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there's a pending law suit and as I read the AG has said hold off and let us try and handle this legislatively, and it appears that one of the ways to handle this legislatively is to do away either with the non-competitive nature of bidding or approach it in some other way. And that's what we're attempting to do here, is to address it. Perhaps I should pose that question to, let's see well, Mitch, can you answer that?

Mitch Gravo: Yes, Mr. Chairman. It is my understanding that the interpretation of our Attorney General is that if this legislation to have the Department of Justice to go away because the regulation will therefore become mute and the legislation will be the commanding, the commanding rule. And that the concern of the Department of Justice. There are other states that have what their, there are other states that have Mini-Brooks legislation, the kind of legislation what you're looking at, and they don't have a problem with the Department of Justice. The reason this State has the problem is because we don't have any legislation however we do have the regulation. And it is my understanding that the Department of Justice said passed legislation that is the same as your regulation and you can do it by legislation but you can't do it just by ... through regulation.

Number 347

Chairman Furnace: Does that answer your question?

Vernon Akin: Maybe I can explain it a little bit more. The Mini-Brooks law and this House Bill 211 what it does is says the State will not put the jobs out for bidding, that what this is written for, the State will not put the jobs out for bidding. And I understand from Mr. Barry that this is legal, they can do whatever they want, the State can do whatever they want to, put what restrictions on the money that they are spending. Now if this 211 passes, it will catch the State and borough and the cities; it will not affect, it will not prohibit bidding of private jobs, private owners that want to put a job out to bid. The proposed bill which the DOJ suit is against this clause, the prohibitive bidding in the regulations. The proposed bill moves it from the regulations to a statute. If that were passed, if that bill were passed, then that would prohibit it for everyone. What it does is it gets the other end of it; it prohibits the engineers and architects from accepting work for bids. In my estimation we need both bills. One of them is to prohibit the jobs from being put out on a bid basis by the governmental entities. The other one is to prohibit the people from accepting it. As I say, the 211 can only get the public works but they can still, unless we have this other bill, well they can still bid on privately.

Number 373

Chairman Furnace: Let me recognize Representative Koponen.

- Number 374 Representative Koponen: Thank you, Mr. Chairman. I was wondering, I see that was the original language of the bill suggested by the Board or by the Attorney General?
- Number 377 Chairman Furnace: Which original language?
- Representative Koponen: The original version of 211.
- Number 378 Chairman Furnace: I'm trying to think. I don't recall. Jeff, do you recall?
- Number 379 Jeff Barry: Yes. Maybe I can clarify something on that. 211 has not really addressed by the Attorney General's Office for the simply reason ...
- Number 382 Chairman Furnace: No, Jeff ...
- Jeff Barry: Well ...
- Chairman Furnace: No, wait a minute. The question was, where did this original language come from? Please address that ...
- Number 383 Jeff Barry: Okay, the original language in 211 is the Mini-Brooks bill and it came from the Board and the members in the profession.
- Number 385 There is discussion on where the original language came from with committee members and Wallace DeBoff.
- Number 387 Chairman Furnace: Let me ask Mitch. Mitch, I think you, in turn can give us, where did you get this original language?
- Number 388 Mitch Gravo: The original language came from the group that testified on Friday, the Consulting Engineers Council of Alaska which is a group of 32 principals in architectural and engineering firms in the State that represent 500 individual architects and engineers.
- Number 392 Chairman Furnace: Was this gleaned from the Mini-Brooks Act?
- Number 393 Mitch: It was ... The Mini-Brooks was used as a model. It's not exactly like the Mini-Brooks but very close to it.
- Number 394 The question is asked, the Washington State legislative model?
- Number 395 Mitch Gravo: The ABA model and the Mini-Brooks model, both of those. They're slightly different but that's the model that was used in drafting the original 211.
- Number 398 Chairman Furnace: Okay. Representative Koponen?

Representative Koponen: The reason I raised the question is that the Attorney General Designate Gorsuch apparently replying to the U.S. District Court did indicate that they would be ...

Number 401 Chairman Furnace: Which document?

Representative Koponen: This is one of the ones in the law case ... Civil Act from filed November 12th, '82. ... And it doesn't include anything, it's merely the agreement that they would, move to the about the tenth one down in that pile we got, it essentially reviews the case. It's in support of the defendant's motion for state proceeding.

Number 408 Chairman Furnace: Okay, I'm still trying to find the same thing that you have.

Number 409 Representative Koponen: It begins on Introduction and Summary after the court has informed by letter, a new attorney general undertook a review of this status ... I was just wondering whether the Attorney General had reviewed the matter since he is now the defending attorney whether, you know, it's the matter that he had drawn up, whether he feels that this would satisfy the case or, you know, in other words since he is your and our lawyer in the case, and he feels that this would satisfy. That's the only reason why I raised the question. I'm curious. And whether we should ask his opinion on this. So that we do change, you know, put forth legislation that will satisfy the requirements, that's all.

Number 422 Chairman Furnace: Mitch, comment briefly.

Number 423 Mitch Gravo: Mr. Chairman. Representative Koponen. It is my understanding that the Attorney General's Office has taken a look at the initial 211. And correct me if I'm wrong Jeff, but was indicated that that would serve the purpose of making the DOJ suit ... that's their understanding.

Number 427 Jeff Barry: No. Well, no. They drafted up a specific bill to address the law suit. The 211 is the State as a consumer in its choice of what it wants to do in its contract and procedures. The Department of Justice suit is the State using its police powers through the regulation and the licensing of engineers, architects and land surveyors of saying that they shall not be allowed to continue in business if they give a price estimate or bid to anyone and the regulation is separate, it's totally separate. 211 addresses what the State as a consumer will do, it's perfectly legal, it's a choice for the State to make as to how they want to handle their own money. The law suit has to do with the regulatory power of the State delegated to the Board of saying that if a person, a member of the profession, responds

to a request for a price. If saying if an individual walks in and says how much will you survey my plot of land for and they give him the answer they may lose their license. That's using the police power and the allegation is that's in violation of Sherman Anti-Trust Act. And there were three suits brought that were settled that said yes it was. They proposed some other legislation, the Governor would not introduce that legislation and they sent the Board down here saying maybe you guys will introduce that particular legislation. The law suit this is totally separate and apart; this is a choice matter; it's perfectly legal and doesn't impact that at all; and it should be treated separately as that being ...

- Number 450 Representative Koponen: Mr. Chairman, there was a reason I raised the question. I was wondering whether we were going to be looking at other legislation and that, you know, as a bundle to meet these questions.
- Number 453 Chairman Furnace: It's quite possible, Representative Koponen. The one we have in front of us now, the one that I would like to resolve first, get that in place, is either go with the original version of 211 or go to the recommended amended which in turn would be a Committee Substitute.
- Number 456 Representative Koponen: It's just in reading this and listening to the testimony made me realize that there are other matters pending that are not addressed by the bill.
- Number 457 Chairman Furnace: It's going to be important now for committee members to read all of this material, get a good handle. And what I propose to do today again is to walk through this, try to mark it up and then let's make sure we do our homework. This is a substantial piece of legislation and we need to have a good handle on it. But let's get on with the business of the hearing. Mr. Akin, are there additional questions?
- Number 462 Vernon Akin: I would like to correct one thing that Mr. Barry said. Using an example that you could not go, the engineer or the architect or land surveyor, anyway, could go in and give a price. This is not what the legislation, not the regulations, says, it says he may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. That's the way, that's what is prohibited. The fact that someone says how will you do this job for me that is essentially what we're doing now is we get the job, I mean the architect or engineer, they talk over the scope and then at the tail end of the negotiation is the how much do you want for doing this. That's not what we're objecting to, we're objecting to competitive bidding. This is the main crux of it. That you put it in and you're bidding against another professional man. And this we say is detrimental if you go on this basis, it's detrimental to

the owner because you're putting the services on a monetary basis rather than an expertise basis.

Number 477 Chairman Furnace: Good. Thank you, Mr. Akin. Let's go now to the next gentlemen to be heard ... Mr. DeBoff.

Number 479 Wallace DeBoff: Chairman Furnace, I wasn't really planning on testifying.

Chairman Furnace: For the record, Sir, would you again state your name and who ...

Number 480 Wallace DeBoff: My name is Wallace DeBoff. I'm Chairman of the Board of Engineers, Architects and Land Surveyors. My last name is D E capital B O F F. I really wasn't planning on testifying for 211 today. I was really more interested in what we're going to do with the bill that the Board proposed. And I understand that you'd like to take one thing at a time. So I believe that I'm on the back burner again. Is that ...

Number 485 Chairman Furnace: Okay. Are you speaking of the original draft of 211?

Number 486 Wallace DeBoff: No, I'm speaking of a bill that was brought down and given to Jeff and asked, you know, we asked him if he'd ask you to introduce it for us.

Number 487 Chairman Furnace: I've not seen that, do you have that?

Number 488 Chairman Furnace calls an at ease.

Number 499 Chairman Furnace: ... let's now concentrate the energy, if we will. There are no other persons to be heard. We do have two potential pieces of legislation. What the Chair would propose we do is to go through these and make some determination of support. Jeff, would you take the seat down here, walk through an analysis on 211, and then we'll go through the recommendation.

Number 505 Jeff Barry: On 211 or also with 'a'?

Number 507 Chairman Furnace: Let's walk through 211 first, then we'll go through the recommend ...

Number 508 Jeff Barry: 211 basically is a change to chapter 36.98 which is professional services and that's this, and it fits within this as an exemption to the normal requirements for the professional services contracting, and I think it's helpful that way to see exactly how it fits in the whole scheme of things. Section 1 on architectural, engineering and land surveying contracts, as it would be straight 211 version, is language which defines how the architectural, engineering and land surveying contracts will be handled by

the State and it's political subdivisions. In the various methodology that's proposed in Section 1. Section 2 adds a new paragraph under 36.98.080 which is a definition that defines an emergency where under Section 1 the procedures would not apply. Section 3 amends AS 37.05.240 which is, with its sister portion AS 37.05.230, has to do with competitive bids, Alaska preference, definition of responsible and the competitive bid aspect and various other sections. And what it does is put a reference back to Section 1 in there that for contracts and architectural, engineering and land surveying shall be treated under Section 1 and not under 230 or 240. Section 4 is adding a new definition under the definitions; that just reiterates that 36.98.041 of Section 1 will be used in the architects, engineering and land surveying. Section 5 says that it will apply after the effective date. And Section 6 is the effective date clause. Did you ... In Section 1 did you want to go through what the methodologies are that are being proposed?

Chairman Furnace responds yes.

Number 541

Jeff Barry: Section A says notwithstanding the provisions of AS 36.98.040, and 36.98.040 has to do with the evaluation of proposals and award of contract. The significant part in there it says that only on the basis of demonstrative competence and qualification, 040 provides for both for the competence qualification but it also, under Part C of 36.98.040, says the contract, well, it defines a number of specific criteria that have to be met the evaluation, the contracting agency, and it requires the request for proposal which is part of the area of whether or not that constitutes a competitive bidding, and that's what this is clearly trying to get away from is competitive bidding or pricing. B is in awarding the contract and it's a selection that it shall be strictly on the basis of demonstrative competence and professional qualifications. C, and that is your basis criteria, is that C it says subject to the criteria in B of this section a particular procedure for the selection of architects, engineers or land surveyors or for the award of contract is not required. And it says the State may publicly rank proposes or offers received in response to a request for services. That's pretty well leaves it wide open, whereas in 36.98 there are some set procedures because of various problems that occurred in the past. D and E, D is an exemption to this procedures for emergencies and E a definition that in this section State includes political subdivisions of the State and agencies of the state and its political subdivisions. It's a straight definition. And basically, ...

Number 573

Chairman Furnace: Let's go through A, then ...

Number 575

Jeff Barry: A again goes back basically to 36.98 which was legislation that was passed last year and tries to bring and

set forth a procedure to be followed. And Part A is just stating that it's the policy of the State to publicly announce the requirements and to negotiate contracts only on the basis of demonstrative competence and qualification for the type of professional services required and a fair and reasonable prices notwithstanding the provisions of 36.98.040. Part B says the section this section chapter, applies to contracts for architectural and engineering services provided to a State agency unless one total amount of the contract does not exceed 25 thousand.

Number 587 Chairman Furnace: Jeff, where did that language come from?

Jeff Barry: That language comes from 36.98.010. It's the exact language ...

Number 588 Chairman Furnace: Statute?

Jeff Barry: Yes, Sir. It's on the small printout putting that in Session Laws '82. The 25 thousand dollar figure was a compromise reached among all parties. Last year when this, what was then House Committee Substitute for Senate Bill 156, was going through the process there were about four or five bills rolled into to clean up the abuses in the professional services area not aimed at architects, engineering and land surveying, but the consultants and across the board in those. The 25 thousand dollar figure was a compromised figure. There were components, the Ombudsman Frank Flavin, former Ombudsman, who it wanted zero, no exception. There were others saying well we have small contracts we need the flexibility to be able to sole source them if we want or anything else. So the 25 thousand figure was just a figure arrived at by compromise. That's saying that it goes over, this will apply, under 25 thousand basically do what you want.

Number 602 Chairman Furnace: Now that's total contract dollars as opposed to 25 thousand in fees?

Number 603 Jeff Barry: Well, it could be read either way. Quite honest ...

Chairman Furnace: ... Well, what was the intent there? What were they thinking? Are we talking contract dollars?
...

Number 604 Jeff Barry: The actual contract dollars to the individual or firm. So it, the interpretation that Mr. Akin had would be probably be correct. It would consistent with the history of 36.98 that the award or the contract to the individual firm would have to exceed 25 thousand.

Number 608 Chairman Furnace: Let me take Representative Ringstad, then Uehling.

- Number 609 Representative Ringstad: My recollection was that, or my understanding was that, the intent here was for the larger contracts, contracts meaning or the interpretation I think was that the job was going to be more than 25 thousand, not necessarily the fee.
- Number 613 Chairman Furnace: Okay, but that's just what he said, wasn't it?
- Representative Ringstad: Well, I think it depends on how we look at it. Now, if we're going to give out a million dollar job, a million dollars is more than 25 thousand. Okay, that's a big job. We want, it would not qualify here as being under 25 thousand. But if the contract is written so that I'm contracting with you to do this million dollar, to oversee architectural million dollar project. The contract with you is only 20 thousand so it falls under this. It's two different contracts. I think that's where the misunderstanding was.
- Number 621 Jeff Barry: It's ambiguous in the regard that basically the legislation was aimed at the consulting areas of which it would be a consulting contract, that's end of and in itself rather than a project where elements could be broken out. So it is ambiguous from that aspect.
- Number 624 Chairman Furnace: I'm going to take a question here, Representative Uehling?
- Number 625 Representative Uehling: Yes, maybe you can explain that further. What, well, what two types of contracts are you talking about? You said if there's a million dollar situation and then you've got 25 thousand what is the, I just don't understand at all.
- Number 628 Jeff Barry: Well, it could read either way and that's what I think everyone is saying. That actually B should be changed in here, you know, applies to contracts unless and then under 1 the total amount of instead of putting in contract put in the word fee, in which case it would clearly designate that and then set whatever dollar amount you want or delete it. This was just taken from above but as specifically pertains to the profession would be appropriate to clarify that so that there is not ambiguity.
- Number 636 Chairman Furnace: Rick, additional questions?
- Representative Uehling: I just didn't see the difference between the fee and the contract. ...
- Jeff Barry: Well, in the project contract if it were a building, the building itself in the total CIP may be two and a half million dollars, but the contract with the architect and engineer for that may be only 20 thousand.

Number 639 Chairman Furnace: ... Representative Koponen.
Jeff Barry: So which would be covered or not and that's ...
Representative Koponen: Thank you, Mr. Chairman.
Chairman Furnace: Representative Koponen.

Number 640 Representative Koponen: Mr. Akin's referred that it would open it up to competitive bidding if the low contract, it can also be read that under 25 thousand dollars that agency or department of the State is not required to inquire into the competency of the ...

Number 643 Chairman Furnace: Absolutely.
Representative Koponen: Which might be one of the things that we don't want to open up. Just grab somebody off the street.

Number 644 Chairman Furnace: Okay, thank you, Representative Koponen. Mr. Ringstad?
Representative Ringstad: I was just going to ...

Number 645 Chairman Furnace: I'm sorry. Let me, I think Mr. Cowdery was ...
Representative Cowdery: I'm going to be ...

Number 646 Chairman Furnace: Mr. Ringstad?
Representative Ringstad: No, I was just going to try and further explain the ...

Number 647 Chairman Furnace: Okay. Mr. Malone?
Representative Malone: I don't have any questions.

Number 648 Chairman Furnace: Let the record show that, did you note that? Continue. Suffice that number 1 under B needs some cleaning up if it is to ...

Number 650 Jeff Barry: Right. It should address B and then the figure amount is was just taken out of 010 and there's no rational basis. Whatever would be. In 2 is and it's bracketed because there's a question people wonder why that was the contract, is an employment contract for services to be performed under the direct supervision regardless of the existence. That basically has to do where people have brought in from outside right directly in-house whether it's to teach new techniques, to clean up, to work on the projects, specific because of a time crunch ... (END OF TAPE)

TAPE #39 (Side B)

Recording

Number 002

Chairman Furnace: Let's break at that point again. I wanted to adjourn the meeting unless there's some objection to it. And have a chance to work with Mr. DeBoff and Mr. Gravo, and Jeff and I to work out some things here. We do have a floor session that's coming up here in about 20 minutes. Give the committee, you a chance to get back to your offices to get prepared for that. Representative Ringstad?

Number 010

Representative Ringstad: Can we get copies of these things so we can take them with us and play with them?

Number 012

Chairman Furnace: Do you want to take your file with you?

Number 013

There was discussion by the Chairman and committee members regarding the committee files. Chairman Furnace then spoke of the agenda for tomorrow's meeting regarding continuation of HB 211 and introduction of HB 197.

Number 031

The meeting is adjourned.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE MEETING
RE: HOUSE BILL NO. 211
March 22, 1983

TAPE #40 (Side A)

Recording

Number 005 Chairman Furnace: The Chairman has called the meeting to order. The day 3/22/83. Those persons present are: Representatives Wendte, Ringstad, Cowdery and Chairman Furnace present. The time is 8:50. The legislation for consideration today is the continuation of the discussion on House Bill 211, "An Act relating contracts for architectural, engineering and land surveying services; and providing for an effective date." We have before you this morning an amendment that is recommended for substitution of the Section 1 of the bill. I'd like to walk through the amendment this morning and to see what the greatest importance here. Does everyone, do you have a copy of that?

Number 013 There is discussion regarding if committee members have a copy of the amendment.

Number 020 Chairman Furnace: All right, let's go to the amendment then.

Number 021 The question is asked, that's the one defined as 'a'?

Chairman Furnace: Yes, that's the one that's defined as 'a'. First of all, has each member had a chance to read the amendment? Are there particular sections of it that you have concerns with? If not, we'll start from the top and just walk through it. ... Section A then is the policy of the State to publicly announce all requirements for architectural and engineering service and to negotiate contracts architectural and engineering services only on a basis of demonstrated competency and qualification for the type of professional service required and that a fair and reasonable price not withstand the provision of chapter 40 the section 36. Any problems with that? Representative Ringstad.

Number 029 Representative Ringstad: I've just one question maybe I'm off base but that's stating that this is the policy. Are we accomplishing what we want to accomplish? In that just 'cause that's policy doesn't mean that necessarily they have to do it that way.

Number 032 Chairman Furnace: What are you suggesting or recommending? I don't follow you.

Number 033 Representative Ringstad: Are we better off to state that this is the way it will be done? Rather than to establish general policies that always have exceptions to the rules and this and that and the other?

Number 035 Chairman Furnace: Well, it might be in our legal terminology. It appears to be that this to understand the language, Representative Ringstad. Would you other suggest language you would like to insert there?

Number 037 Representative Ringstad: Well, you know, and if you're trying to accomplish something, most legislation that I have dealt with is this is the way we shall do it.

Number 039 Chairman Furnace: I think you should read more into the bill and to the amendment shall and ...

Number 041 Representative Ringstad: That type of language is there.

Chairman Furnace: Yes.

Number 042 Representative Ringstad: Your first paragraph is kind of coming across as ...

Chairman Furnace: This is an amendment to be inserted into ...

Number 043 Representative Ringstad: Well, the way I read it, you're taking out this whole thing here. It's starting out as a rewrite of the whole bill the way I read it.

Number 045 Chairman Furnace: The question, Representative Ringstad, do you have a problem with Section A? If so what is your recommendation?

Number 046 Representative Ringstad: Well, it was just a question. To me this would read as intent language ...

Number 048 Chairman Furnace: It's a policy statement.

Representative Ringstad: Okay. Fine.

Number 049 Chairman Furnace: Okay. Section B. This chapter applies to contracts for architectural and engineering services provided to a State agency unless the total amount, and there was a recommendation to change contract to fees, does not exceed 25 thousand dollars. Any problem with that statement? Representative Cowdery.

Number 052 Representative Cowdery: Yes. It seems to me in the real world that the fees out there, the interpretation of whatever the architect or engineering fee would be to a particular project could be in the administration of contracts and everything, this could all be in the fee that was tithed. And I just have problems with the 25 thousand dollars or putting a figure on this with due respect to the qualifications, some maybe think that if we don't put a fee that we're overlooking the small individual, but I still think that in top here it says here demonstrative competence of qualifications that that is the key to me of what the intent of this is to try to get competence

and qualification into this bill, 211. And I think that if we, with due respect to the small guy, I think that the 25 thousand dollar figure is not what unlike a person trying to getting into the contracting business and he builds himself a reputation to the bonding markets to deal with the bond jobs and that is the process through tries to work for large firms or out on your own and demonstrating your competence 'til finally you can get the competence of a bonding company to back you. And too, to the larger amount then I think that's probably, I just have a little problems with putting a fee into the price.

Number 072 Chairman Furnace: So is there a recommendation?

Representative Cowdery: I don't think that there should be a dollar amount.

Number 073 Chairman Furnace: Is there a motion to that effect then? To exclude that language?

Number 075 Representative Cowdery: Yes, I would make a motion that we ...

Number 076 Representative Ringstad: A point of inquiry here. I want to address this to Representative Malone because he's had a little more experience on these. Can we be amending and adopting a draft substitute before we adopt a substitute?

Number 079 Representative Malone: I think that's a decision the Chair should make, Representative Ringstad.

Number 080 Representative Ringstad: I didn't know if the Rules addressed that ...

Number 081 Representative Malone: Committee procedures are fairly informal so whatever the best way to handle something as far as ...

Number 082 Chairman Furnace: Representative Cowdery has the floor. Are you proposing a motion to delete Line 1 under Section B?

Number 084 Representative Cowdery: Yes. With, I would like, we have heard from many people here mainly the architects, we haven't heard from Associated General Contractors I don't believe and from the Department of Transportation, you know, that's maybe that would be in order to get input from them on this issue. But right now I would propose that we delete the sentenced total amount from the fee or contract does not exceed.

Number 089 Chairman Furnace: Is that a motion then, Representative Cowdery?

Representative Cowdery: Yes.

Number 090 Chairman Furnace: We have a motion to delete Line 1, Section B, all in favor of that motion?

- Number 091 Representative Wendte: Mr. Chairman, I would like to call a discussion.
- Chairman Furnace: Discussion? Let me recognize Representative Wendte, then Malone.
- Number 093 Representative Wendte: I note that the entire section there B is in the existing statute. Why are we proposing another bill to put this exact language in the statute when it's already in there? ... Although you're putting it in another section. Verbatim that's taken out of the existing statutes.
- Number 098 It was stated: Representative Wendte. The entire section of the statute you are referring to before does no longer applies to this particular rule, if this is adopted. So there would be absolutely no procedures and this is establishing procedures for that particular group. So you're exempting them from the requirements of 36.98 and ...
- Number 103 Representative Wendte: You mean you're re-establishing the same procedures in this bill?
- It was responded: Or some procedures, yes.
- Number 104 Representative Wendte: In this case, exact verbatim word-for-word procedure.
- Number 105 Chairman Furnace: Let's see ... Where did you find that in the statutes?
- Representative Wendte: 36.98.010.
- Number 107 Chairman Furnace: 010?
- Representative Wendte: Yes.
- Number 110 Representative Wendte: That's my concern and I don't see any reason in the statute to exempt them from one and then completely redraft the same.
- Number 112 There is brief discussion.
- Number 115 Representative Wendte: Well, I guess my concern is that directly to the point of your motion ... The wording that you're trying to get out is already in the statute for professional contracts, professional services contracts.
- There is more brief discussion.
- Number 118 Chairman Furnace: Okay, let's, Representative Wendte has the floor ...
- Representative Wendte: Sections for everything from section, all of Section B is in the statute; down to the start of

Section C; and really Section C is a restating of 36.98.020 except you're adjusting it some, though it's not verbatim but it's model after that as well.

Number 124 Chairman Furnace: Okay, Representative Malone, do you a comment concerning that?

Representative Malone: I guess, do we have a motion pending?

Number 125 Chairman Furnace: There's a motion of the floor we have to handle it.

Representative Malone: It would delete this total amount of the contract does not exceed 25 is what basic ...

Number 127 Chairman Furnace: That's the extent of the motion.

Number 128 Representative Malone: And so it that it would require even in the case of small contracts under this section the State or local government agency to go through all the steps except I guess they wouldn't have to have at least six firms ... That's in fact ...

Number 133 Chairman Furnace: That's one portion of it. Now, be mindful that 36.98.010 applies to the professional services contract; the new section 36.98.041 applies to architects and engineers, so it is a new section of the statute. And so the process here would be to repeat certain existing language in this to make it more conclusive, unless this committee elects to take some of this out and once we go through and adjust this document. The question is, have we violated any statute requirements or whatever, and that would be the second effort. We're still on discussion, Representative Malone.

Number 143 Representative Malone: Well, it just .. basically then you'd have no exemptions from 041. Might be ... state operations, might not be ...

Number 147 Chairman Furnace: Additional discussions? Representative Ringstad.

Representative Ringstad: I tend to agree with Representative Wendte about that whole Section B. I'm not sure what ...

Number 149 Chairman Furnace: Well, Representative Ringstad, we're dealing with Section B, Number 1, at this time. That is the motion on the floor.

Number 151 Representative Ringstad: Okay. ... We're all going to amend the motion or you want me to discuss it?

Number 152 Chairman Furnace: We're having a discussion right now.

Representative Ringstad: Well, that's what I'm trying to discuss ... If you want a motion, we can do that too.

Number 152 Chairman Furnace: Well, we have a motion on the floor to deal with Section B, Item 1.

Number 154 Representative Ringstad: Okay.

Chairman Furnace: To take out the total amount of the contract does not exceed 25 thousand. Additional discussion on that. Are you ready to vote to delete that?

Number 156 The response is discussion.

Number 157 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Well, to me in addressing what Representative Wendte's point, I think we can do without the whole Section. Why go through line-by-line and leave out every line?

Number 159 Chairman Furnace: Then would you wish to amend the motion to take out the entire section? ... that amendment.

Number 160 Representative Ringstad: Yes, I would with Representative Cowdery's concurrence I would amend to move the original motion to leave out Section B here.

Number 163 Representative Cowdery: Okay.

Chairman Furnace: Well, then the amendment to the motion is to take out Section B in its entirety. Discussion on the amendment? No discussion? All in favor of taking out Section B in its entirety show by a raise of hand. All opposed? The motion carries. Section B is deleted. Section C. You gentlemen can read as good as I can. Any concerns with Section C? Representative Wendte.

Number 171 Representative Wendte: Mr. Chairman, I guess I ... We have a section that address professional services, and now we're creating a whole new section for a series of statutes that deal with contracts with architectural and engineering services. So I guess as a drafting concern Section B, Section C rather and throughout, we go back to describing as professional services contracts when you have a whole set of statutes that deal with professional services contracts. Well, I guess it's our intent, as I understand it, to take a section of professional services contract and call them architectural and engineering services. Although that doesn't mean that your professional any more but we are, I can see problems throughout where going back and referring to professional services contracts. Does that mean that professional services contracts for architects and engineers, does that apply to both? Existing statutes do we got and then this one as well?

Number 186 Chairman Furnace: I'll restate my comments from a minute ago. What we're doing now is adding a new section of statute covering architectural and engineering services. In essence, I would assume here that has the intent of taking architectural and engineering services out of the professional services statute and setting up a different sections governing that. That is the request that we've had and that is what we are dealing with now.

Number 191. Representative Wendte: So my concern is let's not take out the wording where they use professional services contracts in this bill. Continue to call it to be consistent with what you just stated. Architectural and engineering services contracts.

Number 194 Chairman Furnace: I believe that that has been done in the amendment.

Representative Wendte: Well, if you go through if you read through C you'll see regular reference to professional services contracts.

Number 197 Chairman Furnace: I don't think, you know, that's not awardable I believe, but let's read that. The State agency proposes to enter into a contract architectural and engineering services the agency shall give public notice soliciting a request for qualification for the professional service contract by qualification at least three times in one more newspapers in general circulation. Now, that particular instance, we have professional services contract and that covers, excuse me, a wide array of other practitioners. In this particular instance, we're speaking of principally to architects and engineering services, that contract is still called a professional services contract. And that is perhaps the distinction you have professional service contract to land surveyors for example. One of the recommendations is to not include land surveyors in this particular bill only to the extent that in they may interact with an architect or engineer. That's another adjustment that we'll have to make. Does that make it plainer?

Number 211 Representative Wendte: Well, the only I guess the point is that if you wanted to add a definitional section that says in every instance in this statute where they discuss professional services contract ...

Number 214 Chairman Furnace: ... statute ...

Representative Wendte: ... that you're ... that you are in effect, you need a definition of what you're talking about when you're talking about that, so that you don't have the conflict between the two sections of the statutes.

Number 218 Chairman Furnace: So noted. We can put that definition in the

...

- Number 219 Representative Wendte: You have a definition for, in this section, architects and engineering services includes professional services, so you define it that way ... It is mostly just a drafting ...
- Number 222 Chairman Furnace: ... as a recommendation. Let's go back now. Sec. 3 is there a motion concerning Sec. 3? Is there a desire to delete portions or all of Sec. 3? Section C, I'm sorry. Representative Ringstad.
- Number 227 Representative Ringstad: We're requesting, let's see, the agency should give public notice soliciting a request for qualifications. Under current statute what we're doing is giving public notice, soliciting proposals. So the change here is that we're requesting qualifications and not proposals?
- Number 232 Chairman Furnace: Well, perhaps let me explain that. In the engineering and architectural situation, the company is judged upon its ability and its qualification, and that qualification often times is spread upon two particular documents, Form 255 and 254. If an engineering firm wishes to bid on sewer job for example, on 255 they would list their history and involvement in sewer jobs. Often times they would pick based upon their qualifications first, and then negotiation as to price and other design characteristics is somewhat of a second phase, you see. So the first solicitation is a request for qualification, and that is probably unique to the engineering and architectural ...
- Number 246 Representative Ringstad: Well, ... address that to me, part of your proposal, to make a proposal, well that's the basis they're going to determine it on your proposal will have that. That's if you don't submit your qualifications as, and all you give them is money, then you have half a proposal and your proposal's no good.
- Number 250 Chairman Furnace: Perhaps what we need to do, Representative Ringstad, is to walk through again the process of solicitation of a job, an A and E job. Mitch, can you share that with us? Can you join us here?
- Number 254 Mitch Gravo: Mr. Chairman, as I understand it how the process works, Representative Ringstad, is that the State first advertises for a request for qualifications for a job. For example, design a bridge, and they solicit responses from qualified architectural and engineering firms. And the only thing that the A and E firms submit are their qualifications or their experiences to do a design for a bridge. And then once the State gets all of those, what are called RFQs, they take a look at them and they see who the six best or three best qualified firms are. And then once they make that short list, they talk to the person, most qualified firm based on the request for qualification. And that at time they ask the most qualified firm to submit a proposal to design the bridge. And then in

that proposal they ask for a request for proposal at that time. So there is a distinction between a request for qualification which occurs initially and up to the point when they determine who the short list is. Once they determine what the short list is, then they ask the most qualified firm of, they request a proposal to do the project. They're terms of ... they have very firm definition within the AE field.

Number 272 Chairman Furnace: Thank you. Representative Ringstad.

Number 273 Representative Ringstad: So basically that's the way they're doing it now?

Number 274 Mitch Gravo: Yes.

Number 275 Representative Ringstad: Effectively what they're doing then is a majority of the people submitting for the job don't put in a bid?

Number 277 Mitch Gravo: No.

Representative Ringstad: Price bid.

Mitch Gravo: No. No. Not at all.

Number 278 Representative Ringstad: So by putting this in here basically you aren't changing anything in this paragraph? ...

Number 279 Mitch Gravo: That qualifies pretty much the standard procedures, at least the Department of Transportation. Now, how Fairbanks or how Unalakleet or how the Anchorage School District solicits paying services may vary a little bit. But that's the standard procedure at least for the Department of Transportation. That's the one that I am most familiar with.

Number 284 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Okay, so the testimony we had the other day, they were trying to get to the local, the local areas too, so this may or may not apply to them at this point?

Number 287 Mitch Gravo: It would apply to them because in the substitute draft that you have before you states that it's defined to include political subdivisions.

Number 289 Chairman Furnace: At this point?

Mitch Gravo: Yes.

Chairman Furnace : It does not necessary apply, that's just the way DOT does ;

Number 290 Mitch Gravo: Right.

Chairman Furnace: Representative Ringstad, one of the attempts here again is in this particular contracting there should be some predictability and some uniformity. Now, what we may be doing is asking other political subdivisions to comply with the statute if this indeed does go into statute. DOTPF has a pretty recognized and respected system and the burden would be upon the municipalities into coming to some type of compliance ... Is this section here okay? ... Representative Ringstad, additional questions? Representative Wendte?

Number 302 Representative Wendte: Mitch, would you, almost everything in this bill in fact aside from dropping out some sections in the existing statutes, would you go through and point out where this bill differs, is a difference from the existing statute? Which I understand was just adopted last year.

Number 306 Mitch Gravo: Representative Wendte, I didn't draft this Committee Substitute, so I'm not totally familiar with it. But I think that if you read it closely the first paragraph, if you turn back to the first paragraph, the only exception to 36.98 that is made here is the exception that 36.98.040, and that is the section in 36.98 that could allow price bidding. That's the only section in 36.98 accepted. So I think if you read it closely, the rest of 36.98 applies. Or could apply.

Number 315 Representative Wendte: I guess I get back to my original question. Why are we going through and putting all the same language back in?

Number 316 Chairman Furnace: How would you suggest handling that then, Representative Wendte?

Number 317 Representative Wendte: I would suggest that whoever drafted it go back and completely redoes it, the whole thing. All we're doing is duplicating statute.

Number 319 Chairman Furnace: Well, Representative Wendte, be mindful now, we're creating a new section of statute.

Number 320 Representative Wendte: I know that.

Chairman Furnace: New section to cover architectural and engineering. Now, I'm not totally positive on this but it appears when if you're going to do that I guess what you're saying, you want to reference back to professional contracts as opposed to making this a separate ... and section all of its own. Which means that you're going to repeat somethings which happens all the way through the statutes, if there is a redundancy here.

Number 326 Representative Wendte: I guess for all concerned I guess the present system isn't, is it working or does not properly apply to architectural and engineering services.

Number 328 Chairman Furnace: Perhaps the best statement is that it does not particularly address the concerns and the intent of codifying more specifically those contracts and the contractual relationship between architects and engineers in a State and political subdivision. I don't think it's a certain question not necessarily working but an attempt to codify it.

Number 333 Representative Wendte: Well, as I understand it the intent of the bill is just to get competitive bidding out of the process in terms of the dollar figure going to essentially to inquire determinations be made on the basis of qualifications.

Number 336 Chairman Furnace: That is ...

Representative Wendte: If that's the case, it just seems to me that there would be a whole lot cleaner way to do that rather than going back and creating a whole new series of sections of statutes that repeats what's, you know, the previous section of statutes.

Number 339 Chairman Furnace: Yes, but do you have some recommendation for that, Representative Wendte.

Number 340 Representative Wendte: I guess my recommendation is we request whoever drafted this to start over again without doing that.

Number 342 Chairman Furnace: Well, you know we could request them to start over again without some specific direction; we've requested that and this is the information ... Now, without some specific recommendation as to what you'd like to see, going back to the drafters aren't going to accomplish what you want. Representative Ringstad.

Number 347 Representative Ringstad: Question to Mr. Gravo. Mitch, now you were saying that the first paragraph in our draft here exempts architects and engineers from section 040.

Number 351 Mitch Gravo: That's the only thing that architects and engineers are exempted for in this Title 36.98.

Number 353 Representative Ringstad: The way I read that that first paragraph that proposes scrutiny.

Number 354 Mitch Gravo: That's the section 36.98 that causes the A and Es some concern because that the section which could allow for question.

Number 356 Chairman Furnace: Which section is this again? Okay.

Representative Ringstad: 36.98.040 is what we're exempting them from. So I follow that one step further by exempting them only from the section, they're still under all the rest of this 36.98. And paragraph B matches up with 36.98.01, paragraph C matches up 36.98.030, and it kind just go back down, and as

Representative Wendte was saying, we're duplicating. So maybe what we need to do in drafting this thing is go back and only address 040, we're going to exempt from that, all we have to do is exempt from that and state specifically ...

Number 373 Mitch Gravo: Mr. Chairman?

Chairman Furnace: For the record, Mitch.

Mitch Gravo: Mr. Ringstad, I think that that is with original HB 211. It just addressed the issue of price bidding, precludes price bidding, and does not say anything about a procedure, and left that procedure up to DOT or the statutes that exist now or the local government or the local school district or whatever.

Number 379 Chairman Furnace: Representative Ringstad.

Representative Ringstad: So in leaving it up to the existing statues or whatever, this is the rest of this 36.98 is the existing statutes, the guideline that is already there. So what we need to do is just make sure that we exempt from 040 and it still by doing that it would still fall in to this and make sure that the State and all political subdivisions thereof fall into that.

Number 389 Chairman Furnace: Question? Continue.

Representative Ringstad: Mr. Chairman, in direction of where Representative Wendte was going is to how do we redraft this to address that. I think that that we are in fact duplicating in saying this still in the existing statute. Maybe what we ought to do is go back to the basis of addressing only the one section that we're exempting architects and engineers from. We don't have to address all the rest of this which we seem to be doing on several pages. I think we can leave to section page on that Page 1, 2, 3, and 4, or 5 out.

Number 401 Chairman Furnace: Are you putting that in motion, Representative Ringstad? Or is that simply ...

Number 401 Representative Ringstad: Well, let me keep working on it to make sure ... you know far we need to go here.

Number 403 Chairman Furnace: Let me recognize Representative Malone.

Number 404 Representative Malone: Well, Mr. Chairman, I understand that, I understand that the same way that we're duplicating a lot of the language and procedures set out in the earlier section, but we're also providing a new contracting mechanism different from 36.98.040 and when you do that you have to set out the procedures you're going to use. That's what this bill does. And I think on that basis it's properly drafted. I mean I suppose you can go in and say that the only section that doesn't apply under 36.98.010 to whatever the end of the chapter is, is 040,

but when you do that you're going to have to make some conformance changes to the rest of it and I think the cleanest way to do it is with a new section. Just from a procedural standpoint.

Number 421 Chairman Furnace: Representative Ringstad.

Representative Ringstad: Mr. Chairman, I would propose or if we so choose a motion form that we redraft this, have this redrafted for us basically so that we would include paragraph A and then paragraphs I, J, K and L. And if we need to we can state in there maybe ... that other procedures within this Title 36.98 would still apply. Something along that line. Within 36.98 it's stated in all these sections and then 36.98 is stated all over again. Perhaps what's already on the books all we have to do is, by implication I think it's there, but if not we can just refer back and say that A and E's still under the guidelines of other parts ...

Number 439 Chairman Furnace: Let's make sure what you're proposing to take out is. Your motion is to ...

Number 440 Representative Ringstad: Well, we've already taken out B, so ...

Number 441 Chairman Furnace: Your motion then addresses taking B through ...

Number 442 Representative Ringstad: Let me take on the positive form.

Chairman Furnace: Okay.

Number 443 Representative Ringstad: I would move to have this redrafted for us so as to include paragraph A, Section 1 on Page 1, Page 5, paragraph 1, and all of Page 6. And I think once we get that and we get a chance to review that, we'll work with that and maybe we can see if we need to add something to reference it back to what's currently in statute or that's implied.

Number 453 Chairman Furnace: Okay, we have a motion on the floor. Discussion? Let's take a second to see ...

Number 468 Chairman Furnace: Additional time to review? Are you ready to handle the motion? Additional discussion? Are you ready for the vote on the motion? All in favor of the motion in its present state to adopt of this Section A ... Section 1 A and move to Page 5, Items A ... I, all of Page 6? That is ... A problem with that?

Number 480 Representative Ringstad: You're doing fine.

Chairman Furnace: All in favor of the motion show by a raise of hand. All opposed to the motion show by a raise of hand. The motion does carry. We'll redraft it to cover that. I want to have a chance again to read back between the two documents.

Number 484 Representative Ringstad: Mr. Chairman?

Chairman Furnace: Representative Ringstad.

Number 485 Representative Ringstad: I would suggest that in reviewing that, Billy can have ... for us and we can study that one a little bit and compare that to this one and compare it to existing statute, compare it to the original bill, and ...

Number 489 Chairman Furnace: Okay. Is there any more discussion on that? All right. We will have to reschedule this, I'll set a date. We've got a fairly heavy calendar ... we'll make it in relationship to another meeting. Are there persons to be heard on HB 211 at this time? Any other comments? If not, that ends discussion on 211.

Number 499 Chairman Furnace then brought the next item on the agenda, HB 197, before the committee.

A /

HB 211

3/12/83

*Section 1. AS 36.98 is amended by adding a new section to read:

Sec. 36.98.041 ARCHITECTS AND ENGINEERS.

(a) It is the policy of the state to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services only on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices notwithstanding the provisions of AS 36.98.040.

(b) This section chapter applies to contracts for architectural and engineering services provided to a state agency unless

(1) the total amount of the contract does not exceed \$25,000;

[[[(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner.]]]

(c) When a state agency proposes to enter into a contract for architectural and engineering services, the agency shall give public

notice soliciting a request for qualifications for the professional services contract by publication at least three times in one or more newspapers in general circulation in the state and, when appropriate, in a newspaper in local circulation where the work is to be performed. The first notice shall be published not less than 30 days before the date on which the agency expects to enter into the contract and each subsequent notice shall be published at intervals of no more than three days thereafter. The notice shall include

(1) a general description of the proposed project for which the agency is seeking professional services; and

(2) the procedure by which a person or firm interested in the professional services contract may submit its response to the agency for consideration for the contract.

(d) In addition to complying with the publication requirements of (c) of this section, when a state agency proposes to enter into a contract for architectural and engineering services it shall

(1) review the register of professional services contractors maintained by the commissioner under AS 36.98.020; and

(2) provide a notice of a request for qualifications for the proposed professional services contract to each prospective contractor who, after review of the register of professional services contractors under (1) of this subsection, the agency finds is qualified for consideration for the contract.

(e) Requests for qualification from at least six persons or firms with the required expertise shall be solicited for contracts equal to or greater than \$100,000. Requests for qualification from at least three persons or firms with the required expertise shall be solicited for contracts of less than \$100,000 if the expertise required is available. If the expertise required is not available to enable an agency to solicit the number of requests for qualification otherwise required under this subsection, the agency shall solicit requests for qualification.

(1) from each person or firm listed on the professional services contractors register maintained under AS 36.98.020 who appears to possess the required expertise;

(2) from each person or firm responding to the public notice given under (a) of this section who appears to possess the required expertise.

(f) The provisions of this section do not apply if

(1) the contracting agency demonstrates that there is a single source of the expertise or knowledge required or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work; however, this exemption applies only if the head of the state agency has submitted a written request to the commissioner that details the reasons for the exemption and the commissioner or deputy commissioner has authorized in writing the state agency to enter contract negotiations with the single source;

(2) the commissioner makes a written determination that public necessity will not permit delay incident to the procedures otherwise required by this chapter; or

(3) the service is to be provided by another state agency, a federal agency, or a political subdivision of the state.

(g) The agency must provide a description of the work to be performed under the contract and the agency shall conduct discussions regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. The state agency must provide a description of the factors that will be considered when it evaluates the request for qualifications received.

(h) After the responses are submitted, the state agency shall publically evaluate them. The evaluation shall consist of assigning point values to factors considered by the agency in evaluating each proposal. Points shall be awarded for being a qualified Alaska firm..

(i) The state shall negotiate a contract with the highest¹ qualified firm for architectural and engineering services at compensation which the state determines is fair and reasonable to the state. In making such determination, the state shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature of the services. Should the state be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, the state shall undertake negotiations with

the second most qualified firm. Failing accord with the second most qualified firm, the state shall enter negotiations with other contractors, in order of ranking until an agreement is reached. The state may reject all or part of a proposal.

(j) This section does not apply to contracts awarded in an emergency if the person responsible for execution of the contract on behalf of the state certifies in writing that an emergency exists.

(l) In this section "state" includes political subdivisions of the state and agencies of the state and its political subdivisions.

(1) In this section "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

I. REQUEST

Bill/Resolution No.: CSHB 211
 Title: Arch/Engr/Land Surveying Contracts
 Sponsor: Furnace, Abood, Barnes, etc.
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: DOT&PF
 Program Category Affected: Transportation
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL				SEE ANALYSIS		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jonathan W. Scribner Phone: 364-4339
 Division: Deputy Commissioner, S.E. Region Date: 4/13/83

Approved by Deputy Commissioner: Jonathan W. Scribner Date: 4/13/83
 Department: Department of Transportation & Public Facilities

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

ANALYSIS

One would be hard pressed to readily identify a cost of this Bill to the State, however, the prohibition against using price in any way to select consultants cannot help but impact the competition process with regard to the cost of the work done. The restrictive nature of this bill could conceivably increase the cost of capital projects as follows:

Assume: Cost of Consultant fee for Design	=	7% of CIP
Cost of Bill	=	5% of Consultant Fee
CIP	=	\$200 Million/year
Cost of CSHB 211	=	$0.05 \times 0.07 \times \200 Million
	=	\$700,000 per year

RECEIVED
3-22-83

March 17, 1983

Representative Mike Szymanski
Pouch V
Juneau, Alaska 99811

Dear Mike:

John and I have read over House Bill No. 211 concerning architectural and engineering services. The procedures outlined sound pretty much like the way things have been handled lately, at least as far as our recent experience is concerned.

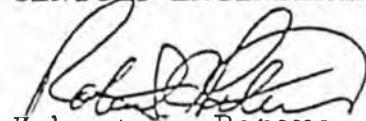
I would think something in the bill giving guidelines as to how "fair and reasonable prices" are determined might be helpful. Most national professional organizations, such as the National Society of Professional Engineers or American Institute of Architects have booklets to help owners determine fee ranges for project types.

On page 2 of the bill, line 23 makes reference to "bids". A bid is usually a monetary figure and would then seem to conflict with other portions of the bill. Possibly "offers of or proposals for" would be more suitable language.

Thanks for allowing me the time to comment on this legislation which affects an area of direct impact on my profession..

Sincerely,

CENTURY ENGINEERING, INC.



Robert S. Peters, P.E.
Project Engineer

RJP/css

Labour Commerce

STUTZMANN ENGINEERING ASSOC., INC.

P. O. BOX 1420
FAIRBANKS, ALASKA 99707
907 452-4094

March 23, 1983

MAR 24 1983

John Ringstad
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Sir:

It has just come to my attention that committee revisions to H.B. 211 have the effect of deleting the profession of land surveying from the context of this bill.

As both a professional engineer and a professional land surveyor, I have supported this bill in its original form as introduced February 17, 1983 and strongly urge your support in passing it as such.

The deletion of land surveying and other amendments proposed in committee do a tremendous disservice to the land surveyor's profession, some two thousand strong in this State; also, its exclusion would have a deleterious effect on the quality of land surveys in the future by aiding in the degradation of this highly skilled profession into sub-professional status.

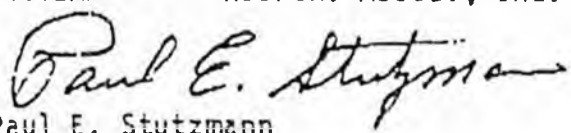
Sub-standard land survey work has already been a major problem in land title work in our State, one of the newest in the Union, and any regulation of land surveying out of professional status can only contribute to more disastrous results.

H.B. 211, as introduced, is a fine and much needed piece of legislation which brings State government procurement practices in line with professional standards in use in other States and by the Federal government.

Again, I urge you to support this bill in original form and resist any modifications thereto.

Very truly yours,

STUTZMANN ENGINEERING ASSOC., INC.


Paul E. Stutzmann

BRO-HB

FAIRBANKS SOCIETY OF
PROFESSIONAL LAND SURVEYORS

SR 10113

P.O. Box 2522

Fairbanks, Alaska 99701

March 24, 1983

Rep. Nillo Koponen
Pouch V
Juneau, AK 99811

MAR 24 1983

Dear Rep. Koponen:

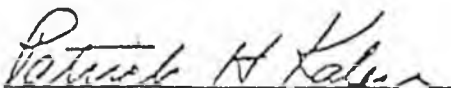
The Fairbanks Chapter of the Alaska Society of Professional Land Surveyors wants to express strong support for HB 211 in its original form. We also wish to express our strong objection and dismay at the Committee Substitute for HB 211 which eliminates Land Surveyors from this bill.

As a profession, we are classified under AS 48 in the same category as Architects and Engineers. We are registered by the same Board of Occupational Licensing and licensed by State of Alaska. Our Professional Certificates are signed by the "Board of Architects, Engineers, and Land Surveyors." Each Professional Land Surveyor receives a Professional License which must be renewed annually by the State of Alaska.

When a Registered Land Surveyor (RLS) signs and places his professional seal on a survey plat, his reputation and that of the entire profession are being offered as surety that the plat is correct and the land survey legal and complete. When a member of the profession is found guilty of unprofessional work, his license and professional status can be stripped by the State Board of Architects, Engineers, and Land Surveyors.

This attempt by the Committee Substitute to remove Professional Land Surveyors from the bill has the effect of removing one-third of the category which the bill addresses. We strongly urge you and others of the Fairbanks delegation, and members of the appropriate legislative committees, to re-instate Land Surveyors as a part of HB 211. It is a good bill, but the Committee Substitute must be rescinded.

Sincerely yours,


Patrick H. Kalen, RLS
Patrick H. Kalen, President
Fairbanks Chapter, ASPLS

Copy: Rep. Bob Bettisworth
Rep. John Ringstad
Rep. Mike Davis
Rep. Mike Miller
Rep. Hugh Malone, RLS
Rep. Furnace, Chair, Labor & Commerce
Speaker Joe Hayes, PE, RLS
Sen. Bettye Fahrenkamp
Sen. Don Bennett

SELECTION OF ARCHITECTS
AND ENGINEERS

§ 541. Definitions

As used in this subchapter

(1) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

(2) The term "agency head" means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

(3) The term "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

June 30, 1949, c. 288, Title IX, § 901, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1278.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4707.

Library References
United States Code
C.J.S. United States II 35, 37, 62 to 64.

§ 542. Congressional declaration of policy

The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

June 30, 1949, c. 288, Title IX, § 902, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4707.

Library References
United States Code
C.J.S. United States II 35, 37, 62 to 64.
1. Grant-funded procurements
Architectural and engineering procurement procedures contained in sections 513

and 511 of this title, mandatory for federal procurements for such architectural and engineering services, were not per se applicable to procurements by the Leaking County Regional Planning Commission, a grantee under a community development grant by the Department of Housing and Urban Development. 1090, 50 Comp.Gen. 251.

§ 543. Requests for data on architectural and engineering services

In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

June 30, 1949, c. 288, Title IX, § 903, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4707.

Library References
United States Code
C.J.S. United States II 35, 37, 62 to 64.

§ 544. Negotiation of contracts for architectural and engineering services

(a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which

making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing agreement with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

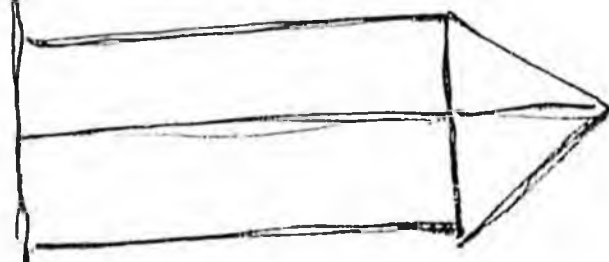
June 30, 1949, c. 288, Title IX, § 904, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4707.

Library References
United States Code
C.J.S. United States II 35, 37, 62 to 64.

1. Factors considered
Factors which were used in fulfilling requirement to negotiate contracts for architectural and engineering services on basis of demonstrated confidence and qualifications for type of professional

services required and which included institutional maturity, organizational framework, management plans and approach, management group experience, and availability of disciplines were not violative of this chapter as unduly stressing those factors most likely to lead to selection of a large, established firm rather than a small minority one with individual rather than institutional competence and qualifications. Mikellinot v. United Engineers & Constructors, Inc., D.C.Pa. 1970, 485 F. Supp. 1292.



COMMITTEE REPORT

4/14

HOUSE

JUDICIARY

FURTHER:

2/17/83

Date: 4/11/83

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 211

✓ An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB (L+C) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Walt Furnace

John [unclear]

[unclear]

[unclear]

Walt Furnace
CHAIRMAN

I. REQUEST

Bill/Resolution No.: CSHB 211
 Title: Arch/Engr/Land Surveying Contracts
 Sponsor: Furnace, Abood, Barnes, etc.
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: DOT&PF
 Program Category Affected: Transportation
 BRJ, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<u>OPERATING</u>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<u>TOTAL OPERATING</u>		-0-	-0-	-0-	-0-	-0-
<u>CAPITAL</u>			SEE ANALYSIS			
<u>REVENUE</u>						

FUNDING: (Thousands of Dollars)

<u>GENERAL FUND</u>						
<u>FEDERAL FUNDS</u>						
<u>OTHER (Specify Source)</u>						

POSITIONS:

<u>FULL-TIME</u>		-0-	-0-	-0-	-0-	-0-
<u>PART-TIME</u>						
<u>TEMPORARY</u>						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Jonathan W. Scribner Phone: 364-4339
 Division: Deputy Commissioner, S.E. Region Date: 4/13/83

Approved by Deputy Commissioner: Jonathan W. Scribner Date: 4/13/83
 Department: Department of Transportation & Public Facilities

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

ANALYSIS

One would be hard pressed to readily identify a cost of this Bill to the State, however, the prohibition against using price in any way to select consultants cannot help but impact the competition process with regard to the cost of the work done. The restrictive nature of this bill could conceivably increase the cost of capital projects as follows:

Assume: Cost of Consultant fee for Design	=	7% of CIP
Cost of Bill	=	5% of Consultant Fee
CIP	=	\$200 Million/year
Cost of CSHB 211	=	$0.05 \times 0.07 \times \200 Million
	=	\$700,000 per year

H

B

2 1/2

COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

Date: 22 MAR 1993

2/17/93

Mr. Speaker:

The Committee on JUDICIARY has had CS HB 212

An Act relating to crime victim compensation; and providing for an effective date.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 212 (SUD) same title
 new title

and recommends _____

- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature] Do Pass
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]
 CHAIRMAN



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Public Safety	Sponsor (Principal) Pestinger & Clocksin	Bill Number HB212
Department Position Support		
Division Director Nola K. Capp	Date 2/22/83	Commissioner's Signature Date

GOVERNOR'S OFFICE USE

Comments:

Position Noted By _____ Date _____

SUMMARY

1. a. Related Bills (Similar or Conflicting) SB 86 HB 104 SB 107	1. b. Other Agencies Affected by Bill
2. a. Organizational Support for Bill	2. b. Organizational Opposition to Bill

3. Program Effects of Bill
This bill would add a new paragraph which would enable the Board to pay the provider directly for services provided as a result of the personal injury or death of the victim. The bill also provides a new paragraph which would enable the Board to deny a claim if the claimant refuses to give reasonable cooperation to law enforcement in their efforts to apprehend and convict the offender for the crime resulting in the personal injury, unless good cause for the refusal is shown the Board. The bill would also repeal the Section of the Act which now excludes relatives and victims living with offenders. The bill, under Section 18.67.130(c), deletes the sentence, "all payments must be made in a lump sum." (continued on page 2)

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:

6. Comments: The Board supports adding the paragraph in Section 18.67.080(a)(4), as many times in the past the provider has not been paid because the service had to be paid in a joint warrant and this warrant did not always get sent to the provider. This would also be less of a hassle for the claimant. The Board supports the deletion of the lump sum payment requirement as they feel long term payments would insure the award was not exhausted before the dependent reaches majority or the claimant is able to return to work. The Board also supports adding paragraph (5) to Section 18.67.130(b), as they feel there are a few cases where the claimant is justified in fearing retribution from the offender. The Board also supports repealing the Section 18.67.130(b)(1) and (2), as they feel many people in the bush and outlying areas are truly innocent victims, but are not included in the present act because they are living in the same residence as the offender. This repeal would also mean innocent dependent children could receive loss of support when one spouse killed the other spouse and left the children homeless. (continued on page 2)

Program Effects (continued from page 1)

A new paragraph is added stating a person awarded compensation is ineligible for subsequent compensation for additional personal injuries inflicted by the same offender if the offender is a relative or member of the same household as the victim.

Comments (continued from page 1)

The Board supports the deletion of the lump sum payment requirement, as they feel long term payments would insure the award was not exhausted before the dependent reaches majority or the claimant is able to return to work. Section 18.67.135 would keep the offender from benefitting from his actions and speaks to this concern.

from Rep. Tischer

CRIME VICTIMS IMPACT STATEMENT

A manual for crime victims citizen associations, judges and prosecutors to provide due process for victims in the criminal justice system.

Washington Legal Foundation

This Crime Victims Impact Statement Manual is prepared and distributed by the Washington Legal Foundation to State and Federal Judges and Prosecutors in all 50 States and the District of Columbia. The purpose of this manual is to help develop a system whereby the victim of crime participates in a constructive manner in the sentencing process of a criminal case.

The Washington Legal Foundation, a nonprofit public interest legal center with 80,000 members nationwide, has been a pioneer in the field of crime victims' rights. Besides the preparation of this manual, WLF has provided legal assistance to victims to enable them to file civil actions against the criminals and third parties for damages suffered by the victim. WLF has also submitted proposals with the United States Parole Commission that if adopted, would require victim compensation as one of conditions for parole. WLF also has participated in many programs concerning victims' rights as part of WLF's commitment to educate the public on this important issue.

We encourage users of this manual to submit comments and suggestions to the Foundation on the use of the Victim Impact Statement as well as on other crime victims' rights issues.

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INTRODUCTION

A violent crime now occurs every 24 seconds somewhere in the United States. Every 23 minutes, a murder is committed. A woman is raped every 6 minutes. There's a robbery every 58 seconds, and an aggravated assault every 48 seconds.

The striking truth about crime is that we are all vulnerable to its random selection, and becoming increasingly vulnerable as America's crime clock continues to tick at a faster rate, with violent crime increasing 11% in 1980.

There has been much written and spoken of the pervasive fear of violent crime which threatens the American way of life. The Chief Justice of the U.S. Supreme Court has recently and poignantly spoken out on the subject of violent crime, noting the "reign of terror" which has made Americans "hostages within the borders of our own self-styled, enlightened, civilized country."

Fighting violent crime has been declared a high priority of the Reagan Administration's Justice Department.

The Washington Legal Foundation believes the victim of violent crime should be given the highest priority in America's continuing struggle to deal with the issue of violent crime.

The diligent efforts of progressive criminologists, jurists and legislators over the past two decades have borne fruit. Caught up on providing social justice for the criminal offender, the American taxpayer has been footing the bill for the millions of dollars being spent on programs for criminal offender-oriented rehabilitation and court reform. We now offer criminal offenders every conceivable right and legal service interpreted to be due them under the law.

Law enforcement officials, the courts and the entire criminal justice system have focused their efforts on the rights of the accused, providing to the offender "massive safeguards" in the words of Chief Justice Warren Burger.

Unfortunately, no one has made such a zealous effort on behalf of the innocent victims of crime, who have become the forgotten factor in the criminal justice equation.

For far too long, the words "Criminal Justice" have been interpreted to mean "Justice for the Criminal." We have forgotten that for every crime, there is at least one victim.

The initial shock and dismay felt by the victim of a violent crime is exacerbated by a criminal justice system that seems to care more for the offender than the victim. Perhaps the saddest commentary on America's criminal justice system is that the victim of a violent crime is not only victimized by the crime itself, but he or she can expect to be re-victimized again and again by an archaic process which is supposed to administer justice, to right the wrong the victim has experienced.

The process by which our society prosecutes the criminal is based on the theory of the law that the government itself, "society", is the victim of crime. The very manner in which criminal cases are titled provides an indication of the victim's status. No matter how severe the crime committed and the injury suffered by the victim, it is the State vs. Criminal, not Victim vs. Criminal. The victim of violent crime finds that he has become, at best, merely the State's witness in their case, a piece of evidence, his status collectivized by society.

The semantics of criminal prosecution would not be significant if the issue were merely one of how we title our court cases. However, the criminal justice system has failed to recognize that every person who commits a criminal act not only violates the law, but also violates a person. The victim of violent crime learns firsthand that America's law enforcement mechanisms are geared to apprehending, prosecuting, and allegedly punishing those who criminally offend society. In the process, the victim is neglected, his rights as an injured person subrogated.

As if it isn't bad enough that the victim of crime has been relegated to an observer status in the prosecution of the offender, the crime victim is further denied the right to even observe. It is well recognized that the crime victim does not even receive complete and timely information regarding the status of the case, from arrest on through to prosecution, plea bargaining, and sentencing, if any.

It is no wonder the victim feels detached from the criminal justice system.

The Washington Legal Foundation proposes that courts throughout the United States can and should assist in im-

proving the rights of the victims of violent crime by establishing a system whereby the victim participates in a constructive manner in the sentencing process of a criminal case.

The Sentencing Process

In all states, criminal procedure laws require a pre-sentence investigation prior to the imposition of a sentence upon a defendant who has been found guilty. The primary focus of the investigation, which is usually conducted and presented to the court by a probation or corrections officer, is on the person to be sentenced, the criminal. The particular areas of pre-sentence investigation include the past delinquencies of the criminal, his employment history, family background, economic status, education and personal habits.

In theory, the court weighs these factors with the circumstances of the criminal offense to determine a just and proper sentence. The investigation report may also include a recommendation of an appropriate sentence. Although a judge is not bound by the report's findings and recommendation, he usually shows deference to the reporting officer's judgment. Thus, the pre-sentence investigation and report is an important element in the judge's decision on an appropriate sentence, including whether the offender should be released on probation or confined to prison, and, if imprisoned, the duration of the jail term.

It seems, then, that this is a crucial juncture along the road to justice, and it is exactly at this juncture that the victim's views should be considered. The use of a Victim Impact Statement provides a mechanism by which the crime victim may directly participate in the sentencing process.

What is a Victim Impact Statement?

Simply put, a Victim Impact Statement is a tool to be used by prosecutors and judges in an effort to make the criminal justice system more accountable to the victims of violent crime.

The "Statement" itself is a questionnaire intended to be voluntarily completed by the crime victim and included in

the information provided to the Court prior to the imposition of sentencing.

The answers to questions included in the Victim Impact Statement will provide the Court with the physical, psychological and economic effects which the crime has had on the victim and his or her family. The information is provided directly by the victim, who has an opportunity to also set forth his attitude and concerns as the victim of a violent crime.

The Washington Legal Foundation recognizes that the weight which the Court places on a Victim Impact Statement depend on the particular circumstances of each case, taken on an individual basis. In no way does the Washington Legal Foundation wish to suggest that the Court should be necessarily bound by the contents of the Victim Impact Statement. Rather, the Victim Impact Statement is meant to provide the Court with additional assistance in the discretionary exercise of its sentencing powers.

At the same time, the solicitation of a Victim Impact Statement will demonstrate to the crime victim that the criminal justice system is concerned with the victim's plight.

CONCLUSION

This Victim Impact Statement Manual includes not only a sample Victim Impact Statement, but a thorough analysis of all State laws that relate to the input by the victim in the criminal justice system. The Foundation hopes that the information provided in this Manual will serve as a catalyst to advance the rights of all victims of violent crime.

The Foundation strongly suggests that members of the public and citizens' groups encourage their local judges and prosecutors to utilize Victim Impact Statements in the sentencing process. With a concerted effort by all concerned, we hope to advance the rights of victims and their families as well as to reduce the occurrences of violent criminal activity.

VICTIM IMPACT STATEMENT

STATE VS. _____

CASE # _____

SENTENCING DATE _____

TO ASSIST THE COURT IN ITS EFFORT TO WEIGH ALL FACTORS PRIOR TO IMPOSING SENTENCE, WE REQUEST YOUR VOLUNTARY COOPERATION IN COMPLETING THIS FORM. THIS STATEMENT IS INTENDED TO BE SUBMITTED TO THE JUDGE IMPOSING SENTENCE HEREIN.

NAME OF VICTIM: _____

ADDRESS: _____
STREET CITY STATE ZIP CODE

DATE OF BIRTH: _____

1. Please describe the nature of the incident in which you were involved.

2. As a result of this incident, were you physically injured? _____
If yes, please describe the extent of your injuries.

3. Did you require medical treatment for the injuries sustained? _____

If yes, please describe the treatment received and the length of time treatment was or is required.

4. Amount of expenses incurred to date as a result of medical treatment received:

\$ _____

Anticipated expenses:

\$ _____

5. Were you psychologically injured as a result of this incident? _____
If yes, please describe the psychological impact which the incident has had on you.

6. Have you received any counselling or therapy as a result of this incident? _____
If yes, please describe the length of time you have been or will be undergoing counselling or therapy, and the type of treatment you have received.

Amount of expenses incurred to date as a result of counselling or therapy received:

\$ _____

8. Has this incident affected your ability to earn a living? _____
If yes, please describe your employment, and specify how and to what extent your ability to earn a living has been affected, days lost from work, etc.

9. Have you incurred any other expenses or losses as a result of this incident? _____
If yes, please describe.

10. Did insurance cover any of the expenses you have incurred as a result of this incident? _____
If yes, please specify the amount and nature of any reimbursement.

11. Has this incident in any way affected your lifestyle or your family's lifestyle? _____
If yes, please explain.

12. Are there any other residual effects of this incident which are now being experienced by you or members of your family?

13. Please describe what being the victim of crime has meant to you and to your family.

14. What are your feelings about the criminal justice system? Have your feelings changed as a result of this incident? Please explain.

15. Do you have any thoughts or suggestions on the sentence which the Court should impose herein? Please explain, indicating whether you favor imprisonment.

THIS FORM IS SUBSCRIBED AND AFFIRMED BY THE VICTIM AS TRUE UNDER THE PENALTIES OF PERJURY. THE INFORMATION AND THOUGHTS YOU HAVE PROVIDED ARE VERY MUCH APPRECIATED.

DATE: _____

SIGNATURE

STATE LAWS AND THEIR APPLICATION TO THE USE OF A VICTIM IMPACT STATEMENT

No state explicitly denies the right of the victim to be considered during the pre-sentence investigation and mentioned in the pre-sentence report. Only four states--Indiana, Connecticut, Illinois and Kansas--have statutes that explicitly require a statement from or concerning the victim in the pre-sentencing report. The text of these statutes is contained later in this publication.

Indiana provides an exemplary procedure for consideration of the victim in the sentencing process. The State of Indiana provides that a pre-sentence report must include any written statements submitted to the prosecuting attorney by the victim, and any written statements submitted to the probation officer by a victim. This concern for the victim, whom the law defines as "a person who has suffered harm as a result of an offense", was enacted by the Indiana Legislature in 1978. The statute also provides that if no written statements are submitted to the probation officer, the probation officer must certify to the Court that an attempt was made to contact the victim, and that if the victim was contacted, the probation officer offered to accept the victim's written statement or to reduce the victim's oral statements to writing concerning the sentence, including the acceptance of any recommendation, i.e., the victim has a say in the plea bargaining process.

The Connecticut and Kansas statutes call for an inquiry into the attitude of the complainant or victim, or in the case of the victim's death, the victim's immediate family.

The Illinois statute requires the pre-sentence report to set forth the effect of the crime upon the victim, as well as any sentencing scheme that would allow the victim to be compensated by his offender. Illinois is noteworthy in that it is the only state in the union which statutorily calls upon the probation officer to devise a restitutive scheme for the benefit of the victim.

The Oregon rules of criminal procedure allow for a post-conviction hearing to determine if an aggravation or mitigation of punishment is warranted. A victim may appear at this

hearing and state his views for aggravating or mitigating the punishment, but the focus of the Oregon pre-sentencing report is primarily on the defendant.

The Minnesota statute alludes to the victim when it requires an account of "... the circumstances of the offense and harm caused thereby to others and to the community", but does not specifically mention or require anything of the nature of a victim impact statement, although it is clear that such a statement would not be unwelcomed.

Although most of the remaining state statutes are defendant-specific, there is room for a victim impact statement in nearly all of them. There are roughly three categories in which the remaining statutes are divided (with some overlap). The first category includes those statutes that require the gathering of information with respect to the circumstances attending the commission of the offense. On the surface, this would simply require the reporting officer to describe the nature of the offense. It seems, however, that the consequent or resultant circumstances of the offense can be included here; that is, a victim impact statement describing the effects of the crime on the victim and the victim's attitude toward sentencing, would seem to fall within the purview of the statutes having this requirement. Sixteen state statutes contain this requirement or one with language similar to it.

The second category includes those statutes that allow the reporting officer to include in his report any matter which he deems relevant to the question of sentence or those that allow the report to contain any information the court orders to be included. Thirteen states have statutes that contain this or similar language. Under these rules the reporting officer and the court are allowed a good deal of latitude in determining the contents of the report. If they deem it proper, they may include a victim impact statement.

The remaining sixteen statutes are predominantly defendant oriented, with no mention of the victim. Thirteen of those statutes simply require a pre-sentence investigation prior to the announcement of sentence with no specific guidelines, or are worded loosely enough to allow a victim impact statement. Four states--Alaska, Delaware, Missouri,

and Utah--have specific guidelines that clearly exclude the victim. Additional or revised language would be required to allow such a statement in those states.

INDIANA

35-50-1A-10 SCOPE OF PRESENTENCE INVESTIGATION AND REPORT--SOLICITATION OF VICTIM'S STATEMENTS.--(a) The presentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education and personal habits. Such investigation may also include any other matter which the probation officer conducting the investigation deems relevant to the question of sentence, and must include:

- (1) Any matters the court directs to be included;
- (2) Any written statements submitted to the prosecuting attorney by a victim under IC 35-5-6 (35-5-6-1 --35-5-6-5); and
- (3) Any written statements submitted to the probation officer by a victim.

(b) If there are no written statements submitted to the probation officer, he shall certify to the court:

- (1) That he has attempted to contact the victim; and
- (2) That, if he has contacted the victim, he has offered to accept the written statements of the victim, or to reduce his oral statements to writing, concerning the sentence, including the acceptance of any recommendation.

(c) As used in this section, the terms "recommendation" and "victim" have the meanings set out in IC 35-5-6-1. [IC 35-4.1-4-10, as added by Acts 1973, P.L. 325, §4, p. 1750; 1978, P.L. 146, §5, p. 1331.]

35-5-6-1. DEFINITIONS.--AS USED IN THIS CHAPTER:

(a) "Prosecutor" means prosecuting attorney or deputy prosecuting attorney.

(b) "Recommendation" means a proposal by the prosecutor to a court that:

- (1) A charge be dismissed; or
 - (2) A defendant, if he pleads guilty to a charge, receive less than the maximum penalty permitted by law.
- (c) "Victim" means a person who has suffered harm as a result of an offense. [IC 35-5-6-1, as added by Acts 1975, P.L. 332, §1, p. 1768; 1978, P.L. 146, §1, p. 1331.]

35-5-6-1.5. NOTICE TO VICTIM OF PROSECUTOR'S RECOMMENDATION.--(a) In making a recommendation on a felony charge, a prosecutor must:

- (1) Inform the victim that he has entered into discussions with defense counsel or the court concerning a recommendation;
- (2) Inform the victim of the contents of the recommendation before it is filed; and
- (3) Notify the victim so that he might be present when the court considers the recommendation.

(b) A court may consider a recommendation on a felony charge only if the prosecutor has complied with this section. [IC 35-5-6-1.5, as added by Acts 1978, P.L. 146, §2, p. 1331.]

CONNECTICUT

§ 54-109. WHEN INVESTIGATION OF DEFENDANT REQUIRED

No defendant convicted of a crime, other than a capital felony, the punishment for which may include imprisonment for more than one year, shall be sentenced, or his case otherwise disposed of, until a written report of investigation by a probation officer has been presented to and considered by the court, if (1) the defendant is so convicted for the first time in this state or (2) his record, as shown by the prosecuting official, discloses a conviction obtained prior to three years from the finding of guilty in the present prosecution; but any court may, in its discretion, order a presentence investigation for a defendant convicted of any crime or offense other than a capital felony. Whenever an investigation is required, the probation officer shall promptly inquire into the circumstances of the offense, the attitude of the complainant or victim, or of the immediate family where possible in

cases of homicide, and the criminal record, social history and present condition of the defendant. All local and state police agencies shall furnish to the probation officer and restitution specialist such criminal records as the probation officer and restitution specialist may request. When in the opinion of the court or the investigating authority it is desirable, such investigation shall include a physical and mental examination of the defendant. If the defendant is committed to any institution, the investigating agency shall send the reports of such investigation to the institution at the time of commitment. (1976, P.A. 76-336, §6; 1978, P.A. 78-188, §5, eff. July 1, 1978.)

KANSAS

62-2238. PRESENTENCE INVESTIGATIONS UPON REQUEST OF DISTRICT COURT; PROCEDURE.

Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. [L. 1957, ch. 331, §13; July 1.]

ILLINOIS

§ 1065-3-2. PRESENTENCE REPORT

(a) The presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation

and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

(4) information concerning the defendant's status since arrest, including his record if released on his own recognizance, or the defendant's achievement record if released on a conditional pre-trial supervision program;

(5) when appropriate, a plan, based upon the personal, economic and social adjustment needs of the defendant, utilizing public and private community resources as an alternative to institutional sentencing; and

(6) any other matters that the investigatory officer deems relevant or the court directs to be included.

(b) The investigation shall include a physical and mental examination of the defendant when so ordered by the court. If the court determines that such an examination should be made, it shall issue an order that the defendant submit to examination at such time and place as designated by the court and that such examination be conducted by a physician, psychologist or psychiatrist designated by the court. Such an examination may be conducted in a court clinic if so ordered by the court. The cost of such examination shall be paid by the county in which the trial is held.

(c) Nothing in this Section shall cause the defendant to be held without bail or to have his bail revoked for the purpose of preparing the presentence report or making an examination. Amended by P.A. 80-1099, §3, eff. Feb. 1, 1978.

CATEGORIES OF STATE LAWS RELATING TO VICTIM INPUT ON SENTENCING

Category I : Statutes which specifically mention or allude to the victim.

Category II : Statutes requiring the gathering of information with respect to the circumstances of the crime.

Category III : Statutes allowing the reporting officer to include, or the Court to order, any matter considered relevant to the issue of sentencing.

Category IV : Statutes which merely call for a pre-sentence investigation.

Category V : Statutes which are defendant-specific and would require revised language in order to implement a Victim Impact Statement.

STATE	STATUTE	CATEGORY
Alabama	Ala. Stat. Ann. Tit. 42 §21	II
Alaska	Alaska Stat., Crim. §12.55.085	V
Arizona	Ariz. Revised Stat. Ann., Rules of Crim. Pro. 26.4	IV
Arkansas	Ark. Stat. Ann. 43-2335	III
California	Cal. Govt. Code Ann., Penal §1203	II
Colorado	Col. Rev. Stat., §16-11-102	IV
Connecticut	Conn. Gen. Stat. Ann. §54-109	I & II
Delaware	Del. Code Ann. §11.4331	V
Florida	Fla. Stat. Ann. §921.231	II
Georgia	Ga. Code Ann. §27-2710	IV
Hawaii	Hawaii Rev. Stat. §806.73	IV
Idaho	Idaho Code Ann. §20-220	II
Illinois	Ill. Ann. Stat. §38:105-3-2	I
Indiana	Ind. Stat. Ann. §35-50-1A-10 §35-5-6-1.5	I, II, III

STATE	STATUTE	CATEGORY
Iowa	Iowa Code, Title 295 §16	IV
Kansas	Kan. Stat. Ann. Tit. 62 §21-4604	I
Kentucky	Ken. Rev. Stat. Ann. §532.050	II & III
Louisiana	La. Stat. Ann. Crim. Pro. Article 875	III
Maine	Maine Rev. Stat. Ann. Tit. 34 §1552	IV
Maryland	Md. Ann. Code Art. 41 §124	IV
Massachusetts	Mass. Am. Laws Crim. Pro. Rules 28(d)	III
Michigan	Mich. Stat. Ann. §28.1144	II
Minnesota	Minn. Stat. §609.115	I & II
Mississippi	Miss. Code Ann. §47-7-33	IV
Missouri	Missouri Rev. Stat. §549.245	V
Montana	Mon. Rev. Code Ann. Tit. §2203-05	IV
Nebraska	Neb. Rev. Stat. §29-2261	III
Nevada	Nev. Rev. Stat. Ann. §176-135	IV
New Hampshire	N.H. Rev. Stat. Ann. §651.4	IV
New Jersey	N.J. Stat. Ann. Tit. 2C:44-6	II
New Mexico	N.M. Stat. Ann. §31-21-9	IV
New York	N.Y. Ann. Stat. §390-30 (McKinney's)	II & III
North Carolina	N.C. Gen. Stat. §15A-1332	II
North Dakota	N.D. Century Code Ann. Rules of Crim. Pro. 32(c) [2]	III
Ohio	Ohio Rev. Code Ann. §2951.03	II
Oklahoma	Oklahoma Stat. Ann. Tit. 22§982	II
Oregon	Oregon Rev. Stat. §137.090 §137.530	I & II
Pennsylvania	Penn. Con. Stat. Ann. §1332	II & III
Rhode Island	R.I. Gen. Laws Rules of Crim. Proc. 32(c)	II & III
South Carolina	S.C. Code of Laws §24-21-420	II
South Dakota	S.D. Codified Laws §23A-27-6	III
Tennessee	Tenn. Code Ann. §40-2904	II
Texas	Tex. Stat. Ann. Art. 42.12-4	II
Utah	Utah Code Ann. §76-3-404	V
Vermont	Vt. Stat. Ann. Crim. Pro. Rules 32(c) [2]	IV
Virginia	Va. Code Ann. §19.2-299	III
Washington	Wash. Rev. Code Ann. §9.95.031	II
West Virginia	W. Va. Code §6-2-12.7	III
Wisconsin	Wisc. Stats. §972.15	IV
Wyoming	Wyoming Stat. Ann. §7-13-302	II & IV

cases of homicide, and the criminal record, social history and present condition of the defendant. All local and state police agencies shall furnish to the probation officer and restitution specialist such criminal records as the probation officer and restitution specialist may request. When in the opinion of the court or the investigating authority it is desirable, such investigation shall include a physical and mental examination of the defendant. If the defendant is committed to any institution, the investigating agency shall send the reports of such investigation to the institution at the time of commitment. (1976, P.A. 76-336, §6; 1978, P.A. 78-188, §5, eff. July 1, 1978.)

KANSAS

62-2238. PRESENTENCE INVESTIGATIONS UPON REQUEST OF DISTRICT COURT; PROCEDURE.

Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. [L. 1957, ch. 331, §13; July 1.]

ILLINOIS

§ 1005-3-2. PRESENTENCE REPORT

(a) The presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation

and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

(4) information concerning the defendant's status since arrest, including his record if released on his own recognizance, or the defendant's achievement record if released on a conditional pre-trial supervision program;

(5) when appropriate, a plan, based upon the personal, economic and social adjustment needs of the defendant, utilizing public and private community resources as an alternative to institutional sentencing; and

(6) any other matters that the investigatory officer deems relevant or the court directs to be included.

(b) The investigation shall include a physical and mental examination of the defendant when so ordered by the court. If the court determines that such an examination should be made, it shall issue an order that the defendant submit to examination at such time and place as designated by the court and that such examination be conducted by a physician, psychologist or psychiatrist designated by the court. Such an examination may be conducted in a court clinic if so ordered by the court. The cost of such examination shall be paid by the county in which the trial is held.

(c) Nothing in this Section shall cause the defendant to be held without bail or to have his bail revoked for the purpose of preparing the presentence report or making an examination. Amended by P.A. 80-1099, §3, eff. Feb. 1, 1978.

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VICTIMS RIGHTS WEEK, 1981

BY THE PRESIDENT OF THE UNITED STATES OF
AMERICA

A PROCLAMATION

For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet the protection of our citizens — to guard them from becoming victims — is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.

Statistics reported by the Federal Bureau of Investigation and other law enforcement agencies indicate that crime continues to be a very serious national problem. But statistics cannot express the human tragedy of crime felt by those who are its victims. Only victims truly know the trauma crime can produce. They have lived it and will not soon forget it. At times, whole families are entirely disrupted — physically, financially and emotionally. Lengthy and complex judicial processes add to the victim's burden. Such experiences foster disillusionment and, ultimately, the belief that our system cannot protect us. As a Nation, we can ill afford this loss of faith on the part of innocent citizens who have been victimized by crimes.

We need a renewed emphasis on, and an enhanced sensitivity to, the rights of victims. These rights should be a central concern of those who participate in the criminal justice system, and it is time all of us paid greater heed to the plight of victims.

Ronald Reagan
April 8, 1981

THE WASHINGTON LEGAL FOUNDATION
1612 K Street, N. W.
Washington, D.C. 20006

crowding is an epidemic-scale problem, but the only response now being considered is billions of dollars of new prison construction. If all the prisons proposed today are actually built, they would cost at least 5.6 billion dollars.¹⁸ Finding better ways to deal with criminal offenders is not only timely; it is a matter of life and death. And fortunately, these better ways are readily available.

Alternative Punishments

There are several alternatives to incarceration which may well prove to be better measures of punishment, both for society and for the offender, than imprisonment. They could improve public safety, save taxpayers huge amounts, and offer far better hope for rehabilitation of offenders. These alternatives constitute "just punishment," often far more just than imprisonment. Let's briefly consider several of these alternatives.

A. Restitution

"Restitution" requires the offender to repay the crime victim for property loss or property or personal damages. Though an alternative to prison, a restitution sentence is not an "easy out." The offender's schedule is rigidly controlled, often through his/her return at the end of the work day to a half-way house. The offender's pay is diverted into channels beyond his/her control: repayment of the victim, compensation of the state, supporting the offender's family, and establishing a capital reserve which will help keep an offender from being impelled back toward crime by poverty after release.

Because of growing public concern for crime victims, the restitution concept holds great promise of gaining broad support. Many surveys, for example, indicate that a high percentage of Americans would prefer to have a nonviolent offender repay his victim rather than serve time in prison at public expense. Likewise, offender repayment is preferred over gov-

ernmental compensation of crime victims through tax dollars.¹⁹

Several states have instituted restitution programs in which corrections staff may negotiate the amount of repayment, monitor the payment schedule and, in some instances, offer employment assistance to unemployed offenders to guarantee that the victim will be repaid.

Restitution has gone past the theory stage in dozens of communities across the country. Though problems inevitably arise, as with all new programs, the results have been encouraging. Programs in Florida, Saginaw, MI and Elkhart, IN, among others, show both the practicality and effectiveness of the restitution alternative.²⁰

B. Community Service Orders

A criminal act is an offense against particular victims, of course, but it is also an offense against society. Both suffer loss: an individual is violated, and public safety is diminished; the offender is thereby said to incur a "debt to society." But as long as punishment and imprisonment are considered synonymous, neither the victim nor society is compensated; to the contrary, both then incur the additional heavy costs of imprisonment. We have discussed restitution by offenders to their individual victims. Is there a comparable approach to compensating society?

Too often offenders now pay their "debt to society" in prison. The resulting waste of valuable human resources is easy to document. For instance, the prisoner operating the washing machine next to Charles Colson at Maxwell Federal Prison had been a prominent doctor, convicted of stock fraud. There was no resident doctor in this particular prison, so the many inmates with medical needs had to rely on a paramedic while a qualified doctor spent his days putting dirty underwear into the washing machine each morning and taking it out each afternoon. Later he volunteered to help meet a shortage of doctors

in the surrounding community by working nights, but his offer was refused. Such shortsightedness serves neither the victim, the offender nor society.

Instead of being sent to prison, offenders could be required to work for a period of years, either at a very modest pay or none at all, in ghettos, hospitals, or other areas of public need. Such alternatives need not be limited to white-collar offenders. Present community service programs provide work opportunities for skilled and unskilled workers alike. California is operating some 50 Community Service Alternatives for offenders.²¹ Similar Community Service Orders have been employed in England with dramatic success.²²

C. House Arrest

This alternative is primarily for convicted felons whose probation reports indicate they are unlikely to be involved in further criminal behavior. Many of those sentenced to house arrest are first-time offenders with no record of prior criminal activity. In California, for example, a nurse in Berkeley was sentenced to house arrest for one year for the fatal shooting of her husband. (Mitigating circumstances were present.) The alternative was approved by a committee of Alameda County officials in response to prison overcrowding and the high cost of incarceration. The convicted woman was required to report each morning and evening, seven days a week, to the County's Probation Department. This sentence permitted her to maintain her nursing job and care for her child.²³

D. Probation and Contract Probation

Probation is one of the most widely used alternatives. Offenders on probation are sentenced to obey specific behavior guidelines under the supervision of a Probation Officer. Violation of the guidelines can result in incarceration, so the offender

has every incentive to avoid that prospect.

Contract probation is usually offered as an alternative to incarceration by one of the lawyers involved (interestingly enough, often the prosecutor's office advocates the program). The judge is presented with a program of punishment, often including Community Service or restitution. Under the guidelines set down, the offender reports to an authority designated by the court throughout the term of the parole.

E. Deferred Sentencing

Offenders assigned this alternative to incarceration plead guilty to their charge, and undergo a pre-sentence investigation. The presiding judge then defers sentencing for several months, during which the offender is referred to service agencies—alcohol and drug treatment, for example. If the offender's response is positive, the judge may impose a sentence of probation with the stipulation of continued participation in rehabilitative programs.

F. Suspended Sentencing

This alternative involves establishment of a fixed sentence by the presiding judge, who then suspends the sentence for a specified period of time, subject to the offender's compliance with behavioral guidelines. If the guidelines are violated, the original sentence takes effect.

G. Fines

Assessment of fines is already a typical penalty for many crimes, but such sentences could be more widely used in place of imprisonment for nonviolent offenses. However, the amount of a fine should be based on both the seriousness of the offense and the offender's ability to pay. Only thus can the United States reduce the blatant discrimination which leads to incarceration of a disproportionate number of the poor—those unable either to pay fines or secure sophisticated legal representation.



Nov. 15, 1982
Newsweek

Divided by Kip MacLisore
Return to [unclear]

Paying My Debt to Society

MY TURN/MARCUS W. KOECHIG

The money looked good. There were tall stacks of it, mostly tens and twenties, just for the taking. There was no casing of the joint and no gunplay. The job was done in less than 60 seconds, and the total take came to \$1,444. Not bad wages for one minute's work. Of course, it also cost me another two years in prison, as well as additional time for my parole violation. The fact that this is my third prison stint shouldn't pose any problem. But it gets harder, especially now that my wife has told me to make arrangements to have my things moved out of the house. She cannot take it any longer, and I do not blame her.

The cost of going to prison keeps going up, and not just for me. There is, of course,

the victim's initial loss. In addition, his tax dollars paid for my defense and go toward my upkeep here in prison, to the tune of \$10,000 to \$15,000 per year. He will pay again if my family is forced to go on welfare and yet again if, when I am released, I am unable to find work. I will simply go on welfare, and he will foot the bill.

Victim: In the time I have spent in prisons, it has been repeatedly stressed to me that I must pay my debt to society. So society proceeds to feed, clothe and house me for however long I must remain behind bars and perhaps even beyond; this is not so much a repayment of debt as an abdication of responsibility. In fact, I owe nothing to society and society owes nothing to me. I

owe my victim \$1,444, and society owes him the opportunity to get that money back. Justice can only be served by my paying back what I have taken.

The average thief in here is "rehabilitated" by performing janitorial duties for a total of perhaps 30 minutes a day. Say an inmate has a two-year sentence: to rehabilitate himself, to pay his debt, he must spend 365 hours pushing a broom. Then he has paid for his crime. The institution perpetuates itself in this way. More inmates means that more cleaning needs to be done. One might spend one's time more fruitfully by sweeping out orphanages or hospitals. The way the system now works is enough to make even the most devious convicts laugh up

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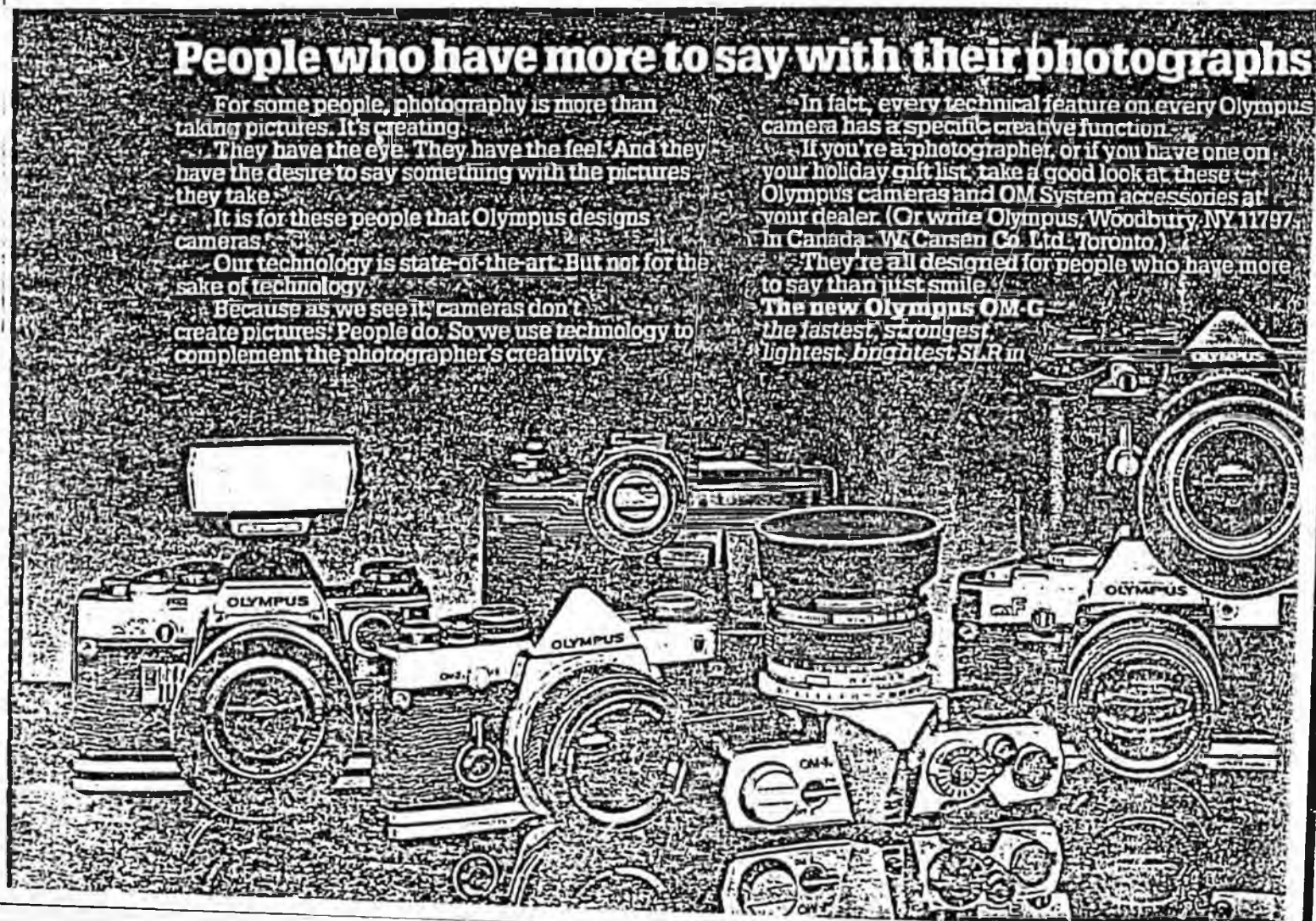
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...ieves. For a man who has nothing
... crime pays quite well.

It is difficult to find and implement solutions to this kind of problem—particularly in the bureaucratic morass that constitutes any department of corrections. (The name presumes that some correcting is going on.) Confining perpetrators of nonviolent property crimes and victimless crimes is of absolutely no use and may even be quite harmful. Rehabilitation is the act of pointing out the errors of an individual and then reinforcing that behavior which will lead to a successful reintegration into society. As it now stands, however, rehabilitation begins and ends with the convict adjusting to the prison routine, an eerie, Pavlovian system of bells, whistles and gross depersonalization of the individual.

Sitting: Rehabilitation does not and can not occur in existing penal facilities. There is nothing that frustrates a person more than sitting in a cell or dormitory 24 hours every day knowing that all he must do to pay for his crime is push a broom 30 minutes each day. What becomes of his sense of worth?

Why should anyone care about some convict's sense of worth? Because convicts get out of prison and go back to communities just like yours. People who have been convicted of crimes love, hate, hurt and feel

good just as regular people do. They sometimes hurt so bad, though, that they are not able to handle it. In order to deal with their hurt, they will, most often unintentionally, do something to get themselves put back in the one place where they can be assured of some certainty in otherwise uncertain and frightening lives. It comes to the point where they decide that what the prison has been telling them all along must be true: that

*Our prisons make even
a dour convict laugh
up his sleeve. For a
man with nothing,
crime pays quite well.*

they are of no value to anyone, not even themselves. They then strike out and come back "home."

You have a very large stake in seeing to it that convicts are rehabilitated in fact and not just on paper—if for no other reason than that it is your money that goes toward getting the job done. If the state legislature tells you that the prison system serves as

anything other than a warehouse, then you are being told a blatant lie. You have every right to know that correctional officials, acting as agents of the courts and state legislatures, are freeing people who are no more equipped to function in the community than a rabid dog.

Respect: One solution may be mandatory restitution administered in a penal setting. Forcing the criminal to restore to his victim what he took in the first place has the potential of instilling in him not only respect for the property of others but also some shred of self-respect. He would learn that there is no such thing as a free lunch when it comes to paying his debt.

Programs of this type could pay for themselves. The convict could receive the minimum wage for necessary public-service work in the county in which he was convicted, with a percentage of his wages going directly to the victim and a percentage to the state for his upkeep. This approach is so simple that it just might work.

For my part, my victim will be paid back as soon as I am able. I have satisfied the requirements of the law. It is time to satisfy the requirements of conscience.

Koehlig is an inmate at the Westville Correctional Center in Westville, Ind.

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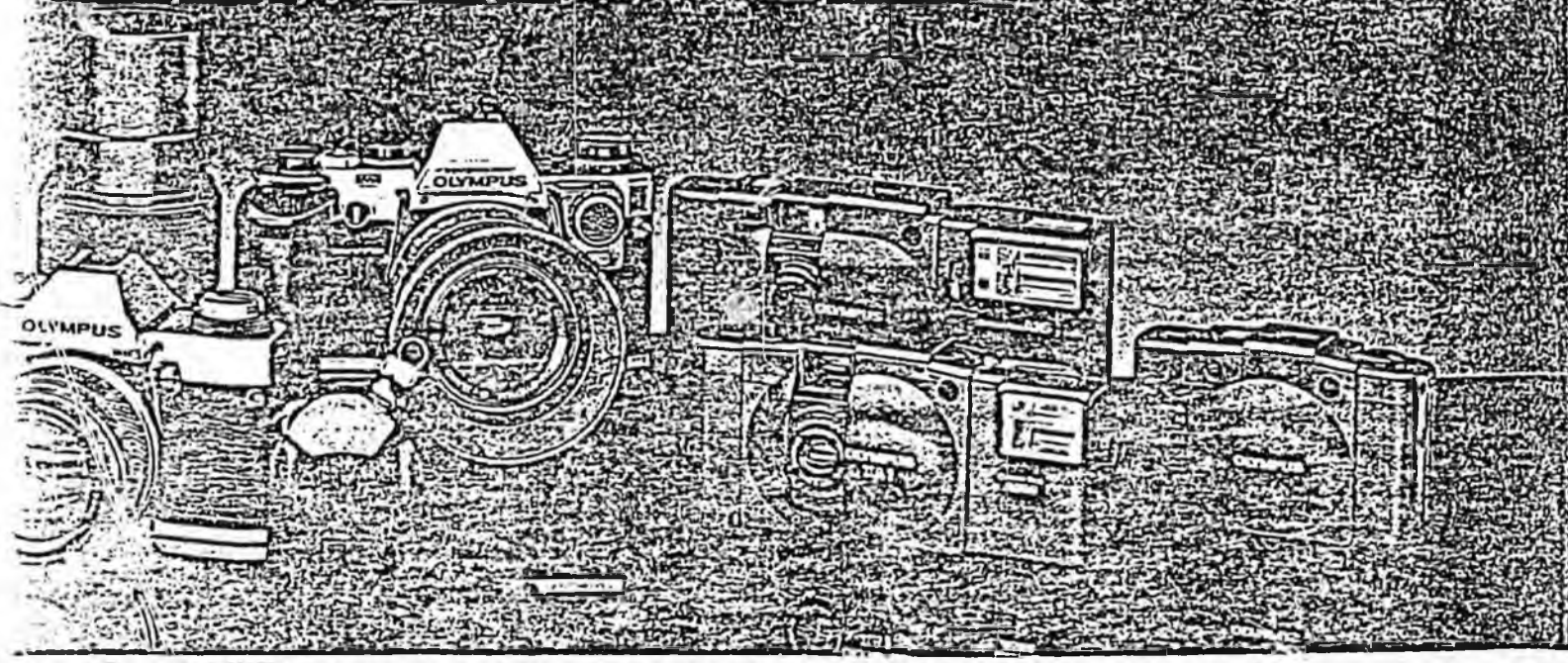
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When you have more to say
than just smile.



COMMENTS

COMPENSATION FOR VICTIMS OF CRIME—THE TEXAS APPROACH

by Paul M. Koning

During the 1979 session, the Texas Legislature enacted Senate Bill 21,¹ the Crime Victims Compensation Act (the Act),² placing Texas in the forefront of the rapidly growing trend to provide state administered programs for the financial compensation of individuals injured by violent crimes. Increased crime rates and welfare costs have focused concern on victims' rights.³ In response, the Act establishes a compensation program that has the potential to equal or exceed the effectiveness of programs existing in other states.

Victim compensation is not a novel concept; the theory of state compensation to victims of crimes occurring within the state can be traced back at least 4,300 years to the Code of Hammurabi.⁴ In modern times, however, the crime victim has been afforded relatively little aid. Apart from recovery under one of the recently formed state victim compensation programs, the victim is limited to three basic alternatives to the absorption of the loss.⁵ The first alternative is a civil action brought against the offender. Since civil recovery requires both the apprehension of the criminal and his financial solvency, this device has been accurately described as impotent.⁶ A victim may also recover his crime-related losses from his insurer, pro-

1. 1979 Tex. Sess. Law Serv., ch. 189, §§ 1-19, at 402-10 (Vernon).

2. TEX. REV. CIV. STAT. ANN. art. 8309-1, §§ 1-18 (Vernon Supp. 1980).

3. A study of the diffusion pattern of state victim compensation programs has shown that the states most likely to enact victim compensation programs are those that experience the greatest increases in per capita welfare expenditures, violent crime rates, and median family income. Doerner, *The Diffusion of Victim Compensation Laws in the United States*, 4 VICTIMOLOGY 119 (1979).

4. Sections 22-24 of the Code of Hammurabi state:

[§ 22] If a man has committed robbery and is caught, that man shall be put to death.

[§ 23] If the robber is not caught, the man who has been robbed shall formally declare whatever he has lost before a god, and the city and the mayor in whose territory or district the robbery has been committed shall compensate him for whatever he has lost.

[§ 24] If (it is) the life (of the owner that is lost), the city or the mayor shall pay one mana of silver to his kinsfolk.

5. THE BABYLONIAN LAWS 21 (G. Driver & J. Miles eds. 1955). For a comprehensive treatment of victim compensation and victim's rights throughout history, see S. SCHAFER, VICTIMOLOGY: THE VICTIM AND HIS CRIMINAL 5-32 (1977).

6. See Lamborn, *Remedies for the Victims of Crime*, 43 S. CAL. L. REV. 22 (1970); McAdam, *Emerging Issue: An Analysis of Victim Compensation in America*, 8 URB. LAW. 346 (1976).

6. McAdam, *supra* note 5, at 348.

vided that he has adequate coverage.⁷ The most frequent victims of crime, however, are those who can least afford insurance, both because they are poor and because they live within the highest premium areas.⁸ For this reason, insurance is hardly a choice for the average victim. The third alternative is restitution. Restitution programs allow criminal justice agencies to establish direct obligatory relationships between the offender and his victim, often as a condition of sentence modification.⁹ Typically, a state restitution program encourages courts to condition probation on the repayment of the victim's losses by the performance of services or by cash payments.¹⁰ Restitution forces the criminal to confront the problems caused by his actions; theoretically, this confrontation is rehabilitative.¹¹ Pragmatically, however, restitution is no more an alternative to the victim than a civil suit, because the majority of criminals are never convicted.¹² Victim compensation programs, on the other hand, offer hope to the victim because they are not linked to the apprehension of the criminal. Instead, these programs are generally based on one or more theories of state obligation¹³ and are funded either from the general revenues or, as in Texas, from a pool of small fines collected from criminals upon conviction.¹⁴

New Zealand established the first modern victim compensation program in 1963,¹⁵ immediately followed by Great Britain.¹⁶ California initiated

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7. For an analysis of the crime exclusions in certain policies, see Starrs, *A Modest Proposal to Insure Justice for Victims of Crime*, 50 MINN. L. REV. 285, 301-05 (1965).

8. Haas, *An Argument for the Enactment of Criminal Victim Compensation Legislation—Oregon*, 10 WILLAMETTE L.J. 185, 196 (1974); McAdam, *supra* note 5, at 348.

9. See generally Laster, *Criminal Restitution: A Survey of its Past History and an Analysis of its Present Usefulness*, 5 U. RICH. L. REV. 80 (1970); Schafer, *Restitution to Victims of Crime—An Old Correctional Aim Modernized*, 50 MINN. L. REV. 243 (1965).

10. See Cohen, *The Integration of Restitution in the Probation Services*, in *CONSIDERING THE VICTIM* 332-33 (J. Hudson & B. Galaway eds. 1975). TEX. CODE CRIM. PROC. ANN. art. 42.12, § 6(m) (Vernon Supp. 1980) authorizes a court to order that, as a condition of probation, the offender "pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense."

11. Schafer, *The Proper Role of a Victim-Compensation System*, 21 CRIME & DELINQUENCY 45 (1975).

12. The United States Department of Justice has reported that for every 100 offenses known to police, only 5.5 persons are apprehended and found guilty as charged. U.S. DEPT. OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS—1977, at 512 (1978) [hereinafter cited as SOURCEBOOK]. "The President's Commission on the Causes and Prevention of Violence reported that only 1.8 percent of victims of crime ever collect damages from the perpetrator." 2 BROWN & DANA, STATE LEGISLATURES 7 (1976), *cit. in* Gross, *Crime Victim Compensation in North Dakota: A Year of Trial and Error*, 53 N.D. L. REV. 7, 10 (1976).

13. For a discussion of the theoretical justifications underlying state victim compensation legislation, see notes 63-80 *infra* and accompanying text.

14. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 14 (Vernon Supp. 1980) establishes a fund for the payment of compensation under the Act, which is to be made up of \$10 and \$15 court costs exacted from convicted felons and certain misdemeanants. See note 59 *supra*.

15. Criminal Injuries Compensation Act, STAT. N.Z. No. 134 (1963), *reprinted in* 43 S. CAL. L. REV. 240 (1970); see Weeks, *The New Zealand Criminal Injuries Compensation Scheme*, 43 S. CAL. L. REV. 107 (1970).

16. COMPENSATION FOR VICTIMS OF CRIMES OF VIOLENCE, CMND. No. 2323 (1964), *reprinted in* Samuels, *Compensation for Criminal Injuries in Britain*, 17 U. TORONTO L. REV. 20, 46-49 (1967).

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the first program in the United States in 1965.¹⁷ By the mid-seventies a definite trend had been established toward state victim compensation programs, a trend partially attributable to a series of federal bills aimed at subsidizing state programs.¹⁸ At the present time, twenty-nine states have some form of victim compensation program.¹⁹

This Comment explores the significant provisions of the Texas Act and analyzes in greater depth two controversial restrictions: the financial stress requirement and the household exclusion. Finally, this Comment stresses the need for effective implementation of the Act's publicity provisions and discusses the intriguing "Son of Sam" sections in light of the constitutional problems that they present.

17. CAL. GOV'T CODE §§ 13959-13974 (West Supp. 1980).

18. Since the mid-sixties, a number of bills aimed at providing federal compensation to victims of violent crimes have been introduced before Congress, but as yet none has passed both Houses. The earlier bills were intended to establish a federally financed national crime victim compensation program. S. 2155, 89th Cong., 1st Sess. (1965); H.R. 11818, 89th Cong., 1st Sess. (1965). Since 1972, however, the most significant federal crime victim compensation bills have taken a two-pronged approach; these bills would provide for 100% compensation to victims of crimes subject to exclusive federal jurisdiction and a partial subsidization of state programs that qualify. *E.g.*, S. 2994, 92d Cong., 1st Sess. (1971). For a detailed history of the federal legislative attempts, see H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO VICTIMS OF CRIME 191-209 (1974).

One of the bills currently before the Judiciary Committee, H.R. 957, 96th Cong., 1st Sess. (1979), shows promise because it is a result of a conference committee compromise of the 1977 bill, H.R. 7010, 95th Cong., 1st Sess. (1977). If passed, H.R. 957 would authorize federal subsidization of 25% of the current cost of state programs that qualify. The Texas Act, TEX. REV. CIV. STAT. ANN. art. 8309-1, §§ 1-18 (Vernon Supp. 1980), meets all the criteria of H.R. 957, which include a right to judicial or administrative review, a requirement for cooperation with local law enforcement agencies, and state rights of subrogation. Several similar bills are before the Judiciary Committee. *See* S. 190, 96th Cong., 1st Sess. (1979); H.R. 4257, 96th Cong., 1st Sess. (1979); H.R. 1961, 96th Cong., 1st Sess. (1979); H.R. 1899, 96th Cong., 1st Sess. (1979); H.R. 99, 96th Cong., 1st Sess. (1979). It is probable that the pendency of federal legislation not only encourages states to adopt victim compensation programs, but influences the nature of state programs by establishing minimum criteria for subsidization.

19. ALASKA STAT. §§ 18.67.010-.180 (1974 & Supp. 1979); CAL. GOV'T CODE §§ 13959-13974 (West Supp. 1980); CONN. GEN. STAT. §§ 54-201 to -215 (1979); DEL. CODE ANN. tit. 11, §§ 9001-9017 (1979); FLA. STAT. ANN. §§ 960.01-.25 (West Supp. 1979); GA. CODE ANN. §§ 47-518 to -526 (1979); HAWAII REV. STAT. §§ 351-1 to -70 (1976 & Supp. 1979); ILL. ANN. STAT. ch. 70, §§ 71-84 (Smith-Hurd Supp. 1979); IND. CODE ANN. §§ 16-7-3.6-1 to -17 (Burns Supp. 1979); KAN. STAT. ANN. §§ 74-7301 to -7318 (Supp. 1979); KY. REV. STAT. §§ 346.010-.180 (1977 & Supp. 1978); MD. ANN. CODE art. 26A, §§ 1-17 (1973 & Supp. 1979); MASS. ANN. LAWS ch. 258A, §§ 1-8 (Michie/Law, Co-op 1968 & Supp. 1980); MICH. COMP. LAWS ANN. §§ 18.351-.368 (West Supp. 1967-1979); MINN. STAT. ANN. §§ 299B.01-.17 (West Supp. 1980); MONT. REV. CODES ANN. §§ 53-9-101 to -133 (1979); NEV. REV. STAT. §§ 217.010-.270 (1977); N.J. STAT. ANN. §§ 52:4B-1 to -21 (West Supp. 1979-1980); N.Y. EXEC. LAW §§ 620-635 (McKinney 1972 & Supp. 1972-1979); N.D. CENT. CODE §§ 65-13-01 to -20 (Supp. 1979); OHIO REV. CODE ANN. §§ 2743.51-72 (Page Supp. 1979); OR. REV. STAT. §§ 147.005-.365 (1977); PA. STAT. ANN. tit. 71, §§ 150-7 to -7.16 (Purdon Supp. 1979-1980); R.I. GEN. LAWS §§ 12-25-1 to -14 (Supp. 1979); TENN. CODE ANN. §§ 23-35-101 to -117 (Supp. 1979); TEX. REV. CIV. STAT. ANN. art. 8309-1, §§ 1-18 (Vernon Supp. 1980); VA. CODE §§ 19.2-368.1 to .18 (Supp. 1979); WASH. REV. CODE ANN. §§ 7.65.010-.910 (Supp. 1978); WIS. STAT. ANN. §§ 949.01-.18 (West Supp. 1979-1980). The Rhode Island statute does not become active until the enactment of federal crime victim legislation. The Nevada and Georgia statutes are limited to "good Samaritan" victims, those who are injured in an attempt to stop an ongoing crime or while aiding police officers.

I. THE TEXAS CRIME VICTIMS COMPENSATION ACT

The Act is a hybrid of provisions culled from various existing statutes as well as from the Uniform Crime Victims Reparations Act.²⁰ The purpose of the program,²¹ like that of almost every compensation program in existence, is to compensate victims of violent crimes for the pecuniary losses²² incurred as a result of their physical injuries. Neither property loss²³ nor pain and suffering²⁴ are compensable under the Act. Furthermore, a

20. This Act has been adopted in North Dakota and Ohio and represents an effort of the commissioners on Uniform State Laws to come to grips with the difficult issues involved in victim compensation legislation.

21. The formal purpose of the Act is declared in § 2:

The legislature recognizes that many innocent persons suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene in crimes on behalf of peace officers may suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds and determines that there is a need for indemnification of victims of crime and citizens who suffer personal injury or death in the prevention of crime or the apprehension of criminals.

TEX. REV. CIV. STAT. ANN. art. 8309—1, § 2 (Vernon Supp. 1980).

22. The Act includes a typical definition of pecuniary loss, which defines the limits of financial compensation for each individual:

(7) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:

(A) regarding personal injury for:

(i) medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;

(ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed \$150 per week; and

(iii) care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed \$30 per child per week up to a maximum of \$75 per week for any number of children; and

(B) as a consequence of death for:

(i) funeral and burial expenses;

(ii) loss of support to a dependent or dependents not otherwise compensated for as a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate of not more than a total of \$150 per week for all dependents; and

(iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury, at a rate not to exceed \$30 per week per child, up to a maximum of \$75 per week for any number of children.

(C) Pecuniary loss does not include loss attributable to pain and suffering.

Id. § 3(7).

23. No compensation program in existence today allows recovery for the loss of property, although some, such as Tennessee, expressly exclude hearing aids and eyeglasses from the definition of property. TENN. CODE ANN. § 23-35-106(5)(b) (Supp. 1979). The exclusion of property loss may be justified on three grounds: first, the economic infeasibility of such a program; secondly, the opportunity for fraud that such a program would present; and thirdly, "property damage does not destroy a person's only indispensable asset, that is, the ability to earn a living." Childres, *Compensation for Criminally Inflicted Personal Injury*, 39 N.Y.U. L. REV. 444, 460 (1964); see Fry, *Justice for Victims*, 8 J. PUB. L. 191, 193 (1959).

24. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(7)(C) (Vernon Supp. 1980). Only one state, Hawaii, allows compensation for pain and suffering. HAWAII REV. STAT. § 351-33(4) (1976). The lack of criteria upon which to base awards is a difficulty faced by the Hawaii program, and other states have chosen to avoid this problem. Tennessee makes one exception, and allows recovery for pain and suffering in cases involving rape or sexual deviancy. TENN. CODE ANN. § 23-35-106(5)(C) (Supp. 1979).

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number of restrictions and qualifications limit the class of eligible claimants and the recovery available to each. The Act directs the Industrial Accident Board (the Board), the agency normally in charge of workers' compensation, to administer the program.²⁵

A. Eligibility

Before an individual can recover under the Act, the Board must be satisfied by a preponderance of the evidence²⁶ that the requirements of the Act have been met. The threshold requirement is that the individual is a "victim" within the meaning of the Act. Victims include Texas residents²⁷ who suffer personal injury²⁸ or death as a result of criminally injurious conduct,²⁹ intervenors,³⁰ dependents of deceased victims,³¹ and those who, in

25. TEX. REV. CIV. STAT. ANN. art. 3309—1, § 10 (Vernon Supp. 1980). States have varied widely in their choice of administrative agencies. Many, such as New York and Connecticut, have established a compensation board unaffiliated with any existing agency. The Massachusetts and Tennessee programs are administered by state courts. Other states have allowed compensation programs to be subsumed by existing agencies in charge of workers' compensation (Texas, Washington), or public safety (Alaska). California had originally delegated control of its compensation program to the Department of Social Welfare, but transferred authority to the State Board of Control upon the realization that the compensation program had taken on the undesirable aura of welfare. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 82-85.

26. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(a) (Vernon Supp. 1980).

27. *Id.* § 3(9)(A). Not only must the victim be a Texas resident, but the criminally injurious conduct must have occurred in Texas as well. *Id.* § 3(4)(A). Other states that limit recovery to residents include California, Delaware, and Washington. States that do not limit recovery to residents include Illinois, Maryland, and Minnesota.

28. *Id.* § 3(9)(A). While the definition of "victim" requires *personal* injury, the Act requires that the victim suffer *physical* injury in order to recover. *Id.* § 6(b). The § 6(b) requirement of physical injury is the result of a house committee substitute amendment. Under S.B. 21, 1979 Tex. Sess. Law Serv., ch. 189, §§ 1-19, at 402-10 (Vernon), as originally proposed, pecuniary loss incurred as the result of personal injury was compensable, including psychological counseling of rape victims who suffer mental, but not physical, injury. It is estimated that 25% of all rape victims seek no medical attention. SOURCEBOOK, *supra* note 12, at 346.

29. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(9)(A) (Vernon Supp. 1980). *Id.* § 3(4) defines criminally injurious conduct:

(4) "Criminally injurious conduct" means conduct that:

- (A) occurs or is attempted in this state;
- (B) poses a substantial threat of personal injury or death;
- (C) is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; and
- (D) is not conduct arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle except when intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701l--1 or 6701l--2, Revised Civil Statutes of Texas, 1925, as amended.

The words "criminally injurious conduct" are used to avoid giving an artificial meaning to the word "crime." Not all crimes will give rise to compensation under the Act. See UNIFORM CRIME VICTIMS REPARATIONS ACT § 1, Comment. Some states, such as Hawaii, instead of using the broad brush approach chosen by Texas, use a list of crimes to describe the conduct that can lead to compensation. HAWAII REV. STAT. § 351-32 (1976). The Hawaiian practice risks penalizing innocent victims of crimes omitted by oversight.

30. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 3(9)(B) (Vernon Supp. 1980) incorporates a "good Samaritan" statute within the Act. *Id.* § 3(8) provides:

the case of a deceased victim, legally or voluntarily assume the medical or burial expenses of the victim.³² Once the Board determines that a claimant³³ is a victim, it must be satisfied that as a result of criminally injurious conduct, the victim suffered physical injury³⁴ or death, which in turn resulted in pecuniary loss.³⁵ The Board must be convinced that the victim is unable to recoup this pecuniary loss without suffering financial stress.³⁶ In addition, the victim's recovery may be denied or reduced to the extent that the victim's pecuniary loss is compensated from collateral sources.³⁷

Three restrictions further narrow the eligible class. First, victims failing to file applications with the Board within 180 days after the crime,³⁸ or victims failing to report the crime to the appropriate local law enforcement agency within seventy-two hours,³⁹ must be denied recovery. Secondly,

(8) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in such conduct, or to aid a police officer. Intervenor does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment.

31. *Id.* § 3(9)(C). Section 3(5) defines dependent by reference to I.R.C. § 152, with the addition of surviving spouses and posthumous children of deceased victims.

32. *Id.* § 3(9)(D).

33. *Id.* § 3(2) defines claimant as "a victim or an authorized person acting on behalf of any victim."

34. *Id.* § 6(b); see note 28 *supra*.

35. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(b) (Vernon Supp. 1980); see note 22 *supra*.

36. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(b) (Vernon Supp. 1980). For a discussion of the financial stress requirement, one of the major issues in victim compensation legislation, see notes 83-109 *infra* and accompanying text. For the statutory definition of financial stress, see note 88 *infra*.

37. TEX. REV. CIV. STAT. ANN. art. 8309-1, §§ 6(b), 6(d)(4) (Vernon Supp. 1980) both preclude recovery to the extent of compensation from a collateral source, which is defined in *id.* § 3(3):

(3) "Collateral source" means a source of benefits or advantages for pecuniary loss awardable other than under this Act which the victim has received, or which is readily available to him or her from:

(A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;

(B) the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act;

(C) Social Security, Medicare and Medicaid;

(D) state-required temporary nonoccupational disability insurance;

(E) workers' compensation;

(F) wage continuation programs of any employer;

(G) proceeds of a contract of insurance payable to the victim for loss which he or she sustained because of the criminally injurious conduct; or

(H) a contract providing prepaid hospital and other health care services, or benefits for disability.

38. *Id.* § 6(c)(1). The 180-day period may be extended by the Board "for good cause shown." *Id.* § 4(c). States vary as to the time limit for filing a claim. MICH. COMP. LAW ANN. § 16.355(2) (West Supp. 1967-1979), allows the shortest period, 30 days, while ALASKA STAT. § 18.67.130(a) (1974 & Supp. 1979); CONN. GEN. STAT. § 54-211(a) (1979); ILL. ANN. STAT. ch. 70, § 73(q) (Smith-Hurd Supp. 1979); and WIS. STAT. ANN. § 949.08(1) (West Supp. 1979-1980) allow two years in which to file a claim.

39. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(c)(1) (Vernon Supp. 1980). The re-

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recovery will be denied if the victim knowingly and willingly participated in the criminally injurious conduct.⁴⁰ Thirdly, if the criminal offender or his accomplice resided in the same household as the victim, no compensation may be awarded to the victim.⁴¹ If, after consideration of the foregoing restrictions and requirements, the Board considers the victim eligible for compensation, recovery may still be denied or reduced if the victim has not "substantially cooperated" with law enforcement authorities,⁴² or if the victim's behavior at the time of the incident giving rise to the claim was such that he or she bears responsibility for the criminal act or omission.⁴³

Once the Board approves the victim's application, it may compensate the victim for his pecuniary loss by means of a lump-sum cash payment or by a series of payments,⁴⁴ which awards may not exceed \$50,000 in the aggregate.⁴⁵ Alternatively, the Board may refer the claimant to state voca-

quirement for reporting the crime to police is intended to encourage aid and cooperation in law enforcement efforts. Section 4(b) allows the 72-hour period to be extended if the extension "is justified by extraordinary circumstances as determined by the board." Most states have either a 72- or 48-hour requirement, although New Jersey allows three months. N.J. STAT. ANN. § 52:4B-18 (West Supp. 1979-1980). Hawaii and Delaware have no police reporting requirement.

40. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(c)(2) (Vernon Supp. 1980). All state compensation statutes contain a similar provision; it seems natural to prevent the criminal or his accomplice from benefiting from his crime. The statute denies recovery if the person whose injury or death gave rise to the application participated in the crime, thus disallowing recovery to the child or spouse of a slain criminal. *Id.*

41. *Id.* § 6(c)(4). For a discussion of the household exclusion, see notes 110-46 *infra* and accompanying text.

42. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(1) (Vernon Supp. 1980). Section 5(e)(1) authorizes the Board to request information from prosecuting attorneys and law enforcement agencies for the purpose of determining claimant cooperation. One of the anticipated benefits of the program is an increase in police cooperation engendered by § 6(d)(1). See Edelhertz, Geis, Chappell & Sutton, *Part II—Public Compensation of Victims of Crime: A Survey of the New York Experience*, 9 CRIM. L. BULL. 101, 103-05 (1973).

43. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 6(d)(3) (Vernon Supp. 1980). The question of victim precipitation or responsibility plays a large role not only in victim compensation legislation, but in the nascent field of victimology. See, e.g., Silverman, *Victim Precipitation: An Examination of the Concept*, in VICTIMOLOGY: A NEW FOCUS (I. Drapkin & E. Viano eds. 1974). Most state programs include such a provision, which is understandably difficult to administer. One of the most common applications of this provision occurs when the victim is criminally injured a short time after soliciting a prostitute. See COMMITTEE ON THE OFFICE OF ATTORNEY GENERAL, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, *LEGAL ISSUES IN COMPENSATING VICTIMS OF VIOLENT CRIME* 24-25 (1976) [hereinafter cited as ISSUES]. Other situations in which compensation may possibly be denied include illegal hitchhiking or wearing furs or jewelry in areas well-known for high crime rates.

44. TEX. REV. CIV. STAT. ANN. art. 8309—1, § 7(c) (Vernon Supp. 1980). Pecuniary loss accrued to the date of the award shall be paid in a lump sum, and future expenses are to be paid in installments unless the Board finds a lump sum payment will promote the interest of the claimant, or the present value of all future pecuniary loss does not exceed \$1,000. *Id.* §§ 7(c)-(d).

45. *Id.* § 7(b). The \$50,000 maximum is a limit on the aggregate compensation awarded to all claimants whose claim arises out of the injury or death of the same victim. *Id.* The Act establishes the highest maximum award of all the state programs, except for Ohio, which also allows \$50,000. OHIO REV. CODE ANN. § 2743.60(E) (Page Supp. 1979). The lowest of the state limits is \$10,000, shared by California, Connecticut, Delaware, Florida, Hawaii, Illinois, Massachusetts, New Jersey, Tennessee, Virginia, and Wisconsin. The

tional facilities or provide counseling services.⁴⁶ Upon the awarding of compensation, the state becomes subrogated to all the claimant's rights to receive or recover benefits from collateral sources to the extent that the state has awarded compensation.⁴⁷ The Act also provides that the Board shall award reasonable attorneys' fees to attorneys representing successful claimants.⁴⁸

B. Procedure

After a victim submits an application to the Board, a clerk appointed by the Board reviews the application for completeness.⁴⁹ A complete application is then reviewed by one Board member who determines whether a hearing is necessary.⁵⁰ A hearing on the application must be held if the Board member deems it necessary or if either the attorney general or the claimant requests a hearing.⁵¹ The Act gives the Board the special power to order the victim to submit to a mental or physical examination or to order an autopsy of a deceased victim "if the mental, physical, or emotional condition of a victim is material to a claim"⁵² and if the order is "for

Texas maximum is commendable, for in many instances criminal injuries are permanently debilitating, and \$10,000 is quickly exhausted.

Many states also have a minimum claim amount. These states include Connecticut and Delaware (\$25), Illinois (\$200), Kansas, Kentucky, Maryland, Michigan, Minnesota, New Jersey, New York, North Dakota, Tennessee, and Virginia (all \$100). Commentators tend to view a minimum claim requirement with disfavor. See, e.g., H. EDELHERTZ & G. GEIS, *supra* note 18, at 47.

46. TEX. REV. CIV. STAT. ANN. art. 8309--1, §§ 7(a)(2)-(3) (Vernon Supp. 1980). In addition to providing public counseling services the Board may contract with private entities to provide these services. *Id.*

47. *Id.* § 11(a). Section 11(a) is an unfortunately drafted section that is susceptible to the extreme interpretation that once a claimant has received any award from the Board, the state becomes subrogated to the *total* amount of collateral recovery available to the claimant, even if that amount is much greater than the compensation awarded by the Board. Section 11(a) provides: "If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a source which is or if readily available to the claimant would be a collateral source." *Id.*

Naturally, the state's right of subrogation should be limited to the amount awarded by the state to the claimant. The ambiguity of § 11(a) could be simply remedied by an amendment that moves the phrase "to the extent compensation is awarded" to a position immediately preceding "the state is subrogated."

48. *Id.* § 12 provides:

As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of compensation. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed. Attorney's fees may not be paid to an attorney of a claimant unless an award is made to the claimant.

49. *Id.* § 5(a).

50. *Id.* § 5(c).

51. *Id.* The attorney general shall be sent a copy of every application received by the Board, and may appear at hearings and present evidence either supporting or opposing approval of the application. *Id.* § 5(b).

52. *Id.* § 5(e)(3). Upon request the Board must give the person examined, or the claim-

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At any time after the denial or award of compensation, the Board may, on its own motion or at the request of the claimant, reconsider its decision.⁵⁴ In addition, a claimant has the right to judicial review of a final ruling.⁵⁵ To preserve this right, the claimant must file a "notice of dissatisfaction" with the Board within twenty days of the ruling and bring suit in district court within twenty days of the filing of notice.⁵⁶ The district court will then determine the issues de novo.⁵⁷

The costs of awards and administration are to be paid exclusively from the Compensation to Victims of Crime Fund, established in the state treasury.⁵⁸ This fund is solely comprised of additional court costs imposed on convicted criminals.⁵⁹ \$15 in the case of a felony and \$10 in the case of a

ant in the case of a deceased victim, a copy of the physician's or psychologist's report. *Id.* § 5(f).

53. *Id.*

54. *Id.* § 9(a).

55. *Id.* § 9(c). The right to judicial review has been a perennial qualification for federal subsidization in the series of federal victim compensation bills. *See, e.g.*, H.R. 957, 96th Cong., 1st Sess. § 4(a)(2) (1979).

56. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 9(c) (Vernon Supp. 1980).

57. *Id.*

58. *Id.* § 14(a).

59. The funding of compensation programs through fining or imposing court costs on convicted criminals is a relatively recent development. California, Connecticut, Delaware, Florida, Maryland, and Washington also use this method of funding, although program appropriations are not limited to this source. One commentator has suggested that "[i]t is . . . an illusion to look to criminal fines, or subrogation, as a substantial source for financing reparations to crime victims." H. EDELHERTZ & G. GEIS, *supra* note 18, at 290. The Texas program will test the accuracy of this prediction.

The method of funding may give rise to a constitutional challenge. One problem arises from the fact that all convicted criminals, except those convicted of misdemeanors with fines less than \$200, must pay the court costs irrespective of whether their offense was violent or nonviolent. Arguably, since the court costs are to be used solely for the purpose of compensating victims of violent crime, the statutory classification of those individuals who will pay the court costs is not reasonably related to the purpose of the legislation and contravenes the equal protection clause of the fourteenth amendment. *See, e.g.*, *McLaughlin v. Florida*, 379 U.S. 184, 190-91 (1964).

This equal protection argument was made before the Supreme Court of Florida in *State v. Champe*, No. 53,811 (Fla. Dec. 14, 1978). In *Champe*, the supreme court overruled the lower court's finding that the funding provisions of the statute were unconstitutional. Chief Justice England stated:

Laws which classify violent and non-violent offenders together for purposes related solely to the prevention of violent crimes have consistently been upheld against equal protection attacks. *See United States v. Brown*, 484 F.2d 418, 423 (5th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974). . . . It is not irrational for the legislature similarly to combine all lawbreakers for the purpose of remedying the consequences of violent crime.

Id., slip op. at 7. *Brown*, however, dealt with the constitutionality of a law proscribing the interstate transportation of firearms by convicted felons, regardless of the violent nature of the felony. The broad brush classification in *Brown* bears a far more rational relation to the purpose of the statute than does the *Champe* classification. The *Brown* classification can be viewed as based not only on the criminal offense, but on post-crime experience in prison, and can be justified by the high rate of crimes committed by ex-convicts. In *Champe* a shoplifter was fined to help pay for injuries suffered at the hands of rapists, murderers, and armed robbers. Unlike *Brown*, the statutory classification in *Champe* was not based on a reasonable attempt to protect the public, nor was it based on any harm directly caused by

misdemeanor punishable by imprisonment or by a fine greater than \$200.⁶⁰ The legislature deleted a proposed provision that would have allowed courts to impose fines up to \$10,000 on individuals convicted of violent crimes.⁶¹ Legislative estimates project that under the current Act, the collection of additional court costs should yield approximately two million dollars annually.⁶²

II. THE THEORETICAL JUSTIFICATION FOR VICTIM COMPENSATION

Commentators traditionally have advanced two theories to justify the state's assumption of the duty to compensate crime victims.⁶³ An examination of these theoretical justifications is essential to an analysis of the restrictions and qualifications embodied in the Act. The first theory is that of "state obligation."⁶⁴ The state obligation theory postulates that the state is under a duty to protect the citizenry and that when a person is criminally injured the state has failed in this duty; consequently, the state is obligated to compensate the victim.⁶⁵ The state's obligation further arises from the fact that the laws of the state prevent the victim from seeking personal retribution against the criminal and impede the victims' civil recovery by incarcerating the criminal.⁶⁶ The second theory, the social welfare theory,⁶⁷ is predicated upon moral considerations. This theory postulates that "an innocent victim ought to be entitled to aid, to maintain that degree of dignity, security, and comfort which he seeks to earn for himself and his family,"⁶⁸ and that the state should provide this aid.

At least one author has recognized that the provision for the general welfare is merely a motive behind victim compensation legislation, not a justification for it.⁶⁹ The social welfare theory begs the question; the state's power to provide for the general welfare offers no explanation for the state's exercise of the power in this particular instance. Yet for some, the state's moral obligation is sufficient reason for victim compensation pro-

the offender. Since the funding provisions of the Texas Act are similar to those of Florida, Texas should expect a challenge similar to that in *Champe*.

60. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 14b (Vernon Supp. 1980).

61. Proposed S.B. 21 was amended Apr. 26, 1979, to delete § 15. House Floor Amendments to S.B. 21, TEX. H.R.J. 1903 (1979). A remnant of old § 15 may be seen in § 3(10), which defines crimes of violence although there is no longer any reference to crimes of violence in the Act. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 3(10) (Vernon Supp. 1980).

62. Fiscal Note accompanying S.B. 21, Apr. 10, 1979.

63. See Galaway & Rutman, *Victim Compensation: An Analysis of Substantive Issues, in CONSIDERING THE VICTIM*, *supra* note 10, at 421-22; Schafer, *Victim Compensation and Responsibility*, 43 S. CAL. L. REV. 55, 58-59 (1970).

64. Schafer, *supra* note 63, at 58.

65. See McAdam, *supra* note 5, at 351.

66. The argument that the state impedes the victim's civil recovery by incarcerating the criminal is somewhat incongruous with the argument that the state is at fault for not apprehending the criminal; nevertheless, both are often advanced together. See, e.g., Galaway & Rutman, *supra* note 63, at 421-22.

67. See Schafer, *supra* note 11, at 48.

68. Note, *The New Jersey Criminal Injuries Compensation Act*, 27 RUTGERS L. REV. 727, 728-29 (1974) (quoting N.J. VIOLENT CRIMES COMPENSATION BOARD, FIRST ANNUAL REPORT 5 (1973)).

69. McAdam, *supra* note 5, at 351.

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grams. The distinguished English jurist Rupert Cross stated, "If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great."⁷⁰

The state obligation theory appears to provide a sounder basis for victim compensation programs than does the social welfare theory, but its premises are rather questionable. The state obligation theory is predicated upon the failure of the state to protect the victim; however, ascribing fault to the state is erroneous.⁷¹ The criminal is at fault, and to place blame on the state is to engage in a fiction and to ignore the individual will of the criminal.⁷² A state cannot protect all people at all times, and it is debatable whether a state should attempt to do so.

Other theories advanced in justification of compensation programs are often merely additional benefits of such legislation, not underlying justifications. Among these prospective benefits are the increased cooperation with law enforcement agencies engendered by eligibility requirements,⁷³ anti-alienation of the victim,⁷⁴ and even the political benefit accruing to sponsors of victim compensation who act because "this . . . is what the people want."⁷⁵

If a primary justification for the state's assumption of the duty to compensate victims must be identified, perhaps it is that the state is in the best position to spread the severe losses incurred by a relatively small group of victims. The loss-spreading function of victim compensation programs has long been recognized,⁷⁶ but rarely suggested as a justification for state compensation.⁷⁷ A state's unique ability to spread these losses efficiently, combined with a state's general duty to provide for the public welfare, implicates a state duty to establish these programs. In a sense, victim compensation may be viewed as the statutory analogue of the common law doctrine of vicarious liability. In both cases, liability is not based on fault but is imposed with the belief that it is better to subject all of society to

70. Cross, *Compensating Victims of Violence*, THE LISTENER 815, 816 (May 16, 1963), quoted in Childres, *supra* note 23, at 448.

71. Childres, *supra* note 23, at 455.

72. *Id.*

73. See McAdam, *supra* note 5, at 353.

74. For a discussion of the theory of victim anti-alienation, see text accompanying note 100 *infra*.

75. See McADAM, *supra* note 5, at 353.

76. Margery Fry, the English penal reformer who is frequently given credit for the rebirth of victim compensation, spoke of the loss-spreading aspects of victim compensation in her seminal article. Fry, *Justice for Victims*, 8 J. Pun. L. 191, 192-93 (1959).

77. Robert Childres, an influential commentator during the nascent stages of state victim compensation stated:

[A] sufficient, independent basis for compensation rests on common sense rather than the metaphysics of causation and responsibility. Endemic losses ought to be spread. That violence and damage criminally inflicted are endemic to American society cannot be disputed. This premise alone is a sufficient basis for the conclusion that the damage ought to be spread among all potential victims.

Childres, *supra* note 23, at 457.

small increments of loss rather than to allow individuals to suffer radical shifts in their economic status.⁷⁸ Under the doctrine of vicarious liability, society must eventually shoulder the loss incurred by an individual injured by a negligent employee; the loss is reflected in the goods purchased from the employer, and thereby society pays the true cost of the goods.⁷⁹ Likewise, victim compensation programs allow the loss suffered by a crime victim to be reflected as a true cost of living in society, either directly, through the imposition of taxes, or indirectly, by the assessment of criminal fines.⁸⁰

III. CONTROVERSIAL RESTRICTIONS IN THE TEXAS ACT

The assumption that loss-spreading is the primary justification of the state's duty to compensate victims of crime raises questions concerning the validity of some of the major restrictions on recovery included in the Texas Act. Certain provisions bear no relation to either the loss-spreading or the state obligation theories. These provisions include the exclusion of victims who live in the same household with the criminal,⁸¹ and the requirement that the victim, regardless of the size of his loss, show that he will suffer financial stress as a result of his injury.⁸² These two requirements are particularly important because of the breadth of their application. This Comment, therefore, examines these restrictions in light of the reasons offered for their support and the detrimental effects they may cause.

A. Financial Stress

Perhaps the most contentious issue concerning victim compensation legislation today is whether recovery should be contingent upon a showing of financial need or stress. Those in favor of such a requirement claim that fiscal limitations demand a restriction on program outlays because a needs requirement will cut back on the total amount awarded and thereby ensure compensation for the neediest individuals.⁸³ The proponents of need requirements are invariably the legislators, perhaps because legislators are naturally most sensitive to the potential budgetary ramifications of proposed legislation.⁸⁴ Objective commentators and experienced victim compensation program administrators,⁸⁵ however, have rarely favored

78. See F. HARPER & F. JAMES, *THE LAW OF TORTS* 759-64 (1956).

79. See Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 *YALE L.J.* 499 (1961).

80. The method of funding adopted by Texas, the imposition of additional fines upon criminal offenders, TEX. REV. CIV. STAT. ANN. art. 8309-1, § 14(c) (Vernon Supp. 1980), may be seen as a partial recapture by society of the loss suffered as a result of the crimes. In a sense, under the Texas method, society pays the cost of victim compensation in advance.

81. *Id.* § 6(c)(4).

82. *Id.* § 6(c)(3).

83. See Note, *Virginia Adopts Statute to Compensate the Victims of Crime*, 11 *U. RICH L. REV.* 679, 682 (1977).

84. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 31-35.

85. In an opinion survey taken of 20 victim compensation program administrators, only three felt that the victim's need should be a prerequisite in making an award. Brooks, *Crime Compensation Programs: An Opinion Survey of Program Administrators*, 11 *CRIMINOLOGY* 258, 269-70 (1973).

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89. See 1

90. *Id.* a

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92. See 5

requirements of financial need or stress; in fact, many ardently oppose such provisions.⁸⁶ Nevertheless, approximately half of the states with victim compensation plans use some sort of financial means test.⁸⁷ The Texas Act includes a typical provision: "The board shall deny the application if: . . . the claimant will not suffer financial stress as a result of the pecuniary loss arising out of the criminally injurious conduct."⁸⁸ The generally accepted reason for the inclusion of such a provision is the anticipated reduction in expenditures.⁸⁹ Whether it is reasonable to anticipate a substantial reduction in expenditures is a question that this Comment addresses later in this section, after the general undesirability of financial stress tests is examined.

General Undesirability of a Financial Stress Test. A financial stress test is undesirable for a number of philosophical and practical reasons. The requirement that a claimant show financial need essentially changes the focus of the program from the compensation of crime victims to the provision of welfare.⁹⁰ As mentioned earlier, one of the primary goals of a victim compensation program should be to spread effectively the losses resulting from crime related injuries,⁹¹ and this goal can only be achieved by adopting a restitutionary approach that ignores the economic status of the victim. Instead of functioning as a loss-spreading device, an act including a financial stress test serves to reallocate wealth by limiting eligibility for recovery to those who meet a certain standard of need. While compensation programs are admittedly enacted to benefit the general welfare, they should not be transformed into welfare programs because victims of crime are not limited to any one income group.⁹² The drafters of the Uniform

86. See, e.g., Chilares, *supra* note 23, at 462; H. EDELHERTZ & G. GEIS, *supra* note 18, at 83-85.

87. CAL. GOV'T CODE § 13964(2) (West Supp. 1980); FLA. STAT. ANN. § 960.13(7) (West Supp. 1979); KAN. STAT. ANN. § 74-7305(d) (Supp. 1979); KY. REV. STAT. § 346.140(3) (1977); MD. ANN. CODE art. 26A, § 12(f)(1) (1973 & Supp. 1979); MICH. COMP. LAWS ANN. § 18.361(5) (West Supp. 1967-1979); N.Y. EXEC. LAW § 631.6 (McKinney 1972); TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(c)(3) (Vernon Supp. 1980); VA. CODE § 19.2-368.13 (Supp. 1979); WIS. STAT. ANN. § 949.06(b) (West Supp. 1979-1980) use financial means tests. ALASKA STAT. § 18.67.080(3)(c) (1974 & Supp. 1979), allows consideration of financial need, but does not require a showing of need.

88. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(c)(3) (Vernon Supp. 1980). Financial stress is defined in *id.* § 3(6):

(6) "Financial stress" means financial hardship experienced by a claimant as a result of pecuniary loss from criminally injurious conduct giving rise to a claim under this Act. A claimant suffers financial stress only if he or she cannot maintain his or her customary level of health, safety, and education for himself or herself and his or her dependents without undue financial hardship. In making its finding, the board shall consider all relevant factors, including:

- (A) the number of the claimant's dependents;
- (B) the usual living expenses of the claimant and his or her family;
- (C) the special needs of the claimant and his or her dependents;
- (D) the claimant's income and potential earning capacity; and
- (E) the claimant's resources.

89. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 32.

90. *Id.* at 91-92.

91. See notes 76-80 *supra* and accompanying text.

92. See SOURCEBOOK, *supra* note 12, at 318.

Crime Victims Reparations Act recognized the danger of this transformation: "If the test is included, however, a real threat to the integrity of the program is posed because a strict 'needs' requirement will limit benefits of the program to persons already on welfare and thus be merely an exercise in bookkeeping."⁹³

In addition to these problems, the financial stress test creates substantial practical difficulties. Instead of focusing on the claimant's injury, the Board will spend a great deal of time investigating the claimant's wealth. The amount of administrative effort directed at the determination of financial need should not be underestimated. The New York Crime Victims Compensation Board consistently reported that the most difficult problem faced was the determination of serious financial hardship.⁹⁴ Thus, the financial stress test certainly will substantially increase the time required to process each claim, as well as distract the administrators from other investigatory tasks. Perhaps more importantly, the procedure for determining financial stress is necessarily demeaning.⁹⁵ Each applicant will be forced to divulge whatever private financial information the Board considers necessary for its decision.⁹⁶ The victim cannot help feeling that he is on trial when he is put in the uncomfortable position of proving he is poor enough to deserve recovery.⁹⁷ A California Board official charged with coordinating the determination of need stated:

[I]t's making the program exceedingly unpopular because the people come in again and again and say because I was frugal, because I saved a dollar, I'm being deprived of my compensation, whereas the man who threw the money away, or the woman who threw it away, is going to get money from you. This story you hear over and over again, and the Board is getting sick of it.⁹⁸

The public sentiment expressed against the programs using a need requirement bears on another issue. One of the recognized benefits of victim compensation programs is the anti-alienating effect on individual victims.⁹⁹ Theoretically, state-provided compensation for victims should help dissipate the disillusionment of individuals who, having suffered criminal injuries, suffer additionally through losses of time and income incurred as a result of their attempts to cooperate in prosecution efforts.¹⁰⁰ If victims who innocently suffered are denied compensation because their income level is not low enough, this achievement is likely to go unrealized. In fact, the experience of other states suggests that, if anything, the programs that use a financial stress test increase alienation.¹⁰¹

93. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(g), Comment.

94. H. EDELHERTZ & G. GEIS, *supra* note 18, at 58-59.

95. *Id.* at 272.

96. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 4(d)(5) (Vernon Supp. 1980) allows the Board to require that an application contain whatever information it considers necessary.

97. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 62-63 (applicant stated upon leaving hearing: "I feel like a criminal").

98. *Id.* at 92.

99. Schafer, *supra* note 11, at 48.

100. *Id.*

101. The chairman of the New York Board has been quoted as remarking at a confer-

The Fiscal requirements states have. As previous attributed to substantial achieved from administrative highest of at the time spent will necessarily with employment an individual Act as well as. Secondly, those are very likely. Hence, medical collateral consequences irrespective of are less likely to cover a relative

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ence of compensation newspaper would financial hardship.

102. *Id.* at 272.

103. See COMM. COLUM. J.L. & SOC.

104. In determining those listed (Vernon Supp. 1980).

105. See Geis, REV. 880, 904 (197).

106. See note 37.

107. See Geis, s.

108. H. EDELHERTZ increase in awards.

The Fiscal Benefit. Although the detrimental effects of the financial stress requirement are widely recognized, Texas and a large number of other states have included such provisions in their victim compensation statutes. As previously mentioned, the popularity of the stress requirements can be attributed to the legislative perception that such restrictions will result in substantial fiscal savings. On the whole, however, the savings to be achieved from these provisions have been greatly overestimated. First, the administrative costs associated with the financial stress test are perhaps the highest of any one phase of the investigatory procedure.¹⁰² In addition to the time spent analyzing financial data submitted by the claimant, officials will necessarily spend a great deal of time cross-checking this information with employers, banks, and other sources.¹⁰³ The Board will have to make an individual judgment in each case, weighing the factors specified in the Act as well as any additional standards it may choose to adopt.¹⁰⁴ Secondly, those individuals who would be excluded by a financial stress test are very likely to be compensated by some collateral source, such as insurance, medicare, or workers' compensation.¹⁰⁵ Thus, to the extent of the collateral compensation, these victims would be precluded from recovery irrespective of the financial stress test.¹⁰⁶ Furthermore, wealthier victims are less likely to be willing to go through the compensation process to recover a relatively small loss.¹⁰⁷

The combination of the substantial increase in administrative cost and the fact that a large number of those who would be excluded by the financial stress test would also be excluded by other restrictions indicates that the fiscal benefits of the test are not likely to be very large. The New York Board has estimated that the elimination of the stress test from the New York program would result in only an additional \$150,000 in overall expenditures, an increase of ten percent.¹⁰⁸

The decision to adopt or retain a financial stress test involves a comparison of the fiscal benefits of the provision with the potential detrimental effects. Considering the probability that a relatively small increase in costs would result from an abandonment of the test, the victim alienation and the inequitable denials of recovery that will accompany the test should compel the abandonment of the financial stress requirement. The majority

ence of compensation board administrators, "I don't know about you, but the letters we get no newspaper would publish, believe you me, when we turn down someone on serious financial hardship." H. EDELHERTZ & G. GEIS, *supra* note 18, at 59.

102. *Id.* at 272.

103. See Comment, *New York Crime Victims Compensation Act: Four Years Later*, 7 COLUM. J.L. & SOC. PRON. 25, 31 (1971).

104. In determining financial stress, the Board is to "consider all relevant factors," including those listed in §§ 3(6)(A)-(E). TEX. REV. CIV. STAT. ANN. art. 8309-1, § 3(6) (Vernon Supp. 1980).

105. See Geis, *California's New Crime Victim Compensation Statute*, 11 SAN DIEGO L. REV. 880, 904 (1974).

106. See note 37 *supra*.

107. See Geis, *supra* note 105, at 904.

108. H. EDELHERTZ & G. GEIS, *supra* note 18, at 59. This figure is based on the expected increase in awards minus the expected administrative savings.

of administrators of existing programs, as well as most commentators, oppose basing victim compensation programs on need and recognize that it is preferable that administrators spend their limited time processing claims instead of prying into innocent victims' private affairs.¹⁰⁹ This Comment, therefore, proposes that the financial stress provision of the Texas Act be deleted.

B. *The Relational Exclusion*

Almost every compensation program in existence contains some type of relational¹¹⁰ exclusion provision.¹¹¹ These provisions establish a class of victims who, regardless of the severity of their need, are denied compensation solely because a statutorily prescribed relationship exists between them and the criminal responsible for their injury. In some states this relationship is defined by degrees of consanguinity.¹¹² A number of states deny recovery to victims involved in sexual relationships with the criminal,¹¹³ while others limit the exclusion to those victims residing in the same household as the criminal.¹¹⁴ These three provisions are sometimes combined within a single statute.¹¹⁵ The Texas Act uses the household exclusion: "The board shall deny the application if . . . the victim resided in the same household as the offender or his or her accomplice."¹¹⁶ Unfortunately, the Act does not define "household,"¹¹⁷ nor does it specify whether

109. Texas narrowly missed disqualification for federal subsidization under the 1979 Victims of Crime Act bill, H.R. 957, 96th Cong., 1st Sess. (1979). H.R. 957 is the result of conference committee compromises of the 1977 bill, H.R. 7010, 95th Cong., 1st Sess. (1977). The Senate had proposed an amendment to H.R. 7010 that would exclude from federal subsidization states using means tests.

The conferees note that Senator Kennedy, one of the managers on the part of the Senate, believes quite strongly that States receiving funds under this Act should not impose financial means tests when determining eligibility. He believes that no innocent victim of a crime should be required to bear the economic burden of a crime, that a uniform standard of eligibility should be used nationwide, that means tests are not only arbitrary but also demeaning, that such tests may have the effect of discouraging claimants from applying for compensation, and that there has been no conclusive showing that such tests are cost effective.

H.R. REP. NO. 1762, 95th Cong., 2d Sess. 11 (1978). The conference committee decided not to adopt the Senate amendment, however, reasoning that in light of the relatively small (25%) federal contribution to the state programs, the states should be free to make their own determinations concerning the desirability of a means test. *Id.*

110. The term "relational" is used in this Comment to describe exclusions based on some relationship between the victim and the criminal. These exclusions are sometimes referred to as familial, but this term fails to describe the variety of relationships that may give rise to exclusion.

111. Only California and Delaware do not have relational exclusions.

112. *E.g.*, MD. ANN. CODE art. 26A, § 2(d) (1973).

113. *E.g.*, ALASKA STAT. § 18.67.130(b)(2) (Supp. 1979).

114. *E.g.*, MICH. COMP. LAWS ANN. § 18.354(4)(2)(c) (West Supp. 1967-1979).

115. *E.g.*, CONN. GEN. STAT. § 54-211(b) (1979); FLA. STAT. ANN. § 960.04(2) (West Supp. 1979); KY. REV. STAT. § 346.050(2) (1977).

116. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(c)(4) (Vernon Supp. 1980).

117. The statutory appearance of the word "household" has previously caused disagreement. *Cf. Gaston v. Gardner*, 247 F. Supp. 441 (D.S.C. 1965) (interpretation of "household" determinative of child's right to social security benefits). The Michigan Act expressly

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123. *Id.*

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the exclusion applies only to those residing together at the time of the incident or to those who have resided together at any time in the past.¹¹⁸ For example, whether the exclusion would apply to a wife assaulted by her husband when the couple had separated one week before the incident is unclear.

The household exclusion may yield a harsh result. The most obvious example occurs in the case of interspousal murder. When a husband murders his wife, the children suddenly find themselves alone, their mother dead and their father in jail. No victims are more innocent nor more deserving of society's aid than such children. Yet because these victims of crime resided with their parents, they are denied funds that the state distributes to others in far less need.¹¹⁹

The household exclusion does not contribute to the program's goal of loss-spreading because there is no reason to assume that pecuniary loss suffered as a result of a crime committed by a co-resident should be less severe than a loss accompanying an injury suffered at the hands of a stranger. Commentators, however, generally advance four justifications to support the policy of relational exclusion: (1) prevention of fraud and collusion;¹²⁰ (2) prevention of the criminal from benefiting from his crime;¹²¹ (3) limitation of expenditures;¹²² and (4) avoidance of grants to victims who are partially responsible for the crime.¹²³ While these arguments all involve valid considerations, they either are based on assumptions that have proven invalid in light of experience, or focus on problems that can adequately be solved through more equitable alternative methods.

Fraud, Collusion, and Indirect Benefit. The first two arguments in favor of relational exclusions are conceptually linked. Those who favor a relational exclusion fear that the relative or co-resident responsible for the injury will ultimately benefit from his or her act through the compensation allowed the victim. Similarly, when the victim and the offender are acquainted, the proponents of relational exclusions perceive a greater opportunity for fraud and collusion. Little if any merit attaches to either of these arguments, however, especially since the problems of fraud and indirect benefit are adequately prevented by other provisions of the Act.

In the first place, the victim must suffer physical injury in order to be eligible,¹²⁴ and then he can recover only for documented pecuniary loss

excludes domestic employees from the household exclusion. MICH. COMP. LAWS ANN. § 18.354(2)(e) (West Supp. 1979).

118. The statutes of other states are generally quite clear as to the time of cohabitation that will cause an exclusion. See, e.g., ALASKA STAT. § 18.67.130(b)(2) (1974 & Supp. 1979) (cohabitation at time of incident).

119. See Note, *Illinois' Crime Victims Compensation Act*, 7 LOY. CH. L.J. 351, 359-61 (1976).

120. See McAdam, *supra* note 5, at 361-63.

121. See Brooks, *How Well Are Criminal Injury Compensation Programs Performing?*, 21 CRIME & DELINQUENCY 50, 54 (1975).

122. See H. EDELBERTZ & G. GEIS, *supra* note 18, at 269.

123. *Id.*

124. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(b) (Vernon Supp. 1980).

such as medical expenses.¹²⁵ The number of people willing to injure themselves seriously enough to require medical attention in order to defraud the program is likely to be negligible. If an individual wanted to defraud the program by seeking recovery for an accidental injury, he could blame an imaginary stranger instead of a relative.¹²⁶

The Act's requirement for cooperation with the local law enforcement agency,¹²⁷ however, most strongly rebuts both the indirect benefit and fraud arguments. In order to be eligible for compensation, a claimant must report the crime within seventy-two hours¹²⁸ and fully cooperate with the police.¹²⁹ Presumably, this cooperation involves filing a complaint and aiding in all prosecutorial efforts. In order to benefit from his crime, therefore, the criminal would first sacrifice his freedom. Furthermore, the victim's willingness to prosecute should operate to create a rebuttable presumption of a lack of collusion.¹³⁰

Finally, those who cling to the indirect benefit theory can be satisfied by an alternative to relational exclusions that does not result in the exclusion of a large class of innocent and needy victims. The drafters of the Uniform Crime Victims Reparations Act have abandoned the relational exclusion in favor of a more equitable test: "Reparations may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or accomplice."¹³¹ In addition to the unjust benefit clause, the Uniform Crime Victims Reparations Act includes an optional addendum that creates a presumption of unjust benefit in certain relational situations. This section is to be used or omitted "according to the legislative appraisal of the options involved."¹³² Although this addendum could cause a hardship in certain circumstances,¹³³ it is preferable to the absolute exclusions in common usage, for it gives the Board an option:

[Unless the Board determines that the interests of justice otherwise require in a particular case, reparations may not be awarded to the spouse of, or a 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.]¹³⁴

North Dakota¹³⁵ and Ohio¹³⁶ have both adopted the Uniform Crime

125. *Id.* § 7(a)(1).

126. Program reports from various states have revealed that the fraud that was expected to accompany the programs has simply not materialized. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 279-81.

127. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(d)(1) (Vernon Supp. 1980).

128. *Id.* § 6(c)(1).

129. *Id.* § 6(d)(1).

130. See Note, *supra* note 119, at 359.

131. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(e).

132. *Id.* § 5(e), Comment.

133. One author has suggested that a rebuttable presumption of unjust benefit might cause a hardship on children seeking recovery. McAdam, *supra* note 5, at 362.

134. UNIFORM CRIME VICTIMS REPARATIONS ACT § 5(e) (brackets in original).

135. N.D. CENT. CODE § 65-13-06(3) (Supp. 1979).

136. OHIO REV. CODE ANN. § 2743.60(B) (Page Supp. 1979).

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141. *Id.* at 53.

142. *Id.* at 269.

143. *Id.*

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Victims Reparations Act exclusions, and the head of the North Dakota program has evaluated the provision as valuable and equitable.¹³⁷

Fiscal Considerations and the Participatory Theory. - Members of society generally perceive that a high proportion of violent crimes occur in domestic settings.¹³³ Garnering additional support from the indirect benefit theory, legislators have included relational exclusions with the view that the elimination of this large class of claimants will ease the constraints of a limited budget. Yet the experience of the New York program, which employs a familial exclusion,¹³⁹ suggests that such financial benefits have been overestimated. In the first four years of the program, of 3,238 claims filed, 1,380 were denied.¹⁴⁰ Only seventeen of these 1,380 denials were based on the relationship between the offender and the victim.¹⁴¹

Nevertheless, the emendation of the household exclusion undeniably would result in an increase in administrative costs, even though the actual increase in claims may be negligible. An increase in administrative costs is likely because it is probable that more administrative time will be spent in examining the possibility of victim participation in an interfamilial crime than in a crime committed by a stranger.¹⁴² In fact, the idea that the victim of an interfamilial crime is usually partially responsible for the crime is a multifarious concept underlying the exclusions.¹⁴³ When a wife has been severely beaten by her husband, the police, the courts, and the community too often believe that "she must have done something terrible to provoke such a response."¹⁴⁴ The public perception of victim participation in interfamilial crimes, however, cannot justify the relational exclusion because the Act already includes a provision for reducing recovery to the extent that the victim precipitated the crime, and every claim will be examined in this light.¹⁴⁵ Although the Board possibly might choose to devote more time to the determination of victim precipitation in interfamilial crimes, precluding a sizeable class of victims from recovery on the mere suspicion

137. Gross, *supra* note 12, at 35. Indiana has responded directly to the inequitable potential of the relational exclusion by limiting exceptions to the exclusion of legal non-spousal dependents of the criminal:

A person who commits a violent crime upon which an application is based, or an accomplice of that person or a member of the family of that person, is not eligible for assistance under this chapter. However, if the victim is a legal non-spousal dependent of the person who commits a violent crime, compensation may be awarded where justice requires.

IND. CODE ANN. § 16-7-3.6-5(b) (Burns Supp. 1979).

138. See H. EDELHERTZ & G. GEIS, *supra* note 18, at 269. This perception is somewhat distorted because the Department of Justice estimates that less than 10% of all aggravated assaults are inflicted upon relatives. SOURCEBOOK, *supra* note 12, at 334-35. The public perception finds justification in the statistics of murder, however, for approximately 30% of all murders are either interfamilial (22%) or romantically related (7%). *Id.* at 457.

139. N.Y. EXEC. LAW § 624(2) (McKinney Supp. 1972-1979).

140. H. EDELHERTZ & G. GEIS, *supra* note 18, at 43.

141. *Id.* at 53.

142. *Id.* at 269.

143. *Id.*

144. T. DAVIDSON, CONJUGAL CRIME 74 (1978).

145. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(d)(2) (Vernon Supp. 1980).

that the investigation of their claims will prove more costly than another group of claimants is unjust.

In summary, no valid reason exists for the exclusion of the broad classes of victims affected by the relational exclusion provisions. The fears of fraud and collusion are rendered nugatory by the requirement for cooperation in the apprehension and prosecution of the victim. The possibility of indirect benefit to the criminal is also lessened by the cooperation requirement and may be eliminated completely by the adoption of the Uniform Crime Victims Reparations Act proposal.¹⁴⁶ The fiscal benefits accruing to a program from relational exclusions are minimal, and neither the slight decrease in claims nor the reduction of administrative costs associated with an undocumented perception of victim precipitation justifies the exclusion of a large class of innocent victims.

IV. THE NEED FOR ADEQUATE PUBLICITY AND EFFECTIVE CLAIM FORMS

While the need for adequate publicity cannot be termed a legal issue, the extent of public education and information largely determines the effectiveness of any compensation statute. How the public is informed, the ease of access to the application forms, and the nature of the forms themselves can have a substantial impact on the number of claims filed and the amount of administrative effort spent in processing claims.

The experience of the New York program demonstrates the relation between public awareness and the number of victims aided. The New York program was underpublicized; after four years some prosecutors were unaware of its existence.¹⁴⁷ Even today, there is no statutory provision for publicity and, although initially several short-lived media "blitzes" were attempted,¹⁴⁸ the chairman of the compensation board has admitted that the largest number of claims arise from knowledge of the program obtained by word of mouth.¹⁴⁹ In 1969, the third year of the program's operation, only 929 claims were filed.¹⁵⁰ In that same year, New York law enforcement agencies received 40,049 reports of murder, manslaughter, rape, and aggravated assault.¹⁵¹ Despite the benevolent intent underlying compensation programs, if the victims themselves are not informed of the availability of state compensation, the programs will be "nothing more than public placebos, tranquilizing showpieces aimed at placating the public and protecting the politician, all for a negligible price."¹⁵²

Fortunately, Texas has taken steps to avoid this problem. Sections 10(e) and (f) of the Texas Act provide:

146. See note 131 *supra* and accompanying text.

147. King, *If You Are Maimed by a Criminal You Can Be Compensated (Maybe)*, N.Y. Times, Mar. 26, 1972, § 6 (Magazine), at 31.

148. H. EDELIHERTZ & G. GEIS, *supra* note 18, at 46.

149. *Id.*

150. Comment, *supra* note 103, at 35.

151. *Id.* at 34.

152. H. EDELIHERTZ & G. GEIS, *supra* note 18, at 238.

(e) Every hospital shall play prominently the existence and standards for the application forms hospital and physical

(f) Every local criminally injurious application forms shall provide application enforcement agency attorney general enforcement agency him or her a descendant comply.

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153. CAL. GOV'T CODE § 885.

154. TEN. REV. CIV. CODE § 55-1-101 (as added).

155. *Id.* § 10(f).

156. *Id.*

157. See Gross, *supra* note 103.

158. CAL. GOV'T CODE § 885.

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(e) Every hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Act. The board shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this Act to each hospital and physician licensed to practice in the State of Texas.

(f) Every local law enforcement agency shall inform victims of criminally injurious conduct of the provisions of this Act and provide application forms to victims who desire to seek assistance. The board shall provide application forms and all other documents that local law enforcement agencies may require to comply with this section. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with him or her a description of the procedures adopted by each agency to comply.

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These provisions closely resemble those adopted by California after that state experienced difficulties similar to those of New York.¹⁵³

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While the Texas Act is admirable for its inclusion of such a provision, it is crucial that the provisions be vigorously applied. Furthermore, law enforcement agencies must develop an efficient procedure for the dissemination of information. Finally, in addition to the statutorily prescribed publicity, the Board should use mass media to publicize the Act and develop adequate screening procedures to cope with the number of claims generated from such publicity.

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Apart from the lesson learned from the New York experience, two other factors demonstrate that publicity requires particular attention. First, although the statute speaks in unequivocal language, directing that "[e]very hospital . . . shall display . . . [and] [e]very local law enforcement agency shall inform . . . ,"¹⁵⁴ it provides no sanction for noncompliance with these duties. The absence of a statutory sanction requires the close monitoring of the compliance of hospitals and law enforcement agencies. If cooperation is not received, perhaps a penalty for noncompliance should be added to the statute. Secondly, the Act divides the control of publicity between the Board and the attorney general. Although the Board is in charge of providing application forms to the law enforcement agencies,¹⁵⁵ the attorney general is responsible for setting the standards for the distribution of these forms.¹⁵⁶ Since the manner of distribution and procedural organization has a substantial impact on the choice of the claim form,¹⁵⁷ the attorney general and the Board must work closely together to assure a smooth operation. At one time the California program involved the same division of authority.¹⁵⁸ Apparently, the split proved unwieldy in practice,

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153. CAL. GOV'T CODE §§ 13968(b)-(c) (West Supp. 1980); see Geis, *supra* note 105, at 885.

154. TEX. REV. CIV. STAT. ANN. art. 8309-1, §§ 10(c)-(f) (Vernon Supp. 1980) (emphasis added).

155. *Id.* § 10(f).

156. *Id.*

157. See Gross, *supra* note 12, at 20.

158. CAL. GOV'T CODE § 13968(c) (1974) (amended by 1977 Cal. Stats. ch. 636, § 4).

for California amended its act in 1977 by placing all authority for law enforcement publicity procedures in the hands of the administrative agency in charge of the compensation program.¹⁵⁹

For the present, the Texas attorney general controls the procedure by which Texas law enforcement agencies distribute information.¹⁶⁰ Since the Act places a duty upon every local law enforcement agency to provide information and application forms to every victim of criminally injurious conduct, the police are essentially the public representatives of the Board, and their efforts are likely to account for the majority of claims filed. The procedures adopted for the distribution of this information will influence the effectiveness of the program, but the limited manpower and budget of law enforcement agencies conflict with the need for widespread distribution of information and applications. Faced with this conflict, California has developed a system for the dissemination of information that promises to be effective as well as efficient, and Texas should consider the adoption of a similar plan. In a memo sent to all local law enforcement agencies, California Attorney General Younger outlined the standard procedure:

- (1) Law enforcement officers are required to provide to victims of [sic] their families a sheet describing the victim program and where to obtain application forms. This sheet shall also identify a Victims of Violent Crime Liaison Officer and his telephone number. Every reporting officer shall indicate in his police report the date when potential claimants were provided with the sheet. Alternatively, a law enforcement agency may devise a system whereby potential claimants are notified by mail of the availability of the program and are advised of the name of the Liaison Officer from whom further information may be obtained;
- (2) All law enforcement agencies shall appoint a Victims of Violent Crime Liaison Officer. This officer will coordinate closely with the State Board of Control and shall obtain from the Board application forms which are to be disseminated to the interested public;
- (3) The program shall be discussed in general agency meetings and new and trainee officers shall be made aware of the program's existence.¹⁶¹

The establishment of a liaison officer serves several purposes. The local agency will benefit from this centralization of responsibility because less time will have to be spent on the education of the entire force. The public will benefit because such an officer will become well-versed in the provisions of the Act and, as a result, will be able to respond to specific inquiries with greater accuracy. The Board will benefit because a liaison officer can serve as a watchdog by checking that the information is being distributed in accordance with the statutory mandate.

Although the statutory delegation of publicity duties to law enforcement

159. *Id.* (West Supp. 1980) The chief administrator of the North Dakota Crime Victims Compensation Board requested that all sections concerning the attorney general's participation be eliminated. See Gross, *supra* note 12, at 29.

160. TEX. REV. CIV. STAT. ANN. art. 8309--1, § 10(f) (Vernon Supp. 1980).

161. ISSUES, *supra* note 43, at 15.

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agencies establishes an efficient device for information distribution, the police can only inform those who report a crime. Over fifty percent of all personal victimizations go unreported.¹⁶² The Act attempts to lower this percentage in Texas by conditioning eligibility on a report of the crime to the appropriate agency within seventy-two hours.¹⁶³ If this ancillary goal of increased crime reporting is to be reached, information about the Act, and the seventy-two hour provision in particular, should be conveyed by sources other than the police. In all likelihood, the best way to reach those who would otherwise choose to avoid involvement with law enforcement agencies is through extensive media coverage. The wide reach of the media, however, creates additional problems. The New York Board discovered that media "blitzes" resulted in a deluge of claims filed by individuals clearly ineligible for recovery—persons seeking a government handout, or persons looking for lost property.¹⁶⁴ These claims resulted in serious administrative backlogs, and the media efforts were quickly discontinued.¹⁶⁵

The problems experienced by the New York Board may perhaps be avoided, however, by the adoption of a simple claim procedure. Besides eliminating the increase in applications of ineligible individuals, this procedure generally will reduce the amount of screening that would otherwise be performed by the limited staff of the Board. This procedure, already used in North Dakota and Minnesota,¹⁶⁶ consists of a two-stage claim process. Before a potential claimant is allowed to fill out a claim form, he or she must fill out a "declaration of eligibility."¹⁶⁷ This declaration would

162. SOURCEBOOK, *supra* note 12, at 302.

163. TEX. REV. CIV. STAT. ANN. art. 8309-1, § 4(b) (Vernon Supp. 1980).

164. H. EDELHERTZ & G. GEIS, *supra* note 18, at 46.

165. *Id.* at 46-47.

166. *See* Gross, *supra* note 12, at 20, 26.

167. The following is a proposed declaration of eligibility form for Texas, adapted from the North Dakota form appearing in Gross, *supra* note 12, at 36.

DECLARATION OF ELIGIBILITY

NAME _____ PHONE _____
 ADDRESS _____ ZIP _____

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

- 1. The incident for which I am declaring my eligibility for compensation occurred on or after January 1, 1980.
- 2. The claimant (and/or victim) suffered bodily injury (or death) as a result of the criminal actions of another.
- 3. This injury (or death) was not the result of an automobile accident.
- 4. The incident occurred in Texas.
- 5. The incident was reported to law enforcement officials within 72 hours or would have been reported except for a valid excuse.
- 6. The claimant (and/or victim) cooperated with law enforcement officials during their investigation of the incident.
- 7. The person whose death or injury gives rise to this claim did not knowingly and willingly participate in the criminal incident.
- 8. The claimant (and/or victim) did not reside in the same household as the criminal offender or his or her accomplice.