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# CRIME VICTIM COMPENSATION IN NORTH DAKOTA: A YEAR OF TRIAL AND ERROR

RICHARD J. GROSS\*

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## I. RATIONALE

Advocates of crime victim compensation programs have taken great pains to demonstrate that concern for the victims of crime is not a new phenomenon but has existed in ancient societies. Since no right-minded individual in our society would deny that the victims of crime ought to be compensated, however, such rationalization begs the question. Instead, the real issue can be perceived in the only logical argument of crime victim compensation program opponents, who ask: "What then, is the purpose of our vast civil remedies system?" The answer to this question, and the real problem with compensation of crime victims under common law, is that, while remedies are available within the Anglo-American legal system, these "remedies," at least in terms of the victims of crime, are illusory. The problem is how, not whether, crime victims should be compensated.

The President's Commission on the Causes and Prevention of Violence reported that only 1.8 percent (.018) of victims of crime ever collect damages from the perpetrator.<sup>1</sup> The reasons for such a mini-

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1. Brown & Dana, 2 STATE LEGISLATURES 7 (1976).

scule recovery rate are legion. The most obvious reason is that many criminals are never caught. Of those who are caught, few have any resources and have little or no opportunity to gain any during their prison terms. Arkansas State Representative Cal Ledbetter has said: "Civil actions are inadequate because many criminals are not apprehended and those that are caught are often penniless. Legal remedies for the victim exist only on paper."<sup>2</sup>

Furthermore, available legal remedies may become such costly and time-consuming processes and involve such additional trauma that the victim is hesitant to seek such a remedy even where the perpetrator has resources.<sup>3</sup> "Even if the offender is caught, the months or years of court proceedings can resemble a scenario out of a Kafkaesque novel. Court delays and postponements, lost wages, and the difficulty of obtaining convictions often persuade frustrated victims to drop their charges."<sup>4</sup>

A recent study funded by the United States Law Enforcement Administration and conducted in New York City found "what most crime victims already know—that they are the 'forgotten' citizens in the nation's fight against crime."<sup>5</sup> The project director contends that crime victims should be treated with the same compassion as are the victims of natural disasters, and states: "Crime victimization is a human disaster, and a special status is the right of every victim and the moral obligation of society."<sup>6</sup>

The historical perspective, while it may exist, is not needed to provide support to those who favor direct crime victim compensation. The simple fact is that we have a system which, for crime victims, is not working. Direct compensation by the state is one alternative.

## II. EXISTING COMPENSATION PROGRAMS

With the establishment of a Criminal Injuries Compensation Tribunal on January 1, 1964, New Zealand became the first country to enact crime victim compensation legislation in modern times.<sup>7</sup>

2. *Id.*

3. It should be noted that Minnesota, MINN. STAT. ANN. § 299B.13 (Supp. 1976), Iowa, IOWA CODE ANN. § 247.6 (Supp. 1976), Georgia, GA. CODE ANN. § 77-517 (1973) and California, CAL. GOV'T CODE § 13967 (West Supp. 1976), presently have provisions that may require the perpetrator to repay the victim with the money earned while in prison, on parole, or while being confined to a restitution center. However, Brown and Dana state that such programs can actually be quite harmful. Brown and Dana, *supra* note 1, at 8. They support this with a statement from Professor Paul Rothstein, who says that "you can hinder the rehabilitation of the offender by heaping him with more obligations of the kind which led him to his criminal action in the first place." *Id.*

4. Brown & Dana, *supra* note 1, at 6. See also RAPE VICTIMOLOGY (L. Schultz ed. 1975); A BURGESS & L. HOLMSTROM, RAPE VICTIMS OF CRISIS (1974).

5. Brown & Dana, *supra* note 1, at 6.

6. *Id.*

7. Criminal Injuries Compensation Act of 1963, New Zealand Act. No. 134 (1963). For a discussion of New Zealand's experience with victim compensation, see H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO VICTIMS OF CRIME 11, 238-41 (1974) [hereinafter cited as EDELHERTZ & GEIS].

Closely following New Zealand's lead were Great Britain,<sup>8</sup> Australia,<sup>9</sup> and Canada.<sup>10</sup> Of the European countries, Sweden<sup>11</sup> was the first to implement a victim compensation program. Various other countries, including Norway, Finland, Denmark, and Japan, have indicated that they, too, would be interested in establishing such a program.<sup>12</sup>

In the United States, California was the first state to recognize the merits of such a compensation program.<sup>13</sup> Legislation in that state became effective in 1966,<sup>14</sup> but because the California program was originally placed within the welfare system, it received a great deal of criticism.<sup>15</sup>

There are, presently, twelve states with operable victim compensation programs. They are Alaska,<sup>16</sup> California,<sup>17</sup> Delaware,<sup>18</sup> Hawaii,<sup>19</sup> Illinois,<sup>20</sup> Maryland,<sup>21</sup> Massachusetts,<sup>22</sup> Minnesota,<sup>23</sup> New Jersey,<sup>24</sup> New York,<sup>25</sup> North Dakota,<sup>26</sup> and Washington.<sup>27</sup> In addition, Kentucky,<sup>28</sup> Michigan,<sup>29</sup> Tennessee,<sup>30</sup> Virginia,<sup>31</sup> and Wisconsin,

8. Compensation for Victims of Crimes of Violence, CMND. No. 2323 (1964). See EDELHERTZ & GEIS, *supra* note 7 at 213-36.

9. Criminal Injuries Compensation Act of 1967, New South Wales Act No. 14 (1967). See EDELHERTZ & GEIS, *supra* note 7 at 248-49.

10. For a compilation of victim compensation programs in the Canadian provinces, see EDELHERTZ & GEIS, *supra* note 7 at 241-47.

11. *Id.* at 250-51.

12. NAT'L. ASS'N. OF ATT'YS. GEN., COMM. ON THE OFFICE OF ATT'Y. GEN., LEGAL ISSUES IN COMPENSATING VICTIMS OF VIOLENT CRIME 3 (May 1976) [hereinafter cited as LEGAL ISSUES].

13. EDELHERTZ & GEIS, *supra* note 7, at 76. For a discussion of the California experience with crime victim compensation, see *id.* at 76-106.

14. Ch. 1549 [1965] Stats. and Amends. to the Codes of Cal. §641.

15. EDELHERTZ & GEIS, *supra* note 7, at 83-89. The result of this criticism as to the placement of the compensation program within the welfare system was that administration of the program was later placed with the State Board of Control. Ch. 1546 [1967] Stats. and Amends. to the Codes of Cal. §707.

16. ALASKA STAT. tit. 18, ch. 67 (1974) (went into operation in 1972).

17. CAL. GOV'T. CODE §§ 13959-13974 (West Supp. 1976) (went into operation in 1966).

18. DEL. CODE ANN. tit. 11, ch. 90 (Cum. Supp. 1975) (went into operation in 1975).

19. HAWAII REV. STAT. ch. 351 (1968) (went into operation in 1967).

20. ILL. REV. STAT. ch. 70, §§ 71-84 (Smith-Hurd Supp. 1976) (went into operation in 1973).

21. MD. ANN. CODE art. 26A (1973) (went into operation in 1968).

22. MASS. GEN. LAWS ANN. ch. 258A (Supp. 1976) (went into operation in 1968).

23. MINN. STAT. ANN. ch. 299B (Supp. 1976) (went into operation in 1974).

24. N.J. STAT. ANN. tit. 52, ch. 4B (Supp. 1976) (went into operation in 1971).

25. N.Y. EXEC. LAW art. 22 (McKinney 1972) (went into operation in 1967).

26. N.D. CENT. CODE ch. 65-13 (Supp. 1975) (went into operation in 1975).

27. WASH. REV. CODE ANN. ch. 7.68 (Supp. 1975) (went into operation in 1974).

28. Ch. 263 [1976] Acts of Ky. — [to be codified in KY. REV. STAT. ANN. ch. 346.] from KY. REV. STAT. & RULES SERVICE 553 (Baldwins Temp. Issue 1976).

29. Public Act No. 223 [1976] Mich. Public & Local Acts — [to be codified in MICH. COMP. LAWS ANN. §§ 18.351 to .368], from MICH. LEG. SERVICE 536 (West 1976).

30. Ch. 736 [1975] Tenn. Public Acts —.

31. Virginia's General Assembly recently enacted a victim compensation bill which will become effective July 1, 1977. However, a number of amendments to this bill are expected to be made prior to the effective date. Mr. Robert P. Joyner informed the North Dakota Crime Victims Reparations Office that, for that reason, a copy of the bill was unavailable for analysis. Therefore, Virginia does not appear on the chart included in the text of this article. Letter from Robert P. Joyner, Commissioner, Industrial Commission of Virginia, to Pat Ellingson, July 2, 1976. Also, just as this article was being prepared for the press, the author learned that Ohio and Pennsylvania have just adopted crime victim compensation programs.

sin<sup>32</sup> passed victim compensation legislation in 1976.

Victim compensation legislation has also been enacted in Louisiana<sup>33</sup> and Rhode Island.<sup>34</sup> These programs, however, are presently unimplemented.<sup>35</sup> For instance, the Criminal Injuries Compensation Act, which was passed by Rhode Island in 1972, is to take effect 120 days following the enactment of federal legislation.<sup>36</sup>

Nevada,<sup>37</sup> Georgia,<sup>38</sup> and Ohio,<sup>39</sup> have "good samaritan" statutes which compensate persons who are physically injured or killed attempting to aid the police, stop an offense, or help a victim.<sup>40</sup> Though the motives behind such acts may be commendable, those programs "usually provide assistance to only a few persons in any year."<sup>41</sup>

One of the most interesting aspects of compensation programs in the United States is the diversity found in the methods of operation of the various state programs. The major difference found among most states is the manner in which the program is administered. Programs in Alaska<sup>42</sup> and Hawaii<sup>43</sup> are administered by the states' departments of social services. Delaware<sup>44</sup> and New York<sup>45</sup> rely on specially created boards for administration; whereas the states of Illinois,<sup>46</sup> Massachusetts,<sup>47</sup> and Tennessee<sup>48</sup> utilize the court systems of their respective states to determine and award compensation.

Although most statutes include provisions which place certain

32. Ch. 344 [1975] Laws of Wisc. — [to be codified in WIS. STAT. ANN. ch. 949], from WIS. LEG. SERVICE 1619 (West 1976).

33. LA. REV. STAT. ANN. §§ 46.1801-1821 (West Supp. 1976).

34. R.I. GEN. LAWS ANN. ch. 12-25 (Supp. 1975).

35. H.R. COMM. ON THE JUDICIARY, SUBCOMM. ON CRIM. JUSTICE, 94TH CONG. 2D SESS., PRELIMINARY STAFF DRAFT 2 (1976) [hereinafter cited as JUDICIARY COMM. STAFF DRAFT].

36. R.I. GEN. LAWS ANN. § 12-25-1 (Supp. 1975) (compiler's notes).

37. NEV. REV. STAT. ch. 217 (1975).

38. GA. CODE ANN. §§ 47-518 to -527 (1974). Although Georgia has a "good samaritan" act, a claimant is eligible for compensation for injuries or property damage he sustained in attempting to prevent a crime only if he acts at the request of the officer he assisted. *Id.* § 47-518 (1974). The program is virtually non-existent in that each claim must be presented to the Georgia legislature, *id.* § 47-522 (1974), for their action on it. EDELHERTZ & GEIS, *supra* note 7, at 183.

39. OHIO REV. CODE ANN. § 2743.32 (Supp. 1975).

40. Although these acts are termed "good samaritan," they compensate only a very limited number of individuals. In the true sense of the word, "good samaritan" acts would compensate those victims who suffer bodily injury and/or property damage as a result of their coming to the aid of someone in immediate need of help, e.g., a drowning person or someone trapped in a burning house. California, CAL. GOV'T. CODE § 13970 (West Supp. 1976), is the only state, thus far to provide a compensation for such victims. The Nevada, NEV. REV. STAT. § 217.070 (1975), and Georgia, GA. CODE ANN. § 47-518 (1974), Acts specifically state that the injury must, in some way, be related to a crime. North Dakota's Act also includes limited coverage of good samaritans by compensating individuals injured or killed while attempting to prevent a crime or apprehend a criminal. N.D. CENT. CODE § 65-13-03(6) (9) (Supp. 1975).

41. EDELHERTZ & GEIS, *supra* note 7, at 12.

42. ALASKA STAT. § 18.67.020 (1974).

43. HAWAII REV. STAT. § 351-11 (1968).

44. DEL. CODE ANN. tit. 11 § 9003 (Cum. Supp. 1975).

45. N.Y. EXEC. LAW art. 22, § 622 (McKinney Supp. 1975).

46. ILL. REV. STAT. ch. 70, § 75 (Smith-Hurd Supp. 1976).

47. MASS. GEN. LAWS ANN. ch. 258A, § 2 (Supp. 1976).

48. Ch. 736, § 2(c) [1975] Tenn. Public Acts —.

limitations on a claimant's right to benefits, the requirements vary considerably. One of these limitations is that the claimant must suffer a minimum amount of economic loss before being eligible for compensation. The usual requirement is a loss of \$100 or two continuous weeks' earnings or support.<sup>49</sup> Delaware set its minimum loss at \$25,<sup>50</sup> Illinois at \$200,<sup>51</sup> and Alaska<sup>52</sup> places no minimum requirement on economic loss suffered.

Another requirement found in each state's compensation legislation is that an applicant for an award must apply within a specified period of time. Most require that the claim be filed within one year of the date of the incident.<sup>53</sup> Claimants in Alaska,<sup>54</sup> Nevada,<sup>55</sup> Rhode Island,<sup>56</sup> and Wisconsin<sup>57</sup> may take up to two years to apply for compensation. Those victims wishing to file in New York<sup>58</sup> and Kentucky<sup>59</sup> must do so within ninety days. Tennessee<sup>60</sup> and Massachusetts<sup>61</sup> require a five dollar fee for filing a claim for compensation.

Maximum award limitations range from \$5,000 in Georgia<sup>62</sup> and Nevada,<sup>63</sup> to \$50,000 in Louisiana.<sup>64</sup> The State of Washington has an intricate system of maximum benefits comparable to state workmen's compensation laws.<sup>65</sup>

In order to be eligible for compensation in all states, the victim must have suffered physical injury or death.<sup>66</sup> The statutes of Georgia<sup>67</sup> and Hawaii,<sup>68</sup> however, allow compensation for property loss also. Pain and suffering are directly compensable in Hawaii<sup>69</sup> and

49. Ch. 263, § 7 [1976] Acts of Ky. — [to be codified in Ky. REV. STAT. ANN. § 346.070], from KY. REV. STAT. & RULES SERVICE 555 (Baldwins Temp. Issue 1976); LA. REV. STAT. ANN. § 46:1813 (West Supp. 1976); MD. ANN. CODE art. 26A, § 7 (1973); MASS. GEN. LAWS ANN. ch. 258A, § 5 (Supp. 1976); N.J. STAT. ANN. § 52:4B-18 (Supp. 1976); N.Y. EXEC. LAW § 626 (McKinney 1972); Ch. 736, § — [1975] Tenn. Public Acts —.

50. DEL. CODE ANN. tit. 11, § 9007(b) (Cum. Supp. 1975).

51. ILL. REV. STAT. ch. 70, § 73(b) (Smith-Hurd Supp. 1976).

52. ALASKA STAT. § 18.67.010 (1974).

53. CAL. GOV'T CODE § 13961(c) (West Supp. 1976); DEL. CODE ANN. tit. 11, § 9006(a) (4) (Cum. Supp. 1975); LA. REV. STAT. ANN. § 46:1813(B) (West Supp. 1976); MASS. GEN. LAWS ANN. ch. 258A, § 4 (Supp. 1976); MINN. STAT. ANN. § 299B.03(e) (Supp. 1976); N.J. STAT. ANN. § 52:4B-18 (Supp. 1976); N.D. CENT. CODE § 65-13-06(2) (Supp. 1975); Ch. 736, § 8(a) [1975] Tenn. Public Acts —.

54. ALASKA STAT. § 18.67.130(2) (1974).

55. NEV. REV. STAT. § 217.210 (1975).

56. R.I. GEN. LAWS ANN. § 12-25-6(a) (Supp. 1975).

57. Ch. 344, § — [1975] Laws of Wis. — [to be codified in WIS. STAT. ANN. § 949.08(1)], from WIS. LEG. SERVICE 1622 (West 1976).

58. N.Y. EXEC. LAW § 625(2) (McKinney 1972).

59. Ch. 263, § 6(2) [1976] Acts of Ky. — [to be codified in Ky. REV. STAT. ANN. § 346.060], from KY. REV. STAT. & RULES SERVICE 555 (Baldwins Temp. Issue 1976).

60. Ch. 736 [1975] Tenn. Public Acts —.

61. MASS. GEN. LAWS ANN. ch. 258A, § 4 (Supp. 1976).

62. GA. CODE ANN. § 47-524(c) (1974).

63. NEV. REV. STAT. § 217.220(2) (1975).

64. LA. REV. STAT. ANN. § 46:1813(F) (West Supp. 1976).

65. WASH. REV. CODE ANN. § 7.68.070 (Supp. 1975).

66. E.g., CAL. GOV'T. CODE § 13961 (West Supp. 1976); MINN. STAT. ANN. § 299B.02 (Supp. 1976); N.D. CENT. CODE § 65-13-02 (Supp. 1975).

67. GA. CODE ANN. § 47-521(4) (1974).

68. HAWAII REV. STAT. § 351-1 (1968).

69. *Id.* § 351-2 (1968).

Provisions	Alaska	Calif.	Del.	Hawaii	Ill.	Ky.	La.	Md.
Administration	Department of Health & Social Services	State Board of Control	Violent Crimes Compensation Board	Department of Social Services	Court of Claims	Crime Victims Compensation Board	Department of Employment Security	Department of Public Safety and Correctional Institutions
Financial Means Test	Yes	Yes	No	No	No	Yes	Yes	Yes
Minimum Loss	No	\$100 or 20% of net monthly income	\$25	No	\$200	\$100 or 2 continuous weeks salary	\$100 or 2 continuous weeks salary	\$100 or 2 continuous weeks salary
Maximum Award	\$25,000	\$10,000	\$10,000	\$10,000	\$10,000	\$15,000	\$50,000	\$45,000
Restitution Programs	No	Perpetrator fined commensurate with offense	Additional 10% fine paid to special fund	No	No	Criminal reimburses fund	Courts levy fine against criminal—paid to special fund	Additional \$5 levied on all fines for criminal offenses
List of Crimes Covered	Yes	No	Yes	Yes	Yes	No	Yes	No
Residency Requirements	None	Must be a resident of state	Must be a resident of state	Crime must occur within the state	Crime must occur within the state	Must be a resident of state	Crime must occur within the state	Crime must occur within the state
Limitations on Applications	Apply within two years—Report crime within five days	Apply within one year	Apply within one year	Apply within 18 months	Report as soon as possible—\$200 deducted—must cooperate	Apply within 90 days—Report within 48 hours—Cooperate	Apply within one year—Report within 72 hours—Cooperate	Apply within 180 days—Report within 48 hours—Cooperate
Attorney's Fees	Paid out of award	Not to exceed 10% of award or \$500	Not to exceed \$1000 or 15% of award—paid in addition to award	Not to exceed 15% of award—paid out of award	Paid on appeal only and determined by court	Set by board	Set by board	Set by board—paid in addition to award
Requirements of Law Enforcement	Hospitals and police officials must inform possible claimants	Hospitals and police officials must inform possible claimants	No	No	No	Police must inform possible claimants	No	No

# CRIME VICTIM COMPENSATION

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Provisions	Mass.	Minn.	N.J.	N.Y.	N.D.	R.I.	Tenn.	Wash.	Wisc.
Administration	Court System	Department of Public Safety	Department of Law and Public Safety	Crime Victims Compensation Board	Workmen's Compensation Bureau	Workmen's Compensation (Special Court)	Circuit Courts	Department of Labor and Industry	Department of Industry, Labor and Human Relations
<b>Financial Means Test</b>	No	No	No	Yes	No	No	Yes	No	Yes
<b>Minimum Loss</b>	\$100 or 2 weeks salary	\$100	\$100 or 2 continuous weeks salary	\$100 or 2 continuous weeks salary	\$100	No	\$100 or 2 continuous weeks salary		\$200
<b>Maximum Award</b>	\$10,000	\$10,000	\$10,000	\$15,000	\$25,000	\$25,000	\$15,000	System comparable to Workmen's Compensation laws	\$10,000
<b>Restitution Programs</b>	No	Criminal reimburses victim	No	No	No	No	\$20 additional fine on all crimes plus 20% of all fines levied	Perpetrator owes debt to fund	No
<b>List of Crimes Covered</b>	No	No	Yes	No	No	Yes	No	Yes	Yes
<b>Residency Requirements</b>	Crime must occur within the state	Crime must occur within the state	None	Crime must occur within the state	Crime must occur within the state	Crime must occur within the state	Crime must occur within the state	Must be a resident of state	Crime must occur within the state
<b>Limitations on Applications</b>	Apply within one year—90 days for death—Report within 48 hours—\$5 fee for applying	Apply within one year—Report within 3 months—Cooperate	Apply within one year—Report within 3 months—Cooperate	Apply within 90 days—Report within 48 hours	Apply within one year—Report within 72 hours—Cooperate	Apply within 2 years	Apply within one year—Report within 48 hours—\$5 fee	Apply within 180 days of injury—120 days of death—Report within 72 hours	Apply within 2 years—Report within 6 days
<b>Attorney's Fees</b>	Set by court—not to exceed 15% of award—Paid out of award	Set by board	\$40 per hour—paid in addition to award	Set by board—paid out of award	Set by board—paid in addition to award	Paid from fund by order of special court	Not to exceed 15% of award—paid in addition to award	No provision within Act	Not to exceed 20% of award—paid out of award
<b>Requirements of Law Enforcement</b>	No	Police must inform victims of right to apply	No	No	No	No	No	No	Law Enforcement Agencies must supply forms



Rhode Island.<sup>70</sup> Tennessee makes an allowance for pain and suffering, but only in cases involving rape or sexual deviancy.<sup>71</sup>

As previously noted, the present state programs offer contrasting approaches to victim compensation. Because the experience of the United States and other countries with such programs is relatively brief, this diversity is necessary. What should emerge from this experimentation is either a workable uniform program or a realization that no one program is suitable for all states.

The preceding chart contains a summary of the salient features of the twelve state programs presently in operation, the two acts in Louisiana and Rhode Island which have been passed but remain unimplemented, and three of the four acts passed this year.

### III. THE NORTH DAKOTA ACT

#### A. DEVELOPMENT

In 1970, the National Conference of Commissioners on Uniform State Laws began deliberations on a compensation act for the victims of crime.<sup>72</sup> After three years, the Conference adopted a proposal termed the Uniform Crime Victims Reparations Act.<sup>73</sup> The American Bar Association's House of Delegates, meeting in Houston on February 5, 1974, also adopted that version of the Act.<sup>74</sup>

About the same time that the National Conference was adopting its version, the North Dakota Criminal Justice Commission was beginning its operations.<sup>75</sup> After a year of deliberations, the Criminal Justice Commission also recommended legislation to aid the victims of crime,<sup>76</sup> relying heavily upon the Minnesota program<sup>77</sup> which went into effect during the Commission's deliberations.

Meanwhile, a third version of the Act arose. The Legislative Council was asked to draft a bill which would aid the victims of crime.<sup>78</sup> It was proposed that the bill be molded after the Washington program.<sup>79</sup> The Washington program was being administered by that state's Department of Labor and Industries, which is roughly the equivalent of the North Dakota Workmen's Compensation Bureau.

The North Dakota Legislative Council took the bill proposed by

70. R.I. GEN. LAWS ANN. § 12-25-5(c) (Supp. 1975).

71. Ch. 736, § 6(c) [1975] Tenn. Public Acts —.

72. Rothstein, *How the Uniform Crime Victims Reparations Act Works*, 60 A.B.A.J. 1531 (1974).

73. UNIFORM CRIME VICTIMS REPARATIONS ACT, HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 188 (1973).

74. Rothstein, *supra* note 72 at 1531.

75. REPORT OF THE NORTH DAKOTA COMMISSION ON CRIMINAL STANDARDS AND GOALS (Dec. 1975).

76. Conversations with the Directors of the North Dakota Criminal Justice Commission.

77. MINN. STAT. ANN. ch. 299B (Supp. 1976).

78. This request was made by Sen. Russell Thane, Republican, Wahpeton, North Dakota.

79. WASH. REV. CODE ANN. ch. 7.68 (Supp. 1975).

the Criminal Justice Commission,<sup>80</sup> added elements of the Minnesota<sup>81</sup> and the Washington<sup>82</sup> acts, and requested input from the North Dakota Workmen's Compensation Bureau.<sup>83</sup> The result was Senate Bill 2289,<sup>84</sup> which was introduced into the North Dakota Senate on January 17, 1975.

## B. LEGISLATIVE HISTORY

The original version of Senate Bill 2289 was named the "North Dakota Violent Crime Victims' Compensation Act."<sup>85</sup> The bill included many features which differed from the Uniform Act later adopted. One requirement was that any incident upon which a claim was based had to be reported to law enforcement agencies within twenty-four hours of its occurrence or within twenty-four hours of "such time when it could have reasonably been reported."<sup>86</sup> Another significant difference was that the bill placed no limit on recovery of economic loss by providing: "Any claimant. . . shall be entitled to compensation in the amount of economic loss suffered by such claimant."<sup>87</sup>

80. Note 76 *supra*.

81. MINN. STAT. ANN. ch. 299B (Supp. 1976).

82. WASH. REV. CODE ANN. ch. 7.68 (Supp. 1975).

83. This contact consisted of various calls to and conversations with the Commissioners of the North Dakota Workmen's Compensation Bureau.

84. S.B. 2289, 44th Leg. Assem. of N.D. (1975).

85. *Id.* The bill contained the names of four sponsors: Senators Thane, Naaden, Erdman and Reiten, all Republicans. *Id.*

86. *Id.* § 6(2)(a) (1975). This section also placed a limitation on filing for benefits of six months after the occurrence. *Id.*

87. *Id.* § 6(1) (1975). Other features which differed from the Uniform Act were:

1. Complete elimination of claimants who:
  - a. Failed or refused to fully cooperate with law enforcement officials, *id.* § 6(2)(b) (1975);
  - b. Consented to, provoked or incited the perpetrator, *id.* § 6(2)(c) (1975);
  - c. Participated in the criminal act which "was the proximate cause of the injury or death for which compensation is sought. *Id.* § 6(2)(d) (1975).
2. Subrogation to collateral sources and right of action against the perpetrator to which recovery the Bureau would be subrogated 50% (nearly identical to section 65-01-09 of the North Dakota Workmen's Compensation Act). *Id.* § 9 (1975).
3. The inclusion of the Administrative Agencies Practices Act, N.D. CENT. CODE ch. 28-32 (1974), as the procedural guideline for the administrator, S.B. 2289, 44th Leg. Assem. of N.D. § 13 (1975).
4. The following definitions:
  - a. "Claimant" means any victim . . . surviving husband or wife, . . . children, . . . mother or father [or] the personal representative of the victim. . . .

*Id.* § 2(3) (1975);

- b. "Criminal act" means an act . . . punishable as a felony or Class A misdemeanor, [but] [n]either an acquittal in a criminal prosecution or the absence of any such prosecution shall be admissible in any claim . . . as evidence of the noncriminal character of the acts giving rise to such claim or proceeding.

Evidence of a criminal conviction . . . shall be admissible . . . for the limited purpose of proving the criminal character of such acts.

*Id.* § 2(4) (1975);

- c. "Economic loss" means actual economic detriment [including] . . . funeral expenses, . . . reasonable expenses, loss of support, including income, goods, comfort, and affection.

*Id.* § 2(5) (1975);

In introducing the bill to the Senate Judiciary Committee, one of the bill's sponsors stated: "[I]t is time we spend some money to help the victims of crimes since we are spending quite a lot on the people who commit the crimes."<sup>88</sup>

Commissioners of the North Dakota Workmen's Compensation Bureau and representatives of the North Dakota Bar Association and American Association of Retired Persons and Retired Teachers' Association also spoke in favor of the bill before the Senate Judiciary Committee.<sup>89</sup>

North Dakota District Judge Eugene Burdick appeared before the North Dakota Senate Judiciary Committee with a proposed amendment to the North Dakota Violent Crime Victim's Compensation Act.<sup>90</sup> The amendment read: "On page 1, line 1, delete everything after the words 'A Bill,' delete the remainder of the bill and insert in lieu thereof the following. . . ." <sup>91</sup> The amendment was the Uniform Crime Victims Reparations Act.

In the House Judiciary Committee the Executive Director of the North Dakota Criminal Justice Commission and the Chief Justice of the North Dakota Supreme Court added their support to the amended bill.<sup>92</sup>

The Speaker of the House requested an opinion of the attorney general as to the constitutionality of the proposed legislation.<sup>93</sup> The Speaker questioned whether it was in conflict with the North Dakota Constitution, which provides:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation.<sup>94</sup>

The attorney general's office response concluded:

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d. "Injury" means actual bodily harm including, but not limited to pregnancy, physical trauma and mental or nervous shock.

*Id.* § 2(6) (1975).

5. An appropriation of \$200,000. *Id.* § 16 (1975).

88. *Hearings on S.B. 2289 Before the Senate Committee on the Judiciary*, 44th Leg. Assem. of N.D. at 2 (Feb. 11, 1975) (remarks of Sen. Russell Thane, Republican, Wahpeton, North Dakota).

89. *Id.* at 2-3.

90. *Id.* at 2.

91. Amendment to S.B. 2289, 44th Leg. Assem. of N.D. (1975).

92. *Hearings on S.B. 2289 Before the House Committee on the Judiciary*, 44th Leg. Assem. of N.D. at 1-2 (Mar. 5, 1975).

93. *Id.*

94. N.D. CONST. art. 12 § 185.

[W]e are not prepared to state that an argument sustaining the constitutionality of SB 2289 could not be made, premised upon the assertion that a compensation fund established to benefit victims of crimes—which are acts against the peace and dignity of the state—constitutes a “public purpose” and consequently is not a “donation to or in aid of any individual . . .” as prohibited by Section 185 of the Constitution of North Dakota. . . .

One should also keep in mind those judicial tenets that conclude that a statute is presumed to be constitutional and such presumption is conclusive unless it is clearly shown to contravene some provision of the State or Federal Constitutions. Further, courts will not declare a statute void unless its validity [sic] is beyond a reasonable doubt. . . while such judicial restraint imposes a great degree of responsibility upon the legislative assembly to scrutinize the constitutionality of its products, it is also a recognized tenet that “the wisdom, necessity, or expediency of legislation are matters for legislative and not judicial consideration.”<sup>95</sup>

In spite of the inconclusive nature of the opinion from the attorney general’s office, the North Dakota House<sup>96</sup> and Senate<sup>97</sup> passed the Act. It was signed into law by Governor Arthur Link on March 27, 1975.<sup>98</sup>

The North Dakota Workmen’s Compensation Bureau was named administrator of the Act.<sup>99</sup> The Bureau is headed by three commissioners appointed by the Governor to staggered six-year terms.<sup>100</sup> Because the Act did not provide funds to implement the program until its effective date,<sup>101</sup> no new personnel could be hired until after July 1, 1975, the same day that claimants became eligible for compensation.<sup>102</sup>

### C. THE UNIFORM CRIME VICTIMS’ REPARATION ACT

Salient features of the Uniform Crime Victims’ Reparations Act are as follows:

1. The Act provides financial assistance in cases where bodily injury or death results from criminally injurious conduct.<sup>103</sup>

95. Letter from Robert P. Brady, Assistant Attorney General, to Representative Robert Reimers, Mar. 5, 1975 citing *State ex rel. Linde v. Taylor*, 33 N.D. 76, 156 N.W. 561 (1916).

96. H.R. JOUR., 44th Leg. Assem. of N.D. 1214 (1975) (passed by a vote of 57 to 33).

97. S. JOUR., 44th Leg. Assem. of N.D. 1104 (1975) (passed by a vote of 46 to 3).

98. Ch. 587 [1975] Laws of N.D. 1545.

99. N.D. CENT. CODE § 65-13-03(1) (Supp. 1975).

100. N.D. CENT. CODE § 65-02-01 (1960).

101. Ch. 587, § 22 [1975] Laws of N.D. 1545.

102. In June 1975, the Commissioners had decided to hire an attorney for the position of Executive Administrator of the Act. The author of this article was hired for the position in mid-August.

103. N.D. CENT. CODE § 65-13-02 (Supp. 1975).

2. The victim must report the crime within seventy-two hours to law enforcement officials<sup>104</sup> and must cooperate with them in their investigation and prosecution of the crime.<sup>105</sup> In addition, the victim must file the claim within a year.<sup>106</sup> The dependents of victims and those who care for them may also be claimants.<sup>107</sup>
3. A victim is one who suffers bodily injury or death:
  - a. As the result of a criminal attack;
  - b. In attempting to prevent a criminal act;
  - c. In attempting to apprehend a criminal.<sup>108</sup>
4. The following victims are specifically and totally excluded from coverage:
  - a. One who loses property only;<sup>109</sup>
  - b. One who is injured or killed in a traffic accident;<sup>110</sup>
  - c. One who is injured or killed as a result of his own criminal act or that of an accomplice;<sup>111</sup>
  - d. One who suffers losses of less than \$100.<sup>112</sup>
5. Awards to the following victims may be *reduced* or *denied*:
  - a. One who is injured or killed due to his own contributory misconduct.<sup>113</sup>
  - b. One who is the spouse, or living in the same household with, or the parent, child, brother or sister of the offender or his accomplice.<sup>114</sup>
6. The Act provides benefits for medical and related expenses and work loss or replacement services.<sup>115</sup> The total recovery allowed is \$25,000.<sup>116</sup>
7. The Act covers attorney's fees after a claim becomes contested, unless the claim is frivolous.<sup>117</sup>
8. The fund is subrogated<sup>118</sup> to a claimant's recovery from a collateral source.<sup>119</sup>
9. An award may be made whether or not a prosecution or conviction occurs.<sup>120</sup>
10. Tentative awards may be made.<sup>121</sup>

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104. *Id.* § 65-13-06(4) (Supp. 1975).

105. *Id.* § 65-13-06(5) (Supp. 1975).

106. *Id.* § 65-13-06(2) (Supp. 1975).

107. *Id.* § 65-13-03(6)(g) (Supp. 1975).

108. *Id.* § 65-13-03(6)(g) (Supp. 1975).

109. *Id.* § 65-13-02 (Supp. 1975).

110. *Id.* § 65-13-03(4)(c) (Supp. 1975).

111. *Id.* § 65-13-06(3) (Supp. 1975).

112. *Id.* § 65-13-06(7) (Supp. 1975).

113. *Id.* § 65-13-06(6)(b) (Supp. 1975).

114. *Id.* § 65-13-06(3) (Supp. 1975).

115. *Id.* § 65-13-06(8) (Supp. 1975).

116. *Id.* § 65-13-06(9) (Supp. 1975).

117. *Id.* § 65-13-13 (Supp. 1975).

118. *Id.* § 65-13-14(1) (Supp. 1975).

119. *Id.* § 65-13-03(3) (Supp. 1975).

120. *Id.* § 65-13-12(1) (Supp. 1975).

121. *Id.* § 65-13-16 (Supp. 1975).

11. The Act contains its own procedures, including hearing and notice requirements and reconsideration and appeal requirements.<sup>122</sup>
12. Definitions differing significantly from those in the original bill are:
  - a. "Claimant" means any of the following claiming reparations under this chapter: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them.<sup>123</sup>
  - b. "Criminally injurious conduct" means conduct that:
    1. Occurs or is attempted in this state;<sup>124</sup>
    2. Poses a substantial threat of personal injury or death;<sup>125</sup>and
    3. Is punishable by fine, imprisonment, or death, or would be so punishable, but for the fact that the person engaging in the laws of the state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death.<sup>126</sup>
  - c. "Economic loss" means 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 services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.<sup>127</sup>
  - d. There is no question of "injury."<sup>128</sup>
13. The Act was funded with a \$100,000 appropriation from the general fund for the biennium.<sup>129</sup>

#### D. A YEAR OF ADMINISTRATION

Since only \$100,000 had been appropriated for administration and

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122. *Id.* § 65-13-09 (Supp. 1975).

123. *Id.* § 65-13-03(2) (Supp. 1975).

124. *Id.* § 65-13-03(4) (a) (Supp. 1975).

125. *Id.* § 65-13-03(4) (b) (Supp. 1975).

126. *Id.* § 65-13-03(4) (c) (Supp. 1975).

127. *Id.* § 65-13-03(6) (Supp. 1975).

128. Professor Richard Cosway states:

At one time the draft of the act included a provision that "Injured" means having sustained personal injury and includes having become pregnant. Unfortunately, the definition seems to have disappeared, and I cannot recall how or why that occurred.

Letter from Professor Richard Cosway to Richard J. Gross, Nov. 4, 1971.

129. Ch. 587 § 22 [1975] Laws of N.D. 1545.

payment of claims for the biennium,<sup>130</sup> the Workmen's Compensation Commissioners were very conscious of funding limitations for personnel and equipment. Therefore, during the first month of administration, applications for federal funds were made in order to obtain equipment and training of personnel which were necessary for administration of the program.<sup>131</sup>

A set of forms was devised for applications and for investigation of claims.<sup>132</sup> Forms from several states were examined, but Minnesota's seemed most satisfactory.<sup>133</sup> Because they were short and uncomplicated, and corresponded well with the requirements of the North Dakota Act, these forms became the basic guideline for those adopted by the Board for the program in North Dakota.

Since the Workmen's Compensation Commissioners would also function as the Crime Victims' Reparations Board, the author felt that the procedures for the two programs should be similar, if not identical. As a result, the proposed rules submitted to the attorney general's office bore the distinct imprint of the Workmen's Compensation procedures. In essence, the rules called for the following procedure: (1) Remittance of claim form to an applicant upon his request; (2) submittal of a completed claim form by claimant; (3) investigation of the claim by the administrator; (4) recommendation by the administrator to the Board as to disposition of the claim; (5) board decision approving, modifying, or denying claim; (6) right of hearing before the Board; (7) decision of the Board; and (8) right of appeal.<sup>134</sup>

Due to various idiosyncrocies of the Uniform Act, these rules were not agreeable to the attorney general's office.<sup>135</sup> Nevertheless, the need for action on incoming claims necessitated provisional use of the proposed rules.

Utilizing materials from other state programs,<sup>136</sup> the Board composed a descriptive brochure which was sent to all police departments, sheriff's offices, physicians, and attorneys in the state.<sup>137</sup> It

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130. *Id.*

131. The Board has received a total of \$1,755 in grants from the North Dakota Law Enforcement Council for training and equipment. Also a CETA grant was obtained to hire an administrative assistant who has taken over the claims investigation and a great deal of the publicity aspects of the Act.

132. See Appendix A for the Board's most utilized forms.

133. These forms are on file with North Dakota Workmen's Compensation Bureau, Bismarck, North Dakota.

134. See Appendix B for the N.D. UNIFORM CRIME VICTIMS REPARATIONS ACT RULES OF PRACTICE AND PROCEDURE.

135. Letter from John E. Adams, Assistant Attorney General, to Richard J. Gross, Oct. 9, 1975; Memorandum from Dale V. Sandstrom, Assistant Attorney General, to Richard J. Gross, Jan. 2, 1976.

136. Brochures for the various state compensation programs were utilized in the preparation of the North Dakota brochure, although primary reliance was placed upon the brochure that had been prepared in the State of Washington. Copies of these brochures and the North Dakota brochure are on file with the North Dakota Workmen's Compensation Commission, Bismarck, North Dakota.

137. The Law Enforcement Council submitted a list of sheriff's offices and police de-

was the Board's feeling that these individuals would have initial contact with victims and potential claimants.

Many of the first claims involved incidents which had occurred prior to the effective date of the Act. Most of those claims were handled by letters, informing the claimant that, since the Act was not retroactive, it could not cover victims injured prior to July 1, 1975, the effective date. However, one claimant's attorney contended that certain incidents which occurred prior to the effective date of the Act ought to be covered. The Act, he said, simply required that an innocent victim suffer bodily injury or death as a result of a criminal act in North Dakota, suffer losses over \$100, report the crime within seventy-two hours, cooperate with law enforcement officials, and file a claim within a year of the incident. His client had fulfilled all those requirements. It was his belief that a claimant was eligible anytime after July 1, 1974, since a claim filed after that time could fall within the one-year time limit. Relying upon a holding of the North Dakota Supreme Court, the attorney argued:

A statute is not retroactive because it draws upon antecedent facts for its operation or because part of the requisites of its action is drawn from time antecedent to its passing.<sup>138</sup>

On the basis of that decision and his argument, the attorney demanded a hearing for his client.

The Board then requested an attorney general's opinion on the question. The attorney general responded:

[S]ubsection 2 of Section 65-13-06 sets out the time limitation within which a claim may be filed. That subsection is quoted herewith as follows:

"Reparations may not be allowed unless the claim is filed with the board within one year after the injury or death upon which the claim is based."

While the Uniform Crime Victims' Reparations Act . . . is silent as to incidents that occur prior to the enactment of the law on July 1, 1975, the North Dakota Supreme Court has spoken many times in regard to the prospective operation of law. . . .

It is our opinion that incidents occurring prior to July 1, 1975, and for which an applicant under the Act seeks an award, are not covered by the Act and consequently the Workmen's Compensation Bureau has no jurisdiction to award a claim.

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partments. The North Dakota State Bar Association supplied the names of attorneys, and the North Dakota Medical Association provided the names of physicians.

138. Brief for Appellant at 3, *Murray v. Crime Victims Reparations Bd.* (Prehearing Conference before C.V.R. Bd., Dec. 11, 1975) quoting *Public School Dist. No. 35, Cass County v. Cass County Bd. of Comm'rs*, 123 N.W.2d 37, 40 (N.D. 1963).



In other words the incident for which the applicant seeks reparation must have occurred on or after July 1, 1975.<sup>139</sup>

In light of that attorney general's opinion, the Board determined that it had no jurisdiction in the claim. The attorney still demanded a hearing, but a hearing was denied because the only issue, in the Board's opinion, was a legal one. The Board offered to stipulate to the facts, for purposes of the appeal only, so that the question of law could be decided by the district court. The attorney would not agree to the stipulation and, when a hearing was again denied, he stated that he would be initiating a mandamus action to force the Board to hold a hearing. The claim, the mandamus action, and the issue remain unresolved.

The next major problem arose with the right of appeal. According to the Act, a claimant may appeal a decision of the Board "in the same manner and to the same extent as a decision of the District Court."<sup>140</sup> That language implies that an appeal from the decision of the administrative agency must be taken directly to the North Dakota Supreme Court.<sup>141</sup>

However, there have been two appeals from Board decisions taken to the district court. One district court judge dismissed an appeal for failure to comply with the procedure required by the Act,<sup>142</sup> and concluded:

This appeal must be taken directly to the Supreme Court of the State of North Dakota in the same manner as an appeal is taken from a decision of the District Court. The manner of taking appeals is jurisdictional. Jurisdiction to hear the appeal cannot be conferred upon the District Court by consent of the parties.<sup>143</sup>

The issue involved in that appeal is whether the Act allows compensation for work loss which results from a victim's appearance as a witness in the trial of his assailants. The Board had determined that the Act did not cover such loss, and an attorney general's opinion supported the Board.<sup>144</sup> The attorney general stated that since a claimant might be required to appear as a witness in court re-

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139. Letter from Allen I. Olson, Attorney General, to Richard J. Gross, at 2-3, Feb. 18, 1976.

140. N.D. CENT. CODE § 65-13-17(3) (Supp. 1975).

141. In early discussions the author had with special assistant and assistant attorneys general and others, their general conclusion seemed to be that that section was obviously a drafting error. (The Uniform Act had a blank space in which the appropriate court was to be inserted. Someone had evidently inserted the name of the wrong court.) The author was advised to act as if it was not there.

142. N.D. CENT. CODE § 65-13-17(3) (Supp. 1975).

143. *Hughes v. Uniform Crime Victims Reparation Bd.*, Civil No. 2650 (4th Dist. N.D., filed May 27, 1976).

144. Letter from Allen I. Olson, Attorney General, to Richard J. Gross, Feb. 18, 1976.

ardless of whether or not he was injured, there was no monetary loss as a direct result of the injury.<sup>145</sup>

This issue remains unresolved, as does the issue of the appropriate court to which an appeal must be taken. An appeal has been taken to the North Dakota Supreme Court.

The second appeal is from a Board decision denying an award to a claimant who was shot. The Board determined that the evidence gathered at a hearing indicated that the degree of misconduct on part of the claimant was so great that he should not be compensated for his losses. The Board arrived at its decision in spite of the fact that the individual who shot the claimant has been found guilty of aggravated assault. The attorney for the claimant has filed an appeal to the district court even though one judge in that district has already determined that the district court has no jurisdiction.<sup>146</sup> It is impossible to determine from the specifications of error submitted in that case what the issues are, but, obviously, one issue must be whether or not the district court has jurisdiction.

Another problem arose in connection with subrogated interests. The Act specifies that the "state is subrogated to all the claimant's rights to receive or recover benefits . . . from . . . a collateral source."<sup>147</sup> "Collateral source" is defined to include an offender,<sup>148</sup> but the definition does not mention a person, such as a bar owner, who may have caused the offense, at least indirectly, by giving the offender too much to drink. In other words, if a victim of a crime brought a dram shop action against a bar owner, would the state be subrogated to his recovery? The attorney general's office concluded that the state would not be subrogated to such recovery because the term "offender" could not be stretched to include bar owners who were civilly negligent in violating provisions of the Dram Shop Act.<sup>149</sup>

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145. *Id.* at 3. The letter stated:

[I]t appears clear from the definition of "work loss" that the Act does not contemplate compensation of a claimant for work loss which he may have suffered due to his required appearance and testimony at a trial as a witness against those individuals whom the claimant alleges assaulted and injured him. The Act compensates for work the injured person would have performed "if he had not been injured." A claimant who suffers a monetary loss because of his testimony does not suffer for that loss as a direct result of the injury. Even if the claimant had not been injured when assaulted, he may still be required, by subpoena or otherwise, to appear in court and testify, and would therefore still have lost time from his employment. Consequently, it is our opinion, that the Act was not intended to cover work lost due to testifying at a trial. *Id.*

146. *Hughes v. Uniform Crime Victims Reparation Bd.*, Civil No. 2650 (4th Dist. N.D., filed May 27, 1976). See text accompanying note 141 *supra*.

147. N.D. CENT. CODE § 65-13-14(1) (Supp. 1975).

148. *Id.* § 65-13-03(3) (a) (Supp. 1975).

149. Letter from Allen I. Olson, Attorney General, to Richard J. Gross, at 3-4, Feb. 18, 1976. The letter concluded:

Under the subrogation portion of subsection 1 of section 65-13-14, the State is subrogated to all the claimant's right from a source which is or would be a "collateral source." As noted in your letter, section 65-13-03(3) defines "col-

The privacy of the Board's records was also questioned. This matter was of special concern because some of the claimants, such as rape victims, would wish as much anonymity as possible. The attorney general declared that the records must be made public<sup>150</sup> on the basis of the North Dakota Constitution<sup>151</sup> and the open records law.<sup>152</sup>

Another problem dealt with the effect of a verdict of "not guilty" upon the claim of the victim. That is, if a claimant alleges that an individual injured him, but a court acquits that individual, can the Board still make an award to the claimant? The Act provides:

An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.<sup>153</sup>

The attorney general's response to this issue was that a finding of not guilty in a criminal action did not preclude recovery.<sup>154</sup> His reasoning was that the Board must make an independent factual determination, and that a "not guilty" verdict or a dismissal could be based on many factors other than the actual guilt of the individual.<sup>155</sup>

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lateral source." Subdivision "a" of subsection 3 of that section appears to be the only portion of the definition which would apply in the case of a liquor establishment being sued under the Dram Shop Act. The question then becomes whether or not "offender" includes a person who caused the "offender" to become an offender. If such is the case, then the operator of a liquor establishment could be considered a "collateral source" under the Act.

It would be difficult to stretch the definition of the word "offender" to include owners of liquor establishments who, because of their civil negligence, violated provisions of the Dram Shop Act. Accordingly, it is our opinion that the State is not subrogated to a recovery by the claimant from the owner of a liquor establishment for a civil action based upon a violation of section 5-01-06 of the North Dakota Century Code by the owner of that liquor establishment.

*Id.* (emphasis in original).

150. Letter from Allen I. Olson, Attorney General, to Richard J. Gross, at 4, Feb. 18, 1976.

151. N.D. CONST. art. 92.

152. N.D. CENT. CODE § 44-04-18 (1960).

153. *Id.* § 65-13-12(1) (Supp. 1975).

154. Letter from Allen I. Olson, Attorney General, to Richard J. Gross, at 4-5, Feb. 18, 1976.

155. *Id.* The attorney general declared:

When reference is made to section 65-13-12(1), NDCC, as quoted in your letter, it appears clear that even though the alleged perpetrator of a criminal action which gave rise to a claim under the Act is found "not guilty" in a criminal case, the claimant under the Act would not be precluded from recovery for that reason. The burden is placed upon the Board to make a factual determination independent of any previous criminal action. However, 65-13-12(1) goes on to state that the Board may use proof of conviction as conclusive evidence that the crime was committed. That appears only to be an aid to the Board and there appears to be no provision of the Act which expressly forbids recovery under the Act when the alleged perpetrator of the crime is found not guilty under the criminal law. The reason for the finding of "not guilty" could be based upon many collateral issues not bearing upon

The attorney general later clarified his opinion by stating that the Board could "consider" a not guilty verdict in making its factual determination.<sup>156</sup>

While the Board has received attorney general's opinions on the foregoing questions and has operated according to those opinions, the issues have not yet been conclusively determined.

In succeeding months, several other problems arose concerning the interpretation of the Act. After the Board had submitted its proposed rules, the attorney general's office concluded that the Board could not deny any claim without a hearing unless a claimant agreed to such denial.<sup>157</sup> Section 65-13-08 of the Act provides:

Unless precluded by law, informal disposition may be made of a claim by stipulation, agreed settlement, consent order, or default. *A claim not so disposed of is a contested case.*<sup>158</sup>

It was the feeling of the attorney general's office that the last sentence of section 65-13-08 did not allow a denial of a claim unless it had been arrived at by agreement with the claimant.<sup>159</sup> The Board questioned what would happen if the claim was not filed within a year, or if the economic loss was less than \$100, or if no crime was involved, and the claimant would not agree to withdraw his claim. The attorney general's office<sup>160</sup> saw no way around the provision in the Act that, unless there is a stipulation, agreed settlement, con-

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the issue of whether or not the perpetrator committed the crime and inflicted injury upon the claimant. For example, a finding of not guilty or a dismissal could be awarded by a court or a jury based upon some evidentiary irregularity on the part of the prosecution or upon the failure of the prosecution to perform certain required procedural activities prior to trial. Such a dismissal or a finding of not guilty, in that case, would have little bearing on the defendant's injuries and the fact that they may have been caused by the perpetrator.

In addition, section 65-13-12(1) clearly permits the Board to make an award "whether or not any person is prosecuted or convicted." It is therefore our opinion that a finding of not guilty against the perpetrator of the action which gave rise to the claim by a court in a criminal action, has no affect and does not preclude the claimant from recovery under the Act.

*Id.*

156. Letter from Calvin N. Rolfson, Assistant Attorney General, to Richard J. Gross, Apr. 23, 1976. Mr. Rolfson said:

While the Board's duty to make a factual determination independent of any previous criminal action is broad, we find nothing in the Act which precludes the Board from "considering" the fact that the perpetrator was found "not guilty" in a criminal case. However, the finding of not guilty should, in no event, be controlling and should be given no more weight than any other data which is brought to the Board's attention. What we are suggesting is that the Board look at the facts of each occurrence, rather than ultimate legal conclusions by other tribunals, and the mere fact that the perpetrator was found "not guilty" in a criminal case should in no way deter the Board from independently reviewing the facts of the case before them and making a determination based upon those facts.

*Id.*

157. Memorandum from Dale V. Sandstrom, Assistant Attorney General, to Richard J. Gross, Jan. 2, 1976.

158. N.D. CENT. CODE § 65-13-08 (Supp. 1975) (emphasis added).

159. Memorandum from Dale V. Sandstrom, Assistant Attorney General, to Richard J. Gross, Jan. 2, 1976.

160. *Id.*

sent order or default, a claim becomes contested<sup>161</sup> and that a contested case requires a hearing.<sup>162</sup> According to the attorney general's office, denial of a claim without a hearing, regardless of the rationale, did not correspond to requirements of the Act.<sup>163</sup>

The Board realized that if it could not deny any claim without a hearing, an enormous amount of time and money could be expended on such a procedure. Therefore, the author wrote to three individuals who had been instrumental in drafting the Uniform Act: Professor Paul Rothstein, University of Georgetown Law School; Professor Richard Cosway, University of Washington Law School; and North Dakota State District Court Judge Eugene Burdick.<sup>164</sup> Their suggestions,<sup>165</sup> together with the approval of the attorney general,<sup>166</sup> produced an added procedure which allowed a "denial without a denial." The suggestions centered around section 65-13-06(1) of the Act which requires that an applicant apply in writing "in a form that conforms substantially to that proscribed by the Board."<sup>167</sup> They suggested that if the Board prescribed the right kind of form, it could eliminate the need for an investigation and denial where the claim, or its face, was ineligible for coverage. A form was drafted and corresponding rules were established to conform to their suggestions.

Those procedures, based upon the Board's rules<sup>168</sup> are now as follows: (1) Upon his request for benefits, an applicant is sent a "Declaration of Eligibility" form<sup>169</sup> which contains nine statements of fact for the claimant to check. (2) If the applicant checks all nine statements, he is eligible to be considered for compensation, and he is sent a claim form.<sup>170</sup> If he does not check all nine statements on the eligibility form, he cannot be considered for compensation and is so notified.<sup>171</sup> This notification is not deemed a denial of his claim, because a claim cannot be filed until after the Board has determined that the applicant is eligible for compensation. Through this procedure, the Board avoids holding a hearing for the

161. N.D. CENT. CODE § 65-13-08 (Supp. 1975).

162. *Id.* § 65-13-09 (Supp. 1975).

163. Memorandum from Dale V. Sandstrom, Assistant Attorney General, to Richard J. Gross, Jan. 2, 1976.

164. All three individuals are members of the National Conference of Commissions of Uniform State Laws. The author had been in previous correspondence with them concerning other problems and felt that, perhaps, they would be able to suggest an alternative procedure.

165. Letter from Paul F. Rothstein to Richard J. Gross, Jan. 25, 1976; Letter from Richard Cosway to Richard J. Gross, Jan. 19, 1976; Letter from Eugene A. Burdick to Richard J. Gross, Jan. 19, 1976.

166. [1974-76] N.D. OP. OF ATTY GEN. — (May 17, 1976).

167. N.D. CENT. CODE § 65-13-06(1) (Supp. 1975).

168. N.D. UNIFORM CRIME VICTIMS REPARATIONS ACT RULES OF PRACTICE AND PROCEDURE, set forth in Appendix B.

169. See Appendix A.

170. See Appendix A.

171. N.D. UNIFORM CRIME VICTIMS REPARATIONS ACT RULES OF PRACTICE AND PROCEDURE, R. 65-13-04.

sole purpose of informing the applicant that, under the provisions of the Act, he is ineligible for compensation. (3) If an applicant is eligible and completes a claim form, an investigation of the claim takes place.<sup>172</sup> (4) The administrator then makes a recommendation to the Board as to disposition of the claim.<sup>173</sup> (5) The Board issues a "tentative decision" approving, modifying or denying the claim and informing the claimant of the "tentative decision."<sup>174</sup> (6) The claimant has thirty days to request a hearing or to approve the decision. While a hearing must be held upon the claimant's request,<sup>175</sup> the decision of the Board becomes final if no reply from the claimant is received within the thirty-day limit.<sup>176</sup> Of course, if the decision is approved in writing by the claimant, it becomes final immediately. (7) A hearing, if requested, is followed by a final decision of the Board.<sup>177</sup> (8) The claimant has a right of appeal.<sup>178</sup>

In addition, several other problems and questions have arisen which remain unresolved. Does bodily injury include pregnancy and mental distress?<sup>179</sup> Is a child who may result from a rape a victim? Is an abortion compensable if pregnancy results from a rape? What is includable within the definition of "allowable expense?"<sup>180</sup> Who is an "interested person?"<sup>181</sup> to whom notice of a hearing must be given? Is an alleged offender such a person? Is a juvenile under sixteen years of age capable of committing "criminally injurious conduct" under the Act?<sup>182</sup>

#### IV. GENERAL OBSERVATIONS AND RECOMMENDATIONS

While problems have arisen and progress has seemed painfully slow, the program is extremely worthwhile and long overdue. Several very deserving claimants have thus far received benefits under the Act, including a man assaulted so badly he suffered a broken back, extensive liver and kidney damage and other internal injuries; a man assaulted by three men, another by two; and seventy-five-year-old man beaten and robbed; a crippled girl raped and beaten so badly she nearly died; a woman who required extensive dental

172. *Id.* at R. 65-13-05.

173. *Id.* at R. 65-13-06.

174. *Id.* at R. 65-13-07.

175. *Id.* at R. 65-13-08.

176. *Id.* at R. 65-13-19.

177. *Id.* at R. 65-13-16.

178. *Id.* at R. 65-13-18.

179. The tentative interpretation of the Board is that pregnancy and mental distress which result in economic loss are covered under the Act. To date, however, no such claim has been received by the Board. The Rodino bill, H.R. 13157, 94th Cong., 2d Sess. (1976), would require such coverage.

180. N.D. CENT. CODE § 65-13-03(6)(a) (Supp. 1975). The Board has taken the position that the "reasonable charges incurred for reasonably needed products, services and accommodations" are limited to charges which are the *direct result* of criminally injurious conduct and do not include house payments, grocery bills, clothing costs, etc. . . .

181. N.D. CENT. CODE § 65-13-09(2) (Supp. 1975).

182. *Id.* § 65-13-03(4) (Supp. 1975).

surgery because she was assaulted during an attempted rape.

From the outset, the Act has received extensive media coverage. Although the original coverage was solicited by the Board, media involvement continued after reporters became aware of the Act. News stories and public service announcements about the Act, carried on radio and television stations, have been very beneficial in making the public aware of the program.

The North Dakota Crime Victims Reparations Act, and the Board's administration of it, has been quite successful,<sup>183</sup> especially when comparison is made to similar programs in other states. In its first year of operation, Hawaii had 13 claims and accepted 3;<sup>184</sup> New York, with roughly 25 times the number of people and a far higher crime rate than North Dakota, had 196 claims and accepted 43;<sup>185</sup> California had 169 claims and accepted 21;<sup>186</sup> Massachusetts had 55 claims and accepted 9;<sup>187</sup> Illinois had 330 claims but, because of their inadequate system, had accepted none of them at the end of the first year of operation;<sup>188</sup> and New Jersey had 239 claims and accepted 6.<sup>189</sup> In its first year of operation, July 1, 1975, to June 30, 1976, the North Dakota Board received 32 claims, made 12 awards totaling \$18,080.77, made 8 denials, had 3 withdrawals, and had 9 claims pending.<sup>190</sup> Administrative costs paid by the North Dakota tax-

183. While the author compares North Dakota's program with those of other states, it is necessary to acknowledge the valuable contribution made by the administrators of other state programs. Many of them responded—several times—to requests for information and made many helpful suggestions. Many were present at the International Conference and fielded questions, gave examples, noted difficulties they had encountered, and suggested ways to avoid such difficulties. It is because of their suggestions that the author has been able to note the problems the Board has had. Because there have been so few, each one seems major. Had there been many, it would have been difficult to list them all within the confines of this article. As it is, the problems noted are really the only ones of any significance that have been encountered during this first year of operation. It is also obvious that any other state which adopts the Uniform Act can solve most of the problems enumerated with simple changes.

184. EDELHERTZ & GEIS, *supra* note 7, at 137.

185. *Id.* at 43.

186. *Id.* at 93.

187. *Id.* at 108.

188. STATE OF WASH. DEPT. OF LABOR & IND., CRIME VICTIMS ACT, FINDINGS AND RECOMMENDATIONS FOR SPECIAL LEGISLATIVE RELIEF 2 (Jan. 29, 1975) (this report compiled various statistical information from the then existing state victim compensation programs).

189. EDELHERTZ & GEIS, *supra* note 7, at 168.

190. [1975-76] N.D. WORKMEN'S COMP. BUREAU, N.D. UNIFORM CRIME VICTIMS REPARATIONS ACT, 1ST ANN. REP.

#### *Fiscal Year 75-76*

Claims Received	32
Awards Made	12
Denials	8
Withdrawals	5
Pending	9
Total Amount Awarded	\$18,080.77
Average Award	\$ 1,506.73

#### *Categories of Crimes*

Rape	5
Assaults	14
Shootings	6
Knifings	4
Arson	1
Assempted Rape	2

payers totaled \$9,724.89.<sup>191</sup>

Despite the apparent success of the North Dakota program, this author would recommend certain changes to any state planning to adopt the Uniform Act:

1. "Bodily injury" should be clearly defined to include or exclude pregnancy and psychological injury.
2. "Allowable expense" should be more clearly defined to include only expenses *directly* related to the injury.
3. "Interested person" should be clearly defined.
4. "Collateral source" should be broadly defined to include dram shop actions or, perhaps, not defined at all.
5. "Victim" should be defined to specifically include or exclude a child resulting from a rape.
6. A period of time, perhaps three to six months, should be allowed to establish administration of the Act, rules of procedure, and publicity about the availability of compensation. A lead-in time is essential; otherwise, claims begin to arrive, and there is no procedure for handling them.
7. An adequate appropriation should be made; in a state like North Dakota, between \$150,000 and \$200,000 for the biennium would be reasonable. Of course, if federal funds become available that amount could be reduced.
8. A provision for private hearings and records should be included.
9. The effect of a verdict of "not guilty" should be noted.
10. Incidents occurring prior to the effective date of the Act should be specifically excluded or included.
11. Whether or not a victim should be compensated for being a witness against the assailants should be clearly noted.
12. The correct court to which to appeal should be inserted.
13. If a state has an adequate Administrative Agencies Practices Act, the section of the Act<sup>192</sup> providing that the procedural guidelines in that statute will apply should be omitted.
14. Denials should be specifically allowed where a claim, on its face, is not compensable—as where the claim was not made within a year of the incident.
15. The sections concerning the attorney general's participation should be eliminated as they are unnecessarily duplicative.

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*Reasons for Denial*

Incident occurred prior to effective date of Act — 5

Claimant did not meet minimum requirements — 1

Provocation — 1

No compensable financial loss — 1

*Id.*

191. *Id.*

192. N.D. CENT. CODE § 65-13-09 (Supp. 1975).



16. A provision should be added to *require* that law enforcement officials notify victims of available benefits.
17. The name of the Act should be changed to remove "reparations" as most people do not readily understand its meaning. The term "compensation" would be better.

There are also many features of the Uniform Act as adopted in North Dakota which are valuable and should be retained:

1. The Act does not require a showing of financial ability by the claimant. Such a requirement would entail additional investigation. Also, such showing is duplicative because most individuals who have adequate assets also have medical and disability insurance and other collateral sources, and would, therefore, be excluded from recovery anyway.
2. Family members of perpetrators are excluded "unless the interests of justice otherwise require. . . ." <sup>193</sup> This allows the Board to evaluate each claim and make an award where, for example, a husband and wife are estranged.
3. If the victim consented to or provoked an injury to himself an award may be *reduced or denied—not simply denied*—<sup>194</sup> depending upon the degree of contributory misconduct of the victim.
4. Attorneys for claimants are paid by the Board unless the claim or appeal is "frivolous." Also, the attorney may not receive any more from the claimant than the Board allows. <sup>195</sup> In other words, the claimant is reimbursed for his losses without having to pay a portion of the award to the attorney.
5. Pain and suffering are not compensable. <sup>196</sup> This recommendation is not intended to denigrate programs which compensate for pain and suffering, but it is almost impossible to make such an evaluation.
6. Property loss is not compensable because the expense would be too great. <sup>197</sup>
7. Crimes covered are not specified, thus avoiding the possibility that an injury resulting from a crime which is not normally injurious would not be covered.
8. Good samaritans are covered to a limited extent. <sup>198</sup> Reporting within seventy-two hours and cooperation with law enforcement

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193. *Id.* § 65-13-06(3) (Supp. 1975).

194. *Id.* § 65-13-06(6)(b) (Supp. 1975).

195. *Id.* § 65-13-13 (Supp. 1975).

196. See N.D. CENT. CODE § 65-13-03(6) (Supp. 1975).

197. See N.D. CENT. CODE § 65-13-03(6) (Supp. 1975).

198. N.D. CENT. CODE § 65-13-03(6)(g)(2), (3) (Supp. 1975).

officers is required.<sup>199</sup> These provisions are intended to fight crime and to aid those who attempt to fight crime. They offer an additional rationale to supporters of such programs.

9. The Act covers *anyone*, a state resident as well as a non-resident, who is injured in the state as a result of a crime.<sup>200</sup> In fact, in order to qualify for federal reimbursement if federal legislation is passed, states may be required to compensate non-residents as well as residents.

10. Tentative awards may be made.<sup>201</sup> The Board has utilized this provision where its investigation was slowed, but the victim's story appeared to be true, and he was having serious financial problems.

11. The Act allows payment for replacement services so that a housewife could receive compensation for someone to take her place even though she suffered no loss of salary.<sup>202</sup>

12. The North Dakota program was set up in an existing agency which has saved a great deal of administrative expense. In addition, since the Workmen's Compensation Commissioners already had a good deal of experience in evaluating claims, they provided a great deal of guidance.

13. Pursuant to a letter from the Internal Revenue Service, awards made to victims are not taxable.<sup>203</sup> Therefore, awards made for work loss are paid based on the net salary of the claimant.

## V. PROPOSED FEDERAL LEGISLATION

Senator Mansfield of Montana has introduced and had passed "at least five times"<sup>204</sup> in the United States Senate a bill providing for compensation to victims of crime.<sup>205</sup> President Ford in his 1975 crime message to Congress also urged the passage of legislation to compensate crime victims.<sup>206</sup>

The major problem with final passage, then, appears to be the House of Representatives. In 1975, under Chairman Peter Rodino, the House Judiciary Committee—specifically, the Subcommittee on Criminal Justice—gave strong impetus to such a bill in the House.

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199. *Id.* § 65-13-06(4) (Supp. 1975).

200. *Id.* § 65-13-02 (Supp. 1975).

201. N.D. CENT. CODE § 65-13-16 (Supp. 1975).

202. *Id.* § 65-13-03(6)(c) (Supp. 1975).

203. Letter from Stephen R. Weidman, Acting Chief, Individual Income Tax Branch, Internal Revenue Service, to North Dakota Workmen's Compensation Bureau, Feb. 19, 1976.

204. 4th Int. Conf. for Comp. of Innocent Victims of Violent Crime, Annapolis, Md. Nov. 12-15, 1975), Summary prepared by Winsor Schmidt, Nat'l Ass'n of Att'y Gen., Comm. on the Office of the Attorney Gen. at 30 (Speaker: Dan Leach, U.S. Sen. Maj. Leader Staff).

205. S. 750, 92d Cong., 1st Sess. (1971). For a discussion of federal involvement in victim compensation in the United States, see EDELHERTZ & GEIS, *supra* note 7, at 191-209.

During the course of its study of crime victim compensation legislation, the Judiciary Committee's Subcommittee on Criminal Justice heard from more than thirty witnesses at seven separate hearings. A broad range of people presented their viewpoints: Members of Congress and Senators; state officials, including persons responsible for administering crime victim compensation programs; the Department of Justice; academicians; and various groups and organizations, such as the American Bar Association and Americans for Effective Law Enforcement. The testimony overwhelmingly supported public compensation to crime victims.<sup>207</sup>

The bill which appears to have the greatest potential for passage if reintroduced in the next session is sponsored by Representative Rodino.<sup>208</sup> It would provide 50 percent matching funds for payment of claims, but 100 percent of the funds for payment of claims for exclusively federal crimes.<sup>209</sup> The bill calls for a three-year authorization of \$150 million.<sup>210</sup>

In order to qualify for matching funds under the Rodino bill, a state program must offer compensation for personal injury to victims of qualifying crimes,<sup>211</sup> compensation to surviving dependents,<sup>212</sup> and the right to a hearing and an administrative or judicial review procedure.<sup>213</sup> The state program must also require that recipients of awards cooperate with law enforcement agencies<sup>214</sup> which must "take reasonable care" to inform crime victims about the availability of benefits.<sup>215</sup> The state must be subrogated to any award made to the claimant as against the criminal.<sup>216</sup> The state program must not mandate that claimants seek welfare benefits as a collateral source, unless they were receiving such benefits prior to the crime.<sup>217</sup>

The Rodino bill contains various limitations on federal grants. State programs would not be reimbursed for administrative expenses.<sup>218</sup> They would not be reimbursed for awards for pain and suf-

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206. See PRESIDENT GERALD FORD, PROPOSALS FOR DEALING WITH CRIME IN THE STREETS, H.R. Doc. No. 191, 94th Cong., 1st Sess. (1975).

207. JUDICIARY COMM. STAFF DRAFT *supra* note 35, at 1. This author appeared before the Subcommittee at a hearing in Chicago in December of 1975 and spoke in favor of federal legislation to aid states and to encourage those who had not done so to set up their own programs. However, he also stated that federal controls should be minimal to allow experimentation by the states, and suggested that any federal act reimburse states on a fifty percent level for claims, paid and not pay for administration of state programs.

208. H.R. 13157, 94th Cong., 2d Sess. (1976). H.R. 13158, 94th Cong., 2nd Sess. (1976) is also the same bill except for the sponsors.

209. H.R. 13157, 94th Cong., 2d Sess. (1976).

210. *Id.* § 8 (1976).

211. *Id.* § 4(1)(A) (1976).

212. *Id.* § 4(1)(B) (1976).

213. *Id.* § 4(2) (1976).

214. *Id.* § 4(3) (1976).

215. *Id.* § 4(4) (1976).

216. *Id.* § 4(5) (1976).

217. *Id.* § 5(4) (1976).

218. *Id.* § 5 (1976).

fering;<sup>219</sup> for property loss;<sup>220</sup> for any award to a victim which exceeds \$50,000;<sup>221</sup> for payments made where the claimant was covered by collateral sources;<sup>222</sup> for payments above \$200 a week for lost wages;<sup>223</sup> for amounts paid to a victim who did not file for benefits within one year ("unless the state program finds that there was good cause for the delay");<sup>224</sup> nor for claims paid to a victim who did not report the incident to law enforcement officers within seventy-two hours ("unless the state program finds that there was good cause for failing to report it within that time").<sup>225</sup>

These provisions would not prevent states from making payments, for example, in excess of \$50,000. However, the state which did so would not be reimbursed, on a 50 percent basis, for that portion of its payments in excess of \$50,000. The same is true for compensation over \$200 per week or payments for pain and suffering. In essence, then, states would be allowed to pay to whomever they choose, but the federal program would reimburse, on a 50 percent basis, only for payments which qualify under the federal act.

The North Dakota Act qualifies under all requirements but one—specifically, the Act does not *require* law enforcement officials to notify victims about the availability of compensation funds.

The federal act appeared to be virtually assured of passage until late April 1976, when the administrators of several programs in the East became concerned primarily about the section which would have allowed the commission created by the Act to set general policies, guidelines, rules, and regulations.<sup>226</sup> Those administrators considered that section, in particular, a blank check which the new commission could use to assure compliance by the states with the desires and whims of the commission. The director of the Maryland program indicated that his state has had too many bad experiences with federal agencies to allow such broad powers to a commission.<sup>227</sup> In addition, he considered the granting of broad powers to such a commission as a "breach of faith" by those who had been assuring the existing state programs that they would remain autonomous.<sup>228</sup>

One proposed amendment to the bill would empower the commission to make only "such rules as are necessary to carry out this Act."<sup>229</sup> This amendment, for some reason, would make the Act more

219. *Id.* § 5(1) (1976).

220. *Id.* § 5(2) (1976).

221. *Id.* § 5(3) (1976).

222. *Id.* § 5(4) (1976).

223. *Id.* § 5(5) (1976).

224. *Id.* § 5(6) (1976).

225. *Id.* § 5(7) (1976).

226. *Id.* § 3(6)(1) (1976).

227. Letter from Martin Moylan, Executive Director, International Association of Crime Victims Compensation Boards to Mr. Tom Hutchinson, Apr. 8, 1976.

228. *Id.*

229. Amendment to H.R. 13157, 94th Cong., 2d Sess. § 3(b)(1) (1976).

agreeable to several of the state administrators. Another proposed amendment would place the federal program under the authority of the United States Attorney General with an advisory body composed of personnel from state victim compensation programs.<sup>230</sup>

The Rodino bill does contain one feature which this author considers to be counter-productive. It would require attorneys' fees to be included within the award to a victim in order to qualify for federal reimbursement.<sup>231</sup> Under the North Dakota Uniform Crime Victims Reparations Act<sup>232</sup> and the Workmen's Compensation Act,<sup>233</sup> attorneys' fees are paid by the state on an hourly basis at \$35 per hour. In this manner the claimant receives 100 percent of any award made. Since the Crime Victims Reparations Act has been in effect for just one year in North Dakota, the impact of that provision is difficult to assess. However, the Workmen's Compensation Bureau has been operating in this manner since 1969, and, for fiscal year 1974-75, total fees paid to attorneys for services rendered on behalf of workmen's compensation claimants was \$22,668.96.<sup>234</sup> This compares to a total paid to claimants of \$7,702,706.65;<sup>235</sup> in other words, attorneys' fees represent .29 percent (.0029) of the amount paid on behalf of claimants in North Dakota.

Those who advocate that attorneys' fees be paid out of claimants' awards contend that the same procedure applies to civil recoveries. While that argument may be valid, it seems that such a requirement contradicts the purpose of victim compensation which is to make the victim whole again. In addition, the experience in North Dakota indicates that such fee payments have remained relatively low and have been of great benefit to claimants.

Following the objections of such state administrators, the House Judiciary Committee dropped the Rodino bill from its hearings scheduled for early May 1976. The bill was resurrected, but not in time to be considered by the full House. It is the understanding of the author that the bill is to be reintroduced in the next session.

## VI. CONCLUSION

As the administrator of the North Dakota program for one year, the author has witnessed the wide spectrum of claims, both legitimate and groundless, which have been submitted under the Act. It is suggested that any success under the Act is attributable largely to the Board's investigatory function, which has sometimes revealed

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230. *Id.* § 2(b) (1976).

231. H.R. 13157, 94th Cong., 2d Sess. § 7(8) (1976).

232. N.D. UNIFORM CRIME VICTIMS REPARATIONS ACT RULES OF PRACTICE AND PROCEDURE R. 65-13-20.

233. N.D. WORKMEN'S COMPENSATION RULES OF PRACTICE AND PROCEDURE R. 65-02-08-XII.

234. [1974-75] N.D. WORKMEN'S COMP. BUREAU RECORD OF ATTY'S FEES PAID.

235. [1973-75] N.D. WORKMEN'S COMP. BUREAU BIENNIAL REP. 10.

that the truth was somewhat disguised, and to its power to reduce or deny awards in cases of contributory misconduct.<sup>236</sup> The Act allows this latter discretion,<sup>237</sup> and that discretion has been exercised conscientiously by the Board through the application of a sort of "comparative guilt" test. The final products, it is hoped, are decisions which are both fair and reasonable.

The Board, as noted earlier, also serves at the Workmen's Compensation Commission. The members serve as the Crime Victims Reparations Board with no additional salary; yet they have devoted a great deal of time and effort to the program. This seems to be consistent with the attitude of nearly all those individuals who are involved in this area.

The assistance rendered by the other existing state programs has been very helpful. The same is true concerning the staff of the United States House Subcommittee on Criminal Justice. As they prepared the Rodino bill for the Subcommittee, they wrote and called often to report the progress of the bill and to gain the Board's input. As a result, the bill which emerged, in the opinion of this writer, was a model of federal restraint vis-a-vis the states.

The cooperation among those involved with crime victims legislation appears to be based upon the realization that the concept is worthy and everything possible ought to be done to foster its proliferation. Because of this, the program has been and will continue to be a very satisfying one.

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236. N.D. CENT. CODE § 65-13-05(5), (6) (Supp. 1975).

237. *Id.*

## APPENDIX A

## DECLARATION OF ELIGIBILITY

NAME \_\_\_\_\_ PHONE \_\_\_\_\_

ADDRESS \_\_\_\_\_ ZIP \_\_\_\_\_

By completing this form you determine whether you are eligible to apply for compensation under the North Dakota Uniform Crime Victims Reparations Act. Check the statements which apply in your case. If you cannot truthfully check all statements, you are not eligible for compensation through the Act, and you will not receive a claim form.

- \_\_\_ 1. The incident which I am declaring my eligibility for compensation occurred on or after July 1, 1975.
- \_\_\_ 2. The claimant (and/or victim) suffered bodily injury (or death) as a result of the criminal actions of another.
- \_\_\_ 3. This injury (or death) was not the result of an automobile accident.
- \_\_\_ 4. The incident occurred in North Dakota.
- \_\_\_ 5. The incident was reported to law enforcement officials within 72 hours or would have been reported except for a valid excuse.
- \_\_\_ 6. The claimant (and/or victim) cooperated with law enforcement officials during their investigation of the incident.
- \_\_\_ 7. Expenses, work loss, and replacement service costs as a result of the incident total \$100.00 or more and have not been totally paid by other sources.
- \_\_\_ 8. The claimant (and/or victim) was not an accomplice to and did not commit a crime in connection with this incident.
- \_\_\_ 9. This claim is being filed within one year of the incident.

I hereby swear that all of the above statements to which I have attested are true, and understand that I will be guilty of a class A misdemeanor for any false statement I have made in connection with this declaration of eligibility.

\_\_\_\_\_  
Signature

\*If additional space is needed, please use the reverse side of this form.



NAME OF CLAIMANT \_\_\_\_\_ PHONE \_\_\_\_\_  
Last First Middle

ADDRESS \_\_\_\_\_ ZIP \_\_\_\_\_  
City State

MEDICAL		
Supplier of Service (name & address)	Purpose	Amount

OTHER EXPENSES		
Creditor	Purpose	Amount

[illegible]

I anticipate further expenses in the following areas and of the following amounts:

Expense	Amount

I have received or will receive benefits from the following other sources:		
Source	Purpose	Amount

**Claimant or Representative Signature**

Signature \_\_\_\_\_

**CERTIFICATE FROM LAW ENFORCEMENT AGENCY**

NAME OF CLAIMANT \_\_\_\_\_ RELATIONSHIP TO VICTIM \_\_\_\_\_  
Last First Middle

ADDRESS _____	PHONE _____
---------------	-------------

YOUR NAME \_\_\_\_\_ POSITION \_\_\_\_\_  
Last First Middle

ADDRESS _____	PHONE _____
---------------	-------------

Are you the investigating officer? \_\_\_\_\_ if no, explain \_\_\_\_\_

Date crime reported to your department \_\_\_\_\_

Give details regarding victim (and/or claimant) and crime\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Was victim (and/or claimant) completely cooperative\_\_\_\_\_ If no, explain:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Has an arrest been made?\_\_\_\_\_ If yes, name assailant\_\_\_\_\_

Disposition of case \_\_\_\_\_

From your investigation of the case, do you feel the victim (and/or claimant) was completely innocent? If no, explain: \_\_\_\_\_

---

Comments: \_\_\_\_\_

\_\_\_\_\_

Signature

**CERTIFICATE FROM SUPPLIER OF SERVICES  
AND/OR PRODUCTS TO CLAIMANT**

NAME OF CLAIMANT \_\_\_\_\_ RELATIONSHIP TO VICTIM \_\_\_\_\_

ADDRESS \_\_\_\_\_ PHONE \_\_\_\_\_

YOUR NAME \_\_\_\_\_ POSITION \_\_\_\_\_

Name of hospital, doctor, creditor, etc. claiming reimbursement for services or products to the claimant or to the victim \_\_\_\_\_

Describe services or products supplied and dates: (attach bills)

SERVICE OR PRODUCT	DATE	AMOUNT
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

What is total amount to date owed for such services or supplies? \_\_\_\_\_

If claimant has other sources for payment to you, please specify:

SOURCE	AMOUNT PAID OR TO BE PAID
_____	_____
_____	_____
_____	_____
_____	_____

Total Claimed from Crime Victim Reparations \_\_\_\_\_

Is it your belief that the entire amount claimed from Crime Victims Reparations is directly or indirectly attributable to or the result of the crime committed against the person of the claimant or the victim through whom he claims:

\_\_\_\_\_  
Signature

## PHYSICIAN'S REPORT

PATIENT

1. Name of Patient \_\_\_\_\_

2. Address \_\_\_\_\_ City/State \_\_\_\_\_

HISTORY  
OF  
INJURY

3. History and date of injury as given by patient \_\_\_\_\_

NATURE  
AND  
EXTENT  
OF  
INJURY  
OR  
DISEASE

4. Findings based upon examination, lab work, x-rays, etc. \_\_\_\_\_

5. Conclusion \_\_\_\_\_

6. Was the injury caused, aggravated, or accelerated by the assault made on the patient? \_\_\_\_\_ Yes \_\_\_\_\_ No.

7. Did this injury or disease disable patient from work? \_\_\_\_\_ Yes \_\_\_\_\_ No.

If yes, complete the following:

a. Totally disabled from \_\_\_\_\_, 19\_\_ to \_\_\_\_\_, 19\_\_.

b. Partially disabled from \_\_\_\_\_, 19\_\_ to \_\_\_\_\_, 19\_\_.

c. Describe such partial disability \_\_\_\_\_

8. Is there temporary total disability? \_\_\_\_\_ Yes \_\_\_\_\_ No. If so, for how long? \_\_\_\_\_

9. What, if any, permanent disabilities have resulted from the injury or disease? (Describe in full and give percentage of loss of use of each injured member.) \_\_\_\_\_

10. Were the affected members normal before this injury? \_\_\_\_\_ Yes \_\_\_\_\_ No.

11. If not, describe previous condition and percentage of loss of use, if any, to be deducted from above estimates. \_\_\_\_\_

12. Inclusive dates of treatment from \_\_\_\_\_, 19\_\_ to \_\_\_\_\_, 19\_\_

13. Who engaged your services? \_\_\_\_\_

14. Describe treatment given and drugs or supplies prescribed \_\_\_\_\_

15. What further medical care is necessary? \_\_\_\_\_

16. If patient was hospitalized, name and address of hospital \_\_\_\_\_

17. Dates of admission to hospital \_\_\_\_\_

Date of discharge \_\_\_\_\_

18. Is rehabilitation or retraining recommended? \_\_\_\_\_ Yes \_\_\_\_\_ No.

DATE \_\_\_\_\_

Physician's signature \_\_\_\_\_

Physician's name (Type or Print) \_\_\_\_\_

Address \_\_\_\_\_

Additional information or remarks may be written on a separate sheet and attached.

NAME OF VICTIM \_\_\_\_\_  
 Last First Middle

Type of benefit	Source	Amount	Date paid or to be paid

**Title**

# PHYSICIAN'S CERTIFICATE IN PROOF OF DEATH

Crime Victims Reparations Claim No. \_\_\_\_\_

Case of \_\_\_\_\_  
(Deceased)

1. Name of the deceased in full \_\_\_\_\_ Age \_\_\_\_\_ Sex \_\_\_\_\_  
Marital Status \_\_\_\_\_

(a) Address \_\_\_\_\_

2. (a) How long have you known the deceased? \_\_\_\_\_

(b) How long have you been medical adviser of deceased? \_\_\_\_\_

3. Place of death (Give street number, city, and state):

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_

4. Occupation at the time of death \_\_\_\_\_

5. Date of death \_\_\_\_\_

6. State explicitly the immediate cause of death \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Was a coroner's inquest held? \_\_\_\_\_ Name of Coroner \_\_\_\_\_  
\_\_\_\_\_

8. Was deceased attended by any other physician for treatment of the fatal injury? If so, state his name and address \_\_\_\_\_

9. From your knowledge of the facts surrounding the incident, do you feel the victim was completely innocent? \_\_\_\_\_

10. Are there any additional facts of which you feel this office should be made aware? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. So far as you know is there any reason that this claim is not a perfectly fair one? \_\_\_\_\_  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Attending Physician - Print or Type

\_\_\_\_\_  
Attending Physician - Signature

Year \_\_\_\_\_ College \_\_\_\_\_ Degree \_\_\_\_\_

## APPENDIX B

UNIFORM CRIME VICTIMS REPARATIONS ACT  
RULES OF PRACTICE AND PROCEDURE

R65-13-01. INTENT. These rules are intended to ensure that any individual appearing before the Board shall receive a determination which has been arrived at in a fundamentally fair manner.

R65-13-02. DEFINITIONS.

1. "Act" means the Uniform Crime Victims Reparations Act.
2. "Board" means the Workmen's Compensation Bureau.
3. "Executive Administrator" means that individual appointed by the Board to enforce the Act; who hereinafter, shall be referred to as the Administrator.
4. "Person" means individuals, partnerships, corporations, and associations or organized groups.

R65-13-03. LIBERAL CONSTRUCTION. These rules shall be liberally construed to secure a just and speedy determination of the issues.

R65-13-04. DETERMINATION OF ELIGIBILITY. In order to be eligible to file a claim for compensation, an applicant shall complete a Declaration of Eligibility form in a manner prescribed by the Board. Upon receipt by the Board of that form, completed as prescribed, a claim shall be deemed filed. Unless that form is completed as prescribed, an applicant shall not be eligible to apply for coverage under the Act.

R65-13-05. INVESTIGATION OF CLAIMS. During investigation of the claim, the Administrator shall obtain from the claimant and other persons all information reasonably related to the validity of the claim, including, but not limited to, information concerning:

1. The occurrence of a crime;
2. The extent of the claimant's economic loss;
3. The extent to which the victim or the claimant has co-operated with law enforcement officials;
4. The extent to which collateral sources are available to the claimant;
5. The extent to which the victim or claimant has been guilty of contributory misconduct.

Failure by the claimant or his representative to return information requested within sixty (60) days of the mailing of the request shall constitute a default.



R65-13-06. INVESTIGATION REPORT AND RECOMMENDATION. Within thirty (30) days of the receipt of all required information, the Administrator shall file a report with the Board which shall recommend a decision on the claim approving the amount claimed, modifying the amount claimed, or dismissing the claim; together with the results of the investigation.

R65-13-07. DECISION OF BOARD. Within ten (10) days of receipt of the recommendation of the Administrator, the Board shall issue a tentative decision on the claim approving the amount claimed, modifying the amount claimed, or dismissing the claim, together with its reasons for doing so; and it shall inform the claimant by certified mail of that tentative decision and of the claimant's right to a hearing.

R65-13-08. REQUEST FOR HEARING. If a claimant or a member of the Board, within thirty (30) days of the mailing of the tentative decision, applies in writing to the Board for consideration of that tentative decision, a hearing shall be conducted according to law and the provisions set out herein. Any proceeding pursuant to such a request shall be treated as a contested case.

R65-13-09. PREHEARING CONFERENCE. Within ten (10) days of the receipt of a request for a hearing, the Board shall appoint one of its members as a hearing officer who shall commence the contested case by serving upon all known parties a document of initiation and notice stating:

1. The commencement of the contested case;
2. The time and place of a prehearing conference;
3. The purpose of the prehearing conference;
4. The name of the hearing officer;
5. The rights of the parties to counsel;
6. That failure to attend may prejudice the party's right in this and subsequent proceedings; and
7. A copy of these rules.

The purposes of the prehearing conference are to simplify the issues to be determined and to reach a settlement on those issues without the necessity of a formal hearing. The Board may dispense with the prehearing conference if it determines that it would be in the best interest of all parties.

R65-13-10. INTERVENTION BY INTERESTED PARTY. Upon timely application, any person shall be permitted to intervene in a contested case upon showing that such person's legal rights, duties, or privileges may be determined or affected in a contested

case; unless, in the discretion of the hearing officer, such person's interest is adequately represented by one of the parties participating in the case.

R65-13-11. CONSOLIDATION. Whenever, before a hearing on any contested case, the Board, either on its own motion or upon petition by any party, determines (a) that separate contested cases present substantially the same issues of fact or law, (b) that a holding in one case would affect the rights of parties in another case and (c) that consolidation would not substantially prejudice any party, the Board may order such cases consolidated for a single hearing on the merits. Within five (5) days following an order on consolidation, the Board shall serve on all parties a Notice of Consolidation containing an explanation of the reasons for consolidation. The parties may also agree and stipulate to such consolidation.

R65-13-12. HEARING. In the event that the issues were not settled through a prehearing conference or if the Bureau dispensed with a prehearing conference, at least twenty (20) days prior to the hearing date, the Board shall serve notice of hearing on all parties to the case. Such notice shall contain the requirements prescribed by Section 65-13-09 (1) of the NDCC.

The Board may prohibit the operation of a camera, lights, recording equipment or other devices in the hearing room if such operation would, in its opinion, interfere with or disrupt the proceedings.

R65-13-13. EVIDENCE. The admissability of evidence in any proceeding before the Board shall be determined insofar as circumstances will permit, in accordance with the practice in the district court, with the privilege exceptions noted in Section 65-13-10 of the NDCC. The Board may waive the usual common law or statutory rules of evidence if such waiver is necessary to ascertain the substantial rights of all parties to the proceeding, but only evidence of probative value shall be accepted. Privileges not waived by statute may not be waived by the Board.

R65-13-14. SUBPOENAE, DEPOSITIONS. The Board shall issue subpoenae and subpoenae duces tecum, either at its own instance or upon written application of any party made not less than ten (10) days prior to a hearing if it would contribute to the function of the Board. The written request shall designate the names and addresses of witnesses and the locations of documents, books, payrolls, personal records, correspondence, papers or any other evidence necessary to the claim. The cost of service, witness, and mileage fees shall be borne by the party at whose request a subpoena is issued unless otherwise ordered by the Board.

The Board, on its own motion or upon written application of any party, shall take or cause to be taken affidavits or depositions of witnesses residing within or without the state, whenever it deems such procedure necessary. The Board may set

appropriate terms and conditions pertaining to the taking of affidavits or depositions. The requesting party shall bear the expense unless otherwise ordered by the Board.

R65-13-15. INFORMATION NOT PRESENTED AT FORMAL HEARING. Consideration of information not presented at a formal hearing shall be pursuant to Section 28-32-07 of the NDCC.

R65-13-16. DECISION. A determination shall be made by the Board pursuant to Section 28-32-13 of the NDCC.

R65-13-17. REHEARING. A rehearing may be had pursuant to Section 28-32-14 of the NDCC.

R65-13-18. APPEAL. An appeal from a Board decision may be taken to the same extent and in the same manner as provided in Section 28-32-15 of the NDCC.

R65-13-19. DEFAULT. If a hearing is not requested pursuant to R65-13-08, the claimant shall be deemed to have defaulted, and the decision of the Board will be final. During the thirty (30) days following a tentative decision, that decision may be made final by stipulation, agreement, or consent order if the claimant approves in writing.

R65-13-20. ATTORNEYS. Any party shall have a right to be represented by an attorney at any stage in the proceedings regarding a claim. Attorney's fees for the claimant only will be paid by the Board from the time a claim becomes contested and to a maximum hourly rate of \$35.00. However, the Board may deny attorney's fees upon a finding that a claim or appeal is frivolous.

The attorney shall file a notice of legal representation, or when appropriate, a notice of substitution prior to or together with that attorney's first communication with or appearance before the Board, whichever is first. After the filing of a notice of legal representation or of substitution, copies of all written communications or notices to the parties shall be sent to such attorney in lieu of the party so represented.

R65-13-21. FORMS. The Board shall prepare and furnish, free of cost, blank forms and shall have the same available on request of any interested party at the Board office. Such forms shall include but not be limited to: declaration of eligibility forms, claim forms, claimant's supplementary forms, legal representation and substitution forms; law enforcement, witness and employer certifications; certification of the supplier of services, and physician's report forms.

R65-13-22. TENTATIVE AWARDS. Tentative awards may be made for work loss or replacement services only and shall not exceed \$800.

R65-13-23. FINAL AWARDS. Final awards for lost wages shall be based upon net salary only and may not exceed \$200 per week.

In the event that there was misconduct on the part of the victim and the degree of misconduct cannot be determined, the percentage of award shall be fifty (50) percent of verified economic loss.

In the event that the victim suffered from a preexisting condition which contributed to the victim's economic loss, and a degree of aggravation of that condition by the crime cannot be determined, the percentage of award for economic loss shall be fifty (50) percent of verified economic loss.

65-13-A. METHOD AND COURSE OF OPERATION. After a Declaration of Eligibility is filed, the Administrator shall examine the declaration and make an initial determination as to eligibility for coverage under the Act. If all the statements on the declaration have not been checked, no claim will be deemed to have been filed, and no investigation will occur. If the declaration indicates eligibility for compensation, a claim form must be completed and an investigation must take place.

The investigation must include interviews and/or signed statements by the investigating officer, if there was one, the attending physician, if there was one, and at least one witness, if there was one. After this investigation, the Administrator must recommend approval, dismissal, or modification of a claim.

The recommendation of the Administrator is not binding upon the Board. After an examination of the recommendation, report, and information submitted by the Administrator, the Board must make a tentative decision, by majority vote, to approve the claim, modify the claim, or dismiss the claim.

If the claimant indicates in writing that he is satisfied with the decision, the decision is final. If the claimant is not satisfied he may request a hearing within thirty (30) days. If he does not request a hearing, he will be deemed to have defaulted and the decision will be final.

In the event that a hearing is requested, the Board must appoint one of its members as a hearing officer who must call and send notice of a prehearing conference unless the Board dispenses with the prehearing conference. Following the prehearing conference, the hearing officer must recommend a dismissal, modification of the award, or full award, which recommendation must be approved by a majority of the Board before it can become a tentative decision. If the recommendation is approved by the Board and acceptable to the claimant, no hearing need be held. If the Board does not approve the recommendation of the hearing officer or if the decision of the Board is not acceptable to the claimant, a formal hearing must be held.

At any time after receipt of a claim, the Administrator may recommend and/or the Board may grant a tentative award pursuant to the Act.

