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REPARATION AWARDS TO VICTIMS OF CRIMES IN OHIO

INTRODUCTION

The concept of compensation for victims of crime through publicly funded programs is of fairly recent origin. Programs were developed in New Zealand and Great Britain in the early sixties, followed by programs in the United States in California and New York. Now approximately twenty states have such programs and there is one under consideration in the United States Congress.

Some of the reasons cited supporting the creation of criminal injury programs are:

1. Society has defaulted on its obligation to protect the individual and therefore has a duty to compensate him for his injury.
2. Incarcerating the criminal effectively deprives the victim of his tort remedy against the criminal.
3. The state has directed its expenditures towards aiding and rehabilitating the criminal not towards the victim.
4. The state has a moral obligation to help the victims of violent crime.
5. It is sufficient justification in a democracy to characterize such programs as a response to a societal need.

2 Id.
6 Id. at 480. See also: McAdam, Emerging Issue: An Analysis of Victim Compensation in America, 8 Urb. L. 346, 347 (1977).
7 Brooks, supra note 5, at 359.
8 Id. at 483.
9 Id. at 485.
6. Allowing recovery only if there has been a showing of cooperation with the police, will improve crime detection, since more crimes will be reported.\(^\text{10}\)

7. Allowing recovery to "good samaritans" who are injured in attempting to prevent crimes will encourage citizens to participate in fighting crime.\(^\text{11}\)

Whatever rationale is propounded, it seems clear that state legislatures are responding to a belief that the traditional remedies of tort recovery, insurance, and restitution\(^\text{12}\) are not adequate, and some kind of state funded program is required.

Ohio has taken steps to assist victims of crime by enacting Revised Code sections 2743.51-.72.\(^\text{13}\) It is the purpose of this comment to review the provisions of the Ohio law, comparing it with the statutes of other states and making a preliminary assessment of its impact, strengths, and weaknesses, based on approximately two years of experience with the law in its present form. Comparison will be made with the provisions of the Uniform Crime Victims Reparation Act, drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1973.\(^\text{14}\)

II. COMPARATIVE STUDY

A. Administration

The Ohio provision for reparation awards to victims of crimes is administered through the Court of Claims, the Court of Claims Commissioners and the State Attorney General's office. The Court of Claims came into existence January 1, 1975, and is a court of limited subject matter jurisdiction.\(^\text{15}\)

\(^{10}\) McAdam, supra note 6, at 359.

\(^{11}\) Id.

\(^{12}\) "For tort recovery, the criminal must be caught and his resources in prison are frequently not adequate to support payment of a judgment or restitution. Those who need insurance are the least likely to be able to afford to carry it." Id. at 347-49.

\(^{13}\) Am. Sub. H.B. 800 created the Court of Claims and waived the sovereign immunity of the State of Ohio, effective January 1, 1975. Am. Sub. H.B. 185, effective January 1, 1975, created a new cause of action for persons killed or injured while helping victims of crime, assisting a police officer or apprehending a criminal. This was repealed by Sub. H.B. 82, effective September 29, 1976, which also repealed the aiders of crime provisions and created the system for an award of reparations to victims of criminally injurious conduct. Am. Sub. H.B. 149 effective February 7, 1978, amended the reparations awards provisions. Am. Sub. Sen. Bill 119 effective August 30, 1978 requires all judges having criminal or juvenile jurisdiction to inform victims of the victims' right to file a reparations application.


\(^{15}\) The Court of Claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in Section 2743.02 of the Revised Code, exclusive jurisdiction of the causes of action of all parties in civil actions that are removed to the Court of Claims and of determinations pursuant to Sections 5315.04 and 5315.05 of the Revised Code, and jurisdiction to hear appeals from the Court of Claims Commissioners.

Most states have set up new administrative mechanisms for their victims’ compensation programs, but some states, such as North Dakota, Virginia, Wisconsin, and Washington, use previously existing administrative departments or commissions with judicial review through regular administrative procedures and court mechanisms. Tennessee uses its circuit courts, mandating that no judge may preside in a claims hearing, and at a criminal or civil trial involving the same crime.

The Uniform Act prefers a special board rather than a Workmen’s Compensation Board or a court.

B. Claims
   a. Compensable Injuries

   In Ohio, claims are allowed for “economic loss” resulting from “criminally injurious conduct,” which is defined as conduct occurring in the state which poses a substantial threat of personal injury or death and is punishable by fine, imprisonment or death, or would be so punishable except that the person acting lacked the capacity to commit the crime under the laws of the state. It does not include injuries caused by a motor vehicle unless there was an intent to cause injury or death.

   California, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, Nevada, North Dakota, Pennsylvania, Tennessee, Virginia, and Washington have similar provisions. However,

21 Id. at (b).
22 Rothstein, supra note 14, at 1532.
24 Id. § 2743.51(c).
25 Id.
32 N.Y. EXEC. LAW § 621 (McKinney 1972).
Alaska, Alaska, Delaware, Illinois, and New Jersey adopt the approach of listing specific crimes for which resulting injury is compensable.

The Uniform Act uses the same definition as the Ohio Act, based on the rationale that it is difficult to predict every crime that might give rise to personal injury.

There are substantial variations in the kinds of losses for which victims are compensated. The Ohio Act provides awards of reparations for "economic loss" which is defined as "economic detriment consisting only of allowable expense, work loss, and replacement services loss." If death is caused, economic loss includes a dependent's economic loss and a dependent's replacement services loss. No direct compensation is allowed for pain and suffering or physical impairment but only for economic loss which they might cause. "Work loss" is loss of income from work the victim would have performed if he had not been injured, expenses incurred by him to obtain services he would have performed for income, less any income from work he did or might reasonably have undertaken. "Replacement services" means expenses incurred in obtaining services the injured might have performed for himself or his family if he had not been injured. Included under "allowable expense" are medical care, rehabilitation, and an amount up to $500 for burial expenses. All funds available to the victim from collateral sources, such as insurance, social security, workmen's compensation and wage continuation are subject to the state's subrogation if an award is made.

There is no specific mention of pregnancy as a result of rape, and it does not seem that this kind of damage would be encompassed by the term "personal injury or death" in the definition of criminally injurious conduct.

The California statute provides that a local government agency shall provide funds for examination of sexual assault victims for the purpose of gathering evidence, but makes no mention of pregnancy. The Delaware,...
New Jersey, Virginia, and Wisconsin statutes specifically provide for compensation for the costs of pregnancy resulting from rape. Illinois excludes child support payments for a child conceived as a result of rape. Nevada has a provision for treatment at county expense for the victim and spouse of a victim of sexual assault contingent upon the filing of a criminal complaint against the alleged offender. Tennessee provides for an award for pain and suffering only to "victims of the crime of rape and victims of crime involving sexual deviancy." It would seem that the failure to address the problem of the costs of pregnancy resulting from rape is a substantial lack in the Ohio law.

Most states do not allow compensation for pain and suffering, although Delaware allows compensation for mental and nervous shock, and New York provides for payment for counseling services for those suffering traumatic shock.

The Uniform Act does not allow compensation for pain and suffering and other non-pecuniary loss, based on a rationale of allowing more people to be at least partly compensated. Also, unlike no-fault insurance, the act preserves the victim's private rights against the offender.

b. Eligibility

In Ohio, the "victim" is defined as a person who suffers personal injury or death as a result of criminally injurious conduct, the good faith effort of any person to prevent criminally injurious conduct, or the good faith effort of any person to apprehend someone suspected of engaging in criminally injurious conduct. The "any person" presumably includes the victim himself, though the language is not clear. That is, it is not clear whether a person who is injured or killed trying to prevent the criminally injurious conduct or trying to apprehend a person suspected of engaging in criminally injurious conduct would be considered a victim or whether the victim would have to be some other person injured as a result of these efforts. Since this section

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62 Rothstein, supra note 14, at 1532.
63 Id.
replaces the old "aiders in case of crime" provisions, the intent of the statute seems to be to include the aiders themselves. Police and corrections officers are not excluded under this section.

All states except Massachusetts and New York have similar "aiders" provisions and most states do not specifically exclude police officers as victims. However, many have statutes similar to that of Tennessee, which defines a victim as a "person who suffers personal injury or death as a direct and proximate result of any act" falling within the enumeration of the crimes. This would seem not to include a police officer in the performance of his duties. Illinois covers persons who assist victims only if such assistance "would be expected of a reasonable man under the circumstances," and those who aid a police officer only "if the assistance was in response to the express request of the law enforcement official." Virginia specifically excepts a law officer in the performance of his duties from the aider provision.

Ohio provides that no award be given to an offender or his accomplice, and allows an award to the spouse or any person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice only if "a determination is made that the interests of justice require that an award be made."

Most states flatly deny an award to such persons, although California and Delaware do not make such an exception.

The Uniform Reparations Act takes the approach that all claims should be scrutinized for fraud, collusion and gain to the offender, but that claims should be allowed for members of the offender's household if the interests of justice so require.

Ohio also provides that a claim may be denied if the victim has not cooperated with law enforcement agencies. This provision would further one of the reasons advanced to support the enactment of such laws: the improvement of law enforcement and crime detection.

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65 Ohio Rev. Code §§ 2743.31-35, amended and renumbered 2743.51, 2743.52 by Sub. H.B. 82, effective September 29, 1976. The former sections created a new cause of action for aiders to victims of crime. The sections did not apply to victims of crime but applied to persons injured or killed while rendering assistance to victims of crime, assisting a police officer or apprehending a criminal. The maximum award allowed was $10,000.


69 OHIO REV. CODE ANN. § 2743.60(B) (Page Supp. 1978).

70 Id.

71 Rothstein, supra note 14, at 1533.

72 OHIO REV. CODE ANN. § 2743.60(C) (Page Supp. 1978).
California, Delaware, Illinois, and Minnesota are among the states that have similar provisions. Additionally, some states, like Ohio, including Alaska, California, Hawaii, Illinois, Nevada, New Jersey, and Pennsylvania require a determination as to whether the victim contributed by his own behavior to the infliction of the injury, the award to be reduced or denied on the basis of such determination. Other states require that the victim's financial means be taken into consideration in deciding the award.

The Uniform Act recommends against considering financial means, both because of the additional administrative work involved in making such an investigation, and because it is felt that economizing can be attained more easily by limiting the elements of compensable damage and by placing a ceiling on awards.

Residency requirements vary from state to state. Ohio requires that the criminally injurious conduct occur within the state, but does not require that the victim be a state resident.

Alaska and New Jersey have no residency requirements at all, so presumably a nonresident would be covered if injured by a crime within the state, and a resident, if injured by a crime which occurred outside the state. California provides such coverage for a resident who was injured or killed while temporarily outside the state. Pennsylvania provides that if the vic-

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75 Crime Victims Compensation Act § 3, ILL. REV. STAT. ch. 70, § 73 (West Supp. 1978).
77 OHIO REV. CODE ANN. § 2743.60(D) (Page Supp. 1978).
78 ALASKA STAT. § 18.67.080(3)(C) (Michie 1974).
80 In determining whether to make an award under this section, the commissioner shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of the responsibility for the crime that caused his injury or death and the commission shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.
81 HAW. REV. STAT. § 351.31(c) (1976).
82 Crime Victims Compensation Act § 7, ILL. REV. STAT. ch. 70, § 77(c) (West Supp. 1978).
87 Exem note 14, at 1531.
tim’s state of residence allows payment to its residents injured in Pennsylvania, then the victim’s state of residence will have primary responsibility for the payment.

If a nonresident is injured in a state such as Ohio which does not require residency as a condition for award, and his home state permits awards for injuries which occur out of the state, which state would be primarily responsible for compensating the victim? While Ohio provides that an award will be reduced by the amount readily available to the victim from collateral sources, specifically mentioning “a state or any of its . . . subdivisions” as such a source, it has not specifically addressed this problem. Pennsylvania has a statute providing that a nonresident of Pennsylvania shall be eligible for such an award only if the victim’s home state provides compensation to Pennsylvania residents who are victims of crime in that state.

Conceivably, in the absence of a provision like that of Pennsylvania, there could be a dispute between states like California, Alaska and New York which provide for awards for their own residents when injured while out-of-state, and a state like Ohio, which presumably allows awards for out-of-state residents injured by criminally injurious conduct which occurs within the state.

A “claimant” in Ohio, that is, a person who may file a claim for an award of reparations, is defined as: a victim; a dependent of a deceased victim; a third person other than a collateral source; a person who is authorized to act on behalf of a victim; a dependent; or a third person who is not a collateral source. A “dependent” means an individual wholly or partially dependent upon the victim for care and support including an after-born child. The provision that a third person who is not a collateral source may be a claimant is somewhat ambiguous. It is probably intended to cover a parent or a minor child, but would this include, for example, a doctor or hospital which provided care for a victim? There seems to be a potential standing problem here, since it is unclear what kind of interest in the claim a third person would be required to have in order to be a claimant under the Ohio law.

Other states are more specific. Alaska allows an award to “a person responsible or who had been responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury or death.” Delaware provides that a relative, guardian or attorney may ap-

91 Id. § 2743.51(B)(2).
94 Id. § 2743.51(D).
ply on behalf of a person deemed by law to be incompetent. Michigan\textsuperscript{97} allows only a person eligible to receive an award or the parent or guardian of a minor to file a claim. The persons eligible to receive an award are the victim himself, a surviving spouse, parent, or child of a victim, or any person dependent for his principal support upon a victim who died as a result of the crime.\textsuperscript{98} North Dakota\textsuperscript{99} defines as claimants of the victim, a dependent of a deceased victim or a representative of either. The Tennessee provision\textsuperscript{100} is similar to that of Alaska.

The “third person” provision in Ohio awaits judicial interpretation but certainly raises problems of ambiguity.

c. Amount of Compensation

The Ohio statute\textsuperscript{101} provides for the award of attorney’s fees to be determined by the Court of Claims Commissioners, commensurate with services rendered and to be paid in addition to the amount awarded to the claimant. The statute also provides that attorney’s fees may be denied upon a finding that the claim or appeal was frivolous, but further provides that attorney’s fees may be awarded even if an award of reparations is not made.

The attorney fee provisions of the statutes of other states are various in form. Illinois\textsuperscript{102} provides that no fee may be charged an applicant for preparing or presenting an application before the Court of Claims; a fee may be charged for representing an applicant in a hearing but only in such an amount as the Court of Claims determines to be reasonable. Massachusetts makes no provision for attorney fees, nor does Michigan. The primary difference between the provisions for attorney’s fees is that some states, such as Hawaii,\textsuperscript{103} allow a percentage of the award to be paid out of the award, while other states, such as New Jersey,\textsuperscript{104} allow up to a certain percentage of the award, but to be paid in addition to the award.

The Ohio provision is potentially one of the most generous, since it places no percentage ceiling on attorney’s fees and pays in addition to the award. Ohio and North Dakota\textsuperscript{105} are the only states that allow by statute for an award of attorney’s fees even if an award of reparations is not allowed. Ohio\textsuperscript{106} also allows compensation for witnesses equal to that received

\textsuperscript{98} Id. § 18.354, sec. 4(1).
\textsuperscript{99} N.D. CENT. CODE § 65.13.03(2) (Smith Supp. 1977).
\textsuperscript{101} OHIO REV. CODE ANN. § 2743.65 (Page Supp. 1978).
\textsuperscript{102} Crime Victims Compensation Act § 12, ILL. REV. STAT. ch. 70, § 82 (West Supp. 1978).
\textsuperscript{103} HAW. REV. STAT. § 351-16 (1976) (up to fifteen percent).
\textsuperscript{106} OHIO REV. CODE ANN. § 2743.65(B) (Page Supp. 1978).
by witnesses in civil cases. Hawaii\textsuperscript{107} is the only other state that allows witness fees.

Ohio's allowance of up to $50,000 per incident is the highest of all the states.\textsuperscript{108} Alaska\textsuperscript{109} allows $25,000 per victim per incident, except in the case of death of a victim who has more than one dependent when the total award may not exceed $40,000. New York\textsuperscript{110} provides that there must be a minimum loss of $100 or 2 weeks earnings, whichever is less, and provides a maximum award of $20,000, unless federal funds are available to provide a larger amount. Delaware,\textsuperscript{111} New Jersey,\textsuperscript{112} and Illinois\textsuperscript{113} provide a maximum of $10,000, and Kentucky\textsuperscript{114} and Michigan,\textsuperscript{115} $15,000.

d. Payments from Collateral Sources

Ohio's statute, as do those of many states, provides that the state shall be subrogated to the claimant's rights to recover from any collateral source any benefits for economic loss for which an award of reparations was made.\textsuperscript{116} The statute also provides that the claimant may sue the offender for any damages or injuries caused by the offender and not compensated for by an award of reparations. Presumably, the wording of the statute would not allow the claimant to sue for any amount for which an award of reparations had been granted. The claimant may join with the Attorney General as co-plaintiff in any action against the offender. Read together with the definition of collateral source\textsuperscript{117} however, this provision might cause some difficulty. Collateral source is defined as "a source of benefits or advantages for economic loss otherwise reparable that the victim has received, or that is readily available to him" (emphasis added), including the offender.\textsuperscript{118}

Could an award of reparations be denied on the grounds that a claimant could have sued the offender, based on the rationale that this was a collateral source readily available to him? Could it be required that a claimant would have to assess his chances of recovery from the offender as a prerequisite for filing for an award of reparations? If he failed to sue the offender, filed a claim, and the statute of limitations had run on his cause

\textsuperscript{117} Id. § 2743.51(B).
of action against the offender before the decision was made on the award, and the award was denied on the grounds that he could have sued the offender as a collateral source, he could be precluded from any recovery for his loss. The reparations application asks if medical or loss of income benefits are available from any source other than under the Victims of Crime Act and includes a box to be checked for the offender, so such an assessment seems to be required.

A possible solution may lie in the provision of the act for reconsideration of a claim.\textsuperscript{119} If the claim has not been dormant for five years, a claimant to whom a reparation award was denied or whose award was minimal because of potential recovery from a collateral source may reassert his claim.\textsuperscript{120} The claim becomes dormant when one of three eventualities occurs:

1. An objection to the award of a single commissioner is not made before the time permitting objection has expired, or
2. An appeal is not made within the time permitted for appealing the original determination of a panel of commissioners, or
3. The court journalizes its final order on an appeal from the decision of a panel of commissioners.\textsuperscript{121}

Seemingly this provision would provide a remedy if it was erroneously determined that aid would be available from a collateral source, such as the offender. It does not seem, however, to eliminate the problem involved in assessing the possibility of recovering from the offender; that is, how, short of filing suit against the offender, could it be determined that the offender would not be a "collateral source readily available\textsuperscript{122}" to the claimant? The dormancy provision would seem also to provide cold comfort to aged victims or those whose needs might be immediate.

One final provision\textsuperscript{123} might provide a partial answer to these problems. If a determination is made by a single commissioner or a panel of commissioners that a claimant will suffer financial hardship unless a tentative award is made, and there is a likelihood that an award will be made, it is provided that an amount may be paid. This amount will be deducted from the final award or repaid to the extent the final award is exceeded. Thus, if the amount available from collateral sources is difficult to ascertain within a reasonable time, some relief is available.

Alaska\textsuperscript{124} merely requires that if compensation is awarded and the person receives a collateral sum, the Board may require that he refund it. The

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\textsuperscript{119} Id. § 2743.68.
\textsuperscript{120} Id. § 2743.68(A).
\textsuperscript{121} Id. § 2743.68(B).
\textsuperscript{122} Id. § 2743.51(B).
\textsuperscript{123} Id. § 2743.67.
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Delaware statute allows the state to institute action against the person who committed the act resulting in injury or death for which compensation is granted only when the person is convicted of the offense. It also provides that the award shall be the amount of pecuniary loss minus "the amount claimant has or will receive as indemnification from any other source." All of these provisions involve the problem of identifying the losses for which collateral sources indemnify in order to decide what amount is owed to the state, and allowing awards with subsequent restoration to the state of amounts received from collateral sources would seem to present enforcement problems.

The Uniform Act takes the approach that only collateral payments to the claimant on elements of damage covered by a compensation award are to be reimbursed and rules are provided for determining what losses are covered by collateral payments.

Kentucky, Massachusetts, and New York all have provisions that any money owed to a criminal for a media representation of any aspect of a crime for which the state has compensated a victim must be paid to the state. The acts provide that the money paid to the victim will be deducted from that amount and generally that the money will be held in escrow pending conviction, to be paid to any other victims of the crime.

C. Reporting Requirements

The states have various requirements for reporting the injury to the police and the time allowed for filing a claim. California and Delaware make no requirements for time in which the injury must be reported to the

126 Id. § 9005(1).
127 Rothstein, supra note 14, at 1532.
131 The Massachusetts statute reads:
§ 8 Proceeds received by criminals as result of commission of crime; distribution to victims.

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the state treasurer any moneys which would otherwise, by terms of such contract, be owing to the person or his representatives. The treasurer shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided such person is eventually convicted of the crime and provided, further, that such victim within three years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

police. Hawaii\textsuperscript{132} merely sets a "reasonable time." The other states include New Jersey's\textsuperscript{133} liberal requirement that the act be reported within three months to the police, and, at the other end of the spectrum, the requirements of Maryland,\textsuperscript{134} Massachusetts,\textsuperscript{135} and Virginia\textsuperscript{136} that the act be reported to the police within forty-eight hours.

Ohio\textsuperscript{137} requires that the report be made within seventy-two hours unless it is determined that good cause existed for failure to do so.

There are also varied time units in which a claim must be filed, ranging from the two year limit of Alaska,\textsuperscript{138} Illinois,\textsuperscript{139} Nevada,\textsuperscript{140} and Wisconsin\textsuperscript{141} down to Michigan's\textsuperscript{142} limit of thirty days after the commission of the crime or ninety days after the death resulting from the crime.

The biggest difference among the states besides the length of time allowed for filing the claim is whether an extension may be allowed for good cause shown or whether the limitation is absolute. The language of the Alaska\textsuperscript{143} statute is absolute, whereas the Illinois\textsuperscript{144} statute, allowing the same length of time, also permits extension of time for good cause shown provided notice of intent to file a claim is filed within six months of the injury. Statutes such as the Maryland\textsuperscript{145} provision, allowing 180 days from the injury or death, or the New York\textsuperscript{146} statute, allowing one year, both permit extension for good cause shown, though both limit the extension time to two years. The Tennessee\textsuperscript{147} statute places no limit on the extension allowed.

Ohio\textsuperscript{148} provides a one-year statute of limitations with no provision for an extension. It has been ruled, in \textit{In re Application of Janice E. and Katherine Powers},\textsuperscript{149} that the provision is an absolute bar against claims not

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\textsuperscript{132}HAW. REV. STAT. § 351-31(a) (1976).
\textsuperscript{137}OHIO REV. CODE ANN. § 2743.60 (Page Supp. 1978).
\textsuperscript{138}ALASKA STAT. § 18.67.130 (Michie 1974).
\textsuperscript{139}CRIME VICTIMS COMPENSATION ACT § 3, ILL. REV. STAT. ch. 70, § 73(g) (West Supp. 1978).
\textsuperscript{140}NEV. REV. STAT. § 217.210 (1977).
\textsuperscript{142}MICH. COMP. LAWS ANN. § 18.355, sec. 5(2) (West Supp. 1967-1979).
\textsuperscript{143}ALASKA STAT. § 18.67.130 (Michie 1974).
\textsuperscript{144}Crime Victims Compensation Act § 3, ILL. REV. STAT. ch. 70, § 73(g) (West Supp. 1978).
\textsuperscript{146}N.Y. EXEC. LAW § 625(2) (McKinney Supp. 1972-1978).
\textsuperscript{148}OHIO REV. CODE ANN. §§ 2743.56(A), 2743.60 (Page Supp. 1978).
\textsuperscript{149}In re Application of Janice E. and Katherine Powers, Claim No. V77-0197 and Claim No. V77-0198 (Ct. Cl., March 29, 1977), \textit{reprinted in Update '77}, at 2.37, 2.39 (Ohio Legal Center Institute).
timely filed: "The court is mindful that the result reached herein may seem harsh... This court, however, cannot substitute its judgment for that of the general assembly, so clearly expressed in R.C. 2743.60. Relief for these claimants must come, if at all, from the general assembly."\(^{150}\) It seems that a two-year limitation might be more realistic in view of the severe trauma sometimes suffered by victims, involving long hospitalization and rehabilitation.

None of the statutes requires arrest and conviction of the perpetrator of the criminally injurious conduct. As in Ohio,\(^{151}\) the body to which the claim is made makes its own determination as to whether the conduct occurred. The Ohio statute\(^{152}\) sets up a preponderance of the evidence as the standard of proof and allows awards for injuries resulting from conduct that could not result in criminal conviction because the person engaging in the conduct lacked the capacity to commit a crime under the laws of the state.\(^{153}\)

The California,\(^{154}\) Minnesota,\(^{155}\) North Dakota\(^{156}\) and Tennessee\(^{157}\) laws also specify a preponderance of the evidence as the standard for deciding whether the requirements for an award have been met. It would seem that specifying the standard of proof is a good provision, since if the awards become too great an expense for the state, there might be a tendency to limit the number of awards by requiring a higher standard of proof.

Some states, notably Michigan,\(^{158}\) New York,\(^{159}\) Pennsylvania,\(^{160}\) Tennessee,\(^{161}\) and Washington,\(^{162}\) specifically provide that acquittal of the alleged perpetrator in a criminal prosecution is no bar to compensation of the victim.

D. Financing

The programs are financed in various ways in different states. Ohio\(^{163}\) provides that the court impose three dollars in additional costs on any per-
son who pleads guilty or is convicted of any offense except a non-moving traffic violation, such monies to go into a reparation special account.

Some states, such as Alaska, have no provision in the act for raising funds. California provides that a person convicted of a crime of violence resulting in death or injury to another person can be fined any amount from ten dollars to $10,000, and additionally provides that a person convicted of a felony must pay ten dollars additional court costs and, of a misdemeanor, five dollars additional costs. Michigan provides that the sentencing of a felon convicted of a crime resulting in death or injury may include the requirement that he reimburse the state for costs of any compensation given to his victim. These provisions are representative of the way the financing is handled among the states.

E. Powers of the Court

In Ohio privileges, except those arising from the attorney-client relationship, are not recognized regarding communications or records that are relevant to the physical, mental or emotional condition of the claimant or victim in a proceeding under the act in which the condition is an element. A single commissioner or panel of commissioners may, for good cause shown and upon notice to the claimant or victim and to the Attorney General, order the victim or claimant to submit to a mental or psychological examination. Under similar provisions, an autopsy can be ordered of a deceased victim. Written reports of such examinations are to be filed with the Court of Claims.

The only sanction for refusal to comply with such an order, or any order under the act is a denial of the claim, since the contempt sanction is not available for such refusal. Interestingly enough, the unavailability of the contempt sanction applies also to the provision requesting the police to notify victims of crimes of the possibility of claiming under the act.

F. Generating Public Awareness

One of the most important provisions of the statutes is the one providing for notification of the victim that this kind of assistance is available. Some states, for example, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey and Tennessee have no provision for so inform-

166 Id. § 2743.62(A).
167 Id. § 2743.62(B).
168 Id.
169 Id.
170 Id. § 2743.63.
171 Id. § 2743.71.
172 See note 181 infra and accompanying text.
ing the victim. Alaska\textsuperscript{173} and California\textsuperscript{174} both provide that notices be posted in hospital emergency rooms with information regarding the compensation and also require that law enforcement agencies investigating crimes involving eligible victims both inform them and give them appropriate forms, while other states such as Minnesota\textsuperscript{175} and Wisconsin\textsuperscript{176} simply provide that the law enforcement agencies give the forms to eligible victims. North Dakota,\textsuperscript{177} Michigan,\textsuperscript{178} Minnesota,\textsuperscript{179} and Pennsylvania\textsuperscript{180} charge the board which administers the act with publicizing it.

Ohio has several statutes dealing with this matter. One\textsuperscript{181} requires that any law enforcement agency investigating an offense committed in the state shall provide information to the victim and his dependents about the availability of the award and tell them where to obtain an application.

No requirement is made as to how the law enforcement agency is to do this, and police departments in the state are handling the matter in different ways. Dayton\textsuperscript{182} has a pamphlet, entitled “The Crime Victim’s Procedural Guide” which is handed to victims by the investigating officer. Included in the pamphlet is the information that state compensation is available and telling the victim how to apply for it. Columbus\textsuperscript{183} has issued an information order to police personnel outlining the provisions of the act and provides officers with a form to give to the victim, informing him that he may be entitled to compensation under the act. Cleveland\textsuperscript{184} has also issued a General Police Order informing officers of their obligation and provides the officers with a form to give to the victim. Toledo\textsuperscript{185} has a similar informational form to be handed to persons who might qualify under the act. There is also a pamphlet available from the Attorney General’s office entitled “Are you an innocent victim of a violent crime?” outlining the provisions of the act and informing victims of the method of applying for compensation. The question, of course, is whether, in the process of investigating such a crime the officer always remembers to hand out the form, and whe-

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\textsuperscript{173} ALASKA STAT. \$ 18.67.175 (Michie 1974).

\textsuperscript{174} CAL. GOV'T CODE \$ 13968(b) (West Cum. Supp. 1979).


\textsuperscript{177} N.D. CENT. CODE \$ 63-15-05 (Smith Supp. 1977).

\textsuperscript{178} MICH. COMP. LAWS ANN. \$ 18.353, sec. 3(j) (West Supp. 1967-1979).

\textsuperscript{179} MINN. STAT. ANN. \$ 299B.06(e) (West Cum. Supp. 1979).


\textsuperscript{181} OHIO REV. CODE ANN. \$ 2743.71 (Page Supp. 1978).

\textsuperscript{182} Available from Beverly F. Pickett, Procedural Analyst, Policy Bureau, Department of Police, Dayton, Ohio.

\textsuperscript{183} Available from Captain Ernest B. Laszlo, Community Relations Bureau, Division of Police, Columbus, Ohio.

\textsuperscript{184} Available from James E. White, Sergeant, Coordinator, Major Offense Bureau, Police Department, Cleveland, Ohio.

\textsuperscript{185} Available from Patrolman Gary L. Thomas, Crime Prevention Section, Division of Police, City of Toledo.
ther this provision places another burden on officers already overburdened with paperwork.

The other three Ohio statutes require judges to notify victims of delinquent acts—at the time of imposing sentence in the case of an adult, or at a hearing at which a child is adjudicated delinquent—of their right to file a reparations application. Again the statutes do not mandate any method of fulfilling this obligation. This, again, seems to be a substantial weakness in the act.

III. Procedure For Applying In Ohio

What is the procedure in Ohio when a person has been informed and thinks he might be eligible for an award of reparations? No effort will be made to compare the Ohio procedure with that of other states, since each state handles the awards in a manner consistent with the type of administrative body that processes the claims. In Ohio, the first step is for the victim to obtain an application form. The forms are available from the Clerk of the Court of Claims or from the Clerk of the Court of Common Pleas in the county of the victim’s residence. When the form is completed, it is filed either with the Court of Claims or the Court of Common Pleas in the county of the victim’s residence. There is a filing fee of seven dollars and fifty cents which may be waived if the victim files an affidavit of indigence, with the provision that the fee will be determined from any award that is made.

If the application is filed with the Court of Common Pleas ten days is allowed for its transmission to the Court of Claims. The application is then sent to the Attorney General, who investigates the claim and makes written findings of fact and recommendations concerning an award of reparations. This must be filed with the Clerk of the Court of Claims within sixty days, although an extension may be granted for good cause shown. The recommendations of the Attorney General are transmitted by the Clerk of the Court of Claims to the claimant, who has an opportunity to respond in writing within ten days.

By the terms of the act, a board of at least three Court of Claims Commissioners has been established, all of whom must be attorneys. One member of the Board of Commissioners hears and makes a determination

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181 Id.
183 Id. § 2743.57(B).
184 Id. at (C); Ohio R. Civ. P. 6(E).
186 Id. § 2743.59.
187 Id. §§ 2743.58(B), 2743.55(C).
of the award;\textsuperscript{195} if the claimant or the Attorney General objects within ten days, then the claim will be heard by a panel of three commissioners, who make the award by a majority vote.\textsuperscript{196} If there is no timely objection, the award is final at this stage. The applicant may appeal to the Court of Claims the award, the amount of the award, or denial of an award by the panel; the Attorney General may appeal the conclusions of law.\textsuperscript{197} The decision of the Court of Claims is final; no further appeals are allowed.\textsuperscript{198}

The award may be made in either a lump sum or installments.\textsuperscript{199} Also, there is a provision that if a criminal prosecution is pending, the commissioners may, at the request of the Attorney General, suspend the proceedings, but in that case a tentative award may be made to the applicant.\textsuperscript{200}

\section*{IV. Two Years Of Experience}

The act has been operative since December, 1976. From December 28, 1976 to June 30, 1977, 706 cases were filed, 194 determined. A total of \$106,058.98 was awarded in 84 cases, with an average award of \$1,262.60. Interestingly, only one order was made for an attorney's fee, and that was for \$200. From July 1, 1977, to June 30, 1978, 1,187 cases were filed, 656 determined, with a total of \$1,242,753.09 awarded in 421 cases, an average of \$2,951.91 per award. Attorneys' fees for this period totaled \$26,913.69 for 92 orders, an average of \$292.54 per order. From July 1, 1978 to March 16, 1979, 875 cases were filed, 695 cases determined and 474 awards made for a total of \$2,399,771.45 or an average award of \$5,062.81. A total of \$46,613.71 was ordered for 134 attorneys' fees, an award of \$347.86 per order. The program totals to March 16, 1979, are: 2,767 cases filed, 1,545 cases determined, 979 awards for a total of \$3,748,583.52, an average award of \$3,828.99. Total attorneys' fees are \$73,726.90 for 227 orders, an average of \$324.79 per order. Obviously, the average amount of both the awards and the attorneys' fees has been rising, though there has not been a significant rise in the number of cases filed or in the number of awards given.\textsuperscript{201}

In the period from December 28, 1976 to June 30, 1978, there were a total of 1,893 cases filed.\textsuperscript{202} In the year 1977, the FBI Crime Reports totals for murder, negligent manslaughter, forcible rape, and aggravated as-
sault in Ohio were 23,135.\textsuperscript{203} Even assuming that some of the victims of these crimes would not be eligible for an award of reparations under the act, the wide disparity in the figures indicates that the law is far from being utilized to its maximum potential.

At least two factors seem to contribute. The first is the general absence of public awareness of the availability of the awards due to the lack of specificity in the provisions for informing the public.\textsuperscript{204} Setting up a more definite mechanism whereby law enforcement officers and judges will notify potential victims, providing for notices to be posted in hospitals, and charging the Attorney General’s office with a positive duty to publicize the act might be some ways to remedy this shortcoming. The other factor is the tremendous amount of work involved in applying for an award in comparison with the low average order for attorneys’ fees. Merely filling in the application would take enough of an attorney’s time to reach the amount of the average fee. Gathering the rest of the information that may be requested under the act\textsuperscript{205} and representing the client in hearings makes the work in essence \textit{pro bono} for the attorney, particularly since the attorney cannot contract for or receive any larger amount than is allowed as part of the order.\textsuperscript{206}

Two years, of course, is not a long enough time to assess the impact of the act. It will be interesting to watch the development of reparations to victims of crime in the State of Ohio in coming years.

\textbf{CATHRINE PETRAGLIA}


\textsuperscript{204} \textit{See} note 181 \textit{supra} and accompanying text.


\textsuperscript{206} \textit{Id.}, § 2743.65(A).
### APPENDIX I

**REPARATIONS AWARD**

**STEPS TO RECEIPT OF WARRANT**

*(Minimum Times: Non-Death Claims)*

<table>
<thead>
<tr>
<th>Step</th>
<th>Total Days</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Days)</td>
</tr>
<tr>
<td>i) Filed by Applicant in Common Pleas Court</td>
<td>0</td>
</tr>
<tr>
<td>ii) Transmitted by Common Pleas Court to Court of Claims <em>(7+3 days) (2743.57(C))</em></td>
<td>10</td>
</tr>
<tr>
<td>1) Filed by Applicant in Court of Claims** <em>(or Received from CP Court) (2743.56)</em></td>
<td>—</td>
</tr>
<tr>
<td>2) Application Served upon Attorney General <em>(2743.58)</em></td>
<td>3</td>
</tr>
<tr>
<td>3) Investigation by Attorney General <em>(2743.59)</em></td>
<td>60</td>
</tr>
<tr>
<td>4) Finding &amp; Recommendation Filed by Attorney General <em>(2743.59)</em></td>
<td>0</td>
</tr>
<tr>
<td>5) Recommendation Served upon Applicant <em>(2743.58(B))</em></td>
<td>3</td>
</tr>
<tr>
<td>6) Time for Applicant to &quot;Respond&quot; to Recommendation <em>(2743.58(B) &amp; Order of Court)</em></td>
<td>17</td>
</tr>
<tr>
<td>7) Assigned to Commissioner for Determination; Commissioner’s Decision Journalized <em>(2743.58(B))</em></td>
<td>30</td>
</tr>
<tr>
<td>8) Commissioner’s Decision Served upon Applicant &amp; Attorney General <em>(2743.55(C))</em></td>
<td>3</td>
</tr>
<tr>
<td>9) Time for Applicant or Attorney General to “Appeal” Commissioner’s Decision <em>(2743.55(C))</em> <em>(19 days actual time for return of Certified Mail Service by U.S. Postal Service)</em></td>
<td>19</td>
</tr>
</tbody>
</table>

* IF NO APPEAL & APPEAL TIME HAS ACTUALLY EXPIRED, THEN: *

<table>
<thead>
<tr>
<th>Step</th>
<th>Total Days</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Days)</td>
</tr>
<tr>
<td>10) Clerk Serves Certified Copy of Judgment upon Auditor and Office of Budget &amp; Management *(OBM) <em>(2743.191)</em></td>
<td>—</td>
</tr>
<tr>
<td>11) OBM Certifies Sufficient Monies to Pay Judgment <em>(2743.191)</em></td>
<td>—</td>
</tr>
<tr>
<td>12) Clerk Serves “Directive to Issue Warrant” *(Modified Voucher) upon Auditor <em>(Auditor)</em></td>
<td>—</td>
</tr>
<tr>
<td>13) Auditor Issues Warrant to Court of Claims <em>(Auditor)</em></td>
<td>—</td>
</tr>
<tr>
<td>14) Warrant Sent to Applicant by Certified Mail</td>
<td>—</td>
</tr>
<tr>
<td>15) Warrant Received by Applicant</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>65</td>
</tr>
</tbody>
</table>

**Total Days** | **210**

**TOTAL TIME** | **(7 Months)**

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* Death Claims: Add zero to 12 months to total for Dependent Class to close.

** Subtract 10 days from total if application is filed by applicant directly with Court of Claims.
APPENDIX II

APPEAL PROCESS
VICTIM REPARATION CLAIMS
FLOW CHART

Claim for Reparations
Filed
(Applicant)
↓
Investigation & Recommendation
(Attorney General)
↓
Optional "Response"
(Applicant)
↓
Court's Decision
(Single Commissioner)
↓
??
Accept Commissioner Decision?
(Attorney General) (No)
↓ (Yes)
Payment Process
(END)

Further Investigation Required
↓
(FINAL)

Appellant Brief
(Applicant*)
↓
Appellee Brief
(Attorney General*)
↓
Oral Hearing
(PANEL of COMMISSIONERS)
↓
Court's Decision
(PANEL of COMMISSIONERS)
↓
??
Accept Panel Decision?
(Attorney General) (No)
↓ (Yes)
Payment Process
(END)

Appellant Brief
(Applicant*)
↓
Appellee Brief
(Attorney General*)
↓
Hearing
(JUDGE)
↓
Court's Decision
(JUDGE)
↓
Payment Process
(END)

* The "Appellant" usually is the Applicant and the "Appellee" usually is the Attorney General, but the roles may be reversed.

Petraglia: Reparation Awards To Victims of Crimes

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