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## Illinois' Crime Victims Compensation Act

If a man has committed robbery and is caught, that man shall be put to death. If a robber is not caught, the man who has been robbed shall formally declare whatever he has lost before God, and the city and the mayor in whose territory or district the robbery has been committed shall replace whatever he has lost for him. If it is the life of the owner that is lost, the city or the mayor shall pay one maneh of silver to his kinsfolk.<sup>1</sup>

Illinois has joined the ranks of other progressive jurisdictions by coming to the aid of victims of violent crimes. In 1973, the Illinois legislature, by passage of the Crime Victims Compensation Act,<sup>2</sup> attempted to ease the financial burdens imposed on persons who have been victimized by violent crime. The Crime Victims Compensation Act, as defined in a brochure prepared by the Secretary of State,

[i]s designed to help reduce the financial burdens often imposed on innocent persons who are seriously injured by violent crimes and also to encourage cooperation with law enforcement agencies. Such cooperation is necessary for effective law enforcement.<sup>3</sup>

Several rationales have been advanced as the underlying basis for victims compensation type legislation. One theory is based upon the notion that the state owes a legal obligation to protect its citizenry. This obligation has been conceptualized as follows:

Due to the very nature of our legal system in general, and our system of criminal law in particular, the state has the duty of protecting its citizens and of providing effective remedies for wrongs. When a crime is committed, the state has failed in its duty of protection and subsequently should be held liable for the victim's loss.<sup>4</sup>

However, the so-called "social welfare theory" has been the most common underlying rationale upon which victim compensation programs have been based. This theory is premised on the notion that

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1. THE CODE OF HAMMURABI, cited in Haas, *An Argument for the Enactment of Criminal Victim Compensation Legislation in Oregon*, 10 WILLAMETTE L.J. 185, 187 (1974) [hereinafter cited as Haas].

2. ILL. REV. STAT. ch. 70, §§ 71-84 (1973).

3. ILL. SECRETARY OF STATE, CRIME VICTIMS COMPENSATION ACT, 1 (1974) [hereinafter cited as Secretary of State].

4. Drobney, *Compensation to Victims of Crime: An Analysis*, 16 ST. LOUIS L.J. 201, 204 (1971).

[J]ust as modern democracy dictates public assistance for the disabled veteran, the sick, the unemployed, and the aged, so should public assistance be afforded the suffering victims of crime. The argument rests not on any inherent obligation of the state but rather on the modern conscience.<sup>5</sup>

The purpose of this article is to examine the successes and failures of the Illinois Crime Victims Compensation Act. In order to accomplish this purpose, an investigation of the administrative channels through which a typical claim is processed must first be made. It is clear that the success or failure of any crime victims compensation program depends on the efficient and quick settlement of the victims' claims. This article will also review the decisions of the Court of Claims which have interpreted the statutory requirements which must be met before compensation can be awarded. Finally, this article will discuss "pecuniary loss" in light of that term's definition in the Act<sup>6</sup> and the manner in which it has been interpreted by the courts. The interpretation of this term is crucial in determining which losses will be indemnified and to what extent.

#### PROCEDURAL ASPECTS OF THE CRIME VICTIMS COMPENSATION ACT

Considering the possible number of applicants who potentially qualify under the Act,<sup>7</sup> few claims have been filed during the Act's two year existence.<sup>8</sup> Moreover, of the victims who have applied for compensation only a few have had their claims reach a final disposi-

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5. Schafer, *The Proper Role of a Victim-Compensation System*, 21 CRIME & DELINQUENCY 45, 48 (1975). See also Note, *Compensation for Victims of Crime*, 33 U. CHI. L. REV. 531, 533 (1965); Haas, *supra* note 1; Secretary of State, *supra* note 3.

6. Pecuniary loss is defined in the Act as follows:

Pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes, in the case of injury, appropriate medical expenses or hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury . . . and . . . in the case of death, funeral and burial expenses and loss of support to the dependents of the victim. Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury, or on \$500 per month, whichever is less. Nothing in this Section authorizes the making of child support payments for the benefit of a child conceived as a result of the rape of its mother. Pain and suffering shall not be considered in determining pecuniary loss. Pecuniary loss does not include property damage.

ILL. REV. STAT. ch. 70, § 74 (1973).

7. In the six county area surrounding Chicago there were reported 55,964 violent crimes in 1974. There were 1,124 murders, 2,452 rapes, 30,402 robberies, and 21,986 aggravated assaults and batteries. Chicago Tribune, Nov. 27, 1975, § 7 at 1, col. 2.

8. Only 1,623 claims have been filed since the enactment of the Act. This is a very small percent considering the total number of possible claimants over the period through December 31, 1975. See Appendix B *infra*.

tion during that time period.<sup>9</sup> This delay is traceable to the legislature's original inadequate draftmanship. Because the Act set forth only minimal procedural guidelines, a substantial amount of time after its enactment was spent establishing administrative procedures.<sup>10</sup> The duty of processing claims was delegated to a number of different state offices.<sup>11</sup> This bifurcation of responsibility resulted in many communication and administrative problems that had to be reckoned with during the Act's early existence. Though these difficulties may have contributed to the low number of claims settled to date, it is not clear whether the design of present administrative machinery is capable of handling the increasing numbers of claims.<sup>12</sup>

Other jurisdictions which have enacted victims compensation programs have established separate administrative agencies to expedite the disposition of claims.<sup>13</sup> The notable exception is Massachusetts,<sup>14</sup> which delegates complete jurisdiction to its existing state courts. Illinois, on the other hand, in an attempt to keep the cost of the program to a minimum, utilizes several existing state offices and its state Court of Claims.<sup>15</sup>

In order to appreciate collateral problems inherent in the administration of the victims compensation program, one must survey the basic procedures which must be followed when filing a claim. First, the claimant must file a notice of claim<sup>16</sup> at the office of the Illinois Attorney General. This filing must be made within six months from the date of the injury. Thereafter, the victim has two years from the date of the injury to submit an application for compensation with the Clerk of the Court of Claims.<sup>17</sup> This application is then sent to

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9. Of the 1,623 claims filed only 344 claims had reached a final disposition; thus, only a very slight number of possible applicants actually received any relief. See Appendix B *infra*.

10. Interview with Paul West, head of the Legal Staff of the Crimes Victims Compensation Division of the Attorney General's Office, in Chicago, September 20, 1975. [hereinafter cited as West Interview].

11. The Attorney General's Office, Crime Victims Compensation Division in conjunction with the Clerk of the Court of Claims are primarily responsible for the administration of the program.

12. The Clerk of the Court of Claims projects that the number of claims will increase from 970 filed in fiscal 1975 to 1,200 claims in fiscal 1976. This increase of 330 claims coupled with the 720 claims still pending from 1975 will certainly increase administrative problems. Memorandum from Robert S. O'Shea, Deputy Clerk, Court of Claims, to Michael J. Howlett, July 1, 1975 [hereinafter cited as O'Shea Memorandum].

13. See, e.g., CRIMINAL INJURIES COMPENSATION, HAWAII REV. STAT. § 351-51 (1967); N.Y. EXEC. LAW §§ 622, 623 (McKinney Supp. 1970).

14. COMPENSATION OF VICTIMS OF VIOLENT CRIMES, MASS. ANN. LAWS ch. 258A, § 2 (1968).

15. ILL. REV. STAT. ch. 70, § 72(b) (1973), For further discussion, see note 11 *supra*.

16. ILL. REV. STAT. ch. 70, § 73(g) (1973).

17. *Id.*

the appropriate regional office<sup>18</sup> of the Attorney General.

Once the application has reached the Attorney General's office, program administrators begin to compile the data necessary to reach a settlement of the claim. The administrators require evidence of doctor, hospital, medical, and funeral expenses. Information is also collected from employers pertaining to loss of earnings. The claimant must also supply all information concerning insurance or other benefits received from private and public sources. This data is essential in order to compute the total compensation to which the victim is entitled.<sup>19</sup>

Following the assemblage of this data, the claimant's file is forwarded to a staff investigator. In order to complete the file, the investigator obtains a copy of the police report. At this stage in the process the investigator interviews the claimant.<sup>20</sup> During the interview all data previously compiled is reverified and further details concerning subsequent losses and subsequent recoveries are acquired.

The most critical function of the investigator in the interview is to explore any discrepancies between the victim's account of the facts and statements of eyewitnesses or of the alleged assailant. These statements are contained in the police report. The investigator's factual conclusions are synthesized into a short report which is sent to the Attorney General's legal staff.<sup>21</sup> The evidence uncovered by the investigator is a major factor in determining whether an award of compensation will be authorized. The findings of the investigator are heavily relied on in determining whether the claim is fraudulent or whether the victim's injury resulted from his own

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18. The state has been divided into two jurisdictions. The City of Chicago, Cook County, and the northern Illinois counties are under the jurisdiction of the Attorney General's Chicago office. All other counties are under the jurisdiction of the Attorney General's Springfield office. Since a higher percentage of crimes are committed in the Chicago area than elsewhere in the state, the Chicago office has processed the majority of the claims. During the first two years of the victim compensation program, the Chicago office processed 99 claims while the Springfield office has processed only 13 claims. Memorandum from Paul West, head of the Legal Staff of the Crimes Victims Compensation Division of the Attorney General's Office, to Peter Bensinger, Chief of Crime Victims Division, June 18, 1975.

19. As one official has noted:

[T]his part of the process is the most time-consuming because the victim fails to understand that in order for all of his pecuniary loss to be compensated these losses must be documented.

West Interview, *supra* note 10.

20. There are three full-time investigators in the Chicago office. The average time taken to interview a claimant is 30 minutes. West Interview, *supra* note 10. See also note 22.1 *infra*.

21. One full-time and several part-time attorneys are assigned to the victims compensation program in the Chicago office. Also, several extern law students assist the legal staff. For further discussion, see Appendix A *infra*.

provocative conduct.<sup>22</sup> After the legal staff assimilates all of the information, it issues a recommendation as to the final disposition of the claim. This is tantamount to the filing of an answer by the state. The time required to prepare the recommendation varies greatly in proportion to the complexity of the legal questions raised under the interpretation of the Act. The preparation of the report is a time-consuming step in processing the victim's claim.<sup>22.1</sup>

Two documents are then presented to the Court of Claims—the recommendation and an opinion based on the findings of the recommendation. Both documents are authored by the legal staff. The court has several options: (1) accept the Attorney General's recommendation and adopt the proffered opinion; (2) write a new opinion substantially in agreement with the findings of recommendation; (3) reject the recommendation and author an opinion on that basis; (4) request that the claim be argued in a hearing before a commissioner of the court.<sup>23</sup> If a victim feels that the Attorney General's recommendation is unjust, he may, by written request, seek a formal adversarial hearing pursuant to section 79 of the Crime Victims Compensation Act.<sup>24</sup> The Court of Claims may, at its discretion, deny the request for such a hearing. As a practical matter, the recommendation of the state is usually received favorably by the court and serves as the opinion of the court.<sup>25</sup>

After a decision is reached by the court, the clerk of the court

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22. The statute provides that a victim may be denied an award if he provoked his assailant. Provocation may also result in a reduction of the award if the provocation is not deemed substantial. ILL. REV. STAT. ch. 70, §§ 73(f), 77(c) (1973). For further discussion, see notes 51 and 52 *infra* and accompanying text.

22.1. While testifying before the United States House Judiciary Subcommittee on Criminal Justice, December 15, 1975, in Chicago, the Deputy Clerk of the Court of Claims, Robert O'Shea, stated:

Each claim is different. The length of the investigation depends on the complexity of the facts and the availability of verifying bills and employer reports of earnings.

After the court makes its decisions, a check is sent within three weeks. The *average* time for a claim is five months from filing to payment.

23. There are six commissioners who sit as fact finders for the full court.

24. Section 79 of the Act provides that:

The Court of Claims may on its own motion and shall upon the written request of an applicant or other person to whom compensation has been awarded set for hearing the question whether and to what extent an award of compensation made under this Act should be modified. No hearing need be held, however, unless the written request states facts which were not known to or by the exercise of reasonable diligence could not have been ascertained by the applicant or other person . . .

ILL. REV. STAT. ch. 70, § 79 (1973).

These hearings can take on an adversary setting, but only if the victim is represented by counsel. Rarely are hearings requested or granted. Only five reported hearings were discovered out of 160 claims researched. Rehearings are granted in the discretion of the court. Only one claim has received a rehearing.

25. West Interview, *supra* note 10.

sends notice of the decision and a copy of the opinion to the claimant. If an award is made, the clerk vouchers the award for payment by the Comptroller. If there are monies available in the fund allotted to the victims compensation program, the victim is paid. If the fund has been depleted by previous awards, the victim must await legislative approval of new appropriations.<sup>26</sup>

A claim is processed through several stages; Illinois' procedures are primarily administrative in that a claimant must deal with several state offices. However, in contested claims the procedure assumes an adversarial nature and a hearing is held before the Court of Claims.

The Act seeks to minimize the possibility of any claim settlement becoming adversarial, encouraging *pro se* determinations on behalf of an applicant. This intent is manifested by prohibiting attorneys from receiving fees for filing a claim for a victim.<sup>27</sup> It is probable that this prohibition was made part of the Act in order to insure that the victims would receive as much relief as possible under the program. The forms are simplified so a victim can theoretically file an application for compensation *pro se*.<sup>28</sup> The Court of Claims has within its discretion the power to fix reasonable attorney's fees in the event of a hearing before the court.<sup>29</sup> Relatively few claims are actually concluded by a hearing before the court, thus the intervention of a true adversary proceeding is rare.<sup>30</sup> If a hearing is requested and allowed,

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26. Interview with Robert O'Shea, Deputy Clerk of the Court of Claims, in Springfield, September 1, 1975. See Appendix B.

27. Section 82 of the Act provides:

No fee may be charged to the applicant in any proceeding under this Act except as provided in this Act. If the applicant is represented by counsel or some other duly authorized agent in making application under this Act or in any further proceedings provided for in this Act, that counsel or agent may receive no payment for his services in preparing or presenting the application before the Court of Claims. He may, however, charge fees to the applicant for representing him at a hearing provided for in this Act but only in such an amount as the Court of Claims determines to be reasonable.

ILL. REV. STAT. ch. 70, § 82 (1973).

This section of the Act sets forth no penalty for disregard or abuse of its prohibitions. If, however, a fee is charged and this fact is brought to the Attorney General's attention "appropriate action will be taken" and the fee is returned to the victim. West Interview, *supra* note 10.

28. The drafters of the Act failed to consider that most victims come from high-crime areas. Persons who reside in these areas typically have low income and limited educational backgrounds. Without some assistance, these victims are incapable of filing the forms or coping with the administrative bureaucracy. The Act, by prohibiting attorney fees for such assistance hampers victims who need relief the most and who are the least capable of securing it.

29. See note 27 *supra* and accompanying text.

30. See note 24 *supra*.

the rules of evidence apply. The claimant must prove by competent evidence all injuries and losses sustained.<sup>31</sup>

The adversarial nature of the hearing also creates evidentiary problems for the state. To a great extent, the state's evidence consists mainly of the police report, which is inadmissible hearsay.<sup>32</sup> Thus, the state must go to the expense of bringing policemen and other witnesses before the Court of Claims which sits in Springfield, Illinois. If the claimant is not represented by counsel, the hearings take on a less formal atmosphere, and the claimant will not be required to strictly follow courtroom procedures.<sup>33</sup>

The problem which has plagued efficient operation of the Crime Victims Compensation Act is the lack of financial resources and administrative personnel. It is obvious that this problem will intensify in magnitude as the number of claims increases.<sup>34</sup> The absence of adequate funding is a malady not unique to the victims compensation program. If the program is to compensate all eligible victims, it is clear that the General Assembly will have to authorize a greater monetary commitment.<sup>35</sup>

The lack of necessary manpower, while a severe problem, is one which might be remedied with a minimum amount of effort on the part of the Attorney General or General Assembly. The manpower shortage is most acute in the Attorney General's Office. A limited number of personnel are assigned to the victims compensation program's Attorney General's legal staff.<sup>36</sup> The writing of the recommendation by the legal staff is the most time-consuming factor in the entire process. In order to allow the victims to receive compensation as quickly as possible, greater manpower resources must be

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31. This factor becomes especially significant if the applicant is trying to prove mental injuries. Here the cost of such proof maybe so burdensome as to be prohibitive. For further discussion, see note 88 *infra* and accompanying text.

32. ILLINOIS SUPREME COURT RULES, ILL. REV. STAT. ch. 110A, § 236(b) (1967).

33. West Interview, *supra* note 10.

34. Since passage of the Act the number of claims filed has steadily increased. This is due to the fact that as the availability of the compensation program becomes more widely known, more victims take advantage of the program. In fiscal 1973, there were 91 claims filed. In fiscal 1974, there were 970 claims filed, an increase of 964 percent. While the increase for fiscal 1975 is not predicted to be as great, percentage-wise, the Deputy Clerk of the Court of Claims expects 1,200 claims to be filed, an increase of 330 claims over fiscal 1974. Thus, efficient operation of the victims compensation program will become increasingly important. O'Shea Memorandum, *supra* note 12.

35. Only 352 victims have received relief since the passage of the Act. O'Shea Memorandum, *supra* note 12. However, this low number of awards has completely depleted the appropriations allocated by the state to the crime victims compensation program. See Appendix B *infra*. The General Assembly will have to appropriate more funds to accommodate future claims and past claims still pending. See Appendix B.

36. See note 21 *supra* and Appendix A *infra*.



allocated to the legal staff. The purpose of the Act is defeated when the amount of time it takes for a victim to receive aid is unreasonably long. The purpose of the Act is to ease the financial burdens imposed upon the victim. In order to accomplish that purpose, the victim must be compensated as soon after the commission of the crime as possible.

#### JUDICIAL INTERPRETATION OF STATUTORY REQUIREMENTS

The Crime Victims Compensation Act specifically states the requirements which must be met before any crime victim can recover compensation. The victim must notify the appropriate law enforcement officials as soon after the crime as is "reasonably practicable under the circumstances."<sup>37</sup> Failure to meet this first prerequisite has been cited as the basis for denying compensation.<sup>38</sup> This requirement is designed to aid police in obtaining evidence, thereby facilitating apprehension of the criminal. Moreover, prompt notice to the police facilitates a more complete police report. This police report later becomes the chief tool used by the investigators and legal staff in determining whether the applicant qualifies for relief.<sup>39</sup>

The Crime Victims Compensation Act also requires "the applicant [to have] cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant."<sup>40</sup> The important language of this section is the word "prosecution."<sup>41</sup> This requirement assures the assistance of the victim in any subsequent criminal proceedings.

Thus, these two provisions of the Act promote one of the legislative purposes underlying enactment of the law: to encourage cooperation with law enforcement officials, thereby aiding in crime prevention.<sup>42</sup> It must be noted, however, that apprehension and conviction of the alleged criminal is not a prerequisite to awarding a victim compensation.<sup>43</sup>

Several applications for awards have been denied on the grounds that the claimant and his alleged assailant were "related, and sharing the same household."<sup>44</sup> The Court of Claims has interpreted this

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37. ILL. REV. STAT. ch. 70, § 73(c) (1973).

38. *In re Bach*, 75cv303 (Ct. of Cl., July 22, 1975). In *Bach*, the claimant was denied recovery because he failed to report the crime until the following day after the crime had been committed.

39. For further discussion, see text accompanying notes 20 through 22 *supra*.

40. ILL. REV. STAT. ch. 70, § 73(d) (1973).

41. *Id.*

42. See Secretary of State, *supra* note 3.

43. ILL. REV. STAT. ch. 70, § 77(a) (1973).

44. Section 73(e) provides that:

statutory language disjunctively, thereby creating two separate standards for disqualification.<sup>45</sup> If the victim is related to the assailant *or* if the victim and assailant are sharing the same household, compensation will not be granted. The court has not yet articulated what degree of kinship will disqualify a claimant.

One might posit a hypothetical situation where one spouse murders the other and is subsequently convicted and sent to prison. Under the present language of the Act, dependent children, who are included in the statutory definition of applicants,<sup>46</sup> would be without any recourse because of their familial relationship to the offender. It is incredible that the General Assembly intended or desired such an unconscionable result.

It seems that the purpose of the kinship/domicile provision was to prevent fraud and collusion in making claims. Still, the requirement leaves a potentially large class of needy victims without compensation under the Act. The policy of preventing fraudulent or collusive claims can be achieved by less drastic means. One commentator suggests that rather than reject an entire class of victims on this basis, such claimants should be required to meet a more stringent burden of proof.<sup>47</sup> In order to meet this burden, the commentator suggests the conviction of the assailant be a precondition to compensation of the victim.<sup>48</sup> However, this type of prerequisite is overly restrictive. Under the Illinois Crime Victims Compensation Act cooperation with law enforcement agencies is already a prerequisite to receiving an award.<sup>49</sup> If a victim is willing to sign a complaint, and cooperate in the prosecution of the assailant to whatever extent the officials deem necessary, these facts alone should raise a presumption that there is no fraud or collusion between the victim and assailant. A victim's need is no less when the assailant is a relative or someone sharing the household of the offender. To make

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A person is entitled to compensation under this Act if: . . . (e) the victim and his assailant were not related, and sharing the same household . . . .

ILL. REV. STAT. ch. 70, § 73(e) (1973) [hereinafter referred to as the kinship/domicile provision].

45. See *In re Miller*, 75cv159 (Ct. of Cl., August 1, 1975). In *Miller*, the court denied the award on the grounds that the assailant and the victim, although not related, were living together at the time of the assault.

46. Section 72(a) defines applicant as

[a]ny person who was a dependent of a deceased victim of a crime of violence for his support at the time of the death of that victim.

ILL. REV. STAT. ch. 70, § 72(a) (1973).

47. Note, *New York Crime Victims Compensation Board Act Four Years Later*, 7 COLUM. L.J. SOC. PROB. 25, 40 (1971).

48. *Id.* at 41..

49. Nine claims have been denied for failing to assist law enforcement officials. See Appendix B *infra*.

relief conditional upon the status of the assailant is to deny compensation on an unreasonable basis. Denial of relief to victims because of their relationship to the assailant defeats the purpose of the Act to aid innocent persons injured by criminal activities. This is especially true if the underlying purposes of the kinship/domicile provision—prevention of fraudulent and collusive claims—are already promoted by other sections of the Act.<sup>50</sup>

A further factor which prevents fraudulent and collusive claims and has resulted in denials of awards is a finding by the administrators that the injury or crime was provoked by the victim. If the court or administrators find that the victim substantially provoked his assailant he is denied all relief. On the other hand, if the provocation is not deemed substantial enough to require outright denial of a claim, the Court of Claims may reduce the amount of the total award in proportion to the degree of provocation present.<sup>51</sup>

In all of the opinions reported to date no mention has been made of any reductions pursuant to section 77(c). There have been many outright denials of compensation pursuant to a finding of substantial provocation under section 73(f).<sup>52</sup> Several claims mark the outer limits of what the court deems to be substantial provocation. In the case of *In re Adams*,<sup>53</sup> a Chicago gang member was found slain in a stairway of a housing project. The alleged assailant was a member of a rival street gang. There were no witnesses to the shooting. The mother of the victim was reimbursed six hundred and fifty dollars for funeral expenses. This award was based on the court's finding that rival gang membership *per se* does not amount to substantial

50. See notes 40 *supra* and 54 *infra*.

51. Section 77(c) states:

In determining the amount of compensation to which an applicant is entitled,—the Court of Claims shall consider the facts stated on the application . . . and:

(c) shall determine the degree or extent to which the victim's acts or conduct provoked or contributed to his injuries or death and reduce or deny the award of compensation accordingly.

ILL. REV. STAT. ch. 70, § 77(c) (1973).

52. Section 73(f) states:

A person is entitled to compensation under this Act if:

(f) the injury to or the death of the victim was not substantially attributable to his wrongful act or substantial provocation of his assailant. . . .

ILL. REV. STAT. ch. 70, § 73(f) (1973). See, e.g. *In re Feutress*, 75cv154 (Ct. of Cl., April 23, 1975). This case presents the typical fact situation which supports a finding of substantial provocation. In *Feutress* the victim was stabbed in a barroom brawl. The Court found that there was evidence that the victim was drinking and also evidence that the victim provoked the altercation. Twelve claims have been denied on the basis of substantial provocation. See Appendix B *infra*.

53. 75cv82 (Ct. of Cl., April 23, 1975).

provocation.<sup>54</sup> The case of *In re Weitzman*<sup>55</sup> also raised the issue of substantial provocation. In *Weitzman*, the claimant attacked a youth who had knocked into his daughter in a park. While the claimant was attacking the youth some of his companions came back and hit the applicant over the head with a baseball bat. The court held that the claimant's actions were not substantial provocation.<sup>56</sup> In neither of the foregoing cases did the court make mention of section 77(c), which allows for a reduction of the award based on a finding of less than substantial provocation. Thus, there are no guidelines as to how a reduction for less than substantial provocation should be computed. With respect to a victim who comes to the aid of another, the court will judge his conduct by a reasonable man standard. In the case of *In re Mounstein*,<sup>57</sup> the applicant was injured while attempting to protect his girlfriend from being molested. The applicant attacked the girl's assailant and was injured in the fight. The court considered irrelevant the fact that the victim initially attacked the girl's assailant and held that he acted as a reasonable man under the circumstances. This reasonable man standard has been incorporated into the statutory definition of "victim,"<sup>58</sup> with respect to one who attempts to assist another.

#### PROVISIONS DEFINING LOSS WHICH CAN BE COMPENSATED

Once it has been established that a valid claim exists, the remaining task of the program's administrators is to compute the amount of the award. Pecuniary loss<sup>59</sup> is the only type of loss for which compensation is allowed. Most awards have reimbursed the victim for hospital and medical expenses,<sup>60</sup> and past and future loss of

54. *Id.*

55. 75cv157 (Ct. of Cl., April 23, 1975).

56. *Id.*

57. 75cv273 (Ct. of Cl., June 2, 1975).

58. Section 72(d) defines victim as:

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

ILL. REV. STAT. ch. 70, § 72(d) (1973).

59. Pecuniary loss as defined by statute is set forth in ILL. REV. STAT. ch. 70, § 74 (1973) (for full text see note 6 *supra*).

60. Medical expenses include doctor and nursing bills and medicine, *In re Schwartz*, 75cv33 (Ct. of Cl., March 27, 1975); (dental work) *In re Pizanco*, 75cv169 (Ct. of Cl., April 15, 1975); (psychological counselling) *In re Kline*, 75cv62 (Ct. of Cl., April 15, 1975). The

earnings.<sup>61</sup> In the event of the death of the victim, funeral expenses and past and future loss of support is customarily awarded to surviving dependents.<sup>62</sup>

Compensation for loss of earnings and loss of support is more difficult to compute and prove compared to other pecuniary losses. The amount of compensation awardable for loss of earnings or support is limited by the Act to a maximum of five hundred dollars per month.<sup>63</sup> Loss of earnings is computed by taking the victims average monthly earnings over the previous six months.<sup>64</sup> However, this six-month standard has been abrogated by the Court of Claims. In *In re Levine*,<sup>65</sup> the victim, at a hearing, was denied compensation for loss of earnings due to the fact that he had been employed for only two weeks prior to the crime. Upon a rehearing granted pursuant to section 79 of the Act, the court reversed itself and held that two weeks previous employment was a sufficient period by which to determine with certainty the loss of future earnings. The court found that the claimant would have been able to work for the next three months and that the cause of his unemployment was the injuries sustained in the crime. Therefore, future earnings were deemed ascertainable despite the fact that the claimant had been employed for an extremely short period of time prior to the crime.<sup>66</sup> This judicial alteration of the "previous employment requirement" does not, however, have any effect on the requirement that the victim must have been employed at the time of the crime.<sup>67</sup> It only changes the

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court has also allowed four hundred dollars to a youth who required plastic surgery after being stabbed by a member of a street gang. *In re Thomas*, 75cv211 (Ct. of Cl., May 13, 1975).

61. See, e.g., *In re Zaring*, 75cv21 (Ct. of Cl., February 13, 1975).

62. See, e.g., *In re Miller*, 75cv141 (Ct. of Cl., May 28, 1975), where the claimant received over seven thousand dollars in loss of support when her husband, age 33, was the victim of a homicide.

63. If the victim is out of work for less than a month the monthly earnings of the victim is divided by 30.4, that being the average number of days in a month. The result is then multiplied by the total number of days the victim is out of work due to his injuries sustained in the crime. This formula simplifies and expedites the time needed to compute loss of earnings. West Interview *supra* note 10.

64. ILL. REV. STAT. ch. 70, § 74 (1973) (for full text, see note 6 *supra*).

65. 75cv113 (Ct. of Cl., May 7, 1975).

66. The Court of Claims measured the loss of earnings by multiplying the previous two-week earnings by two, in order to compute the monthly loss. This result was then multiplied by the number of months the victim was unable to work. *In re Levine*, 75cv113 (Ct. of Cl., May 7, 1975). The probable legislative intent underlying the six month criteria was to fix the amount of loss with certainty. The court held that the only just conclusion under the facts was that the previous two-week time period of employment was sufficient to meet the underlying intent of the legislature.

67. See, e.g., *In re Petty*, 75cv175 (Ct. of Cl., May 6, 1975) where the court found no compensable loss when a mother applied for loss of earnings suffered when her son was stabbed in the back and unable to work. The court denied loss of earnings because the son had been unemployed for the previous six months.

amount of time that the victim must have been employed in order to measure the loss of future earnings. The court has not gone to the extreme of allowing an award based on the standard of what a victim might have earned had he been employed at the time of the crime.

The requirement that a victim must have been employed immediately preceding the crime may be overly harsh in some circumstances. For instance, a housewife would not be entitled to any compensation for loss of earnings since she has no employer.<sup>68</sup> It is possible that the Court of Claims would accept the argument that expenses paid by such a victim in hiring a housekeeper or babysitter while recovering from an injury are compensable as a medical expense. But even a broad interpretation of what expenses might be compensated as medical expenses will not benefit the family of a housewife killed during the commission of a crime. The family will not receive any compensation for loss of her valuable services. If an unemployed child is murdered the only loss which the family recovers under the Act is reasonable funeral expenses.<sup>69</sup> An exception to this rule was formulated in *In re Steele*,<sup>70</sup> where a mother received compensation for the loss of public aid child support payments.

#### MANDATORY SET-OFFS

After the total allowable pecuniary loss is computed, there must be subtracted certain statutory set-offs.<sup>71</sup> The Act serves as a last resort for victims whose expenses are not compensated by either public or private insurance programs. These mandatory set-off provisions penalize the victim who is prudent enough to purchase protection in the form of private insurance. The Court of Claims has yet to be confronted with the contention that insurance premiums should be considered as medical expenses and thus compensable as a pecuniary loss. However, such an allowance should be made on the rationale that the cost of insurance premiums are as much of a medical expense as is a direct out-of-pocket payment for medical

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68. See, e.g., *In re Clemens*, 75cv175 (Ct. of Cl., May 6, 1975).

69. See, e.g., *In re Gregg*, 75cv13 (Ct. of Cl., June 2, 1975); *In re Gonzala*, 75cv176 (Ct. of Cl., May 6, 1975); and *In re Berron*, 75cv239 (Ct. of Cl., April 1, 1975).

70. 75cv30 (Ct. of Cl., January 8, 1975).

71. Section 77(d) of the Act provides that the following deductions must be made in computing the final award:

The Court of Claims . . . (d) shall deduct \$200 plus the amount of benefits, payments or awards, payable under the "Workmen's Compensation Act," from local governmental, State or federal funds or from any other source except annuities, pension plans, federal social security benefits and the net proceeds of the first (\$25,000) . . . of life insurance that would inure to the benefit of the applicant.

ILL. REV. STAT. ch. 70, § 77(d) (1973).

aid. In both situations, the victim has had to provide for his own medical care as a result of being injured in the course of the commission of a crime.

The court has not limited set-offs to those specifically enumerated in the Crime Victims Compensation Act. In *In re Gettis*,<sup>72</sup> the Court of Claims allowed a six hundred and fifty-four dollar set-off from the total award, on the basis that the victim was indebted to the state in that amount because of past due license plate fees. It is not clear how this debt came to the Attorney General's attention or under what authorization the court was empowered to reduce the award. To what extent this holding will be followed remains to be seen. Hopefully the court will not continue to abrogate the statute. Utilization of the Act in the manner exhibited in *Gettis* is neither authorized nor desirable. The victims compensation program was established to aid crime victims, not to serve as a potential collection agency for the state.

The Crime Victims Compensation Act requires that a victim have suffered at least two hundred dollars in pecuniary losses before he can seek compensation.<sup>73</sup> This minimum loss requirement has been criticized on the grounds that,

[T]he primary purpose of the lower limits is to assume that the cost of processing small claims does not exceed the benefits to victims and society of compensating small claimants.<sup>74</sup>

Considering the serious backlog of claims already swamping the administrators, the minimum loss provision theoretically fulfills a useful purpose. However, in light of the substantial number of awards denied on this basis,<sup>75</sup> it appears that the provision is not saving administrative costs or time. In order to deny claims on this basis, a complete administrative review of the claim must take place in order to determine if the loss is greater than the two hundred dollar minimum. Moreover, even if the minimum loss provision did in fact save administrative costs and time, the provision is inequitable to low income victims to whom a loss of even less than two hundred dollars could be catastrophic. Since most high-crime areas also are low-income areas, this requirement potentially bars many needy victims from receiving meaningful relief.

Section 77(e) of the Act fixes a maximum limit of ten thousand

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72. 75cv98 (Ct. of Cl., April 28, 1975).

73. See note 71 *supra*. 22 claims have been denied on the grounds that the victim's loss did not exceed two hundred dollars. See Appendix B *infra*.

74. Lamborn, *Scope of Programs for Governmental Compensation of Victims of Crime*, 1973 U. ILL. L.F. 21, 54 [hereinafter cited as Lamborn].

75. See note 73 *supra*.

dollars on any award.<sup>76</sup> Most claimants who have received maximum awards were dependents of homicide victims.<sup>77</sup> While this amount cannot realistically fully compensate these claimants,<sup>78</sup> it appears that the maximum is high enough to ease the financial burdens imposed on all other classes of claimants.<sup>79</sup> One major issue not addressed by the Act is whether mandatory set-offs should be subtracted from the ten thousand dollar maximum, or from the entire loss sustained by the victim. In an early decision,<sup>80</sup> the Court of Claims held that it would follow the rationale of the Massachusetts court in *Gurley v. Commonwealth*.<sup>81</sup> In *Gurly* the court held that ten thousand dollars was the maximum award possible and therefore the mandatory set-offs were to be subtracted from the total loss sustained. This computation results in the realization of the victim's actual monetary loss. If the actual loss is greater than the maximum, the award would be ten thousand dollars. This formula is in accordance with the rationale underlying the Crime Victims Compensation Act. If the set-offs were subtracted from the ten thousand dollar maximum, fewer awards would be made. It is likely that in homicide cases loss of support to the family alone far exceeds the maximum allowable award.<sup>82</sup> In most instances, a homicide victim's dependents do receive some sort of benefits from private or public sources. If these benefits exceeded ten thousand dollars, but did not recompense the victim for all losses suffered, absent the *Gurly* rationale, this class of claimants would be denied compensation under the language of the Act.

Property loss is expressly excluded from the statutory definition

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76. Section 77(e) of the Act provides:

In determining the amount of compensation to which an applicant is entitled, the Court of Claims shall consider the facts stated on the application . . . and: (e) shall offer or award, as the case may be, the resultant amount or \$10,000, which ever is less, to the applicant or, if the victim is deceased, to be apportioned among the persons who were dependent on him for their support at the time . . . of the crime . . .

ILL. REV. STAT. ch. 70, § 77(e) (1973).

77. Of the 19 maximum awards allowed in the first two years of the victims compensation program, 14 went to dependents of homicide victims.

78. Loss of support alone to a family of a homicide victim who is the head of the household is usually well over the statutory maximum. See, e.g., *In re Simpson*, 75cv12 (Ct. of Cl., Jan. 31, 1974); *In re Spivak*, 75cv14 (Ct. of Cl., April 23, 1975); *In re Miller*, 75cv141 (Ct. of Cl., May 28, 1975); *In re Burrage*, 75cv148 (Ct. of Cl., May 13, 1975); *In re Redmond*, 74cv80 (Ct. of Cl., July 1, 1975).

79. The statistical fact that only five victims, other than victims of homicides, qualified for the maximum award shows that most victims who have received compensation under the program thus far have had their entire loss compensated.

80. *In re Simpson*, 75cv12 (Ct. of Cl., Jan. 31, 1974).

81. 296 N.E.2d 477 (Mass. 1973).

82. See note 78 *supra*.



of pecuniary loss.<sup>83</sup> The Act does not compensate for stolen property. It is obvious that the cost of compensating for property losses would be so burdensome as to be prohibitive.<sup>84</sup> Furthermore, proof of property loss is much more difficult to document and thus more easily susceptible to fraud. Denial of property loss has been attacked as being inconsistent with the underlying purpose of a victims compensation program. This criticism is based on the fact that property loss in the case of low-income victims may be a greater hardship than personal injury.<sup>85</sup>

#### MENTAL INJURIES AND PECUNIARY LOSS

Pain and suffering is not compensated for under the Crime Victims Compensation Act, and is explicitly excluded from the definition of pecuniary loss.<sup>86</sup> The General Assembly's probable reasons for not allowing such compensation can be attributed to several factors. First, to grant relief for such loss would greatly add to the cost of the program.<sup>87</sup> Secondly, loss attributed to pain and suffering is extremely difficult to measure objectively. Pain and suffering is so subjective that it may vary in degree depending on the individual victim. Thirdly, to allow compensation for pain and suffering might lead to awarding relief for fraudulent or exaggerated claims. Finally, disproving such loss might well necessitate testimony of witnesses expert in areas such as psychological testing and physical examination, which would add to the cost of the program and encourage adversarial proceedings. Moreover, from the victims' viewpoint, the cost in attempting to prove pain and suffering may be so prohibitive that it is not worth a claimant's efforts in view of the ten thousand dollar maximum award limitation.<sup>88</sup>

Only two jurisdictions<sup>89</sup> in the United States allow for pain and

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83. ILL. REV. STAT. ch. 70, § 74 (1973) (for full text, see note 6 *supra*).

84. In 1974, the number of reported property crimes in Illinois was 362,370. Since the inception of the Act only 127 victims of violent crimes have been compensated. To attempt to compensate any of the 362,370 victims of property crimes would add a burden to the program. Furthermore, in order for the program to attempt to compensate this great number of victims, the General Assembly would have to appropriate a prohibitively large sum of money. Statistics concerning property crimes reported in Chicago Tribune, Nov. 27, 1975, § 7 at 1, col. 2.

85. Lamborn, *supra* note 74 at 2-29.

86. ILL. REV. STAT. ch. 70, § 74 (1973) (full text of statute in note 6 *supra*).

87. As one commentator noted: "Compensation for pain and suffering accounted for almost 38 percent of the average 1972 Hawaii award." HAWAII CRIMINAL INJURIES COMPENSATION COMMISSION, FIFTH ANNUAL REPORT (1973), cited in Lamborn, *supra* note 74, at 36.

88. Lamborn, *supra* note 74, at 33-40.

89. HAWAII REV. STAT. §§ 351-33(4), 351-52(2) (1968); R.I. GEN. LAWS ANN. § 12-25-5(c) (Supp. 1972). For a more complete discussion on whether or not recovery for pain and suffering should be granted see Childres, *Compensation for Criminally Inflicted Personal Injury*,

suffering to be compensated under crime victims compensation legislation. The experience of at least one of these jurisdictions in the administration of its program has lent credence to the criticisms against allowing relief for this type of loss. The Hawaii Board of Commissioners, the administrative agency in charge of that state's compensation program, reported the following findings:

As a practical matter, the evaluation of pain and suffering and the amount awarded for it, has been the most difficult aspect of our deliberations. Of necessity, pain and suffering is unique to each case and it is impossible to establish objective criteria for its measurement. The lack of such criteria makes it difficult, if not impossible, to assure that each qualified applicant is receiving a fair and equitable award.<sup>90</sup>

Even though these criticisms are well taken it is important to remember that pain and suffering might be the only substantial loss incurred by a victim of some violent crimes. Chief among these types of crimes are sexual offenses. One commentator argues that compensation for pain and suffering should be allowed because

[p]ain and suffering are very real parts of the victim's injuries, and may be severe and permanent. For some crimes the only item of injury may be non-physical. For example, in three-fourths of the cases of forcible rape the victim suffers no physical harm apart from the sex act itself. To urge compensation for rape, as public opinion is thought to require, and then to deny benefits because there is not loss of income or medical expense is said to mock the victim and play havoc with consistency.<sup>91</sup>

This inconsistency is especially distressing when one considers the latest statistics on the crime of rape.<sup>92</sup>

The Crime Victims Compensation Act expressly lists rape among the violent crimes for which the Act intends to allow victims to be compensated.<sup>93</sup> However, to date only two rape victims have received any compensation under the Illinois program. These claimants received awards primarily because they incurred extenuating

50 MINN. L. REV. 271, 278 (1965); Comment, *Compensation for Victims of Crimes of Violence*, 30 ALBANY L. REV. 325, 332 (1966); Comment, *Crime Victims Compensation: The New York Solution*, 35 ALBANY L. REV. 717, 731 (1971).

90. HAWAII CRIMINAL INJURIES COMPENSATION COMMISSION, FIRST ANNUAL REPORT 4-5 (1969), cited in Lamborn, *supra* note 74, at 33.

91. Lamborn, *supra* note 74, at 37.

92. Rape . . . is the fastest-growing of the nation's most violent crimes. Incidents of rape jumped 9 percent last year, 165 percent in the past fifteen years—and it is estimated that at least three rapes occur for every one reported.

Footlick, *Rape Alert*, Newsweek, November 10, 1975, at 70, col. 1. For further discussion, see note 7 *supra*.

93. ILL. REV. STAT. ch. 70, § 72(c) (1973).

medical expenses. One victim, a fifteen year old girl, required lengthy hospitalization due to a stab wound inflicted during the rape.<sup>94</sup> The second compensated victim was pregnant at the time of rape. The rape caused a miscarriage which precipitated a longer hospitalization than is usually necessary in rape cases.<sup>95</sup> Neither victim received any compensation for any pain and suffering. The low number of rape victims compensated thus far under the victims compensation program points out a major deficiency in the Act when one considers the number of rape victims who qualify as potential claimants.<sup>96</sup> The medical expenses usually incurred by rape victims would be below the minimum loss requirement of two hundred dollars set forth in the Act. Therefore, the ultimate effect of defining pecuniary loss to exclude pain and suffering is to deny relief to victims of rape, the fastest-growing violent crime.

While pain and suffering will not be considered in measuring the victim's compensable loss, the Act does not explicitly preclude compensation for mental injuries. Several provisions in the Act use the term "injury"<sup>97</sup> but the Act neither defines that term specifically nor restricts its meaning to physical harm. If the legislature had intended to limit the type of injury compensable, it should have expressly written the statute in such a way as to make this intention clear. New York's statute is an excellent example of legislation which expressly describes the type of injury which is compensable.<sup>98</sup> Since the Illinois legislature did not follow the example of the New York statute, it is arguable that it must have intended to compensate mental as well as physical injuries. The Court of Claims in *In re Lohr*<sup>99</sup> held, however, that it would not decide the issue of whether injury as defined by the Act included mental as well as physical injuries.

The claimant contends that the word "injured" under the definition of victim in §2(c) of the Act, and the word "injury" as used in §4, do not preclude psychological injury or mental or nervous shock. Whether those words are limited to physical injury alone need not be decided in this case since the claimant introduced no evidence of mental or nervous shock. Her claim for loss of earnings,

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94. *In re Tanaka*, 75cv22 (Ct. of Cl., May 1, 1975).

95. *In re Newton*, 75cv739 (Ct. of Cl., July 1, 1975).

96. There were a reported 2,452 rape victims in Chicago and its surrounding six counties in 1974. However one must note that a large number of rapes go unreported to the police. *Chicago Tribune*, Nov. 27, 1975, § 7, at 1, col. 2.

97. ILL. REV. STAT. ch. 70, §§ 72(d), 73(b), 73(f), 74 (1973).

98. N.Y. EXEC. LAW § 631-1(b) (McKinney Supp. 1970) ("physical injuries").

99. 75cv40 (Ct. of Cl., August 22, 1975).

due to her self imposed absence from work was based *solely* on her *fear* of future assaults.<sup>100</sup>

If psychological injuries are compensable, the issue then becomes one of defining the class of psychological injury which will be compensated. The Act precludes pain and suffering from being held to be within this class, but does it also preclude mental and nervous shock from being compensated? Some emotional trauma arguably afflicts every crime victim. This emotional trauma is characterized by the Court of Claims as a state of "general anxiety and specific fear."<sup>101</sup> Decisions of the Court of Claims indicate that defining these mental conditions and distinguishing between them is very difficult. Jurisdictions which do compensate for psychological injuries have compensated, for example, a shopkeeper who sold his business and retired because of his fear of being alone at night, after he was assaulted and robbed one evening.<sup>102</sup> The Court of Claims explicitly rejected this line of cases. In *In re Lohr*,<sup>103</sup> the court further rejected the contention that fear alone could be the basis for remaining away from work and held that a victim could not recover loss of earnings.<sup>104</sup> The claimant in *Lohr* was a Chicago high school teacher who, after having her life threatened seven times and being assaulted three times, refused to continue working at the school. All of the incidents were reported to the proper school and law enforcement officials. The victim cooperated fully in the apprehension and prosecution of her assailants, even to the extent of testifying against them in juvenile court. The claimant sought compensation for lost wages for 99 days which she incurred when she refused to go back to work because of her fear of further harm. In denying this victim any relief for lost earnings the Court of Claims stated:

We find nothing in the Act that authorizes payment for loss of earnings due to fear. It is readily apparent that a different interpretation would open the state treasury to a plethora of claims for lost earnings by persons afraid to work in high crime areas.<sup>105</sup>

Therefore, it is apparent that the court will neither directly allow compensation for fear as an injury nor allow a mental state which indirectly causes loss of earnings to be compensated under the Act.

The *Lohr* court may have overlooked its own precedent in finding that it had never considered the question of whether psychological

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100. *Id.* at 3 (emphasis added).

101. *In re Kline*, 75cv62 (Ct. of Cl., April 15, 1975).

102. *Criminal Injuries Compensation Awards - January*, 1966, CRIM. L. REV. 237 (1966).

103. *In re Lohr*, 75cv40 (Ct. of Cl., August 22, 1975).

104. *Id.* at 4.

105. *Id.*

injuries could serve as a basis upon which to grant compensation for loss of earnings. In *In re Kline*,<sup>106</sup> the court awarded compensation for loss of earnings due to psychological injury under circumstances similar to those in the *Lohr* case. The *Kline* court allowed loss of earnings under the following circumstances. The victim and her boyfriend were robbed by a black assailant armed with a pistol. The claimant received minor physical injuries when she fell down while fleeing from the scene of the crime. She was awarded compensation for loss of earnings for 42 days. The court found

[T]hat the claimant was unable to work for a period of six weeks following the assault due to a *general anxiety state* and a *specific fear* of all black men, which kept her in her apartment for six weeks.<sup>107</sup>

The *Kline* court further recognized the validity of psychological injury when it allowed the victim to receive compensation for the cost of psychological counselling.<sup>68</sup> However, this relief was not granted as aid for the loss as a direct injury but rather under the guise of medical expenses, which are explicitly authorized under the definition of pecuniary loss.<sup>109</sup> Thus, the court has exhibited a willingness to indirectly allow compensation for psychological injury when that injury consists of both general anxiety and a specific fear and this mental state results in other measurable pecuniary loss. The *Kline* case is factually indistinguishable from the *Lohr* claim. Both victims received minor physical injuries and had their lives threatened. Each victim stayed away from work for long periods of time because of a well-founded fear for their safety. In neither claim was mental or nervous shock alleged, nor did either victim seek compensation for the psychological injury *per se*. Yet one victim was compensated for loss of earnings caused by a mental condition or state of mind, and the other was not. The only distinction offered was that in *Kline* the victim had a general state of anxiety and a specific fear which caused her to incur loss of earnings. In *Lohr*, the victim voluntarily stayed away from work but only because of her admittedly "well-founded"<sup>110</sup> fear. Future claims concerning compensation for mental injuries, either directly or indirectly under the guise of some other pecuniary loss, demand a more consistent review than has been announced by the Court of Claims in its past deci-

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106. 75cv62 (Ct. of Cl., April 15, 1975).

107. *Id.* at 2 (emphasis added).

108. *Id.* at 3.

109. ILL. REV. STAT. ch. 70, § 74 (1973) (for full text, see note 6 *supra*).

110. *In re Lohr*, 75cv40 at 3 (Ct. of Cl., August 22, 1975).

sions. Hopefully, the court will expand the definition to allow for compensation for mental injury *per se*.

#### CONCLUSION

The Crime Victims Compensation Act is a significant step in the right direction. The Act imposes a legal and moral obligation upon the state to aid innocent victims of violent crimes. However, the Act does not compensate all innocent victims; it denies recovery to victims who are related to or sharing the same household as their assailants. The purpose of this classification is to prevent fraudulent, collusive and exaggerated claims. This purpose is adequately met by other sections of the Act. The legislature must take steps to abolish this inequitable classification.

The Act purports to compensate rape victims, but the statutory definition of "pecuniary loss" is so restrictive that it denies meaningful relief to most victims of one of the fastest growing violent crimes. This inconsistency between the purpose and effect of the Act must be remedied. One solution would be for the Court of Claims to interpret injury to include psychological injuries and allow appropriate relief. The court has moved to some extent in this direction by allowing awards to claimants where the psychological injury is the cause of medical expenses or loss of earnings. The next logical step would be to extend this rationale and allow compensation for psychological injuries *per se*. Obviously, the entire problem could be totally alleviated by the General Assembly amending the definition of pecuniary loss to include compensation for pain and suffering.

The compensation program is administered by a process which allows maximum benefits to go to the victim. The program does allow the victim to pursue his claim outside purely administrative channels by requesting a full adversarial hearing. The main criticism of the administration of the program is that the present process takes too long in settling the claims, thus delaying disbursements of relief to victims. Two major problems now hamper the efficient operation of the Act: lack of financial resources and lack of sufficient manpower to properly administer the compensation program. Failure by the appropriate state officials to remedy the deficiencies can only serve to further delay or deny victims of violent crimes the relief they need and are entitled to under the Act.

JOHN J. DURSO

## APPENDIX A

The legal staff serves several functions in the administration of the victims compensation program. It compiles the initial data and authors the recommendation which is sent to the Court of Claims for approval. The figures show that a majority of the claims listed as active are being worked on by the legal staff in the data compilation stage. Of those 130 claims past this initial stage, 98 are once again either waiting for the attention of the legal staff or the staff is in the process of authoring the recommendation. These figures represent the status of the program as of June 18, 1975. However, without a greater allocation of manpower to the legal staff, the speed with which claims are processed will not increase to the level required to meet the increased number of claims expected.

## Status of claims on file as of June 18, 1975

32	Claims in the Investigators files
49	Claims assigned to the legal staff.
49	Claims awaiting to be assigned to legal staff.
590	Claims in which the application is filed and just listed as active.
720	Pending claims which are backlogged from Fiscal 1975

## APPENDIX B

## Grounds upon which awards were denied through June 30, 1975:

22	denials based on loss not greater than \$200. § 73(b)
12	denials based on a finding of substantial provocation § 73(f)
9	denials based on failure of victim to assist law enforcement officials § 73(d)
6	denials based on finding victim injured before program took effect.
	denials based on finding victim and assailant living together or related § 73(c)
1	denial based on finding that there was no evidence of a crime
1	injury due to accident not caused by crime.
1	denial because harrassment is not compensable
3	denials; in which no reason given in the opinion.
57 =	Total number of reported denials.

APPENDIX B [continued]

ILLINOIS CRIME VICTIMS COMPENSATION ACT  
OCTOBER 1, 1973 - DECEMBER 31, 1975

FISCAL YEAR	NUMBER OF CLAIMS FILED	TOTAL AWARDS \$	AMOUNT ACTUALLY PAID \$	NUMBER OF CLAIMS CLOSED	NUMBER OF CLAIMS GRANTED	NUMBER OF CLAIMS DENIED	TOTAL AWARDS REMAINING UNPAID 12/31/75
1974 Oct. 1, 1973 through June 30, 1974	91	754.30	754.30	1	1	0	
1975 July 1, 1974 through June 30, 1975	970	349,452.74	266,704.29	184	127	57	
1976 July 1, 1975 through Dec. 31, 1975	562	766,795.22	246,095.81	344	224	107	
<b>TOTALS</b>	1,623	1,117,002.26	513,554.40	529	352	164	227,455.68 instalment awards 375,992.18 lump sum awards <u>603,447.86 Total awards</u>

H.B. 836 APPROPRIATED \$250,000.00 FOR FISCAL YEAR 1976 AWARDS: UNEXPENDED BALANCE IS: \$2,463.18  
Average award based on total number cases decided (i.e. both awards and denials): \$2,111.53

\*H.B. 3154, passed January 14, 1976, appropriated \$750,000.00 in additional funds for fiscal year 1976 awards.  
Statistics prepared by Robert S. O'Shea, Deputy Clerk, Illinois Court of Claims.