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# The Illinois Compensation to Victims of Crime Act

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# LEGISLATIVE NOTES

## THE ILLINOIS COMPENSATION TO VICTIMS OF CRIME ACT

On June 18, 1973, the Illinois legislature passed two companion bills designed to provide compensation to victims of violent crime. The passage of House Bill 269,<sup>1</sup> the Crime Victims Compensation Act, and House Bill 270,<sup>2</sup> expanding the jurisdiction of the Illinois Court of Claims to include claims brought under the Crime Victims Compensation Act, is the result of several years of legislative work beginning with a feasibility study initiated in August, 1965.<sup>3</sup> A third bill, House Bill 271,<sup>4</sup> designed to amend the Public Meetings Act<sup>5</sup> to permit the Court of Claims to hold closed hearings in certain cases in the administration of the Crime Victims Compensation Act, was defeated. The three bills were sponsored by Representative Leland H. Rayson (D-Tinley Park) in the Illinois House and Senator Howard W. Carroll (D-Chicago) in the Illinois Senate.

While there are several theoretical bases for a compensation to victims of crime law, the Illinois plan is motivated primarily by a social welfare philosophy emphasizing government programs which are designed to aid the victims of misfortune.<sup>6</sup> Secondary motivations for the Act

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1. H.B. 269, *as amended*, 78th Ill. Gen. Assembly (1973) [hereinafter cited as H.B. 269]. The Bill was signed into law on August 23, 1973 and became effective October 1, 1973.

2. H.B. 270, 78th Ill. Gen. Assembly (1973) [hereinafter cited as H.B. 270]. H.B. 270 was also signed into law on August 23, 1973 and became effective October 1, 1973.

3. For a historical summary and analysis of crime victim compensation laws *see* Comment, *Compensation to Victims of Violent Crimes*, 61 Nw. U.L. REV. 72 (1966).

4. H.B. 271, *as amended*, 78th Ill. Gen. Assembly (1973) [hereinafter cited as H.B. 271].

5. ILL. REV. STAT. ch. 102, §§ 41 *et seq.* (1971).

6. Other rationale for a crime victims compensation plan include: (1) the notion that the offender has the duty to make restitution to the victim and that the state's duty to the victim is to expedite or substitute such relief; and (2) the idea that the state is liable to the victim for injuries which result from the state's failure to maintain a reasonable degree of public safety upon which its citizens rely.

include: (1) better crime statistics, better law enforcement and increased incentives for the victims to report crimes through the requirement of prompt reporting for compensation,<sup>7</sup> (2) increased cooperation between victims and law enforcement officials in the apprehension and prosecution of criminals through the requirement of full cooperation before compensation,<sup>8</sup> (3) protection and encouragement of the "good samaritan" by allowing such persons to obtain compensation under the plan,<sup>9</sup> (4) the possibility that the state may recover the sums expended in compensating the victim,<sup>10</sup> and (5) improvements in the state penal system such as allowing expanded work release programs enabling a prisoner to pay his debt to his victim.

Opponents of the Bill, basically those opposed to the social welfare philosophy, centered their arguments upon the possible loopholes in the Bill which could allow false claims. Proponents of the Bill cite workmen's compensation, veterans' assistance, social security and public assistance programs to support the proposition that the state is committed to spreading the risk of loss in aid of certain classes of persons. In the present case, the desire is to alter the approach to crime by affording justice to the victim as well as to the criminal.

The direct beneficiaries of this legislation are three classes of victims of certain crimes<sup>11</sup> and persons dependent upon a deceased victim for support at the time of death. The Bill does not define the term "dependent." A victim is not entitled to compensation under the Act if he and his assailant were related and shared the same household.<sup>12</sup> No time frame is set in which the fulfillment of these conditions will operate to deny relief. It is thus unclear, for example, whether the former wife of an assailant is entitled to compensation for a battery committed by the

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*See generally* Comment, *Compensation for Victims of Crime*, 33 U. CHI. L. REV. 531 (1966).

7. H.B. 269, § 3(c).

8. H.B. 269, § 3(d).

9. H.B. 269, §§ 2(d)(2) and (3).

10. H.B. 269, §§ 10(a) and (c).

11. H.B. 269, § 2(d) defines "victim" as a person (1) killed or injured in this state as a result of a crime of violence perpetrated or attempted against him, (2) killed or injured in this state while attempting to assist a person against whom a crime of violence is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable man under the circumstances, or (3) killed or injured in this state while assisting a law enforcement official to apprehend a person who has perpetrated a crime of violence or to prevent the perpetration of any such crime if that assistance was in response to the express request of the law enforcement official.

12. H.B. 269, § 3(e).

former husband upon the former wife subsequent to their divorce. This provision, no doubt designed as a safeguard against the possibility of collusion and the possibility that the assailant might benefit in the compensation award, is an unfortunate requirement. A large proportion of crimes causing personal injury or death are committed by relatives of the victim.<sup>13</sup> As a result, many deserving victims of crime will be denied compensation due to this unduly strict statutory requirement. While a party bent on collusion will easily be able to avoid this particular requirement, the other provisions of the Act will operate to deny undeserving relief.<sup>14</sup> Any benefit realized by the provisions designed to preclude false claims is offset by the Act's harshness. Even though there may be difficulties attendant upon determining the facts of a violent crime committed among family members at home, a strict standard of proof would provide a more equitable system of compensation in cases of this type, consistent with the purposes of this legislation, than would a general rule of exclusion.

Section 2(c) of the Act defines the crimes of violence involved in the compensation scheme. The crimes, defined with reference to the 1961 Criminal Code,<sup>15</sup> are: murder, voluntary manslaughter, kidnapping, aggravated kidnapping, rape, deviate sexual assault, indecent liberties with a child, assault, aggravated assault, battery, aggravated battery, reckless conduct and arson. Injuries due to crimes which occur during a mob action<sup>16</sup> are not compensable under the Act.<sup>17</sup> Compensation may be denied if the injury has been substantially provoked; and provocation to any degree may affect the amount of the award.<sup>18</sup>

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13. For example, FBI statistics show that in 1972, 25 percent of all murders were committed within a family. 1972 FBI UNIFORM CRIME REPORTS 8.

14. For example, an applicant must promptly notify the appropriate law enforcement officials of the perpetration of the crime, H.B. 269 § 3(c), he must fully cooperate with law enforcement officials in the apprehension and prosecution of the assailant, H.B. 269 § 3(d), and the applicant must have his application reviewed by the Court of Claims, H.B. 269 § 5.

15. ILL. REV. STAT. ch. 38, §§ 1 *et seq.* (1961), *as amended*, ILL. REV. STAT. ch. 38, §§ 1 *et seq.* (Supp. 1972).

16. ILL. REV. STAT. ch. 38, §§ 25-1 and 25-2 (1971), *as amended*, ILL. REV. STAT. ch. 38, §§ 25-1 and 25-2 (Supp. 1972).

17. H.B. 269, § 2(c). One explanation for the exclusion of injuries due to crimes of violence committed during a mob action may be that the state undertakes to provide, and the citizen may only reasonably rely upon, a reasonable degree of safety. Injuries due to crimes of violence committed during a mob action are thus beyond those for which the state should be liable. A second possible explanation for this provision is that it is the result of a political compromise needed to placate law and order legislators opposed to the bill who feared a drain on the state's treasury at the direction of riot leaders.

18. H.B. 269, § 7(c).

In considering the amount of compensation to which a victim is entitled, the Court of Claims "need not consider whether or not the alleged assailant has been apprehended or brought to trial nor the result of any criminal proceedings against the person."<sup>19</sup> Critics of the plan have expressed concern that this provision will leave the state subject to a host of false claims. For example, an individual whose injury has not resulted from criminal action might make a claim for an award under the present Act. But such a false claim will face additional safeguarding requirements of the Act<sup>20</sup> and a determination by the Court of Claims. The helpless victim whose assailant has fled should not be required to await his capture and conviction to be entitled to relief.

An interesting question arises in considering the authority of the Court of Claims to disregard the result of a criminal proceeding against the alleged assailant: What is the effect of a prior acquittal by reason of infancy, insanity or intoxication upon the victim's claim for relief? The provision noted above would presumably authorize the Court of Claims to ignore such a result and award compensation to the victim. But it appears possible, by strict adherence to criminal law principles, to find that no crime of violence was in fact committed if the perpetrator lacked the mental state required by the criminal law as an element of the crime. In operation, however, such a finding would be repugnant to the purposes of the legislation, since an acquittal for lack of criminal intent merely reflects a social policy that an otherwise criminal act should be excused and the perpetrator not held criminally responsible for its commission.

As a corollary to consideration of victims' rights, the rights of the alleged assailant to a fair trial should in no way be compromised by the award of compensation to his alleged victim. The Act provides protection for the alleged assailant by allowing for a closed hearing if he has not been brought to trial and a public hearing would adversely affect his trial,<sup>21</sup> and by disallowing the use of the hearing transcript for any purpose in a criminal proceeding except one against an individual for perjury in testimony before the Court of Claims.<sup>22</sup> It remains to be seen whether in operation these two provisions will afford sufficient protection to the alleged assailant in his criminal trial. It should be noted that the defeat of House Bill 271 in the Illinois legislature presents a vagary in the Illinois law in that a closed hearing under section six of the Crime Vic-

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19. H.B. 269, § 7(a).

20. H.B. 269, §§ 3(c), 3(d) and 5.

21. H.B. 269, § 6(a).

22. H.B. 269, § 6.

tims Compensation Act would presumably be prohibited by the terms of the Public Meetings Act.<sup>23</sup>

In order to be entitled to compensation, an applicant must have sustained a pecuniary loss of \$500 or more. Pecuniary loss includes,

in the case of injury, appropriate medical expenses or hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury . . . and, in addition, in the case of death, funeral and burial expenses and loss of support to the dependants of the victim.<sup>24</sup>

Child support payments for the benefit of a child conceived as a result of the rape of its mother are not allowed. Pain and suffering, and property damage are not to be included in determining pecuniary loss.<sup>25</sup> The maximum award available to an applicant is \$10,000.<sup>26</sup>

The minimum claim requirement of \$500 is unfortunately high. Although designed to further guard against false and/or frivolous claims, the minimum claim requirement will no doubt operate to deny relief to many deserving applicants. In a recent study of the operation of the New York compensation plan, which has a \$100 minimum,<sup>27</sup> it was found that the largest number of applications for compensation are rejected because they do not meet the minimum claim requirement.<sup>28</sup> While it may be reasonable to set a minimum claim requirement so that administrative costs in handling a claim do not exceed the amount of the claim involved, the denial of an otherwise valid claim for any other reason appears to be both unjustified and unwise.

In determining the amount of the final award, the plan provides for the deduction of workmen's compensation awards and funds to which the victim is entitled under local governmental, state or federal plans.<sup>29</sup> However, the Act does not provide for the deduction of private insurance payments. The exclusion of pain and suffering in the determination of awards is designed to preclude payment for unduly speculative injuries and to avoid making the program much more complex and costly than it is at present. Additionally, an inclusion of pain and suffering in the computation of loss would undoubtedly place a premium upon legal services in the pressing of a claim before the Court of Claims.

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23. ILL. REV. STAT. ch. 102, §§ 41 *et seq.* (1971).

24. H.B. 269, § 4.

25. *Id.*

26. H.B. 269, § 7(e).

27. N.Y. EXEC. LAW § 626 (McKinney 1972).

28. Edelletz, Geis, Chappell, and Sulston, *Public Compensation of Victims of Crime: A Survey of the New York Experience*, 9 CRIM. LAW BULL. 5, 45 (1973).

29. H.B. 269, § 5(g).

Property damage is similarly excluded based upon the additional consideration that an individual who has suffered property loss is likely to have it privately insured.

The Act allows for the grant of an award upon the condition that the recipient subrogate his right to civil damages against the assailant to the state.<sup>30</sup> If there has been no subrogation, the state has a charge for the amount of compensation paid under the plan.<sup>31</sup>

Attorney's fees for representation at a hearing under the Act are subject to approval by the Court of Claims. It is hoped that the need for attorneys may be minimized in the operation of the plan by administering the plan in a non-adversary manner. In addition, since the Court of Claims is to administer the plan, a dissatisfied applicant may petition the court for a new trial,<sup>32</sup> but judicial review of the Court of Claims determination is not available.<sup>33</sup> Finally, appropriations for the plan are to be made following an award by the Court of Claims,<sup>34</sup> such an award being a claim or charge against the state.

Illinois joins at least eight other states which have some form of compensation to victims of crime legislation,<sup>35</sup> although the Illinois Act as presently constituted is certainly not a model piece of legislation. It seems clear that the concept of crime victims compensation is in itself sound. A crucial factor in its usefulness is public awareness of its availability. Those features of the Act which appear to constitute loopholes and those features which seem unduly harsh may be remedied within a few years by the amendatory process and judicial interpretation.

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30. H.B. 269, § 10(a).

31. H.B. 269, § 10(c).

32. ILL. REV. STAT. ch. 37, § 439.15 (1971).

33. ILL. REV. STAT. ch. 37, § 439.17 (1971).

34. ILL. REV. STAT. ch. 37, § 439.23 (1971).

35. Alaska (1972); California (1966); Georgia (1972); Hawaii (1967); Maryland (1968); Massachusetts (1968); New Jersey (1971); and New York (1967).