

COMPENSATION FOR CRIME VICTIMS

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## ISSUE DEFINITION

There has been a growing interest in recent years in providing compensation for the innocent victims of violent crime through programs financed by the Federal and/or State Governments. At issue have been the general propriety, desirability, and feasibility, as well as the cost, of Federal support of such programs.

## BACKGROUND AND POLICY ANALYSIS

The idea that a society should assist those of its citizens victimized by crime has been traced back to the ancient Babylonian Code of Hammurabi (c. 2038 B.C.), which provided that when a man was robbed or murdered the city in which the crime occurred should compensate the victim or his heirs for their losses. Modern law, by contrast, has sharply distinguished between criminal and civil proceedings, so that criminal prosecutions deal only with punishment of offenders, while victims are left to find their personal remedies in private tort actions. Recent dissatisfaction with this modern dichotomy began with English penal reformer Margery Fry, who in 1955 called for the establishment of more effective remedies for crime victims.

The first contemporary jurisdiction to set up a crime victim compensation program was New Zealand, which did so in late 1963. Great Britain followed suit in 1964, and since then several other British Commonwealth and European countries have adopted such legislation. The first State in this country to establish a victim compensation program was California in 1965. Since that time at least 30 States and the Virgin Islands have adopted programs providing for some form of governmental compensation for crime victims: California (1965); New York (1966); Hawaii (1967); Massachusetts (1967); Maryland (1968); Virgin Islands (1968); New Jersey (1971); Alaska (1972); Illinois (1973); Washington (1973); Minnesota (1974); Delaware (1975); North Dakota (1975); Ohio (1975); Kentucky (1976); Michigan (1976); Pennsylvania (1976); Tennessee (1976); Virginia (1976); Wisconsin (1976); Montana (1977); Oregon (1977); Kansas (1978); Indiana (1978); Connecticut (1979); Nebraska (1979); Texas (1979); Colorado (1981); New Mexico (1981); Oklahoma (1981); West Virginia (1981); and the District of Columbia (1982). Rhode Island has passed a law which will establish a program if Federal funding becomes available. Nevada and Georgia have "Good Samaritan" programs which award compensation to victims only if they are injured while attempting to prevent a crime. Many States are facing serious budgetary problems and are finding it difficult to continue to fund, or to start to fund, victim compensation programs. For instance, the Washington program is not providing compensation to individuals injured on or after July 1, 1981.

Proponents of governmental compensation for crime victims base their arguments on various rationale. One justification is "society's failure to protect." This theory holds that when an individual has been injured by a criminal act, society has failed to carry out its responsibility to protect that person. Since civilized society forbids a person to take the law into one's own hands and seek private vengeance, it should compensate that person when it has failed to protect. A second rationale behind crime victim compensation programs is the need to combat the individual citizen's sense of alienation and anger at society and to encourage citizen participation with law enforcement agencies. Finally, proponents argue that if there is a

Federal interest in helping States to prevent crime, to apprehend, try, and imprison criminals, and to house and facilitate the rehabilitation of prisoners, then there should also be a Federal interest in helping States to assist the victims of those criminals.

Opponents of Federal assistance to State victim compensation programs argue first that although compensating crime victims can be a legitimate governmental activity, such programs are essentially charitable in nature and not the result of any absolute governmental liability to its citizens. Second, since the Federal Government has no responsibility for the enforcement of a State's criminal laws, it therefore has no responsibility for compensating its victims. And third, opponents are also concerned about the long-range costs of such a program. No precise estimate is available, but Congressional Budget Office projections estimated that the cost to the Federal Government in outlays would be \$8 million in FY80, and \$13 million, \$16 million, \$17 million and \$18 million in fiscal years 1981 through 1984, respectively. The Law Enforcement Assistance Administration issued a report concluding that total costs for a national program could range from \$144 million to \$261 million.

Legislative activity in this area until recently centered in the Senate. Since the 92d Congress, the Senate has passed victim compensation legislation on seven separate occasions. The House Judiciary Subcommittee on Criminal Justice held hearings in the 94th Congress, and a bill (H.R. 13157) was favorably reported by the full committee (H.Rept. 94-1550), but no further action was taken. Legislation similar to that approved by the House Judiciary Committee in the 94th Congress was passed by both the House and the Senate in the 95th Congress (H.R. 7010), but the bill died when the House failed to agree to the conference report.

In the 96th Congress, legislation was introduced by Senator Kennedy, then Chairman of the Senate Judiciary Committee, and by Representative Rodino, Chairman of the House Judiciary Committee (S. 190/H.R. 1899). Following mark-up of H.R. 1899 by the House Judiciary Subcommittee on Criminal Justice, a clean bill (H.R. 4257) was introduced and favorably reported, amended, by the full Judiciary Committee on Feb. 13, 1980 (H.Rept. 96-753).

S. 190 and H.R. 4257 as reported were substantially similar. Both would have provided for grants to qualifying State victim compensation programs in an amount equal to 25% of the cost of compensating victims of State offenses and 100% of the cost of compensating victims of Federal offenses. Neither would have provided funds for administrative costs and certain other expenses. The maximum award to any one victim or his dependents that would have been federally reimbursable under the Senate bill would have been \$35,000; the maximum reimbursable award under the House bill would have been \$25,000. The Senate bill would have required that States could not base eligibility for compensation on the financial means of the claimant; the House version had no such requirement. The House bill would have required States to set up escrow accounts to benefit victims of crime from book royalties and similar profits accruing to criminals; the Senate bill had no such requirement. Authorized appropriations under the Senate bill would have been \$30 million for FY80, \$40 million for FY81, and \$50 million for FY82. The House bill would have authorized \$15 million for FY80, \$25 million for FY81, and \$35 million for FY82. The Carter Administration indicated that it did not support the legislation because of budgetary considerations.

In the 97th Congress, Chairman Rodino has again introduced victim compensation legislation (H.R. 2855). This bill would provide grants for

qualifying State programs in an amount equal to 50% of the cost of compensating victims of State offenses and 100% of the cost of compensating victims of Federal offenses. The maximum award to any one claimant that would be federally reimbursable is \$50,000. Authorized appropriations would be \$15 million for FY82, \$25 million for FY83, and \$35 million for FY84. Companion legislation (S. 1046) was introduced in the Senate Apr. 29, 1981, by Senator Sasser and referred to the Committee on the Judiciary. This bill is identical to H.R. 2855. Three other bills (H.R. 2284, H.R. 2776, and H.R. 6057) also would help States provide assistance to victims of crime.

Two related bills (S. 2420 and S. 2433) provide respectively that the defendant pay restitution of a violent crime committed in a Federal jurisdiction, and that a Victim Compensation Fund be established and administered by a Victim Compensation Board which would be located in the Department of Justice. S. 2420, the Omnibus Victims Protection Act of 1982, which provides for the payment of restitution and for the revocation of bail under certain circumstances and requires a sentencing report to include a "victim impact statement" was signed into law on Oct. 12, 1982 (P.L. 97-291). Title II of S. 2572, introduced by Senator Thurmond on May 26, 1982, is similar to S. 2420. S. 2572 passed the Senate on Sept. 30, 1982, as an amendment to H.R. 3963, the Contract Services for Federal Drug Dependent Offenders Act of 1978. The Victim-Witness Protection provisions were deleted from the final version of H.R. 3963 which was passed by both chambers on Dec. 20, 1982. The President vetoed the bill on Jan. 14, 1983. Two other bills (H.R. 6115 and H.R. 6448) would have amended the Internal Revenue Code of 1954 to provide that the excise tax on handguns be transferred to a trust fund to be used for purposes of providing compensation to victims of crime.

President Ronald Reagan on Apr. 15, 1982 announced the creation of a task force to examine the problems encountered by victims of crime. The final report of the Presidents' Task Force on Victims of Crime was released on Dec. 31, 1982.

In the 98th Congress bills that would provide compensation to victims of crime have been introduced.

On Mar. 8, 1983 Senator Heinz introduced S. 704 the Federal Crime Victims Compensation Act. The bill would establish a victims compensation fund and would provide financial support for Federal and State victims and witness assistance programs. In the House, Representative Russo introduced H.R. 2470, which provides that the excise tax from handguns be transferred to a trust fund to be used for providing compensation to victims of crime, and H.R. 2661, the Federal Criminal Victims and Witnesses Assistance Act which would establish a Victims Compensation Commission in the Department of Justice. On June 30, 1983 Mr. Rodino introduced the Victims of Crime Act of 1983, which authorizes the Attorney General to make grants to States for support of victim assistance programs. On Oct. 6, 1983 Senator Specter introduced S. 1941 which establishes a crime victim's assistance fund to provide Federal assistance to State and local programs to aid juvenile and adult victims of crime. The 1st session of the 98th Congress ended with no action having been taken on these bills. Hearings began on several victims' bills on Feb. 2, 1984 in the House Judiciary Subcommittee on Criminal Justice. The Administration's victims' bill, S. 2423 was introduced on Mar. 13, 1984 and referred to the Senate Judiciary Committee.

LEGISLATION

## H.R. 2470 (Russo)

Federal Victims Compensation Trust Fund amends the Internal Revenue Code of 1954 to provide that the excise tax from handguns will be transferred to a trust fund to be used for providing compensation to victims of crime. Introduced Apr. 12, 1983; referred jointly to Committees on Judiciary and Ways and Means. Hearings held by the Subcommittee on Select Revenue Measures of Ways and Means Committee Apr. 18, 1983.

## H.R. 2661 (Russo)

Federal Criminal Victims and Witnesses Assistance Act. Establishes a Victims Compensation Commission in the Department of Justice. The Commission would establish guidelines for the payment of compensation to victims of crime. Introduced Apr. 20, 1983; referred to the Committee on the Judiciary.

## H.R. 3498 (Rodino)

Victims of Crime Act of 1983. Authorizes the Attorney General to make grants to the chief executive of each State for the financial support of qualified crime victim assistance programs. Introduced June 30, 1983; referred to Committee on the Judiciary. Hearings began in the criminal Justice Subcommittee Feb. 2, 1984.

## S. 704 (Heinz, Grassley)/H.R. 2978 (Fish)

Federal Crime Victims Compensation Act. Establishes a victims assistance fund to compensate victims of crime. Would also provide financial support for State and Federal victims and witness assistance programs. Introduced Mar. 8, 1983; referred to Committee on the Judiciary.

## S. 1644 (Nunn, Armstrong)

Sentencing Improvement Act of 1983. Describes restitution as an alternative form of punishment. Provides that in appropriate cases the court may, with due consideration of the defendant's resources, require him to pay the victim's medical expenses, repay the value or cost of damaged property, or return that property. When no victims are ascertainable, the restitution will be paid into a special fund of the treasury to be distributed on a quarterly basis to State victim compensation plans. Introduced July 20, 1983; referred to the Committee on the Judiciary.

## S. 1941 (Specter)

Crime Victim's Assistance Fund. Provides Federal assistance to qualifying State Victim compensation programs and to victim and witness assistance programs. Establishes in the U.S. Treasury a revolving fund to be administered by the Attorney General and to be known as the Crime Victim's Assistance Fund. Introduced Oct. 6, 1983; referred to the Committee on the Judiciary.

## S. 2423 (Thurmond, by request)/H.R. 5124 (Fish, by request)

Victims of Crime Assistance Act of 1984. Establishes a crime victims' assistance fund in the U.S. Treasury comprised of all criminal fines paid to the United States and certain profits stemming from literary, visual, or audio productions relating to Federal crimes. Empowers Federal courts to order forfeiture of such profits. Permits victims to make impact statements at Parole Commission hearings. Introduced Mar. 13, 1984; referred to the Committee on the Judiciary.

HEARINGS

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Criminal Justice. Compensating crime victims. Hearings, 96th Congress, 1st session, on H.R. 1899. Washington, U.S. Govt. Print. Off., 1980. 228 p.  
Hearings held Feb. 28 and Apr. 3, 1979.

----- Crime victim compensation. Hearings, 94th Congress, 2d session. Washington, U.S. Govt. Print. Off., 1976. 1285 p.  
Hearings held Nov. 4, 18; Dec. 9, 15, 1975; Feb. 7, 13, and 27, 1976.

----- Victims of crime. Hearing, 93d Congress, 1st session, on H.R. 8777 and S. 300. Aug. 1, 1973. Washington, U.S. Govt. Print. Off., 1973. 108 p.  
"Serial no. 13"

----- Victims of crime compensation. Hearings, 95th Congress, 1st session, on H.R. 7010 and related bills. Mar. 29, Apr. 22, 25 and 27, and May 5, 1977. Washington, U.S. Govt. Print. Off., 1979. 372 p.

U.S. Congress. Senate. Committee on the JUDICIARY. Subcommittee on Criminal Law. Omnibus Victim Protection Act. Hearings, 97th Congress, 2d session, on S. 2420. May 27, 1982. Washington, U.S. Govt. Print. Off., 1982. 192 p.

----- Subcommittee on Criminal Laws and Procedures. Victims of crime. Hearings, 92d Congress, 1st session. Washington, U.S. Govt. Print. Off., 1972. 112 p.  
Hearings held Sept. 29; Nov. 30, 1971; and Mar. 27, 1972.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. Conference Committee. Victims of Crime Act of 1978; conference report to accompany H.R. 7010. Washington, U.S. Govt. Print. Off., 1978. 15 p. (95th Congress, 2d session. House. Report no. 95-1762).

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~~-----~~ Victims of Crime Act of 1979; report together with dissenting, separate dissenting, and separate views to accompany H.R. 4257. Washington, U.S. Govt.

Print. Off., 1980. 18 p. (96th Congress, 2d session.  
House. Report no. 96-753)

U.S. Congress. Senate. Committee on the Judiciary. The Omnibus  
Victims Protection Act of 1982; report to accompany S. 2420.  
Washington, U.S. Govt. Print. Off., 1982. 45 p. (97th Congress,  
2d session. Senate. Report no. 97-532).

U.S. Congress. Senate. Committee on the Judiciary.  
Criminal Code Reform Act of 1977; report to accompany  
S. 1437. Washington, U.S. Govt. Print. Off., 1977.  
1411 p. (95th Congress, 1st session. Senate. Report  
no. 95-605).

----- Victims of Crime Act of 1978; report to accompany  
S. 551. Washington, U.S. Govt. Print. Off., 1978. 18 p.  
(95th Congress, 2d session. Senate. Report no. 95-963)

----- Victims of Crime Act of 1973; report together with  
additional views to accompany S. 300. Washington, U.S. Govt.  
Print. Off., 1973. 27 p. (93d Congress, 1st session. Senate.  
Report no. 93-83)

#### OTHER CONGRESSIONAL ACTION

N/A

#### CHRONOLOGY OF EVENTS

- 07/29/83 -- A Federal judge in Birmingham, Alabama declared the  
victim restitution provision of the Federal Victim Witness  
Protection Act of 1982 (P.L. 97-291) unconstitutional.
- 07/11/83 -- Lois Haight Herrington, Assistant Attorney General for Justice  
Assistance, created an Office for Victims of Crime in the  
Office of Justice Assistance, Research, and Statistics.
- 07/11/83 -- Attorney General William French Smith promulgated Federal  
guidelines concerning the treatment of crime victims and  
witnesses by Department of Justice investigators and  
prosecutors.
- 12/31/82 -- President's task force on violent crime issued its final  
report.
- 10/12/82 -- Omnibus Victims Protection Act signed into law  
P.L. 97-291.
- 04/15/82 -- President Reagan announced that he was creating a  
special task force to examine the problems  
encountered by victims of crime.
- 01/13/80 -- House Judiciary Committee favorably reported  
H.R. 4275, Victims of Crime Act of 1979. (H.Rept. 96-753).
- 10/14/78 -- Senate adopted conference report on H.R. 7010, and

House failed to agree to the conference report.

09/30/77 -- H.R. 7010 passed by the House.

09/11/78 -- H.R. 7010 passed by the Senate after amending it to contain the language of S. 551.

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----- Compensation for victims of crime: a selected bibliography 1973-1980 [by] Barbara McClure and Margaret Seiler, Sept. 25, 1980. [Washington] 1980. 8 p.

CRS Report 80-174-EPW

Victim/witness legislation: considerations for policy makers.



Washington, Victim/Witness Assistance Project, Section of  
Criminal Justice, American Bar Association, 1981. 81 p.