annual Report of Minnesota's Crime Victims Reparations Board represents a goal worth striving for: "Since the process and procedure in making a claim has been kept to a minimal amount of paper work and simplified to the largest extent possible, in most cases the victim has not felt required to hire counsel to represent him or her."²⁰⁸

Not far removed from concerns about what one shall be compensated for are concerns about the limitations to be imposed on the amounts awarded. If program costs are directly related to what is reimbursable, certainly they are also directly related to the placement of a program's threshold and ceiling. Though one might wish there were no ceiling, the obvious need to retain basic control of one's environment will persuade most to accept one. Debate on that subject concerns instead its height and tends to reflect frustration or resignation rather than rebellion.²⁰⁹

Also on point are two concrete facts about maximums. For the first seven years of its existence, California's victim compensation program operated under a ceiling of \$5,000. In fiscal 1974-75 the ceiling was raised to \$23,000. In spite of that rather dramatic renovation, the average individual award has remained virtually unchanged.²¹⁰ Another related provision, the effects of which are not reported, appears in Tennessee's statute. Basing its victim compensation awards as closely as possible on its workmen's compensation scale, that state provides medical care "virtually without monetary limits."²¹¹

The usefulness of an artificial threshold for claims is less obvious, especially if it is placed very low. One rationale cited in support of establishing one is that it reduces administrative burdens by blocking trivial amounts. But, one observer notes, "Since every claim must be investigated anyway, to determine whether the claimant is eligible for compensation, there would seem to be little opportunity here for effective savings."²¹² The observation seems clearly to apply to Delaware's minimum claim requirement of \$25.00, "except in cases of dire hardship . . ."²¹³ and leads one to wonder why Delaware did not instead adopt Hawaii's example and impose no minimum.²¹⁴

A much more common minimum is the figure \$100. While that level is high enough to block more trivia, it--and the occasional stipulation of \$200²¹⁵--is also likely to keep the most likely victims outside the shelter: "First, given the incidence of crime, a minimum loss requirement would keep compensation from being paid to the very persons who are most in need and for whom no loss is 'trivial.' The burden of loss is relative, and it is relatively larger for those who are most likely to become victims of crime."²¹⁶

Additional related difficulty arises from the ambiguity of language in some minimum loss clauses. In some the minimum is stated clearly as deductible. For example, Massachusetts declares that "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 One hundred dollars shall be deducted from any award granted under this chapter."²¹⁷ Equally as

often a statute simply states the minimum loss that one must incur before he can file a claim; as a result of such language, some clauses seem to require a minimum for application but not a minimum award. All that the Wisconsin statute indicates is that "the department may not make a compensation award of more than \$10,000 nor less than \$200 for any one injury or death,"²¹⁸ except in the instance of funeral expenses less than \$200.²¹⁹ Neither in a later section, which enumerates what is to be deducted from the total award granted, nor anywhere else in the statute is the \$200 minimum mentioned. Based on this language, a \$201 loss seems fully recoverable, but a loss of \$190 would not be recoverable at all.

Also impacting costs--and in fact functioning as a subdivision of maximum limits--are statutory provisions that define and prohibit double recovery for injuries and losses, and clauses that subrogate state claims to personal claims once an award has been granted.

Double recovery--i.e., recovery for losses both from a victim compensation scheme and from other collateral sources--is forbidden. The Uniform Act defines collateral source as "a source of benefits or advantages for economic loss otherwise reparable under this Act which the victim or claimant has received, or which is readily available to him . . ."²²⁰ and then lists eight more specific sources, covering basically all possibilities, except perhaps a gift from a wealthy relative. While this principle remains and is reiterated exactly in some statutes,²²¹ other statutes reflect a loosening of restrictive paraphernalia. Thus, in the Minnesota statute, one finds a definition and enumeration of collateral sources much like that of

the Uniform Act, with this exception: "The term does not include a life insurance contract."²²² (On the other hand, one may not be able to accept the rich relative's gift, for Minnesota includes as a deductible collateral source "any private source as a voluntary donation or gift."²²³ Alaska too has amended its statute to exclude the proceeds of a life insurance policy as a collateral source.²²⁴ The relevant statute in Illinois relaxes even more to allow exclusion of the first \$25,000 in life insurance and of compensation from "annuities, pension plans, /and/ Social Security benefits. . . ."²²⁵

One obvious result of selective exclusion is, in effect, to raise the maximum amount recoverable. Another means of accomplishing the same thing is not to establish the maximum award as a flat amount but to consider the actual loss sustained and adjust according to that figure. The Alaska legislature, recognizing that "many needy victims received only a partial award or, in some cases, no award because they had already received benefits in excess of the \$10,000 /maximum limit/," amended their law to permit "payment of expenses or losses over and above the amount received from other sources to the maximum allowable under the amendment /*i.e.*, \$25,000/ . . ."²²⁶ Consequently, a victim who sustained losses of \$35,000 and recovered \$30,000 from various deductible collateral sources could still be awarded \$5,000 by the board. Massachusetts and Tennessee have adopted this interpretation also, Tennessee apparently following the "Massachusetts Rule,"²²⁷ established in Gurley v. Commonwealth, that the actual loss sustained "is determined by deducting the benefits received as a result of the injury from the total loss sustained," and then awarding money to

cover the actual loss, up to the statutory maximum, minus the statutory deductible.²²⁸

Another observer takes note of an aspect of double recovery clauses that has been a source of troubled commentary all along: some who could easily afford insurance but who do not purchase it can recover their losses from the state while others who acted more responsibly (e.g., bought insurance rather than a sportier car) get nothing for covering their own losses. Then he makes the following suggestion: "Therefore, it would make compensation awards more equitable if a victim, who had received insurance benefits and thus had in the past incurred premium expenses, could be compensated under the Act for his premium payments covering the time period in which he was injured."²²⁹

And always as programs are orchestrated, the primary value is balance. As the authors of Alaska's Fourth Annual Report observe, "The Board must always bear in mind the appropriation available and the cost to the state, but if the program is to fulfill its objectives, compensation must be more than nominal."²³⁰ (Whether this is the intent of very many programs is questioned by a contemporary reviewer, who observes cryptically, "Legislatures now appear willing to adopt any of the various existing programs as long as the promised cost is sufficiently low."²³¹

Related to the stated desire that victim compensation not be simply a token proceeding, some state statutes include a further stipulation clearly designed to ensure that the money awarded to cover claims and losses goes where it is designed to go. Written

into the statutes of Delaware²³² and of Florida,²³³ for example, is language to indicate that money awarded by the victim compensation board may not be claimed to cover other indebtedness. This stipulation also seems consistent with their not deducting attorneys' fees from the amount the claimant is awarded. Delaware pays attorneys from a separate fund;²³⁴ Florida requires that the state attorney's office give claimants such assistance as they might need to file and document claims.²³⁵ In contrast, Wisconsin, which also has a clause prohibiting the attachment of the award "other than for expenses resulting from the injury which is the basis for the claim,"²³⁶ is not bound by the same logic: attorneys' fees, which "shall not exceed 20% of the amount the attorney assisted the victim to obtain," are paid out of the claimant's award.²³⁷

On first consideration there seems to be nothing to say about subrogation clauses except that all states have them in some form or another. Once the compensation board makes an award, it and, by extension, the state, is subrogated to (substituted for) the victim in a civil suit. Closer scrutiny reveals greater variety.

Not surprisingly, one of the most flexible and yet most careful approaches is taken in the Uniform Act, which stipulates that, if an award is made, "the State is subrogated to all the claimant's rights to receive or recover benefits or advantages . . ."²³⁸ /emphasis added/ and that the claimant must inform the board of his intent to bring such suit. At that time the board may join the suit or require the victim to bring the suit as a trustee of the state.

Costs to the claimant acting as trustee are deductible.²³⁹

Other jurisdictions arrange that the state is subrogated to the cause of action once the state has made a compensation award²⁴⁰ and then say nothing else about civil suits. Having been deprived of his cause of action, the individual would then seem to be precluded from bringing suit on his own. If this is indeed the situation that exists, a citizen is deprived of a basic civil right. Somewhere in between this approach of Florida and Alaska and the approach of the Uniform Act is Hawaii, which cites the possibility of a "derivative action" brought by the state against a convicted offender "in the name of the victim or such of his dependents as have been awarded compensation . . . 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."²⁴¹ Though the statute does not mention civil suits, neither does it seem to deprive a claimant of cause.

Louisiana's proposed S.B. 1 reflects another option, one which is in effect in Delaware. In addition to a statement that the attorney general may institute a civil action against a person convicted of a crime which was the basis of the victim's claim,²⁴² S.B. 1 further states that "an order for the payment of compensation under this Chapter shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death . . ." on the further condition that the claimant reimburse the criminal victim indemnity fund up to the amount of the award earlier provided by the board.²⁴³

A common thread in the obviously varied fabric displayed above is the further stipulation that any amount recovered by the state in excess of the amount awarded a claimant by the victim compensation board shall be given the victim.²⁴⁴ And, of course, a claimant who wins a civil suit after being awarded compensation by a board must repay the victim indemnification fund as much of its award to him as is also covered from the civil suit.

The possibility of substituting the state's right²⁴⁵ for an individual's right to file and recover civil damages is, in effect, another means of preventing double recovery; it is also another means of reducing program costs--i.e., the state, with its greater resources, is perhaps more likely than a private citizen to risk filing for civil damages, and the damages recovered will presumably repay sufficiently more than the cost of filing to justify the suit. Though that logic seems sound as far as it goes, the fact remains that criminal offenders usually have few resources from which recovery can be made.

Such evidence as there is substantiates the suspicion that there is indeed less to be recovered than one might hope. California, a state whose board is not required to make an annual report to its legislature,²⁴⁶ reports in a letter that of nearly \$6.5 million awarded in fiscal 1977-78, \$1.75 million were returned to the state as a result of its subrogation to individual claims and its penalty assessments imposed on convicted offenders.²⁴⁷ A further breakdown is not provided. The situation reflected in Hawaii's most recent

annual report may or may not clarify: of the 223 claims decided in 1977, in only one did the state recover based on its subrogation rights, and that was in the amount of \$150.²⁴⁸

Another means of introducing "new" money into the indemnification system and a subject usually included in lists of collateral sources, is restitution payments by the offender to his victim or the victim's dependents. Some of the ineffectiveness of this option can be explained with the same observations that are offered to explain the inadequacy of civil suits-- who ever brings them-- as a means of reimbursing the costs associated with criminal victimization: offenders are likely to have few resources, a poor work record, and few salable skills. In the opinion of some, restitution by the offender is a plan, like the rehabilitation of offenders, that has never seriously been tried. While that contention forms the base for the report to follow, suffice it to say at this juncture that such few reports as are available from a scattering of annual reports reflect modest results.²⁴⁹

Another source of funding has been cited repeatedly in journal articles and annual reports from various jurisdictions during the last couple of years: it appears that the federal government will make funds available to the states. Along with hopeful statements that "it looks like this year is it," one need recall that the Congress has heard the subject mentioned regularly since 1965 and has been debating it actively since 1972. So maybe this year is it, but maybe it isn't either.

Also, enthusiastic discussions about federal funds tend to

obscure the fact that federal funds are--like state funds--based on taxes. Whether taxpayers subsidize a victim compensation scheme directly through state appropriations or less directly through federal funds, they have indeed given at the office. If any have a reason for smugness, it will perhaps be those who live in a state that has a victim compensation program and that, consequently, receive partial matching funds, the latter of which are collected from citizens in states without victim compensation programs as well as from citizens and states with such programs.

Nowhere, however, has the enthusiasm, or ingenuity, of program developers been more apparent than in the options created to squeeze money from the alleged turnips of society, i.e., the average offender--reportedly indigent, frequently imprisoned, and ultimately unemployable.

Maryland imposes a surcharge of \$5.00 on any fine levied on a convicted offender, over and above their other fines.²⁵⁰ Florida follows suit, then ups the ante, imposing a fine of \$10.00 in the instance of any misdemeanor or felony charge, the result of which is a plea of guilty or nolo contendere or a verdict of guilty. The fine is in addition to any other costs and can be waived in the case of severe financial hardship.²⁵¹ Delaware imposes "a 10% surcharge on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses."²⁵² Even if the court suspends imposition of same, the penalty assessment cannot be suspended.²⁵³

The broadest range of possible penalty assessments exists in California, where a person convicted of a crime of violence that

results in injury or death may be ordered by the court to pay a fine commensurate with the offense committed . . . of at least ten dollars (\$10), but not to exceed ten thousand dollars (\$10,000).²⁵⁴ The penalty is contingent upon the defendant's ability to pay--i.e., his financial circumstances and his family situation.²⁵⁵ Any other, nonviolent crime is assessible at the rate of \$10 for a felony or \$5 for a misdemeanor.²⁵⁶

To date, however, Tennessee seems to have moved closest to an offender-supported victim compensation scheme. According to an article in the Memphis State University Law Review, that state's statute "provides that monies in the Criminal Victim Compensation" fund will come exclusively from persons convicted in criminal court of crimes against property and persons."²⁵⁷

The funds come from a twenty-one dollar fine imposed on persons convicted of crimes against persons or property. Moreover, if an offender is unable to pay the fine it will be collected by causing compensation paid to the offender for any work during the first twelve months of his incarceration to be turned over to the Fund until the fine is extinguished. Another unique funding mechanism of the Tennessee Act is the collection of up to 10% of an offender's earnings while he is on probation, parole or working in any other community based program. /258/

Yet for all of these provisions, almost always the major burden of support falls to the state and thereby to its citizens, who pay taxes. This reality is included in the generally agreed upon definition of victim compensation programs stated in the Introduction: these programs "rely on State resources rather than those of offenders."²⁵⁹ Though other resources contribute to a reduction of costs, that is normally the best that occurs: costs are reduced. Most program funds come

from taxes, the same source that pays for other state programs--other social services, schools, prisons, etc. (For some, the common source of funding becomes an additional reason for implementing a victim compensation program. In the opinion of the Minnesota Crime Victims Reparations Board, "Since it costs the State of Minnesota approximately \$15,000,000 a year to operate our prison and reformatory, the sum of \$375,000 per year to compensate victims of violent crime in this state certainly seems minuscule by comparison, but it is a beginning.")²⁶⁰

With the realities of available funds clearly in mind, it remains only to consider the other numbers in the cost equation.

A recent article in the Baton Rouge Morning Advocate calls attention to an undesirable component in figuring cost and an additional problem that must be faced once a victim compensation statute is implemented:

WASHINGTON (AP)--Benefits paid to federal workers for alleged job-related injuries quadrupled to \$546 million between 1970 and 1977 because of poor screening for potentially fraudulent claims, a congressional watchdog agency charged Wednesday.

And the cost to taxpayers for federal worker compensation benefits could reach \$1 billion by 1980 unless the government does a better job of verifying that the claims are valid, the General Accounting Office said in a report./261/

With this possibility in mind, various state statutes have included penalty clauses to deter both fraudulent claims and attorneys' negotiating for larger fees than those allowable under statute.

Illinois classifies falsification of claim a misdemeanor.²⁶² Alaska also classifies it as a misdemeanor; stipulates its penalty as not less than \$500, imprisonment up to a year, or both; and requires

forfeiture of any award so obtained.²⁶³ Wisconsin provides essentially the same, except that one may be imprisoned for no more than 6 months; that state's statute also includes a penalty clause applicable to an attorney who violates fee restrictions. He shall forfeit double the amount he was to have earned; the applicant will be reimbursed the overcharge.²⁶⁴ Most jurisdictions simply state that an attorney shall not negotiate for or receive more than the maximum amount provided in statute, but Hawaii adheres to the practice of Wisconsin, imposing a fine of up to \$2,000 if an attorney "charges, demands, receives or collects" more than "the reasonable attorneys' fees" allowed by statute.²⁶⁵

Properly, fraud is a secondary concern (though figures cited at the paragraph's beginning suggest that it can become a very strong secondary). But most costs presumably will not arise from fraud, and presently, program administrators do not cite fraud as an important contingency to be dealt with.²⁶⁶

What then would it cost to operate a victim compensation program? A contemporary reviewer has said that "the experiences of existing programs, which vary greatly in scope of coverage, provide a firm basis for reasoned experimentation in expansion of benefits to victims not presently covered."²⁶⁷ We have examined these experiences, reflected in both theory and practice within many jurisdictions. What do these experiences teach about costs? And, more to the point, what do they have to suggest about costs for a victim compensation program in Louisiana?

Essentially, the experiences of other jurisdictions offer, at

this point, two principles. One, reiterated repeatedly in the pages above, is that program costs are directly related to program features. That established, one can consider the amount that different programs with various particular features cost individual states. From these figures, ultimately illustrative rather than predictive, the other principle emerges: program costs increase with program life. For example, in FY 1974 the Illinois Court of Claims granted 126 claims for a total of \$362,813.52; by FY 1978 the court had made awards to 501 claimants for a total amount of \$1,082,214.26.²⁶⁸ A similar pattern of increasing costs appears in Alaska from FY 1974-FY 1976: the total amount awarded rose from \$36,025.60 to \$125,266.20 to \$272,948.29.²⁶⁹ There is more fluctuation in the growth of Maryland's program, though again the difference between \$328,000 awarded in FY 1970 and the figures of more than a million dollars reported for the last four consecutive fiscal years is noteworthy.²⁷⁰

An effective determination of the possible cost of a victim compensation scheme in Louisiana can come only from remaining aware of the two principles just cited, and then looking within. The federal government compiles extensive data regarding the frequency and extent of criminal victimization occurring in certain statistically significant locations across the United States. This plus data included in the Uniform Crime Reports provides a sound basis on which to design a program that can remain within whatever budgetary bounds are deemed necessary.²⁷¹

This seems to be the thesis of the Louisiana Commission on Law Enforcement (LCLE) also. In a report on victim reparation programs,

to be released by the LCCJS Division to the public within the month of October 1978,²⁷² researchers employ victimization data, suggestions implicit in other state programs, and the aid of the Louisiana Legislative Fiscal Office to project program costs for a victim compensation program with a particular design. The figure they arrive at is \$539,700 for the first year and \$883,000 per year once the program is fully operationalized.²⁷³

There are, however, hazard warnings attached to the inevitable and very realistic concern for program costs. If cost considerations override all else, the resultant program may become no more than another half-measure to be relegated to the bin with other half-measures that it was intended to supplant. If the program's mere existence is its own reason for being, it becomes "a fraud on the public that believes that it should and will be assisted if victimized, and a cruel hoax on many persons actually injured by crime."²⁷⁴

E. Summary--Recommendations

But still there remains the question: is victim compensation the solution to the problem of victim need, a problem that few deny exists? In many ways the theoretical answer is no easier to isolate at this point than it was initially. There remain, clearly, two sides. One careful observer finds the amounts awarded to be convincing evidence in themselves: "Inasmuch as the programs do not provide awards for persons made whole by the offender or fully covered by insurance, the amounts expended amply demonstrate that traditional remedies for crime victims are inadequate."²⁷⁵ Advocates in Wisconsin

share this attitude: "It has been our experience that many persons who are injured by criminal acts in fact do not have insurance to cover the medical expense and wage loss. Many are ineligible for any type of public aid and they do sustain a significant financial hardship by criminal acts inflicted upon them by no fault of their own."²⁷⁶ Victim compensation thus becomes a means of closing the cracks through which some of society's citizens fall.

In contrast, Professor Gerhard Mueller, one of the 1960's most articulate opponents of victim compensation, maintained consistently that there are other more effective ways of closing cracks than building a new bridge. The major problem with debate about victim compensation, he has complained, is that it seems to ignore alternatives. Why not, he suggests in one article, put the money where it will do more good--why not double the salaries of public school teachers and law enforcement officers and corrections personnel? By doing so, he insists, society would attract to those positions more intelligent, better qualified persons and could thus more successfully reach the roots of the problem of crime. With fewer criminals, we would have fewer victims.²⁷⁷

Elsewhere Professor Mueller has argued:

Our penal system, in fact, relates the severity of punishment (or the threat thereof) not just to the needs of deterrence, rehabilitation, and neutralization (measured in years and days) deemed requisite for a given offender or offender type, but also and very prominently to the amount of harm caused. Only that explains, for example, the long term sentence imposed on the murderer who acted emotionally and is unlikely to repeat his offense, as compared with the short term sentence for the thief who is likely to repeat his crime. In the past we have measured

this "harm" much more in emotional-retributive terms, than in terms of compensable injury. Might it not be possible, however, to reinterpret the harm yardstick, to translate it, so to speak, from a retributive value (without giving up the retributive idea entirely) into a compensation value? In short, is it possible, as part of our correctional system, or as a rehabilitative aim, to require a convict to engage in useful labor, perhaps rated at the market value of his service, payment for which is then transmitted to the victim of his crime as compensation?²⁷⁸

Certainly Mr. Mueller's attitude is compatible with that of Stephen Schafer, a contemporary proponent of restitution programs, who describes state compensation as ". . . actually a crippled and inefficient form of restitution . . ."²⁷⁹

So the question remains and is now raised for a last time: should Louisiana too institute a program to compensate the innocent victims of violent crime? The question and the issues it raises are reducible to three elemental considerations:

1. one's philosophy of the proper role of government in programs directed toward the social well being of its citizenry,
2. an awareness too of the assistance that government gives to ensure that accused offenders as well as convicted ones are treated fairly, and
3. fiscal realities and contingent priorities.

If those considerations point toward victim compensation, then it becomes important to select program characteristics that will best satisfy what are identified as the unique needs of Louisiana's citizens and that will simultaneously remain within the boundaries established by the state's current financial conditions.

APPENDIX A
Uniform Act, Sec. 5(g)

(g) (1) Reparations may be awarded only if the Board finds that unless the claimant is awarded reparations he will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if he cannot maintain his customary level of health, safety, and education for himself and his dependents without undue financial hardship. In making its finding the Board shall consider all relevant factors, including:

- (i) the number of claimant's dependents;
- (ii) the usual living expenses of the claimant and his family;
- (iii) the special needs of the claimant and his dependents;
- (iv) the claimant's income and potential earning capacity; and
- (v) the claimant's resources.

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

- (i) one year's earnings;
- (ii) the claimant's equity, up to \$30,000, in his home;
- (iii) one motor vehicle; and
- (iv) any other property exempt from execution under [the general personal property exemptions statute of this State].

(3) Notwithstanding paragraph (2):

(i) the board may award reparations to a claimant who possesses net financial resources in excess of those allowable under paragraph (2) if, considering the claimant's age, life expectancy, physical or mental condition, and expectancy of income including future earning power, it finds that the claimant's financial resources will become exhausted during his lifetime; or

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

APPENDIX B

H.R. 7010, Sec. 5

Limitations on Federal Grants

Sec. 5. In computing the annual cost of a qualifying State program for the purpose of establishing the amount of Federal grants under section 3, there shall be excluded from such cost any amount for administrative expenses incurred in carrying out the program and any amount representing State compensation awards--

- (1) for pain and suffering;
- (2) for property loss;
- (3) to the extent the amount of any award to a victim, or the aggregate amount of any awards to the surviving dependents of a victim with respect to such victim, exceeds \$25,000;
- (4) to any claimant who has received or is entitled to receive compensation from any source other than a compensation program assisted under this Act or the perpetrator of the qualifying crime;
- (5) to any claimant whose award would be for an amount less than \$100 or for lost earnings computed on the basis of less than five work days;
- (6) for lost earnings of more than \$200 per week per individual;
- (7) to any claimant who failed to file a claim under the State program within one year after the occurrence of the qualifying crime, unless good cause for such failure to file has been found by the appropriate State agency; and
- (8) to any claimant who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime, unless good cause for such failure to report has been found by the appropriate State agency.

As reported in the Congressional Record, September 30, 1977, p. H 10402.

APPENDIX C

S. 551, Sec. 4 and Sec. 5

Qualifications of State Programs

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

(1) The program offers--

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

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

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

(3) The program does not have a limitation based on the financial means of the victim or any surviving dependent.

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

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

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

(b) If a State has a program in effect on the effective date of this Act which does not comply with the requirements of subsection (a) of this section such program shall be eligible for grants under this Act until the day after the close of the first regular session of the State legislature that begins after the effective date of this Act. Thereafter, only those programs which comply with the requirements of subsection (a) shall be eligible for grants under this Act.

APPENDIX C CONTINUED

Limitations on Federal Grants

Sec. 5. In computing the annual cost of a qualifying State program for the purpose of establishing the amount of Federal grants under section 3, there shall be excluded from such cost any amount for administrative expenses incurred in carrying out the program, any amount for which the program has received proceeds pursuant to any State right of subrogation or for which the victim or any dependent has received restitution from the perpetrator of the crime, and any amount representing State compensation awards--

- (1) for pain and suffering;
- (2) for property loss;
- (3) to the extent the amount of any award to a victim or the aggregate amounts of any awards to the surviving dependents of a victim with respect to such victim, exceeds \$50,000.
- (4) to any claimant who is entitled to receive compensation for personal injury or death from any source, other than from a compensation program assisted under this Act or from the perpetrator of the qualifying crime, up to the amount of that compensation;
- (5) to any claimant other than a claimant sixty-two years of age or older, whose award would be for an amount less than \$100 or for lost earnings or loss of support computed on the basis of less than five work days;
- (6) to the extent the amount of any award for loss of earnings to a victim, or the aggregate amount of any awards for loss of support to the surviving dependents of a victim with respect to such victim, exceeds \$200 per week;
- (7) to any claimant who failed to file a claim under the State program within one year after the occurrence of the qualifying crime unless good cause for such failure to file has been found by the appropriate State agency;
- (8) to any claimant who failed to report the qualifying crime to law enforcement authorities within seventy-two hours after the occurrence of that qualifying crime unless good cause for such failure to report has been found by the appropriate State agency; and
- (9) to any claimant who failed to cooperate with appropriate law enforcement authorities with respect to the qualifying crime for which compensation is sought.

APPENDIX D
QUALIFICATIONS OF STATE PROGRAMS

H.R. 7010 AND S. 551 COMPARED, WITH REFERENCE TO S.B. 1

<u>Qualification</u>	<u>Qualification As Identified by Number in H.R. 7010</u>	<u>Qualification As Identified By Number in S. 551</u>	<u>Qualification Present in S.B. 1</u>
compensates physical injury or death	(1)	(1)	implied
provides for judicial review	(2)	(2)	yes
requires that claimants co-operate with law enforcement officials	(3)		yes
requires arrangements for informing victims of program's existence and its conditions	(4)		no
subrogation clause	(5)		not clearly stated as such
prohibits imposition of welfare conditions on claimants	(6)	(4)	yes
provides for denial or reduction of a claim based on contributory negligence	(7)	(5)	yes
instructs that restitution can be required of an offender	(8)		no
mandates an escrow fund to receive monies generated from publicity regarding crime to benefit the offender	(9)		no
forbids financial need stipulation		(3)	no
payment of claim shall not be contingent upon apprehension or conviction of the criminal offender		(6)	yes

NOTES ON VICTIM COMPENSATION

¹Bruce Jacob, "The Concept of Restitution: An Historical Overview," Restitution in Criminal Justice, Joe Hudson and Burt Galaway, eds. (Lexington, Mass.: D.C. Heath and Company, 1975). The author notes the following circumstances: In the eighteenth century Jeremy Bentham argued that there should be some form of victim compensation program by which losses were restored to victims of unsolved crimes and to victims whose criminal assailants were known but insolvent (p. 48). In 1847 "an eminent French jurist, criminologist and reformer" proposed a combination restitution-compensation program, arguing that a victim is entitled to reimbursement as part of the social contract; consequently, "'if there is no known culprit, society itself must assume the responsibility for reparation.'" (pp. 48-49) In 1900 the reimbursement of the victim of crime was a haltingly debated topic at the Sixth International Penitentiary Congress in Brussels (p. 49).

²"Compensation for Victims of Criminal Violence: A Round Table," 8 Journal of Public Law 191 (1959).

³Gerhard O.W. Mueller, "Compensation for Victims of Crime: Thought Before Action," 50 Minnesota Law Review 213, 215 (1965); Stephen Schafer, "Victim Compensation and Responsibility," 43 Southern California Law Review 55, 57 (1970).

⁴Margery Fry, "Justice for Victims," 8 Journal of Public Law 191, 191 n (1959).

⁵Ibid., p. 193.

⁶"An Examination of the Scope of the Problem," 50 Minnesota Law Review, 211 (1965).

⁷Ibid., p. 212.

⁸Anthony C. Mead, et al., "Discovery of a Forgotten Party: Trends in American Victim Compensation Legislation," Forgotten Victims: An Advocate's Anthology, George Nicholsen, et al., eds. (Sacramento: California District Attorneys Association, n.d.), p. 31.

⁹Ibid., pp. 33,34 n 1; Criminal Injuries Compensation Board of Maryland, Eighth Annual Report (Baltimore, 1977), p. 1.

¹⁰Mead, n. 8 supra at 33-34. Louisiana is listed as one of the three states with enabling legislation; the act was never funded and was repealed in 1974. See discussion on pp. 18 & 19 of text for additional detail.

¹¹ House Committee on the Judiciary, Report on Victim of Crime Act of 1977, Report No. 95-337 (Washington, D.C., May 1977), p. 2.

¹² Mead, n. 8 supra at 33-34.

¹³ Stephen Schafer, "Compensation of Victims of Criminal Offenses" 10 Criminal Law Bulletin, No. 7, 605, 613, n. 31 (1974).

¹⁴ Note, "Rehabilitation of the Victims of Crime: An Overview," 21 UCLA Law Review 317, 317 (1973).

¹⁵ Id.

¹⁶ "Dedication," Forgotten Victims: An Advocate's Anthology, George Nicholson, et al., eds. (Sacramento: California District Attorneys Association, n.d.); Remarks of Sen. Edward F. Kennedy during debate about victim compensation in the U.S. Senate, Congressional Record, September 11, 1978, pp. S 14925-6.

¹⁷ Note, 21 UCLA Law Review, n. 14 supra at 318.

¹⁸ House Report on Victim of Crime Act of 1977, n. 11 supra at 4.

¹⁹ Arthur J. Goldberg, "Preface to Symposium: Governmental Compensation for Victims of Violence," 43 Southern California Law Review 1, 2 (1970).

²⁰ Id.

²¹ John A. Stookey, "The Victim's Perspective on American Criminal Justice," Restitution in Criminal Justice, Joe Hudson and Burt Galaway, eds. (Lexington, Mass.: D.C. Heath and Company, 1975), p. 19.

²² Id.

²³ Schafer, 43 Southern California Law Review, n. 3 supra at 55; 60 n. 27. That proponents could never agree on a theoretical justification for a criminal injuries compensation scheme can be variously interpreted. According to one scholar,

. . . a criminal injuries scheme is basically the product of an inarticulated political decision to assist financially a disadvantaged group which is easily identifiable by its public visibility and its political potential. No doubt compensation is viewed as a tangible expression of the state's sympathy and concern for those who, through no fault of their own suffer unjustifiable invasions of their personal integrity; but there may be less charitable motives behind this philanthropy. Most government plans to introduce more humane methods of disposition of offenders or better prison conditions or to

abolish capital punishment are invariably greeted by incoherent cries of "what about the victim?" An efficient compensation scheme is a good way of silencing the opposition, and at the same time the distribution of sums of money to the criminally injured engenders a sense of well-being in the donor while nothing is actually done to alleviate the crime problem.

/Note, "Assault on the Law of Tort" 38 Modern Law Review 139, 150 (1975).²⁴

Though its tone is different and its statement more general, this opinion is echoed in A Report on State Compensation Programs, published in 1975 by the Council of State Governments: the increasing advocacy of programs to compensate victims of violent crime has evolved politically "in response to public fear and reactions to the country's spiraling violent crime rate." (p. i).

²⁴This attitude is reflected, for example, in the remarks of U.S. Rep. Goldwater during House debate on the Victims of Crime Act of 1977, Congressional Record, September 30, 1977, pp. H 10404-5.

²⁵Note, 21 UCLA Law Review, n. 14 supra at 335-336.

²⁶Frank W. Miller, "Compensation for Victims of Criminal Violence: A Round Table," 8 Journal of Public Law 203, 204 (1959).

²⁷LeRoy L. Lamborn, "Remedies for the Victims of Crime," 43 Southern California Law Review 22, 24 (1970); Richard Cosway, "Crime Compensation," 49 Washington Law Review 551, 552 (1974).

²⁸Goldberg, 43 Southern California Law Review, n. 19 supra at 1.

²⁹Fred E. Inbau, "Compensation for Victims of Criminal Violence," 8 Journal of Public Law 201, 202 (1959).

³⁰Marvin E. Wolfgang, "Victim Compensation in Crimes of Personal Violence," 50 Minnesota Law Review 223, 223 (1965).

³¹Miller, 8 Journal of Public Law, n. 26 supra at 205-206.

³²Ibid. Miller observes that it "appeals strongly to one's sense of justice" to establish criminals generally as the responsible group (pp. 208-209).

³³Wolfgang, 50 Minnesota Law Review, n. 30 supra at 233, n. 33; Lamborn, 43 Southern California Law Review, n. 27 supra at 46-47; Note, 21 UCLA Law Review, n. 14 supra at 335.

³⁴Note, 21 UCLA Law Review, n. 14 supra at 333-335; Cosway, 49 Washington Law Review, n. 27 supra at 552-554.

³⁵ Lamborn, 43 Southern California Law Review, n. 27 supra at 48.

³⁶ Goldberg, "Preface," 43 Southern California Law Review, n. 19 supra at 3.

³⁷ House Report on Victim of Crime Act of 1977, n. 11 supra at 15.

³⁸ Lamborn describes the government's involvement at this point as "essentially passive"--i.e., ". . . the government merely provides the courtroom, judge, and jury . . ." /Lamborn, 43 Southern California Law Review, n. 27 supra at 29/.

³⁹ Ibid., p. 36.

⁴⁰ Ibid., p. 37.

⁴¹ Note, 21 UCLA Law Review, n. 14 supra at 319-323; Goldberg, 43 Southern California Law Review, n. 19 supra at 2.

⁴² See Note, 21 UCLA Law Review, n. 14 supra at 336 n 82:

First, some of the responsibility for the crime victim's plight rests on the state, which, though it may not guarantee immunity from all criminal acts, is the agency which has undertaken responsibility to curb crime. In addition, by fining and incarcerating the criminal, the state makes it more difficult for the victim to satisfy a claim by a civil action. The individual is the true victim of crime, but it is society which exacts retribution.

⁴³ Goldberg, "Preface," 43 Southern California Law Review, n. 19 supra at 2; Note, 21 UCLA Law Review, n. 14 supra at 320. One scholar repeats the suggestion of a county judge in Indiana that "victim advocate groups should get state funds to finance such suits just as many defendants receive free legal counsel." Warming to the idea himself, the writer continues:

We have seen the growth of any number of state-funded human rights and civil rights boards and commissions charged with the laudable task of enforcing the civil rights of our citizens. Why, then should not the government get into the business of enforcing the rights of the victims of crimes?

He does concede that the victory would likely be moral rather than financial--even with the burden of cost removed from the victim, "the result in most cases would be the same: an uncollectible judgment." /Frank Carrington, "Victims' Rights Litigation: A Wave of the Future?" 11 University of Richmond Law Review, No. 3, 447, 457 (1977)/.

⁴⁴ Note, 21 UCLA Law Review, n. 14 supra at 320.

⁴⁵ Ibid., pp. 320-321.

⁴⁶ Schafer, 43 Southern California Law Review, n. 3 supra at 57.

⁴⁷ Gerhard O.W. Mueller, "Compensation for Victims of Crime: Thought Before Action," 50 Minnesota Law Review 213, 216 (1965); Note, 38 Modern Law Review, n. 23 supra at 148.

⁴⁸ Note, 38 Modern Law Review, n. 23 supra at 142.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Ibid., p. 150.

⁵² Id.

⁵³ Gerhard O.W. Mueller, "Compensation for Crimes of Criminal Violence: A Round Table," Journal of Public Law 218, 227 (1959); Stephen Schafer, "Restitution to Victims of Crime--An Old Correctional Aim Modernized," 50 Minnesota Law Review 243, 243 (1965).

⁵⁴ Mueller, Journal of Public Law, n. 53 supra at 219.

⁵⁵ Lamborn, 43 Southern California Law Review, n. 27 supra at 42.

⁵⁶ Id.

⁵⁷ Ibid., p. 52.

⁵⁸ James E. Starrs, "A Modest Proposal to Insure Justice for Victims of Crime," 50 Minnesota Law Review 285, 292 (1965).

⁵⁹ Id.

⁶⁰ Ibid., p. 305.

⁶¹ Ibid., p. 309.

⁶² Carrington, 11 University of Richmond Law Review, n. 43 supra at 453.

⁶³ Wolf v. State, La. App., 325 So.2d 342 (1975); Wolf v. State, La. App., 346 So.2d 320 (1977).

⁶⁴ Wolf v. State (1977).

⁶⁵ S.B. 1; H.B. 164; H.B. 188; H.B. 1501.

⁶⁶H.B. 545.

⁶⁷National Conference of Commissioners, Uniform Crime Victims Reparations Act (1973).

⁶⁸Informal conversations with Sen. James Brown, sponsor of S.B. 1, and Mr. Wayne Valentine, counsel to the Senate Judiciary A Committee.

⁶⁹Sec. 3.

⁷⁰Sec. 1804.

⁷¹La.R.S. 49:951 et seq.

⁷²See "Comment" following Sec. 4.

⁷³Sec. 4(k)

⁷⁴Sec. 1(1); Sec. 1802(11). The Uniform Law is the more broadly constructed of the two, requiring only that the victim's be a good faith effort to deter or apprehend. S.B. 1, in contrast, casts its definition in terms of assistance to a law enforcement officer.

⁷⁵Sec. 1(e).

⁷⁶The House Report on Victims of Crime Act of 1977 names New Jersey and Wisconsin as two such examples (Report, n. 11 supra at 3).

⁷⁷Sec. 1(e)(3). The corresponding section of S.B. 1--Sec. 1807(B)--also excludes accidental injury or death resulting from a boat or an airplane.

⁷⁸S.B. 1, Sec. 1807(C); Uniform Act, Sec. 1(e)(3).

⁷⁹S.B. 1, Sec. 1813(B); Uniform Act, Sec. 5(b).

⁸⁰S.B. 1, Sec. 1813(E); Uniform Act, Sec. 5(d).

⁸¹S.B. 1, Sec. 1813(G); Uniform Act, Sec. 5(e)

⁸²S.B. 1, Sec. 1806(C); Uniform Act, Sec. 5(f)(2).

⁸³Sec. 1813(C).

⁸⁴Sec. 5(b).

⁸⁵Sec. 1813(D).

⁸⁶Sec. 5(c).

⁸⁷Sec. 5(c).

⁸⁸See "Comment" following Sec. 5(c).

⁸⁹Sec. 1813(A).

⁹⁰Sec. 1813(A).

⁹¹See "Comment" following Sec. 5(g).

⁹²Id.

⁹³Id.

⁹⁴Id.

⁹⁵S.B. 1, Sec. 1808; Uniform Act, Sec. 1(c).

⁹⁶S.B. 1, Sec. 1809(A); Uniform Act, Sec. 1(c).

⁹⁷Sec. 1814(E).

⁹⁸Sec. 1806(E). This stipulation appears in the Uniform Act, Sec. 11(a) also.

⁹⁹Sec. 1906(D).

¹⁰⁰Sec. 11(a).

¹⁰¹Sec. 1811.

¹⁰²Sec. 1802(8).

¹⁰³Sec. 1802(8).

¹⁰⁴Sec. 1(g).

¹⁰⁵S.B. 1, Sec. 1813(F); Sec. 5(j).

¹⁰⁶Sec. 5(i), Alt. A.

¹⁰⁷Sec. 5(i), Alt. B.

¹⁰⁸Sec. 1812.

¹⁰⁹Sec. 1817.

¹¹⁰Sec. 13(a).

¹¹¹S.B. 1, Sec. 1815; Uniform Act, Sec. 15.

¹¹²Sec. 1815(C).

¹¹³ Sec. 1810.

¹¹⁴ Sec. 12.

¹¹⁵ S.B. 1, Sec. 1810; Uniform Act, Sec. 12.

¹¹⁶ Sec. 1817.

¹¹⁷ Sec. 13(b).

¹¹⁸ Sec. 13(b).

¹¹⁹ Sec. 1816(A).

¹²⁰ Sec. 1818.

¹²¹ Sec. 1816(A).

¹²² Sec. 1821.

¹²³ Sec. 1821.

¹²⁴ Sec. 1822.

¹²⁵ "Prefatory Note" to Uniform Act.

¹²⁶ Cosway, 49 Washington Law Review, n. 27 supra at 555.

¹²⁷ National Council on Crime and Delinquency, Criminal Justice Newsletter 8 (October 10, 1977), No. 20, p. 7.

¹²⁸ Congressional Record, 124 (Monday, September 11, 1978), No. 140, S 14923 et seq.

¹²⁹ Congressional Record, September 30, 1977, pp. H 10396, 10399.

¹³⁰ The title of S.B. 1 states that this is the bill's purpose; the mechanics of accomplishing same become the content of most of the rest of the bill.

¹³¹ Sec. 7(7)(A).

¹³² This act includes five sections regarding the adjudication of contested agency decisions--La.R.S. 49:955-959.

¹³³ H.R. 7010, Sec. 4(3); S.B. 1, Sec. 1813(A).

¹³⁴ H.R. 7010, Sec. 4(7); S.B. 1, Sec. 1806(C).

¹³⁵ Sec. 1816(A).

¹³⁶ Sec. 1817.

¹³⁷ Art. 895.A(7), Code of Criminal Procedure.

¹³⁸ La.R.S. 15:574.4.

¹³⁹ Sec. 1819(A).

¹⁴⁰ Sec. 7(8).

¹⁴¹ Sec. 5.

¹⁴² Sec. 1802(7).

¹⁴³ S. 551, Sec. 7(1).

¹⁴⁴ S. 551, Sec. 4(6).

¹⁴⁵ Sec. 1806(E).

¹⁴⁶ S. 551, Sec. 4(4).

¹⁴⁷ Sec. 1813(A).

¹⁴⁸ Sec. 1813(F).

¹⁴⁹ S. 551, Sec. 5(5).

¹⁵⁰ Leroy L. Lambarn, "Crime Victim Compensation: Theory and Practice in the Second Decade," Forgotten Victims: An Advocate's Anthology, George Nicholson, et al., eds. (Sacramento: California District Attorneys Association, n.d.), pp. 50-51.

¹⁵¹ Cosway, 49 Washington Law Review, n. 27 supra at 556.

¹⁵² Letter from Nola K. Capp, Administrator, Department of Public Safety, Violent Crimes Compensation Board, September 11, 1978.

¹⁵³ Hawaii Rev. Stat., Sec. 351-11.

¹⁵⁴ Alaska Stat., Sec. 18.67.020; see also comments by James Brooks, "Crime Compensation Programs: An Opinion Survey of Program Administrators," Criminology, 11 (August 1973), 260.

¹⁵⁵ Letter from Zel Rice, Secretary, Department of Industry, Labor and Human Relations, accompanying Wisconsin Crime Victim Compensation: Annual Report (January 1, 1977-December 31, 1977).

¹⁵⁶ Cosway, 49 Washington Law Review, n. 27 supra at 557.

¹⁵⁷ Ibid., p. 565.

¹⁵⁸ Wisconsin Ann. Stat., Sec. 949.06(2)(c)

¹⁵⁹"Legislation and Corrections: Florida's Crimes Compensation Act," Corrections Compendium, 2, No. 10 (May 1978), 5; Maryland, Eighth Annual Report, n. 9 supra at 2.

¹⁶⁰Illinois Ann. Stat., ch. 70, Sec. 75; see also brochures, Illinois Crime Victims Compensation Act, issued by Attorney General, State of Illinois and Crime Victims Compensation, issued by Secretary of State, Ex-Officio Clerk of the Court of Claims.

¹⁶¹Note, "Tennessee's Criminal Injuries Compensation Act," 7 Memphis State Law Review 241, 252 (1977).

¹⁶²Massachusetts Ann. Laws, ch. 258A, Sec. 4.

¹⁶³Letter from Richard A. Godegast, Assistant Executive Secretary, State Board of Control, September 20, 1978.

¹⁶⁴Criminal Injuries Compensation Commission, Tenth Annual Report (1977), p. 4.

¹⁶⁵Letter from Wilfred S. Pang, Executive Secretary, Criminal Injuries Compensation Commission, September 8, 1978.

¹⁶⁶Wisconsin Crime Victim Compensation: Annual Report (January 1, 1977 - December 31, 1977), p. 3 and unnumbered pp. 7-8.

¹⁶⁷Crime Victims Reparations Board, Statistical Support Data accompanying Second Annual Report (July 1, 1976 - June 30, 1977), Table III and Table V.

¹⁶⁸Lamborn, Forgotten Victims, n. 150 supra at 49.

¹⁶⁹Note, 7 Memphis State Law Review, n. 161 supra at 253; Massachusetts Ann. Laws, ch. 258A, Sec. 2.

¹⁷⁰Illinois Ann. Stat., ch. 70, Sec. 76.

That the state can bring suit against a convicted offender to recover damages normally associated with a civil proceeding also flags the observer to one of the intersections at which systems created to remain apart nearly collide, but don't.

While an offender is affected by victim compensation legislation--which, in effect, makes awards for civil damages and then holds him conditionally responsible--this can occur only after the offender has been convicted in criminal proceedings. He is not presumed guilty on the basis of victim compensation proceedings. Because the standard of proof of criminal guilt is a different and a higher one from that required to establish civil liability or, more generally, involvement in the victimization process, it does not seem unfair that criminal conviction is sufficient to establish an offender's liability to the

state for compensation granted on the same charge. And the complementary declaration that evidence of one's being the cause of a claim for victim indemnification is inadmissible in criminal proceedings tacitly acknowledges the lesser standard in the former proceeding.

In fact, the standard of "proof" in victim compensation hearings is generically different from that involved in either criminal or civil proceedings: the difference is not in quality but in kind. In victim compensation proceedings there must simply be evidence that a crime was committed which was the proximate cause of the victim's reported injury; proof of criminal intent is beside the point; even the identity of the offender is essentially irrelevant.

¹⁷¹ Minnesota Ann. Stat., Sec. 299B.14.

¹⁷² James Brooks, "How Well Are Criminal Injury Compensation Programs Performing?" Crime and Delinquency, 21 (January 1975), 54-55.

¹⁷³ Lamborn, Forgotten Victims, n. 150 supra at 50.

¹⁷⁴ Brooks, Crime and Delinquency, n. 172 supra at 55.

¹⁷⁵ Brooks, Criminology, n. 154 supra at 260.

¹⁷⁶ Lamborn, Forgotten Victims, n. 150 supra at 50.

¹⁷⁷ Minnesota Ann. Stat., Sec. 299B.15; Wisconsin Ann. Stat., Sec. 949.04(2); for a broader summary, see Table 1.158: "Characteristics of victim compensation programs in the 11 states with programs, as of 1975," Sourcebook of Criminal Justice Statistics 1977 (Washington: LEAA), pp. 248-249.

¹⁷⁸ Id.

¹⁷⁹ Cosway, 49 Washington Law Review, n. 27 supra at 555.

¹⁸⁰ Sourcebook, n. 177 supra at 248-249.

¹⁸¹ Cosway, 49 Washington Law Review, n. 27 supra at 554.

¹⁸² S.B. 1, Sec. 1813(A).

¹⁸³ Copy of Crime Victim Compensation Rules of Practice, ch. Ind. 81.20.

¹⁸⁴ Cosway, 49 Washington Law Review, n. 27 supra at 554.

¹⁸⁵ Uniform Act, n. 67 supra at Sec. 5(c).

¹⁸⁶ Lamborn, Forgotten Victims, n. 150 supra at 49.

- ¹⁸⁷ Brooks, Crime and Delinquency, n. 172 supra at 54.
- ¹⁸⁸ Note, 7 Memphis State Law Review, n. 161 supra at 562.
- ¹⁸⁹ Cosway, 49 Washington Law Review, n. 27 supra at 562.
- ¹⁹⁰ Wisconsin Ann. Stat., Sec. 949.08(2)(a).
- ¹⁹¹ Wisconsin Ann. Stat., Sec. 949.08(2)(b).
- ¹⁹² Massachusetts Ann. Laws, ch. 258A, Sec. 3.
- ¹⁹³ Hawaii Revised Stat., Sec. 351.34.
- ¹⁹⁴ Minnesota Ann. Stat., Sec. 2998.03, Subd. 2(c)(d).
- ¹⁹⁵ The theory behind the specific inclusion of good samaritan clauses and their subsequent enhancement is that they will combat and in some way diminish the nation's spiraling crime rate. No one has yet offered evidence that this is in fact happening, though there are unsupported speculations to support both conclusions. Brooks, Crime and Delinquency, n. 172 supra at 56; Lamborn, Forgotten Victims, n. 150 supra at 50; Wisconsin, Annual Report, n. 155 supra at 2.
- ¹⁹⁶ 11 Delaware Code Ann., Sec. 9006(d).
- ¹⁹⁷ Massachusetts Ann. Laws, ch. 258A, Sec. 6.
- ¹⁹⁸ Wisconsin Ann. Stat., Sec. 949.06(5).
- ¹⁹⁹ Hawaii Rev. Stat., Sec. 351-51.
- ²⁰⁰ Robert Childress, "Compensation for Criminally Inflicted Personal Injury," 50 Minnesota Law Review 271, 272 (1965).
- ²⁰¹ One source cites 11 jurisdictions, 9 of which exclude pain and suffering and 2 of which include it: Sourcebook, n. 177 supra at 6, Table 4.
- ²⁰² Note, 7 Memphis State Law Review, n. 161 supra at 250.
- ²⁰³ Hawaii Commission, Tenth Annual Report, 1977, n. 164 supra at 6, Table 4.
- ²⁰⁴ Massachusetts Ann. Laws, ch. 258A, Sec. 4; Alaska Stat., Sec. 18.67.050.
- ²⁰⁵ Wisconsin Ann. Stat., Sec. 949.14(1).
- ²⁰⁶ Sourcebook, n. 177 supra at 248-9.

²⁰⁷ Letter, Secretary of Department of Industry, Labor and Human Relations, Wisconsin, n. 155 supra; Maryland Eighth Annual Report, n. 9 supra at 6.

²⁰⁸ Minnesota Crime Board, Second Annual Report, n. 167 supra at 4.

²⁰⁹ This was reflected in the statistical report from one jurisdiction; repeatedly, Board members noted the maximum amount awarded fell far short of reimbursing the victim's real loss.

²¹⁰ Material received from Victim of Crimes Program, State Board of Control of California. Note the specific figures:

AVERAGE AWARDS INCLUDING ATTORNEY FEES

<u>Fiscal Year</u>	<u>Average</u>
1967-68	\$ 786.36
1968-69	1,249.02
1969-70	1,320.35
1970-71	2,218.37
1971-72	1,960.15
1972-73	1,789.80
1973-74	1,891.47
1974-75	1,859.16
1975-76	1,773.66
1976-77	1,924.14

²¹¹ Cosway, 49 Washington Law Review, n. 27 supra at 565. New York reportedly adheres to the same practice: Lamborn, Forgotten Victims, n. 150 supra at 51.

²¹² Brooks, Crime and Delinquency, n. 172 supra at 53.

²¹³ 11 Delaware Code Ann., Sec. 9007.

²¹⁴ Brooks, Crime and Delinquency, n. 172 supra at 53.

²¹⁵ See, e.g., Wisconsin Ann. Stat., Sec. 949.06(3).

²¹⁶ Brooks, Crime and Delinquency, n. 172 supra at 53.

- 217 Massachusetts Ann. Laws, ch. 258A, Sec. 5.
- 218 Wisconsin Ann. Stat., Sec. 949.06(3).
- 219 Wisconsin Ann. Stat., Sec. 949.06(4).
- 220 Uniform Act, n. 67 supra at Sec. 1(d).
- 221 Massachusetts Ann. Laws, ch. 258A, Sec. 6; S.B. 1 would also follow this example.
- 222 Minnesota Ann. Stat., Sec. 299B.02.
- 223 Minnesota Ann. Stat., Sec. 299B.02(4)(i).
- 224 Alaska Stat., Sec. 18.67.090(c).
- 225 Brochures, n. 160 supra; Illinois Ann. Stat., ch. 70, Sec. 77(d).
- 226 Alaska Violent Crimes Compensation Board, Fourth Annual Report (1977), p. 2.
- 227 Note, 7 Memphis State Law Review, n. 161 supra at 251.
- 228 Gurley v. Commonwealth (1973) 296 N.E. 2d 477, 363 Mass. 595.
- 229 Id.
- 230 Alaska Crimes Board, Fourth Annual Report, n. 226 supra at 7.
- 231 Lamborn, Forgotten Victims, n. 150 supra at 49.
- 232 11 Delaware Code Ann., Sec. 9001.
- 233 Florida, Corrections Compendium, n. 159 supra at 8.
- 234 11 Delaware Code Ann., Sec. 9009.
- 235 Florida, Corrections Compendium, n. 159 supra at 8.
- 236 Wisconsin Ann. Stat., Sec. 949.07.
- 237 Wisconsin Ann. Stat., Sec. 949.14(1).
- 238 Uniform Act, n. 67 supra at Sec. 13(a).
- 239 Ibid., Sec. 13(b).
- 240 Alaska Stat., Sec. 18.67.140; Wisconsin Ann. Stat., Sec. 949.15; Florida, Corrections Compendium, n. 159 supra at 8.
- 241 Hawaii Revised Stat., Sec. 351-35.

²⁴²S.B. 1, Sec. 1816(A).

²⁴³S.B. 1, Sec. 1816(B); 11 Delaware Ann. Code, Sec. 9010.

²⁴⁴Alaska Stat., Sec. 18.67.140; Wisconsin Ann. Stat., Sec. 949.15; Hawaii Rev. Stat., Sec. 351-35.

²⁴⁵Refer to lengthy informational note at 170 *supra*.

²⁴⁶Letter from Richard A. Godegast, n. 163 *supra* at 1.

²⁴⁷*Ibid.*, p. 2.

²⁴⁸Hawaii Commission, Tenth Annual Report: 1977, n. 164 *supra* at 7, Table 5.

²⁴⁹Michael D. Kannenohn, A Report of State Crime Compensation Programs (New York: Council of State Governments, 1975), p. 4.

²⁵⁰*Id.*

²⁵¹Florida, Corrections Compendium, n. 159 *supra* at 8.

²⁵²Letter from Oakley M. Banning, Jr., Executive Secretary, Delaware Violent Crimes Compensation Board, September 19, 1978.

²⁵³11 Delaware Code Ann., Sec. 9012.

²⁵⁴California Government Code, Sec. 13967.

²⁵⁵*Id.*

²⁵⁶*Id.*

²⁵⁷Note, 7 Memphis State Law Review, n. 161 *supra* at 258, which cites Tennessee Pub. Acts, ch. 736, Sec. 16(B).

²⁵⁸*Id.*

²⁵⁹Jacob, Restitution in Criminal Justice, n. 1 *supra* at 63.

²⁶⁰Minnesota Board, Second Annual Report, n. 167 *supra* at 5.

²⁶¹"Benefits for Injuries Quadruple in 7 Years," Baton Rouge Morning Advocate, Thursday, October 5, 1978, 3-A.

²⁶²Illinois Ann. Stat., ch. 70, Sec. 83.

²⁶³Alaska Stat., Sec. 18.67.150.

²⁶⁴Wisconsin Ann. Stat., Sec. 949.14(3).

²⁶⁵ Hawaii Rev. Stat., Sec. 351-16.

²⁶⁶ Lamborn, Forgotten Victims, n. 150 supra at 49.

²⁶⁷ Ibid., p. 50.

²⁶⁸ Materials received from Court of Claims, State of Illinois, dated September 25, 1978. Other excerpts are here included.

Illinois Court of Claims
Statistics Under The
Crime Victims Compensation Act

	<u>Amount Paid</u>	<u>Cases Granted</u>
FY 74	\$ 754.30	1
FY 75	362,813.52	126
FY 76	725,992.68	218
FY 77	929,900.00	321
FY 78	1,082,214.26	501

²⁶⁹ Violent Crimes Compensation Board of Alaska, Fourth Annual Report (1977) p. 10. The figure for 1977 is not easily compared because of changes in their funding arrangements.

²⁷⁰ Board of Maryland, Eighth Annual Report, n. 9 supra at 5. The most elaborate growth data as well as the least evidence of regular growth are reported by Hawaii. (See Hawaii Commission, Tenth Annual Report, n. 164 supra at Appendix D.)

²⁷¹ Lamborn, Forgotten Victims, n. 150 supra at 54.

²⁷² Louisiana Criminal Justice Information System, Draft of Crime Victims Reparation Legislation (Baton Rouge: LCLE, 1978).

²⁷³ Ibid., p. 15. Especially useful at this point is this document's careful analysis of cost issues related to victim compensation. The discussion on pp. 7-9, 13-15 focuses specifically on Louisiana.

²⁷⁴ Lamborn, Forgotten Victims, n. 150 supra at 51.

²⁷⁵ Ibid., p. 49.

²⁷⁶ Wisconsin Annual Report, n. 166 supra at 1-2.

²⁷⁷ Gerhard O.W. Mueller, "Compensation for Victims of Criminal Violence: A Round Table," 8 Journal of Public Law 218, 236 (1959).

278 Mueller, 50 Minnesota Law Review, n. 3 supra at 220-221.

279 Stephen Schafer, "The Proper Role of a Victim-Compensation System," Crime and Delinquency, 45 January 1975, 48.

