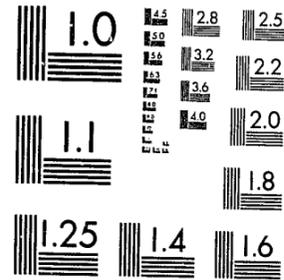


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STATEMENT

OF

LOIS HAIGHT HERRINGTON
ASSISTANT ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

BEFORE

THE

SUBCOMMITTEE ON CRIMINAL JUSTICE
HOUSE COMMITTEE ON THE JUDICIARY

CONCERNING

H.R. 3498 - VICTIM COMPENSATION

ON

MARCH 15, 1984

9-3-3-7X

Mr. Chairman, I am pleased to present the Department of Justice's views on H.R. 3498, "The Victims of Crime Act of 1983". This bill is similar in many significant respects to the Administration's recently introduced legislation, "The Victims of Crime Assistance Act of 1984." The technical differences between the two proposals do not obscure our common commitment to the goal of improving assistance to the innocent victims of violent crime.

I would also like to express my appreciation for all the help that this Subcommittee and its staff have provided me, first in my capacity as Chairman of the President's Task Force on Victims of Crime, and now as Assistant Attorney General for Justice Assistance. I hope we can continue to work together on the important subject of Federal financial assistance to victims of crime.

I would like to first describe the key features of our bill, then briefly address the differences between the two proposals.

The Administration's bill implements many of the recommendations made by President Reagan's Task Force on Victims of Crime. The Task Force presented strong rationales for establishing a program of Federal assistance in this area. Foremost among them was that, at present, the States are shouldering the entire burden of compensating victims of crime. The Federal government, however, has a significant interest in compensating and otherwise assisting victims of crime. By helping the criminal justice system to actually work for the benefit of the innocent victim, the Federal government can assure

greater cooperation between victims and the system to the substantial benefit of law enforcement nationally. Creation of a Crime Victims' Assistance Fund in the Treasury will help the government restore public confidence in the efficiency and integrity of the criminal justice system.

The thrust of our legislation is to place the Federal government in a leadership role without creating an unnecessary bureaucracy to impose the Federal government's priorities on the States. Under the bill, the Federal government will provide money to the States to encourage them to effectively run their own programs. The States will continue to make their own policy choices on critical elements of their compensation programs. The legislation provides for only minimal Federal guidance in areas of substantial Federal interest that will not interfere with a State's discretion to run its own program as it sees fit.

Criminals--not innocent taxpayers--will provide the money for the Fund. The principal source of funding is the total of all criminal fines collected from convicted Federal defendants, including anti-trust fines. Criminal fines are also defined to include fines imposed for criminal violation of Federal motor vehicle laws, and forfeited appearance bonds posted by Federal criminal defendants.

The best, most recent figures on criminal fines collected by the courts indicate that just under \$72 million in fines was collected in FY 1983. This figure, however, may be unreliable because it is derived from accounts maintained by the Administrative Office of the United States Courts that do not

identify collected fines as civil or criminal. GAO is presently examining this issue and hopes to have a draft report available for the Department of Justice in the near future. Our bill would require the Director of the Administrative Office of the United States Courts to report to the Attorney General within one year after the bill's enactment on what steps have been taken to improve the accounting of criminal fines and to assure the deposit of fines in the Fund. The report may also make other recommendations for future Federal action to improve the collection of fines.

Absent reliable data on the amount of fines being collected now, it is not possible to definitively project how much money would be realized in the Fund from this source. It is our expectation, however, that with improved accounting techniques and the enactment of the collection procedures delineated in the Administration's "Comprehensive Crime Control Act of 1983", this source would provide approximately \$45-75 million for the Fund its first year.

Under our bill, the Fund would also receive the proceeds of any contract entered into by any Federal defendant for the sale of literary or other rights arising from his criminal act. This proposal, modeled after the "Son of Sam" laws enacted by 15 States, responds to the requirement of the "Victim and Witness Protection Act of 1982" that the Attorney General report to Congress regarding any Federal laws necessary to ensure that Federal felons do not profit from selling the story of their crimes.

To that end, the bill adds a new Rule 32.2 to the Federal Rules of Criminal Procedure. The new rule would authorize a United States District Court judge, at any time after the filing of an indictment or information against a defendant, to order any person or organization with whom the defendant has contracted "for the purpose of having his crime or alleged crime depicted in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or for the purpose of expressing his thoughts, opinions or emotions regarding such crime" to pay in to the clerk of the court any money which would otherwise be paid to the defendant, his representative, or a third party under the contract. Before entering the order, the court would be required to hold a hearing at which the defendant, the person or organization with whom he contracted, any third party beneficiary of the contract, and the victim would be permitted to speak. The purpose of the hearing would be to permit the court to determine whether the order would be warranted in the interests of justice or to redress the injuries of the victim. The defendant or any third party to the contract would have the opportunity to present any legal challenges to such an order at this hearing.

Any monies paid to the clerk would be deposited in the Fund for the benefit of any victim of the defendant's crimes. The victim could receive the funds only after securing judgment in a civil action brought against the defendant for damages arising out of the crime. If no action was filed within 5 years after the first deposit of money into the Fund, the money would become

part of the Fund. The only other use to which the money could be put would be the payment of the defendant's legal defense fees. No more than 20 percent of the money put into the Fund with respect to the defendant could, however, be used for that purpose. Upon dismissal of the charges or acquittal of the defendant, the clerk would immediately pay over to the defendant all money paid into the Fund with respect to the defendant.

These sections may serve as a deterrent to any contract ever being entered between a defendant and another party for the purposes listed above. As a result, it may be that no funds will ever be deposited in the Fund from this source. New York's experience, however, has shown that some defendants will still enter into such contracts in hope of getting better treatment on parole. No projection of anticipated funding from this source can, however, realistically be made at this time.

Fifty percent of the money deposited in the Fund will be available for distribution annually to those States with operating victim compensation programs for the purpose of reimbursing them for ten per cent of their payouts under those programs. To be eligible for this funding, a State must provide the same compensation to nonresident victims as it does to residents, and the same compensation to victims of Federal crimes as it does to victims of State crimes. The States must also agree to compensate victims for mental health counseling required as a result of their victimization.

Thirty percent of the Fund will be distributed to the States (and the territories and commonwealths of the United States) on

the basis of their population for the purpose of improving the assistance provided to victims of crime by State governments, local units of government, and nonprofit organizations. To be eligible to receive funding from this portion of the Fund, organizations must demonstrate a record of quality assistance to victims, promote the use of volunteers, demonstrate a commitment from other organizations to provide necessary services to all victims of crime, and assure coordination with other service providers.

The remaining 20 percent of the Fund will be distributed among Federal law enforcement agencies for the purpose of improving the assistance offered by the Federal government to victims of crime. This money could be spent for establishing victims assistance positions or units in Federal agencies, providing services to the victims of Federal crimes, training Federal law enforcement and court personnel in victims assistance, and disseminating information about Federal victims assistance services. A Federal Victims Assistance Administrator appointed by the Attorney General will administer this share of the Fund.

The Administrator will be guided by a Federal Victims of Crime Advisory Committee to be appointed by the President. The Committee would be chaired by the Attorney General, and would include the Secretary of the Interior (to represent, among others, the Park Police and the Indian Police), the Federal Administrator, such other Federal officials as the President may appoint, and at least two members of the public who have special

knowledge of the needs of victims. The Committee would also make periodic recommendations to the President about other actions the Federal government could take to improve treatment of the victims of Federal crime.

The Federal Administrator must seek to avoid funding activities that duplicate assistance already effectively provided by local organizations. The Administrator would also be responsible for overseeing Federal compliance with the "Guidelines for Fair Treatment of Federal Crime Victims and Witnesses" enacted pursuant to the Victim and Witness Protection Act of 1982.

The bill would also provide victims the opportunity to appear at Federal parole hearings to inform the Parole Commission of the emotional, psychological, physical, and financial impact a prospective parolee's crime had on their lives.

The legislation contains a sunset date of September 30, 1988 and incorporates administrative provisions of the Omnibus Crime Control and Safe Streets Act, as amended, concerning nondiscrimination, audit of fund recipients, and confidentiality of information.

Comparison of H.R. 3498 and Administration Proposal

H.R. 3498's funding and disbursement provisions differ in several respects from the Administration's bill. I would like to touch upon the most significant of these differences.

The Crime Victims Fund created by H.R. 3498 (the Rodino-Berman bill) would receive all Federal criminal fines, the

proceeds of all criminal forfeitures, new penalty assessments imposed on convicted Federal criminals, and the taxes collected on the sale of pistols and revolvers. The Administration proposal would place criminal fines and that portion of "Son of Sam" proceeds not claimed by individual victims in a Crime Victims' Assistance Fund.

Unlike the Administration's bill, H.R. 3498 does not include the proceeds of forfeited appearance bonds posted by Federal criminal defendants in its Fund. Appearance bond forfeiture proceeds presently go to the General Fund of the Treasury. Department of Justice figures indicate that more than \$6 million in cash was collected from that source in FY 1983. We believe that, as revenue derived from accused criminals who have fled or otherwise avoided prosecution, this money is an appropriate source of funding for the relief of victims of crime.

The Administration has proposed to earmark criminal forfeitures for other high priority law enforcement purposes. Under the "Comprehensive Crime Control Act of 1983", recently passed by the Senate, racketeering profits, seized drug profits and customs forfeitures are to be placed in discrete forfeiture funds. The proceeds of these forfeitures are to be used to pay the expenses of the forfeiture, storage, and sale of seized property. Drug and custom forfeiture proceeds may be also used to pay rewards to informers. Dedication of these proceeds to the purposes cited is critical to the Government's effort to more efficiently and productively combat RICO, drug, and customs violations. This critical need and the nexus between the source of the proceeds and their intended use makes it

highly appropriate to use the funds in question for the purposes set forth in the Administration's earlier proposal.

Although we have no strong objection to imposition of a nominal penalty assessment fee on convicted Federal defendants, it is our feeling that if money coming into the Fund from other sources were adequate, this money might best be spent elsewhere, for other law enforcement purposes currently under study.

With respect to the tax on pistols and revolvers proposed in H.R. 3498, we understand that the Department of Interior is providing the Subcommittee with the Administration's views. We therefore defer to that agency in this regard.

On the disbursement side, H.R. 3498 would allocate 80% of the Fund for victims compensation. From that allocation, each State operating a victims compensation program would receive a grant of up to 50% of its covered costs of compensating victims of State crimes and 100% of its covered costs of compensating victims of exclusively Federal crimes. A State would be eligible for this grant only if its program offered compensation for medical expenses, including mental health counseling and care; prosthetic devices; dental services; other services "rendered in accordance with any method of healing" recognized by State law; and funeral expenses attributable to a death resulting from a compensable crime.

State eligibility would be further contingent on the State's promotion of victim cooperation with law enforcement; its ability to diminish compensation to the extent of a victim's or beneficiary's contributory misconduct; its subrogation to a beneficiary's claims against the perpetrator of a compensable

crime to the extent of compensation paid; its nondiscrimination against nonresidents of the State; and its compensation of victims of exclusively Federal crimes.

By contrast, the Administration's proposal conditions State eligibility for Federal victims compensation assistance only on certification of the amount spent by the State for victims compensation during the prior fiscal year, a certification of non-supplantation, and the State's assurances that it will provide compensation for mental health counseling, and compensate nonresident victims and victims of exclusively Federal crimes.

Although the conditions H.R. 3498 would place on the States are well intentioned, they place the Federal Government in the position of dictating State policy on matters that are best left to the States to decide. The nature and extent of compensation a State chooses to pay to victims of crimes committed within its borders must be, first and foremost, established according to the popular will of the residents of the State and their elected representatives. Those policy choices must be made in the context of the fiscal, political, and administrative realities existing in the State. The Federal Government should respect the State's choices in these matters and act to assert its will only on those issues of overriding national interest. Our bill is designed to permit the State to fashion its own remedies to these problems, with Federal assistance available to help the State implement those remedies.

The Administration's bill allocates 50% of the Fund to state victims compensation programs. The provision awarding States up

to 10% of their prior year's compensation spending is principally intended to encourage the States in their compensation endeavors, to reimburse them for compensating Federal victims, and to demonstrate a Federal commitment to provide assistance in this area. The 50% match in H.R. 3498 could result in the unanticipated commitment of far more Federal money than necessary in this area, or prove to be an illusory promise to States whose compensation spending accelerated faster than the growth of the Fund.

H.R. 3498 would allocate only 20% of the Fund to victims' assistance, in contrast to the 50% allocated by the Administration proposal. Further, the eligibility requirements imposed on prospective recipients of assistance money are much more restrictive in H.R. 3498 than in the Administration bill. For example, in order to be eligible for assistance under the Rodino-Berman bill, an organization must be "established exclusively" to provide services directly to crime victims. This would apparently render ineligible a broad range of victim service providers--from hospitals to counseling centers to district attorneys' offices--that would be eligible for assistance under the Administration's proposal. We believe that if the organization can provide quality services to victims, it should not be ineligible for funding merely because it provides those services to others as well.

In addition, H.R. 3498 imposes a series of cumulative eligibility requirements on service providers that, in our view, would again constrict the range of organizations eligible for

assistance. Our proposal would make eligible those providers who could demonstrate an ability to provide only one of a list of direct services.

This Administration is committed to helping the criminal justice system of this nation provide fair and compassionate treatment to the victims of violent crime. It is obvious that the drafters and sponsors of H.R. 3498 share the same goal. I hope that the continuation of our constructive dialogue on these issues will result in the passage of effective legislation that will benefit both the victims of crime and the criminal justice system as a whole.

Thank you, Mr. Chairman, I will be pleased to respond to any questions you or members of the Subcommittee may have.

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