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## Criminal Law-Victims' Rights-Virginia Adopts Statute to Compensate the Victims of Crime

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# RECENT LEGISLATION

## Criminal Law—Victims' Rights—VIRGINIA ADOPTS STATUTE TO COMPENSATE THE VICTIMS OF CRIME<sup>1</sup>

Concern for the victims of crime has increased in recent years.<sup>2</sup> The enactment by the Virginia General Assembly of a statute to compensate victims of crime reflected this concern. The General Assembly, "as a matter of moral responsibility,"<sup>3</sup> decided to aid victims of crime who suffer disability and financial hardship. Underlying Virginia's passage of a victim compensation statute was the recognition that civil remedies against the criminal offender generally have been unsuccessful.<sup>4</sup>

Compensation and restitution of this nature have been practiced throughout history.<sup>5</sup> It is important to note that compensation and restitution are not the same. "Compensation is a responsibility assumed by society; it is civil in character, and thus represents a non-criminal welfare goal."<sup>6</sup> On the other hand, "[R]estitution . . . allocates responsibility to

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1. 1976 Va. Acts, ch. 605, at 759-64, codified at VA. CODE ANN. § 19.2-368.1 *et seq.* (Supp. 1976).

2. Schafer, *Victim Compensation and Responsibility*, 43 S. CALIF. L. REV. 55, 57-58 (1970) [hereinafter cited as Schafer]. In 1963, New Zealand became the first modern jurisdiction to enact a victim compensation law. Great Britain and California embraced the idea of victim compensation in 1964. The following states have passed some type of victim compensation statute: ALASKA STAT. § 18.67 (1974); CAL. GOV'T CODE §§ 13959-69 (West Cum. Supp. 1976); GA. CODE ANN. §§ 47-518 to -527 (1974); HAW. REV. STAT. § 351 (1968), *as amended* (Supp. 1975); ILL. ANN. STAT. ch. 70, §§ 71-84 (Cum. Supp. 1976); LA. REV. STAT. ANN. §§ 46.1801 to .1821 (Cum. Supp. 1976); MD. CODE ANN. art. 26A (Repl. Vol. 1973); MASS. ANN. LAWS ch. 258A (Cum. Supp. 1976); NEV. REV. STAT. ch. 217 (1973); N.J. STAT. ANN. § 52:4B (Cum. Supp. 1976); N.Y. EXEC. LAW §§ 620-635 (McKinney 1972), *as amended* (Cum. Supp. 1976); R.I. GEN. LAWS §§ 12-25-1 to -12 (Supp. 1975); VA. CODE ANN. § 19.2-368.1 (Supp. 1976); WASH. REV. CODE ANN. §§ 7.68.010-.910 (Cum. Supp. 1975).

3. VA. CODE ANN. § 19.2-368.1 (Supp. 1976).

4. THE CHALLENGE OF CRIME IN A FREE SOCIETY: A REPORT BY THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 142 (1968); Schafer, *Compensation of Victims of Criminal Offenses*, 10 CRIM. L. BULL. 605, 613 (1974). Civil remedies have been unsuccessful because the offender has often been unknown or, if known, has had no financial resources.

5. Schafer, *supra* note 2, at 55-57. Wolfgang, *Victim Compensation in Crimes of Personal Violence*, 50 MINN. L. REV. 223, 225 n.14 (1965) [hereinafter cited as Wolfgang]. The Code of Hammurabi (circa 2380 B.C.), early Anglo-Saxon law and early American law each had a system of either compensation or restitution. For a history of compensation and restitution see S. SCHAFFER, COMPENSATION AND RESTITUTION TO VICTIMS OF CRIME 1-144 (2d ed. 1970); Laster, *Criminal Restitution: A Survey of Its Past History and an Analysis of Its Present Usefulness*, 5 U. RICH. L. REV. 71 (1970).

6. Schafer, *supra* note 2, at 65. State statutes which award compensation from funds allocated by the legislature are true compensation statutes. *Id.*

the offender; a claim for restitution by the criminal is penal in character, and thus manifests a correctional goal in the criminal process."<sup>7</sup> The following analysis will show that elements of both compensation and restitution are present in the Virginia statute. This analysis will also attempt to determine the extent to which Virginia's compensation statute goes to aid victims of crime and precisely which victims are afforded this remedy.<sup>8</sup>

Persons eligible to receive compensation under Virginia's statute fall into three categories. First is the "victim"<sup>9</sup> of a "crime."<sup>10</sup> The second category can best be labeled as the "good Samaritans."<sup>11</sup> Included as good Samaritans are persons injured while attempting to prevent a crime or while trying to apprehend a criminal.<sup>12</sup> The last category includes the dependents of either the victim or the good Samaritan who died as a direct result of the crime.<sup>13</sup>

Not only must a person fall within one of the above categories to be

7. *Id.* Schafer argued for restitution instead of compensation. Schafer maintained that requiring the offender to restore the victim to his former position would have a reformatory effect on the offender. *Id.* at 65-67.

8. "It will be a long step in advance when the State comes to regard as a public function, the indemnification of the person injured by criminal delict." Wolfgang, *supra* note 5, at 227, quoting GAROFALO, *CRIMINOLOGY* 434-35 (1914).

9. "Victim" is defined as a "person who suffers personal physical injury or death as a direct result of a crime." VA. CODE ANN. § 19.2-368.2 (Supp. 1976).

10. "Crime" is defined as "an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law . . . ." *Id.* Excluded from the definition of a crime for the purpose of compensation is any act involving the operation of a motor vehicle which causes an injury, provided such act was not intentional. *Id.*

11. Rothstein, *How the Uniform Crime Victims Reparations Act Works*, 60 A.B.A.J. 1531, 1534 (1974) [hereinafter cited as Rothstein]. According to Rothstein, this category of persons was included in the UNIFORM CRIME VICTIMS REPARATIONS ACT (1974) [hereinafter cited as UNIFORM ACT] in an effort to encourage people to go to the aid of victims of crime.

12. VA. CODE ANN. § 19.2-368.4 (Supp. 1976). The good Samaritan category includes [a]ny person, except a law-enforcement officer engaged in the performance of his duties, who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

*Id.*

13. *Id.* For the purposes of determining eligibility for compensation, a dependent is not defined the same for a victim as for a good Samaritan. A dependent of a victim is limited to the victim's spouse and child. *Id.* A dependent of a good Samaritan includes not only the good Samaritan's spouse and child, but also "any other person dependent for his principal support . . ." upon the good Samaritan. *Id.* Thus, the Virginia statute allows the dependent mother of the dead good Samaritan to receive compensation, while not allowing the dependent mother of the dead victim to receive compensation. Such provisions are based on the policy of encouraging persons to act as good Samaritans. See Rothstein, *supra* note 11, at 1532.

eligible for compensation, but he must also meet certain other requirements.<sup>14</sup> Any person who is in any way criminally responsible for the crime on which a claim is based is not eligible for compensation.<sup>15</sup> Also, members of an offender's "family"<sup>16</sup> are not eligible.<sup>17</sup> Thus, under Virginia's statute, if a husband kills his wife, any surviving children will have no right to compensation. The reason Virginia excludes family members from receiving compensation is to prevent fraud.<sup>18</sup> Although most other states<sup>19</sup> with compensation statutes also exclude family members from receiving compensation, it is questionable whether an exclusion as arbitrary as one based on family relationships is necessary.<sup>20</sup>

Another provision of the Virginia statute excludes many victims by requiring that persons seeking compensation must "suffer undue financial hardship . . . ."<sup>21</sup> In determining what is "undue financial hardship," the Virginia statute outlines a "financial stress" test which is in accord with the Uniform Crime Victims Reparations Act.<sup>22</sup> The test specifies that "[a] claimant suffers undue financial hardship only if he cannot maintain his

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14. A person must be a resident of the Commonwealth at the time of the injury in order to be eligible for compensation. VA. CODE ANN. § 19.2-368.4 (Supp. 1976).

15. *Id.* Behind this provision is the common law maxim of not allowing someone to profit by his own wrong.

16. "Family" as used in the statute means "(1) any person related to such person within the third degree of consanguinity or affinity, or (2) any person residing in the same household with such person." *Id.* § 19.2-368.2.

17. *Id.* § 19.2-368.4. Studies have shown that as many as twenty-five percent of all homicide victims are related to their killer. Lamborn, *The Scope of Programs of Governmental Compensation of Victims of Crime*, 1973 U. ILL. L.F. 21, 84 [hereinafter cited as Lamborn].

18. Rothstein, *supra* note 11, at 1532.

19. ALASKA STAT. § 18.67.130 (1974); HAW. REV. STAT. §§ 351-34 (1968); ILL. ANN. STAT. ch. 70, § 73 (Cum. Supp. 1976); MD. CODE ANN. art. 26A, § 5 (Repl. Vol. 1973); MASS. ANN. LAWS ch. 258A, § 3 (Cum. Supp. 1976); N.J. STAT. ANN. § 52:4B-18 (Cum. Supp. 1976); N.Y. EXEC. LAW § 624 (McKinney 1972). *Contra*, CAL. GOV'T CODE § 13964 (West Cum. Supp. 1976).

20. UNIFORM ACT, *supra* note 11, § 5(c) does not have a family exclusion provision, but instead would deny any award that "would unjustly benefit the offender or accomplice . . . ." CAL. GOV'T CODE § 13964 (West Cum. Supp. 1976) prohibits a victim from recovery "because of the nature of his involvement in the events leading to the crime or the involvement of the persons whose injury or death gave rise to the application." The premise underlying the family exclusion in the Virginia statute (*i.e.*, that family members are more likely to commit fraud together than are friends) must be seriously questioned. Even if this premise is accepted, the Uniform Act and the California statute both have sufficient safeguards against collusion without arbitrarily excluding someone because of his relationship to the offender. *See, e.g.*, *Weisinger v. Van Rensselaer*, 79 Misc. 2d 1023, 362 N.Y.S.2d 126 (Sup. Ct. 1974). In *Weisinger*, that court upheld a compensation board's decision not to allow compensation to a husband shot by his wife, even though they had not been living together for a year.

21. VA. CODE ANN. § 19.2-368.13 (Supp. 1976).

22. UNIFORM ACT, *supra* note 11, § 5(g).

customary level of health, safety and education for himself and his dependents."<sup>23</sup> Thus, a person whose expenses are covered by insurance or who is financially stable is not eligible for compensation. Most states,<sup>24</sup> like Virginia, have some type of financial hardship requirement. The purpose of the financial hardship requirement is to limit the number of awards granted and, in the process, make sure that those who are most severely affected by crime receive compensation.<sup>25</sup>

The responsibility for the administration of this statute lies with the Industrial Commission of Virginia.<sup>26</sup> Most state programs, like Virginia's, are run by an administrative agency.<sup>27</sup> The procedure for receiving compensation in Virginia can be summarized into the following steps: filing of a claim; investigation and decision, and right of review.

A person who believes himself eligible to receive compensation must file a claim with the Commission not later than 180 days after the alleged crime upon which the claim is based.<sup>28</sup> Claims must be filed with the

23. VA. CODE ANN. § 19.2-368.13 (Supp. 1976). Factors to be taken into consideration include:

- (1) the number of claimant's dependents, (2) the usual and ordinary living expenses of the claimant and his family, (3) any special needs of the claimant and his dependents, (4) the claimant's income and potential earning capacity, and (5) the claimant's resources.

*Id.*

24. ALASKA STAT. § 18.67.080 (1974); CAL. GOV'T CODE § 13964 (West Cum. Supp. 1976); MD. CODE ANN. art. 26A, § 12 (Repl. Vol. 1973); N.Y. EXEC. LAWS § 631 (McKinney 1972). *Contra*, HAW. REV. STAT. §§ 351-31, -33 (Cum. Supp. 1976); ILL. ANN. STAT. ch. 70, § 77 (Cum. Supp. 1976); MASS. ANN. LAWS ch. 258A, § 5 (Cum. Supp. 1976); N.J. STAT. ANN. § 52:4B-12 (Cum. Supp. 1976); R.I. GEN. LAWS § 12-25-5 (Supp. 1975).

25. Note, *New York Crime Victims Compensation Act: Four Years Later*, 7 COLUM. J.L. & SOC. PROB. 25, 40 (1971). *Contra*, Vitali, *A Year's Experience with the Massachusetts Compensation of Victims of Violent Crime Law, 1968 to 1969*, 4 SUFFOLK U.L. REV. 237, 247 (1970). Vitali, in defending the Massachusetts statute, argued that inquiry into need was costly and compensation based on need had the stigma of welfare.

26. VA. CODE ANN. §§ 19.2-368.2, -368.3 (Supp. 1976).

27. CAL. GOV'T CODE § 13961 (West Cum. Supp. 1976); HAW. REV. STAT. § 351-11 (1968); MD. CODE ANN. art. 26A, § 3 (Repl. Vol. 1973); N.J. STAT. ANN. § 52:4B-3 (Cum. Supp. 1976); N.Y. EXEC. LAWS § 622 (McKinney 1972). *Contra*, MASS. ANN. LAWS ch. 258A, § 2 (Cum. Supp. 1976); R.I. GEN. LAWS § 12-25-2 (Supp. 1975). In Massachusetts, compensation is awarded by the district courts, while under the Rhode Island statute a special session of the superior court handles compensation claims. *See generally* Note, *New York Crime Victims Compensation Board Act: Four Years Later*, 7 COLUM. J.L. & SOC. PROB. 25, 38 (1971). This article pointed out that the judiciary was already overburdened and that an administrative board had the advantage of simplicity, accessibility and the development of expertise.

28. VA. CODE ANN. § 19.2-368.5 (Supp. 1976). If the claim is filed by the dependent of a crime victim who was killed, the dependent has 180 days from the victim's death to file a claim. The Commission may extend the time period up to two years if good cause is shown.

*See generally* Johnsen v. Nissman, 331 N.Y.S.2d 796 (Sup. Ct. 1972), where the court held

secretary of the Commission by mail or in person.<sup>29</sup> Immediately upon receipt of a claim, the Commission must notify the Commonwealth's attorney of the jurisdiction in which the incident allegedly took place.<sup>30</sup> If the Commonwealth's attorney notifies the Commission within ten days that a criminal prosecution is pending involving the alleged crime, the Commission will defer all proceedings until the termination of the criminal prosecution at the circuit court level.<sup>31</sup>

When inquiry into a claim is not deferred or the criminal prosecution has terminated, the claim is assigned to one of the Commission's members to conduct an investigation into the validity of the claim.<sup>32</sup> In conducting the investigation, the Commission member uses official police and court records concerning the crime, as well as hospital records relating to any injury upon which the claim is based.<sup>33</sup> The Commission member will consider claims regardless of whether the alleged criminal has been caught, convicted or found not guilty.<sup>34</sup> The only purpose of the investigation is to determine whether a crime was committed and whether the crime resulted in a "personal physical injury to or the death of the victim."<sup>35</sup> Thus, if a jury finds the alleged criminal innocent, the claimant may still be granted compensation if the record of the Commission's investigation shows that a crime was in fact committed which resulted in injury to the claimant. The Commission member must also find that the crime was reported to local authorities within forty-eight hours after its occurrence.<sup>36</sup> This provi-

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that the awarding of compensation under a statute similar to Virginia's was a matter of legislative grace and that no right to receive this compensation existed unless the claimant had complied with all statutory prerequisites, including the time period within which the statute required a claim to be presented.

29. VA. CODE ANN. § 19.2-368.5 (Supp. 1976).

30. *Id.*

31. *Id.* The deferral provision of the statute is evidently intended to save the Commission the expenses of investigation. The trial transcript will contain most of the information that the Commission would otherwise have to determine through investigation. The deferral provision probably does not adversely affect the claimant since he may receive an emergency award, if "(1) such claim is one with respect to which an award probably will be made, and (2) undue hardship will result to the claimant if immediate payment is not made . . ." *Id.* § 19.2-368.9.

32. *Id.* § 19.2-368.6.

33. *Id.* The Commission also has the power "to require and direct medical examination of victims." *Id.* § 19.2-368.3.

34. *Id.* § 19.2-368.6.

35. *Id.*

36. *Id.* § 19.2-368.10. If good cause is shown, the Commission member may waive the requirement that the crime was to have been reported within forty-eight hours of its occurrence. The Commission member may also deny, reduce or withdraw any award upon a finding that the claimant did not fully cooperate with law-enforcement agencies. *Id.*

sion not only encourages the reporting of crimes, but it also aids in the prevention of fraud.<sup>37</sup>

If the Commission member is unable to decide whether to grant the claim on the basis of the investigation, he may order a hearing.<sup>38</sup> The Commission member has the authority to issue summonses for the appearance and testimony of witnesses and to require that evidence be brought to the hearing.<sup>39</sup> After the hearing, the Commission member must decide whether or not to grant the claim.<sup>40</sup> The decision must be submitted in writing to the secretary of the Commission and must set forth the reasons for the decision.<sup>41</sup>

If the claimant is dissatisfied with the decision of the Commission member, he may apply to the entire Commission for a consideration of the merits of his claim.<sup>42</sup> Upon receipt of the application to review the Commission member's decision, the entire Commission must review the record and decide whether to affirm or modify the decision.<sup>43</sup> This review constitutes the Commission's final decision.<sup>44</sup> If the claimant still disagrees with the decision, he may begin "a proceeding in the circuit court of the county or city where the crime was committed, to review the decision of the Commission."<sup>45</sup>

37. See Note, *Criminal Victim Compensation in Maryland*, 30 Md. L. Rev. 266, 281 (1970). The provision helps to prevent fraud by making sure police officials have the opportunity to investigate an incident immediately after it takes place.

38. VA. CODE ANN. § 19.2-368.6 (Supp. 1976).

39. *Id.* § 19.2-368.3. "At the hearings any relevant evidence, not legally privileged, shall be admissible." *Id.* § 19.2-368.6.

40. *Id.* § 19.2-368.6.

41. *Id.* "The secretary shall thereupon notify the claimant and furnish him a copy of such report, upon request."

42. *Id.* § 19.2-368.7. The application for a review by the full Commission must be made in writing and within thirty days of the claimant's receipt of the report of the Commission member. *Id.*

43. *Id.*

44. *Id.* However, "the Commission, on its own motion, or upon request of the claimant, may reinvestigate or reopen a decision making or denying an award." *Id.* § 19.2-368.8.

45. *Id.* § 19.368.8. "Any such proceeding shall be heard in a manner pursuant to § 9-6.14:16 of the Code of Virginia and shall have precedence over all other civil cases in such court." A claimant under section 9-6.14:16 has a right to direct review of the Commission's decision either

by proceeding pursuant to express provisions therefor in the basic law under which the agency acted or . . . by an appropriate and timely court action against the agency.

Such proceedings include those for declaratory judgments, mandamus, or equitable relief.

VA. CODE ANN. § 9-6.14:16 (Cum. Supp. 1976).

The judgment of the circuit court is subject to review. Some states, such as California, have no provision for judicial review. Other states, such as New York, allow judicial review only

Awards are made on the basis of loss of earnings and the expenses incurred as a result of the crime.<sup>46</sup> The amount of an award granted for loss of earnings is determined by the degree of incapacity and benefits provided for such incapacity as specified in Virginia's Workmen's Compensation law.<sup>47</sup> Out-of-pocket medical and funeral costs are among the expenses for which compensation is granted.<sup>48</sup> Also, "any other reasonable and necessary expenses or indebtedness incurred as a direct result of the injury or death upon which such claim is based . . ." may be compensated if the Commission finds such expenses appropriate.<sup>49</sup> No awards are granted under one hundred dollars or over ten thousand dollars.<sup>50</sup>

It should be noted that the Virginia statute does not compensate for the pain and suffering of the victim.<sup>51</sup> This failure to compensate for anything more than an economic loss occurring as a result of a physical injury greatly limits compensation. The person who has no job and loses the use of his arm will not receive compensation for the suffering caused by the injury.<sup>52</sup> On the other hand, the rape victim<sup>53</sup> will receive no compensation

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at the request of the attorney general, who may request a review of an award he considers excessive or improper. See, e.g., N.Y. EXEC. LAWS § 629 (McKinney 1972). UNIFORM ACT, *supra* note 11, § 16 provides for judicial review on request by either the claimant or the attorney general. See generally *Criminal Injuries Compensation Board v. Gould*, 273 Md. 486, 331 A.2d 55 (1975).

46. VA. CODE ANN. § 19.2-368.11 (Supp. 1976).

47. *Id.* For the schedule of benefits and the degrees of incapacity, see *id.* §§ 65.1-54 to -56 (Cum. Supp. 1976). Generally, for total incapacity, the Virginia Code provides for compensation equal to "sixty-six and two-thirds per centum" of the claimant's average weekly wages. *Id.* § 65.1-54. For partial incapacity the Virginia Code provides for compensation equal to "sixty-six and two-thirds per centum" of the difference between the claimant's average weekly wages before the injury and his average weekly wages after the injury. *Id.* § 65.1-55.

48. *Id.* § 19.2-368.11. Funeral expenses are not reimbursed in excess of five hundred dollars.

49. *Id.*

50. *Id.* The validity of limiting awards to ten thousand dollars is specious. If someone is totally incapacitated by a crime, the ten thousand dollar award would clearly be insufficient. UNIFORM ACT, *supra* note 11, § 5 places a more realistic limit of fifty thousand dollars on awards.

51. *Id.* Accord, ALASKA STAT. § 18.67.120 (1974); CAL. GOV'T CODE § 13965 (West Cum. Supp. 1976); ILL. ANN. STAT. ch. 70, § 74 (Cum. Supp. 1976); MD. CODE ANN. art. 26A, § 7 (Repl. Vol. 1973); MASS. ANN. LAWS ch. 258A, § 5 (Cum. Supp. 1976); N.J. STAT. ANN. § 52:4B-12 (Cum. Supp. 1976); N.Y. EXEC. LAW § 631 (McKinney 1972); UNIFORM ACT § 2. *Contra*, HAW. REV. STAT. § 351-33 (1968); R.I. GEN. LAWS § 12-25-5 (Supp. 1975).

52. See generally Comment, *Crime Victim Compensation: The New York Solution*, 35 ALBANY L. REV. 717, 731 (1971). The author of this article argued for allowing recovery for pain and suffering up to five thousand dollars. This proposal would at least give some aid to those who are now excluded from compensation because they had no job.

53. Durso, *Illinois Crime Victims Compensation Act*, 7 Loy. U.L.J. 367-68 (1976). Durso noted that under the Illinois statute, which did not provide compensation for pain and suffering, only two rape victims had been awarded compensation. He further noted that in

for the emotional trauma of the rape. The lack of a pain and suffering provision makes Virginia's compensation program easier and less expensive<sup>54</sup> to administer,<sup>55</sup> but it excludes many crime victims.

Virginia's statute also does not award compensation for property damage suffered by victims of crime.<sup>56</sup> Virginia, like most other states,<sup>57</sup> does not compensate for property damage because of the possibility of fraud<sup>58</sup> and the heavy financial burden such compensation would impose.<sup>59</sup> However, the need for state aid for this type of loss is reduced by the ready availability of private insurance.<sup>60</sup>

Once granted, an award is not subject to execution or attachment "other than for expenses resulting from the injury . . ." which were the bases of the awarded claim.<sup>61</sup> The award may be reduced if the claimant receives any other payments from any source as a result of the crime.<sup>62</sup> Upon acceptance of an award by the claimant, the state is subrogated by the amount of the award to any right of action the claimant has as a result of the crime.<sup>63</sup>

both instances the rape victim received other physical injuries for which the compensation was awarded. Nevada sought to remedy this problem by granting compensation to rape victims for such things as counseling and psychological care. NEV. REV. STAT. § 217-300-310 (1972). Virginia does grant compensation for "expenses attributable to pregnancy resulting from forcible rape." VA. CODE ANN. § 19.2-368.11 (Supp. 1976).

54. In 1972, compensation for pain and suffering accounted for approximately thirty-eight percent of the average Hawaiian award. Lamborn, *supra* note 17, at 36.

55. See Comment, *Crime Victim Compensation: The New York Solution*, 35 ALBANY L. REV. 717, 731 (1971). The author noted that the length of hearings would be increased due to the difficulty in determining the extent of a victim's pain and suffering.

56. VA. CODE ANN. § 19.2-368.11 (Supp. 1976).

57. ALASKA STAT. § 18.67.010 (1974); CAL. GOV'T CODE § 13965 (West Cum. Supp. 1976); ILL. ANN. STAT. ch. 70, § 74 (Cum. Supp. 1976); MD. CODE ANN. art. 26A, § 12 (Repl. Vol. 1973); MASS. ANN. LAWS ch. 258A, § 5 (Cum. Supp. 1976); N.J. STAT. ANN. § 52:4B-11 (Cum. Supp. 1976); N.Y. EXEC. LAW § 631 (McKinney 1972); R.I. GEN. LAWS § 12-25-3 (Supp. 1975); UNIFORM ACT §§ 1, 2. *Contra*, HAW. REV. STAT. §§ 351-52 (1968).

58. Fry, *Justice for Victims*, 8 J. PUB. L. 191, 193 (1959); Note, *Criminal Victim Compensation in Maryland*, 30 MD. L. REV. 266, 281 (1970).

59. Note, *Criminal Victim Compensation in Maryland*, 30 MD. L. REV. 266, 281 (1970).

60. Rothstein, *supra* note 11, at 1532; Note, *Criminal Victim Compensation in Maryland*, 30 MD. L. REV. 266, 281 (1970).

61. VA. CODE ANN. § 19.2-368.12 (Supp. 1976).

62. *Id.* The award is reduced regardless of whether the source of the other payments is private or public. The award will be reduced for insurance payments received, as well as for payments received as an emergency award under this statute. See generally *Gurley v. Commonwealth*, 363 Mass. 595, 296 N.E.2d 477 (1973), where the court held that life insurance proceeds received by dependents as a result of the victim's death should be deducted from the amount of compensation due, as well as welfare payments which were being received by dependents as a result of the victim's death.

63. VA. CODE ANN. § 19.2-368.15 (Supp. 1976). See generally Note, *New York Crime Vic-*

Claimants who do receive awards are paid from the Criminal Injuries Compensation Fund.<sup>64</sup> The money in the compensation fund does not come from tax dollars, but rather from the pockets of criminals.<sup>65</sup> The Virginia statute provides that after July 1, 1976, any person convicted of certain crimes shall be assessed an extra ten dollars in costs.<sup>66</sup>

The ten dollars will be paid to the Comptroller "to be deposited into the Criminal Injuries Compensation Fund."<sup>67</sup> Payment of claims will be limited to funds collected during the preceding fiscal year.<sup>68</sup> All administrative costs will also come from the Criminal Injuries Compensation Fund.<sup>69</sup>

The Virginia statute contains elements of both compensation and restitution. The welfare nature of the statute and the lack of any penal provisions make the statute a compensation measure. The fact that the financial burden of the program rests on the offender, rather than on the state, makes the program one of restitution. By paying ten dollars into the compensation fund, criminals as a class make restitution to victims as a class. The victim is assured of receiving compensation regardless of

*tims Compensation Board Act: Four Years Later*, 7 COLUM. J.L. & SOC. PROB. 25, 37 (1971), where the author noted that after four years the state of New York had recovered nothing as a result of being subrogated to the rights of the victims.

64. VA. CODE ANN. § 19.2-368.18 (Supp. 1976).

65. *Id. Accord*, MD. CODE ANN. art. 26A, § 17 (Repl. Vol. 1973)(each person convicted in Maryland is charged an additional five dollars in order to gain revenue for the compensation fund); R.I. GEN. LAWS § 12-25-12 (Supp. 1972)(twenty percent of all fines and penalties in criminal cases goes into the compensation fund). *Contra*, HAW. REV. STAT. § 351-35 (1968); MASS. ANN. GEN. LAWS ch. 258A, § 6 (West Cum. Supp. 1976); N.J. STAT. ANN. § 52:4B-19 (Cum. Supp. 1976). In Hawaii, Massachusetts and New Jersey the legislature allocates funds for the compensation fund.

See generally CAL. GOV'T CODE § 13967 (West Cum Supp. 1976). The California statute allows a court to order a defendant with the financial ability "to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim . . . ." This fine does not go directly to the victim, but rather into the compensation fund.

66. Where any person is convicted of any crime of treason, felony, or of any offense punishable as a Class 1 or Class 2 misdemeanor under Title 18.2, except a violation of article 2, chapter 7, of Title 18.2 or drunkenness or disorderly conduct, by any court with criminal jurisdiction, there shall be imposed an additional cost, . . . of the sum of ten dollars.

VA. CODE ANN. § 19.2-368.18 (Supp. 1976).

The California plan (see note 65 *supra*) is more flexible and probably would provide for more funds. If the offender has the money, it seems eminently justifiable to require him to pay a sum commensurate with his offense into the compensation fund.

67. VA. CODE ANN. § 19.2-368.18 (Supp. 1976). The ten dollars is similar to a tax in that it does not vary with the harshness of the crime, as would a penalty.

68. *Id.* No claims will be accepted by the Commission "until July one, nineteen hundred seventy-seven."

69. *Id.* This means that the compensation program is self-sufficient and will cost the taxpayer nothing.

whether the offender in his case is caught or has the financial means to pay.

Although the concept behind the Virginia compensation statute is sound, in practice the statute would seem to offer little or no help to most crime victims in Virginia. The limitations and exclusions of the statute make most of the crime victims in Virginia ineligible for compensation. The rape victim, the victim who is injured by a member of his own family, the victim with health insurance and the victim who does not suffer serious financial hardship as a result of the crime will not receive compensation under the statute. Even for those who are fortunate enough to qualify for compensation, the amount which can be awarded is far too small.

The Virginia statute is a step in the right direction, but it is a very small step. The statute asks too little of the offender and does not give enough to the victim.

#### 1977 AMENDMENTS

The 1977 Session of the Virginia General Assembly made certain minor amendments to the victim compensation statutes.<sup>70</sup> The first significant change expands the list of persons eligible for assistance. The amended version includes persons legally dependent for support upon a victim of crime who dies as a direct result of the crime.<sup>71</sup> All filings must now be made with the Industrial Commission itself, rather than with its secretary.<sup>72</sup>

The next major amendment concerns the manner in which applications are processed. Under present law, the chairman of the Industrial Commission immediately assigns a claim to himself or another member of the Commission for investigation.<sup>73</sup> The amended version, however, provides that a claim is to be first "properly investigated, and, if necessary, assigned by the chairman to a Commissioner, Deputy Commissioner or other proper party for disposition."<sup>74</sup>

The time within which a claimant may appeal an adverse decision to the full Commission has been changed from thirty days after receipt of the written report to fifteen days from the date the report is filed.<sup>75</sup>

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70. The vehicle for these amendments was H.B. 1584, Va. Gen. Assem. (1977) [hereinafter cited as H.B. 1584].

71. VA. CODE ANN. § 19.2-368.4(A) (5) (Supp. 1976), *as amended*, H.B. 1584, *supra* note 70, at 2.

72. *Id.* § 19.2-368.5(C), *as amended*, H.B. 1584, *supra* note 70, at 2.

73. *Id.* § 19.2-368.6(A).

74. H.B. 1584, *supra* note 70, at 3.

75. VA. CODE ANN. § 19.2-368.7(A) (Supp. 1976), *as amended*, H.B. 1584, *supra* note 70, at 4.

Finally, subparagraph (C) of section 19.2-368.8, relating to judicial review, was rewritten as follows:

C. Within thirty days of the date of the report containing the final decision of the Commission, the claimant may, if in his judgment the award is improper, appeal such decision to the Supreme Court of Virginia, as provided in § 65.1-98. The Attorney General may appear in such proceedings as counsel for the Commission.<sup>76</sup>

Additional amendments can be expected at future sessions of the legislature, after the compensation statutes have been tested by actual use.

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<sup>76</sup> VA. CODE ANN. § 19.2-368.8(C) (Supp. 1976), *as amended*, H.B. 1584, *supra* note 70, at 5.

