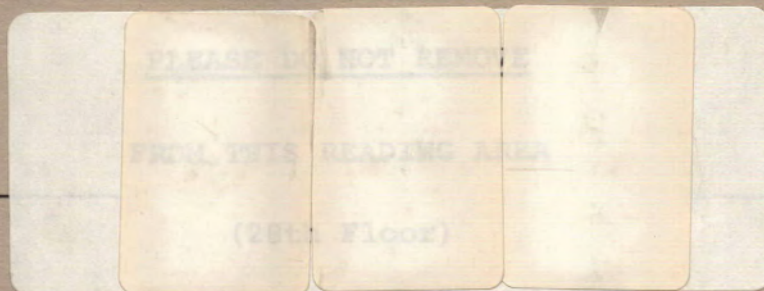




CRIME VICTIMS

Working Paper No. 2

ALTERNATIVE FUNDING MECHANISMS FOR VICTIMS' COMPENSATION PROGRAMS IN THE UNITED STATES



**Research and Statistics Section
Policy Planning and Development Branch**

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IN THE UNITED STATES

This survey, which was carried out by Sylvie Vallières with the assistance of a grant from the Department of Justice, should not be interpreted as Government of Canada policy. It is intended as a working paper to provide information to individuals and organizations concerned with this topic.

This working paper is one of a series of papers on victims of crime published by the federal government.

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Similarly, my thanks to those others with whom I came into contact who are involved in one way or another in setting up aid services for victims and witnesses. Without the information these various persons supplied, the purpose of this study could not have been fulfilled.

INTRODUCTION

In the past few years there has been growing awareness of the existence of a "justice crisis". Although the various commentators are often in disagreement as to what interpretation to place on this, consensus seems to emerge to the effect that, more and more, citizens are questioning the adequacy of the penal system to deal with a certain number of problematic situations that are commonly termed "crimes". Recent research in victimology¹ reveals in particular a dissatisfaction and real disillusionment among victimized citizens with their treatment by the different justice agencies.

Currently, this observation is spurring work on numerous reforms aimed at encouraging greater community participation in the administration of justice. In the United States, efforts are focussed particularly on the essential target clientele of victims and witnesses. Accordingly, crime victim compensation programs and victim/witness aid projects have been set up in several states. While the main thrust of the victim/witness aid programs is to extend referral, information, and support services to that client group, the compensation programs provide financial assistance to offset certain losses sustained by victims of violent acts.

One of the specific justifications for creating compensation programs is based on the fact that other mechanisms of financial assistance are inadequate and often even unworkable as far as victims are concerned. For example, a civil action for damages and interest will frequently involve a loss of time and money for the victim that negates the idea of genuine redress, not to mention the fact that such recourse must be based on knowledge of the offender and his ability to pay for the injuries caused.

Out of concern for social justice, then, a number of states resolved to undertake the responsibility of compensating victims of violent acts for certain losses sustained. At the outset, these programs were largely underwritten by the states from tax revenues. In a difficult economic context, the governments are tending more and more to pull their contributions out, so that the projects have to be self-financing with help from other revenue sources.

The purpose of the present report is to look into the funding methods of crime victim compensation programs in the states of California, New Jersey, Tennessee, and Washington.² Though my task is initially one of description -- detailing the various legal provisions

related to these methods and their implementation, as well as those having to do with distributing the revenue they generate -- I have also tried to analyze, on the one hand, their operationalization, with special attention to problems arising in implementation, and, on the other hand, the implications and consequences of their remedies from the viewpoint of an equitable model of justice.

To do this, I first present the four programs under study by placing a few of their characteristics in perspective. Thus, I deal with the policies relating to their client groups and the services provided, then their main organizational procedures, and, finally, I take note of certain quantitative data on their activities. In a second chapter, I reconstruct the funding history of these programs by analyzing the legal provisions of the financing methods and their implementation, and examining the problems connected with their use. Lastly, a final section offers some considerations on the various implications of recourse to such methods, along with some suggestions about the policies related to the funding of this type of project.

CHAPTER 1

THE PROGRAMS

Before I proceed to look at the compensation programs' methods of financing, I feel that it is essential to give a brief outline of their main elements. To start with, I will consider, on the one hand, the policies that define beneficiaries by laying down criteria for eligibility, and, on the other, the provisions relating to the types of losses compensated for. After this, I will deal with organizational and operational procedure in terms of the place these different programs occupy in the state structure and how their staff are made up. The chapter then concludes with some data on the workings of each program in terms of number of cases processed and the costs involved in their operation.

1.1 Policies relating to the client group and services provided

Who are the beneficiaries from compensation under these programs? First, the prime category of persons aimed at is obviously that of the victims. Essentially, a victim is defined as anyone killed or injured following the commission of a criminal act. The laws examined³ provide for a special mention in the case of persons killed or injured while attempting to forestall or to stop the committing of a crime. With the exceptions of California, which compensates for emotional damage when this is

accompanied by threats or physical injury, and Tennessee, which grants compensation for pain and suffering in cases of sexual assault, the states will indemnify only for physical injury.

With respect to defining the crimes for which it is possible to obtain compensation, the laws of Tennessee, Washington, and California state that they are crimes where injury or death is inflicted. For its part, the New Jersey legislation lays down a series of specific crimes (murder, rape, assault, etc.) while stipulating that all other crimes of violence are included as well. It ought to be noted that all the laws rule out offences associated with the operation of a motor vehicle, except when these are committed with the intention of causing injury or death, or else are parts of a crime as defined in these laws.

Beyond payment to the victim, the laws also allow for compensation to dependents when the victim has died. All of them, except for Washington's, contain the added possibility of compensation for anyone who takes the victim into his care or defrays the latter's expenses following a crime. California includes any family member or intimate of the victim, present at the time of the incident, as eligible to be compensated for emotional distress.

These programs, then, are aimed at a highly specific victim client group, in other words essentially the victims of certain acts prohibited by law that are identified as "crimes of violence". The upshot of this is that the majority of victims of classic "criminality" are ruled out, since the programs offer no benefits to those who have sustained loss or damage to property. What is more, the host of eligibility criteria set forth in the legislation will open the way for a further cutback in these programs' clientele. An examination of some of these criteria also shows them to contain a special version of the concept of the victim. Although this subject deserves in-depth study on its own, I will limit myself here to a straightforward listing.

First, various provisions in the laws set forth a number of conditions to be complied with in order to secure compensation. There is a mention in each law of a time limit (1 or 2 years after the date of the crime) for lodging a compensation request. Similarly, the laws contain a section obliging individuals to report the crime to the police within a period that varies from state to state between 48 hours and 3 months. Some programs specify, however, that this period can be extended if the reasons for the delay are warranted.

It is noteworthy that under the California and Washington laws compensation can be granted only to victims who are state residents. All the laws have a section providing that beneath a certain loss figure, no compensation will be paid. The amounts of these "minimal losses" range between \$100 and \$200 or 2 weeks' loss of income.

Washington's law, however, exempts sexual-assault victims from this provision. For its part, the Californian law rules this criterion out for persons who are retired or have a disability. A bill tabled very recently in New Jersey contains an exemption similar to that in the California law. As for Tennessee, the terms of the provision allow for its non-application in cases where the interests of justice would not be served. Though this is presently up for debate, California includes a section stating that the only victims eligible for the program are those faced with losses which they are incapable of overcoming without difficulty.

Moreover, the laws governing the different programs also provide specifically that compensation can be refused or its sum reduced in certain circumstances. First, the applicant's non-cooperation with the justice agencies

responsible for the offender's arrest and trial can bring rejection of his request. As well, in cases where the victim is proven to have played some part, whether by consent, provocation, or incitement, in the inflicting of his injury or death, the programs reserve the right to refuse or to reduce compensation.

The New Jersey, Washington, and Tennessee laws also rule out as not eligible for compensation any family member or person living with the offender at the time of the offence. However, the Washington legislation admits possible acceptance of the request in cases where it is proven that the person is no longer living with the offender, or else that the interests of justice require it. In New Jersey, a bill⁴ is in discussion that would permit compensation for such persons when they co-operated in the arrest and conviction of the offender. In this context, it is important to note that this type of exclusion makes compensation of victims of "domestic violence" an impossibility.

In addition, the laws examined all rule out any application coming from a victimized person at the time when the offence in which he is involved is committed. The Washington legislation extends this ban to persons

victimized while they are incarcerated in a correctional institution. When playing the part of "offender," apparently, it is not possible to appear as "victim" !...

Let us now look at what the various programs offer to this client group. It is important to note at the outset that the losses compensated for by the projects are restricted to ones which have not already been the subject of money payment from other available sources (private or state insurance, social assistance, etc...). In the State of Washington, however, the first \$40,000 paid by private insurance can be excluded from consideration.

In general, the various laws set a maximum amount of compensation that can be paid to the victim. A first class of losses covered by the programs relates to medical expenses paid because of victimization. Only the California law really defines what this type of expense is to include. It is stated to embrace costs incurred in psychiatric or psychological treatment as well as those involved in the replacement or repair of handicap devices (glasses, artificial limbs, etc...). When it comes to these expenses, the various laws set no maximum compensation amount, the exception being California, which provides for the sum of \$10,000.

The second type of compensation that can be paid has to do with losses related to income from work or support. Only the Washington and California acts stipulate a maximum amount, of \$10,000, for such applications. Under these two programs, compensation can also be granted for expenses connected with job retraining. Washington pays up to \$5,000 in such cases, while the California program provides for \$3,000. Finally, in some cases where the victim has died, some programs will compensate for burial expenses over and above the damages awarded to dependents for loss of support.

1.2 Organizational procedure

In the preceding, I have attempted to introduce the clients to whom these programs are addressed and the types of compensation they disburse. The purpose of this present section is to outline, working from its organizational procedures, the type of organization that discharges these responsibilities and how its staff is made up.

California was the first American state to set up a crime victim compensation program. The Victim Indemnification Program has been in existence since 1965. At its inception, it was attached to an existing agency, the State Welfare Department. A few years afterwards, however, the program was turned over to another body, the Board of

Control, because the procedures and philosophy of social assistance were deemed inappropriate for the operation of a crime victim compensation program.

The Board of Control, currently responsible for the program's administration, pre-existed it. The purpose of this agency is to receive and inquire into complaints against government. In spite of the similarity between the nature of its functions and those of the compensation program, it was only very recently that the program took over the steps of checking and investigating requests for compensation. These had been carried out previously by the various district attorneys.

At present, the program has specialized staff for this purpose. They are working more and more closely with the staff of the victim/witness aid programs, which, being decentralized at the country level, tend more or less to function as the main centres for receiving and verifying compensation requests. This staff is trained in co-operation with the Board of Control. In addition to the employees involved in the business of checking and investigation and in work of a clerical and administrative nature, the program complement is rounded out by

commissioners whose job it is to make decisions about indemnity payments. In all, about 68 people are working in the program.

The State of New Jersey has had a crime victim compensation program since 1971. Though it is independent administratively, the Violent Crimes Compensation Board is integrated with the government structure in the Department of Law and Public Safety. This program has about 32 staff members including 5 commissioners whose job it is to make decisions about indemnity applications. The remaining staff is made up of employees involved in administrative duties and those following up applications put before the Board. Recently, the program has developed a project dealing specifically with elderly victimized persons. Its purpose is to try giving this client group special assistance, especially by helping them, if necessary, through the various stages of the request process. In addition, a call-in facility has been set up to offer victims information, referral, and support services. Unlike California's the New Jersey program has not so far evolved such close relations with the victim/witness aid services.

The State of Tennessee has chosen a different route from the states canvassed above in that the Criminal Injuries Compensation program set up in 1978 reports to two agencies, the main one being the court system. This program operates at the level of the court, which, with the advice of the district attorney, receives and decides whether to accept or reject indemnity applications. Responsibility for carrying out the compensation regulations lies, however, with another agency, the Board of Claims. Only two persons in the agency are detailed to these functions, the chief mandate of the Board of Claims being similar to that of the Board of Control in California. According to the officials contacted in the state, this organizational structure has a number of disadvantages such as are often experienced with any decentralized body. There is a problem with investigating claims, since this is left to the discretion of the district attorneys in the various counties, whose main responsibilities are of a quite different nature. There appears to be some inconsistency in terms of decisions as well, since a very large number of people, the judges in all the counties, are making them. There is also the danger of a certain conflict of interest for judges and district attorneys, who, having been elected by the people, must then rule on the indemnity applications of their electors.

In the State of Washington, the compensation program has existed and been administered since 1974 by a branch of the Department of Labor and Industries whose mandate is to compensate for work injuries. Three persons in this department are working on the Crime Victim Compensation Program. The program was interrupted in 1981 because of financial problems. However, it was revived in March of 1982 by Bill 8285 with changes affecting particularly the funding structure of the program. As in the California system, the Crime Victim Compensation Program staff work very closely with the victim/witness aid services operating statewide. The latter only perform support function for compensation claims; they are not responsible. Nonetheless, and I will be going into this further on, they play an important role in terms of financing the crime victim compensation program.

1.3 Some data on their workings

To get a better idea of the everyday reality of the programs under examination, in this section we will look at some information on their activities. I will limit myself, however, to data relating to the number of claims dealt with and the programs' operating costs.

Using Tables 1 and 2, we can see that scope in terms of cases received varies considerably among the different programs, particularly when we bring together the State of Tennessee, where the numbers of requests approved in the years 1980 and '81 were 55 and 87 respectively, and California, where the figure for the same years was 8,700.

TABLE 1

CLAIMS RECEIVED AND APPROVED IN 1980-1981
BY THE COMPENSATION PROGRAMS OF
NEW JERSEY, TENNESSEE, AND WASHINGTON

STATE	YEAR	CLAIMS RECEIVED	CLAIMS APPROVED	CLAIMS REJECTED (%)	CLAIMS PENDING
New Jersey ⁶	1980	1,020	464	327 (32)	229
	1981	1,524	788	498 (33)	238
Tennessee ⁷	1980	92	55	-	44
	1981	131	87	-	88
Washington ⁸	1980	1,434	1,005	429 (30)	-
	1981	1,683	1,189	494 (29)	-

TABLE 2

CLAIMS APPROVED AND REJECTED IN 1980-81 AND 1981-82
BY THE CALIFORNIA PROGRAM

STATE	YEAR	CLAIMS APPROVED	CLAIMS REJECTED	CLAIMS PENDING
California ⁹	1980-81	8,700	3,682	6,888
	1981-82	9,511	4,491	6,153

From the data presented in these tables (1 and 2) we can also note the existence of a significant number of "cases pending" in the majority of programs. This lag can be ascribed mainly to an appreciable increase in claims received during these years and the inadequacy of the funding allocated annually to the projects. In addition, it is interesting to note the programs' levels of rejection of claims, which is relatively high. This will no doubt be the result of the numerous eligibility criteria they have worked out.

Nonetheless, in spite of this fairly high rate of claim rejection by the program, they have to meet substantial costs. For example, the cost of the Californian program added up to over \$14,575,579.00 for 1981-82, while those of the Washington and New Jersey programs were between \$2,000,000 and \$2,500,000 in 1981, and the figure for Tennessee was in the order of less than \$1,000,000 for the year 1981 (see Table 3).

TABLE 3

THE COSTS OF THE COMPENSATION PROGRAMS OF
CALIFORNIA, NEW JERSEY, WASHINGTON,
AND TENNESSEE

STATE	YEAR	COMPENSATION COSTS	ADMINIS- TRATIVE COSTS	TOTAL COSTS
California ¹⁰	1981-82	\$12,770,141	\$1,805,438	\$14,575,579
New Jersey ¹¹	1981	\$ 2,226,890	-	\$ 2,226,890
Tennessee ¹²	1981	\$ 801,451	-	\$ 801,451.61
Washington ¹³	1980-81	\$ 2,378,634	\$ 118,524 (5%)	\$ 2,497,158

CHAPTER 2
FINANCING METHODS

In the first chapter, I quickly outlined the rise in compensation claims and the processing lag faced by the programs under examination. One of the factors underlying this situation is their financial plight. At the outset, these projects, with the exception of Tennessee's, took most of their operating costs from their states' general revenue. Given the difficult economic context, however, these states are tending more and more to pull their contributions out, thus obliging the programs to seek other funding sources.

To better understand how the programs' financing has developed, I have elected to, as it were, reconstitute their record in this area. Initially, then, I will analyze the funding pattern at the time when the states were absorbing most of the costs. Next, I will deal with the present, characterized by the virtually exclusive use of modes that push the programs towards a self-financing pattern. In these sections I will be describing, on the one hand, each method in the light of analysis of the provisions in law creating them and paving the way for their implementation, and, on the other hand, the limitations and problems experienced in their practice.

2.1 The period of the primacy of state financing

At the time when the programs, Tennessee's being the exception,¹⁴ were mainly funded by the states, it can be seen that the various acts respecting the compensation of crime victims nonetheless contained provisions allowing for recourse to other funding sources. In this section, I will consider each of these as well as their methods of application as provided for in the different acts concerned. Afterwards, I will deal with the limitations and problems arising in practice.

2.1.1 Secondary funding sources

Repayment of compensation awards

All the laws examined contain a provision that opens the way for programs to recover compensation awarded to victims by the use of the civil law procedure of subrogation. By this process, the state can take the victim's place in his right to compensation in cases where he has received payment from the program. It is to be understood here that the moneys can come from the offender or any other persons judged to be responsible for the financial losses suffered by the victim.

The California law's provision¹⁵ stipulates that the state is to be subrogated to the victim's rights for any payment he receives when his compensation claim is granted. To this effect, the state can recover up to the equivalent of the total amount of compensation awarded by judgement minus the sum paid as a fine imposed by the Court on the author of the offence in question. These subrogation rights can be exercised in an action brought by or in the name of the victim or in a separate action by the state against the offender.

In addition, when the claim is settled within a year's time from the recovery date, the state promises to pay 25% of the amount repaid to the county probation department or the victim, provided that the complete amount is redeemed. As for the other 75% and any sums unclaimed within a year, these are to be paid into specific funds for the exclusive use of the compensation program. This feature is basically an encouragement for the probation service or the victim to move quickly against the offender, thus permitting recovery of the sums paid out in compensation by the program.

In this event, the section also provides that the compensation board or, as the case may be, the attorney-general shall be notified of the existence of such claims. Finally, let us note that under the law's provision the board can amend the right of substitution when such action is shown to be in the state's best interest or else that it would be liable to cause undue hardship to the victim. Under this part of the section, the victim can, as it were, be compensated both by the program and by the offender or the person judged responsible for the loss.

The New Jersey act contains a provision of this kind as well.¹⁶ It stipulates that whenever an order for payment of compensation is executed, the compensation board must be subrogated in the victim's suit against the person responsible for the losses suffered. The section provides additionally that in the event that the sum recovered exceeds the amount of the indemnity paid to the victim, the board shall remit the difference to the latter. Unlike the law previously cited, New Jersey's lays down no specific application procedure for this provision.

The Tennessee legislation¹⁷ also leaves it open for the state to bring an action to recover in whole or in part the amount of the indemnity awarded. The section stipulates

additionally that the payment of an indemnity by the compensation program in no way affects the victim's rights to proceed with a civil suit for damages. It must be understood here that the state has in effect no interest in prohibiting this recourse for the victim to the extent that this allows for recovery through its right of subrogation.

The provision even goes a bit farther in this sense, since it states that the person seeking redress must, as a condition of obtaining compensation, co-operate with the various agents of government when the latter launches any action for recovery against the offender. As is the case with the California act, Tennessee's states that if the victim decides to avail himself of a civil remedy, he must notify the attorney-general in order to give the state the opportunity to join in such action and recover its contribution.

The comparable section¹⁸ in the Washington act differs from those above in that it goes into more detail about the collection procedures to be used to ensure recovery by the state. First, it provides that any person having committed a criminal act for which indemnity has been awarded can be required to make reimbursement to the department responsible for administering the program. And

another peculiarity lies in the fact that under this provision, the right of recovery can be exercised by an order from the detention and conditional discharge board, the department of health and social services, or by a court order, which takes precedence over any other. Following the California section's example, this order can be altered or else dropped by the department in the interests of justice or of the offender's rehabilitation.

As for the application procedures of the provision, it is stated that when the offender receives a conditional discharge, he may have imposed as a condition of his supervised freedom the making of payments to repay the indemnity awarded to the victim. It is interesting to note here that unlike the other states, Washington gives certain agencies the power to require the offender to defray the sums awarded in compensation. By thus delegating to various agencies the power to order recovery, the state increases the potential for repayment, since this is no longer dependent exclusively on a civil action by the victim.

Diversion of sums paid in royalties to offenders

Besides recovery, all the laws examined, with the exception of California's, have or are developing another potential source of revenue. This provision allows them to

appropriate the sums paid in royalties to offenders convicted of a crime who create a work telling the story of their offence.

At the present, the New Jersey act does not provide for such recourse. However, there are two bills¹⁹ in discussion to correct this. According to the first bill, when a person convicted of a crime contracts for or sells a story concerning this crime, the compensation board diverts any money received in this connection in order to indemnify the victim of the crime. Under this section, these moneys are placed in a special account controlled by the board, which, by order of the court, can use this fund to pay the offender's costs of legal representation. Let is also be noted that the provision sets a time limit of 5 years for any action brought by the victim for the purpose of receiving compensation from this fund.

The second bill²⁰ tabled on this subject attempts to refine the application of this remedy by providing that the sums amassed in this connection can be given to any victim eligible for the program once the specific victim has been granted compensation. The bill also gives victims the option of bringing a civil action or allowing the board to decide the amount to be granted. In addition, it allows the

board, first, to give the victim an indemnity greater than the maximum provided by the compensation act, and, secondly, to compensate him for injuries not covered by the program, such as pain and suffering.

In Tennessee's case, the section²¹ related to this procedure also states that any person or corporation contracting with an individual convicted of a crime to recreate the story of it must pay to the state revenue department any money that would in other circumstances be paid to the accused. Like the New Jersey bill, it provides that the department must afterwards deposit this money in the compensation board's account. The victim has 5 years from the time this account is set up to avail himself of it. The section also states that in the event that no claim is lodged by this time, the revenue department must at once remit to the offender all moneys paid in royalties. Let us note that these funds can also be used to pay the offender's costs of legal representation.

The Washington act contains a provision²² that is couched in very much the same terms as Tennessee's. Here, however, the money is to be turned over to the Department of Labor and Industries, which then deposits it in an account for the victim's benefit. He may make use of it only if the

offender is convicted and if he brings an action within 5 years from the date the account is opened. In cases where actions are dropped, end in acquittal, or if the time limit has run out and no suit is pending, the department remits the money to the offender. The section provides that at least once every six months during the 5 years, the offender has to place a legal notice in the newspapers of the district where the crime was committed informing the victim of these funds' existence.

Use of this procedure as well as that of recovery is still limited, in that the first is exceptional in nature and with the second, a suit for recovery must be brought against the offender, which requires that the latter be "known" and have a certain ability to repay. On their own, these two funding procedures cannot generate sufficient revenue to cover all the expenses of the programs.

The programs have worked out other approaches with greater potential in this respect. In essence, these provide for the imposing of new penalties to be added to any other sentences on conviction for crime. They are no longer directed, then, only at offenders whose victims have lodged compensation claims, but at all individuals who have committed offences.

The imposition of new money penalties

In contrast to those of the two methods above, the legal provisions for this third financing approach are different in terms of the client group to whom they are addressed, the sums imposed, and the means provided for their implementation.

Since 1967, the California act has contained a section²³ of this kind that empowers the court to impose a fine over and above any other sentence on conviction for a crime of violence involving the injury or death of another person. There is a restriction, however, for the provision states that the court may waive in cases where the fine would mean undue hardship for the offender and his family. No procedure is spelled out for the collection of these fines. The usual method of fines collection applies here. However the law does provide that the funds generated from these fines have to be placed in a special account, the compensation fund, managed by the state treasurer. This fund is then available by legislative appropriation for the purposes of compensating crime victims. In 1973, an amendment²⁴ set a maximum amount of \$10,000 for this fine.

Over and above any other sentence, the law also allows for a fine of \$10 on conviction for any crime and \$5 on conviction for any offence. Apart from this second penalty, it is provided that once every month, a certain percentage of the moneys deposited in what is called the Assessment Fund be transferred into the indemnity account. The Assessment Fund is fed basically by fines imposed by the courts for other purposes, in particular for fishing and gaming, training guides, etc.

It was not until 1980 that Tennessee adopted a similar method. In that year, a law was passed²⁵ imposing, over and above any other sentence, a minimum fine of \$25 but not exceeding \$10,000 on all persons convicted of violent crimes involving the injury or death of others. The law also provides, in addition to any other sentence, for a \$25 fine for any individual found guilty of common assault or any other crime not involving the injury or death of another person.

Another part of the section gives priority to the collection of these fines. They have to be collected before any other fine ordered by the courts. The mechanisms set up for this purpose are the same as those established by state law for other fines and restitution orders. When the

penalties are imposed by the superior court or by the courts with jurisdiction in the various counties, they are collected by the county probation departments. If they are accompanied by a sentence of detention in a county institution, they are collected by the corrections department. Finally, in cases where they are set by the municipal courts, they are collected by the clerks of these courts, except for those imposed as part of a probation order, in which event it is the probation department that collects them.

Once they have been collected, these sums are sent to the treasurer of the municipality or county, who then forwards them to the state treasurer. They are then deposited in a special account for the exclusive use of the compensation board.

In Tennessee, use of this method was legislated in 1977, one year after the crime victim compensation act of that state came into force. However the program did not start up until 1978, so that it has been financed from the outset from funds collected in this manner. Under the act²⁶ passed for this purpose, in addition to any other

costs ordered by the court, they impose a "privilege tax" of \$21 on anyone convicted of a crime against persons or property.

The act has a section that deals specifically with the ways in which these taxes are to be collected. The function falls to the clerks of the state's various criminal courts. They have to notify the corrections department about payments received. In the event that the tax has not been paid by the offender, the commissioner of the Department of Correction is to arrange collection during his period of confinement and notify the compensation board of this.

Once they have been collected, these fines are forwarded to the clerks of the courts involved, and it is up to them to send the money on to the revenue department for deposit in the accounts set up for the use of the Criminal Injuries Compensation program, except for one dollar out of each \$21 taken in, which is to be kept by the clerks against the expenses of collection.

The act of this state empowers the conditional discharges board, based on an inquiry into their financial status, to order its clients to pay, over and above this

tax, a percentage of their income not to exceed 10% for the purpose of compensating crime victims. In cases where such orders are made, the commissioner is to send the clerk of the court and the Board of Claims a report notifying them of the decision. These moneys are afterwards deposited in the compensation fund. All the income generated by these various fines is invested by the state treasurer so that it will be available to the compensation program.

As for the Washington law, it includes a provision²⁷ whereby a fine of \$25 or 10% of any penalty or fine can be imposed on any person found guilty of having committed a prohibited act involving a victim and punishable as a crime or serious offence. The section also provides for an additional penalty of \$25 on any bail required from any person convicted of an offence involving a victim and punishable as a crime or serious offence. Respecting the collection procedures for these fines, the provision simply states that they are to be paid to the clerk of the court or county treasurer, who then forwards them on a monthly basis to the treasurer of the state. He in turn deposits them in the state general revenue to a specific account for the exclusive use of the crime victim compensation board.

In contrast to the methods mentioned earlier, the new money penalties have a greater potential for raising revenue in the sense that they are applied to a greater number of people than only those offenders committing offences for which an indemnity claim has been lodged. Despite this potential, however, it seems that the income generated from this source in the various states has remained limited in the first years of implementation. In the next section, I will consider the main limitations and problems involved in this approach.

2.1.2 Limitations and problems with the fining system

In the first place, one problem identified by the officials in the various programs is that in spite of the broader range of application of this penalty as compared with recovery and the diversion of royalties, it is still restricted to certain categories of offences. To these officials, the effect of this is to reduce considerably the amount that can be raised by the use of these penalties.

For instance, in the State of Washington as in New Jersey, this procedure is applied only to acts punishable as crimes or serious offences involving a victim (Washington) or (New Jersey) only to crimes of violence, common assault or other acts defined as crimes but not involving the

victim's injury or death. In addition, some program members consider that a number of fines are "lost" to them through plea bargaining. Having committed an offence to which the penalty applies, a person is later charged with a lesser offence that is not included in the act imposing these fines. Moreover, a special problem regarding this method has occurred in the State of Tennessee. It seems that the phrase "crime against property or the person" produced such confusion for the clerks of the court that the tax was for all practical purposes barely collected by them in the first years of its application.

Furthermore, application is often restricted as well by the discretion granted the judge as to imposition. Under some acts examined, the judge can in fact decide not to order these penalties if he feels that this might cause financial hardship to the accused or his family.

It even happens that they are quite simply not imposed. In Tennessee, for example, it seems that the conditional discharge board has never wielded its authority to order a percentage of clients' incomes to be paid to the Criminal Injuries Compensation fund. According to program officials, the situation can be attributed to the program's particular status in their jurisdiction; decentralization

means that too many agencies and individuals are involved, and there is no central organization with responsibility for supervising the various fine-collecting operations.

This leads me to a consideration of a second type of problem the programs encounter in applying this method. These difficulties have to do with collection procedures. In the first place, there are states where the provisions relating to the penalties have little or nothing to say about how they are to be collected (California, Washington). No agency is made responsible for ensuring that the penalties are imposed and collected.

Where these mechanisms do exist, certain states (New Jersey, Tennessee) still face problems. As I have already mentioned, the procedures for ensuring that the fines are imposed and collected basically take the form of making the agencies carrying out the sentence (corrections, probation department) responsible for collection when they have not been paid to the courts. In Tennessee, the law provides for no such mechanism at the local government level, that is, in the county correctional programs.

As for New Jersey, these procedures involve a host of requirements in that, on the one hand, the agencies

concerned have to be informed and asked for their co-operation, and on the other, they have to be helped in their work by the devising of standardized collection procedures. It does seem in fact that very often, accounts relating to the collection of the various fines are not being properly kept by the courts, so that a number of fines "get lost" for want of adequate administration.

2.2 The age of self-financing

In the years following the introduction of the funding procedures dealt with in the last section, the different compensation acts have been amended significantly. On the example of the Tennessee compensation program, those of California and Washington must now be self-financing with the help of the various procedures devised for this purpose, chiefly the levying of money penalties. As for New Jersey, it appears that its program is also moving in this direction.

In this section, I will examine the changes that have been made in the measures relating to financing procedure, collection and to the distribution of the funds they make possible for the compensation of crime victims. Following

this, I will look at their implementation by presenting, first, some data on actual collection, and then the problems and solutions seen for the future.

2.2.1 Changes in methods

The measures dealing with money penalties are the main zone of change in the laws examined. In general, these changes are intended to enlarge the area of application and/or the amounts of the fines so that the funds for victim compensation can be increased.

In 1981, the State of California changed its formula for money penalties for this purpose. These are now in the order of an additional \$4 on top of each \$10 in fines for all crimes and most other offences. In addition, the state passed a new law²⁸ in 1981 on the fines for offences connected with driving under the influence (alcohol, drugs). Among the provisions of this act are an increase in fines to a minimum \$375 for this type of offence and the allocation of \$20 of this for deposit in the compensation fund. It is stated in one provision that the \$20 fine is to be used for victim compensation with priority given to victims of offences connected with driving under the influence. It should be noted here that the provision on the fine for conviction for violent crime is still in force.

As of now, the State of New Jersey has made no amendment to its legislation on money penalties. In Tennessee, an amendment²⁹ introduced in 1981 to the law respecting "privilege tax" enlarges its application to include any offender convicted by the circuit or criminal courts of a crime of any kind, with the exceptions, first, of crimes punishable by a maximum fine of \$500 and, secondly, of those not punishable by imprisonment. This amendment also brings in a new section under which, added to any other sentence, a \$10 tax can be imposed on any offender convicted of crimes as listed above by a court of general session or a comparable court of criminal jurisdiction.

It must be added that a section of another act³⁰ introduces a new penalty for the purpose of indemnifying victims of criminal acts. This measure stipulates that except in cases where it is shown that the offender is suffering financial hardship, any person on conditional discharge, under suspended sentence, on probation, or under the supervision of the corrections department, who has paid employment, must be required to contribute \$5 a month to the compensation fund from the time he has finished his first 30 days of work.

A delay of more than two months in making such payment is adequate grounds for revoking these measures. With regard to the collection of these moneys, the section states that they are to be deducted by those responsible for these persons' monthly incomes. The funds are sent afterwards either to the clerk of the municipal court or to the county treasurer, who is to forward them on a monthly basis to the state treasurer for deposit in the Criminal Injuries Compensation account.

The intent of the changes in the Tennessee legislation was to clarify the earlier formulation, "crime against property or the person," by substituting "Crime of any kind." In ruling out crimes punishable by a maximum fine of \$500 and not by imprisonment, the legislator wanted to exclude offences connected with the operation of a motor vehicle.

I have mentioned earlier in this paper that the Washington state program has been interrupted in 1981. It has been reintroduced in March of 1981 by a new law³¹ that makes numerous changes in the previous act. Chiefly, the law states that the compensation program must now finance itself through money penalties. To this end, the law brings

considerable change to the provision for these penalties. It widens their application as well as increasing their scale.

It is stipulated that every time a person is found guilty of having committed a crime, with the exception of most of the offences in the highway act, the court will impose an additional fine of \$50 for any crime and most serious offences, and \$25 for misdemeanours. These fines are also applied when the same offences are committed by minors judged to be "delinquent".

In addition, another section of the act provides for a \$50 fine on any bail required from a person convicted of a crime or serious offence, and \$25 when the offence is a misdemeanour.

2.2.2 Changes in procedures for collecting and distributing funds

Over the years, improvements have also been made in terms of procedures for collecting and distributing the funds amassed through fines. I will deal with these methods together because they are intrinsically interrelated in the

cases of certain states. In some, the compensation funds are also used to fund other programs, chiefly the victim/witness aid projects.

The State of California is among these. Unlike the other compensation acts which deal specifically with collection procedures for money penalties, the California law makes no mention of this. However, information gleaned from other sources³² handles the question succinctly. All fines set by county courts are collected by the clerks of those courts. They send them on to the county treasurers, who forward them on a periodic basis to the treasurer of the state. They are then deposited in the compensation fund.

Though not explicitly responsible, the co-ordinators of the numerous county victim/witness aid projects play a direct role in setting up and reviewing the book-keeping procedures that keep track of the sums collected in fines. Their decentralized position enables the members of these projects to inform courts and clerks of legislative changes in the area and the consequences of these in terms of the courts' work. Dissemination of this information also makes for more efficient imposition and collection of fines. While the fines for conviction of violent crime as well as the money penalties are carried together on the county books

and deposited in the compensation fund, the fines for offences related to driving under the influence have to be deposited separately in this fund. They are to be used on a priority basis for compensation the victims of these types of offences.

There are also major changes having to do with the measures for the distribution of funds. I should point out first that the percentage of money from the assessment fund to be transferred to the compensation fund this year is around 24.85. The compensation fund generated from this source as well as from the fines and penalties is used to finance various projects in the Office of Criminal Justice Planning and the programs of crime victim compensation. The former are financed only in part out of the compensation funds since they have other revenue sources. The amounts granted by the compensation fund, then, are added to revenues already available for these projects. It is up to the Office of Criminal Justice Planning to distribute to the various projects the moneys granted by the compensation fund. These projects consist of the victim/witness aid programs, rape centres, and aid projects for sexually abused children.

There are very close relations between the Office and the compensation program. The victim/witness aid programs help victims prepare and present their claims to the compensation board. In addition, they co-operate with the board in checking these compensation claims. Finally, it should be pointed out that the various programs have no direct access to the compensation fund. Their budgets are struck by legislative appropriation in accordance with their needs and the amounts available in this fund. As an example, the budget estimates for fiscal 1982-83³³ are about \$16,637,000 for the compensation board and \$4,034,000 for the Office, to which another \$2,700,000 may possibly be added by legislative appropriation.

In the case of New Jersey, there has been no major change in terms of collection procedure. To be sure, these were already highly developed in the 1980 act, since intervention on the part of a number of agencies. In 1982 the program acquired the services of someone to keep books in parallel with those of the agencies responsible for collecting the fines in order to make sure that collection was complete. It seems however, that this work calls for more than one person. As far as the systems for distributing funds are concerned, these remain unchanged.

All the amounts brought in from the various sources are allotted exclusively to the indemnity program for victim compensation.

In Tennessee, an amendment³⁴ was introduced in 1981 to develop special collection procedures in the counties. It provides that when the offender who has been ordered to pay the tax is sentenced to a county institution or to a program operated by the corrections department, the clerk of the court must notify the department when payment is made. If it has not been made, the corrections people are responsible for collection. If the offender has been admitted to a county institutional program, the clerk of the court notifies the responsible official in that program and, if required, the latter takes care of collecting the tax. The moneys collected are sent to the clerk, who keeps \$1 from each \$21 or \$10 to cover administration costs. The rest is sent to the revenue department for deposit in the compensation fund.

Bill 828,³⁵ promulgated as law in the State of Washington in 1982, makes sweeping changes in the procedures for collecting and distributing the funds amassed through the various fines. To start with, the new legislation includes provisions to ensure that these are collected.

Though they do not come into force until January of 1983, they develop procedures similar to those which exist in New Jersey and Tennessee. Taking the cue from these states, the call for action in terms of fine collection by the agencies carrying out the sentences.

Bill 828 formalizes this action, however, by amending the law on probation and conditional discharge so as to allow fines under these measures as sentencing conditions. It provides that whenever a person is convicted of a crime, except for some that are regarded as serious (murder, armed robbery, etc...), the court may at its discretion suspend sentence and put the person on conditional discharge with such terms as the judge deems appropriate.

As a condition for suspending sentence, the court must insist on payment of the fines provided for by the compensation act and can require the accused to make restitution to the victim, pay an unsuspended fine, pay court costs, and obey an order that obliges him to support his family. When the offender is liable to a term of detention, there can be no suspended sentence unless he is released in the care of a conditional discharge agent and the officer of the institution where he is being held, or to supervision by a probation officer.

In cases where a restitution order is made, the supervising agent must make every effort required to carry it out. If this is not happening, he must notify the district attorney that a condition of suspended sentence has been violated. In addition, there is another provision that deals specifically with probation sentencing. It provides that in handing down such a measure, the court can suspend it and order that this suspension continue for a period not to exceed the maximum period of the disposition made originally.

In cases where the court imposes a probation sentence, it can either send the accused to a county jail for a maximum one-year period or else impose a maximum \$1,000 fine over and above the costs of the trial. As a term of probation, it has to require payment of the money penalties intended for the compensation fund. On the other hand, it can also require the same conditions as in cases of supervised discharge.

The changes in the procedure for distributing the funds collected that were introduced in the 1982 act have been applied since that act came into force. Given its text, the new provision is intended to better ensure both the imposing and the collection of the fines. It offers

encouragement to the district attorneys of the various counties by turning over part of the amount to them to be used by the victim/witness aid projects for which they are responsible.

Previously, all moneys collected had to be forwarded to the state treasurer. Now, only 80% of these fines are being sent to him for the use of the compensation program. The rest is kept by the district attorneys for the exclusive use of the "extensive" victims and witnesses. The provision contains a series of criteria the purpose of which is to define what is to be understood by "extensive" program.

In the first place, the program must offer services to victims and witnesses of any crime, with the emphasis placed on crimes against persons or property. In this connection, it is stated that the lawmakers' intention is to make funds available only to programs that do not limit their services to victims and witnesses of a particular type of crime. It must be noted that these funds do not take the place of those allocated to these projects by local governments; they aim only to round them out. Secondly, these programs have to be administered by the attorneys or by agencies charged with this task by the counties. Further, their mission is to inform known victims or their

dependents of the existence of the compensation act and its procedures, and assist them in drawing up their compensation claims. They are also to help the victim in the judicial process and make efforts to get him restitution. Finally, the law states that funding of these programs as "extensive" projects is up to the compensation board.

2.2.3 Achievements, problems, and solutions foreseen

Now that I have presented both the various financing strategies used by the compensation programs and the procedures developed for collecting and distributing the money, I will look in this last section at some data on the sums collected from these penalties. I will also be raising their current collection problems and the solutions to these foreseen by some states.

To start with, I must say that it has not been possible to get any information about the numbers of convictions carrying fines and the rates of non-payment of these fines. It seems that this data has not been available up to now, no provision having been made for compiling them except in the State of Washington, where they will be collected regularly from 1983 on. In the general opinion of the officials contacted in the various states, this question does not appear to be crucial. It must be remembered that

most states have worked out procedures to better ensure collection, in particular by the action of the agencies carrying out the sentences. In general, the fines are imposed systematically in the same way as the court costs that the accused must pay. As we have already seen, in the event that these are not paid immediately into court, they are often ordered in the context of a probation or conditional discharge disposition as a condition of sentencing. In cases where the person still fails to pay the fine when sentence is being served, this is a violation of a condition of the measure, and the judge can order either an extension of the time of sentence and/or set a penalty for the breach.

The various officials contacted in each of the states could not tell me about the tendency in terms of these procedures. Some of them did say, however, that judges are more than reluctant to pronounce a sentence of imprisonment for failure to pay a fine. Besides, it seems that the United States Supreme Court has already ruled against such practice. Moreover it appears that judges are limited in terms of sending these cases to the county jails, which are facing financial difficulties because of the high costs of incarceration.

In spite of these gaps, it has been possible to get data concerning the amounts collected by imposing money penalties. As Table 4 shows, the various pecuniary sentences in effect in California have produced more than \$10,065,454 in a period of 6 months. Projected revenue for the year 1982-83³⁶ is in the order of \$23,312,636, which will be enough to pay the costs of the Office of Criminal Justice Planning and the crime victim compensation program. Actually, the estimated expenses for these projects in 1982 and 1983³⁷ are \$16,663,000 for the latter and about \$4,034,000 for the Office.

As a result, it appears that the use of these various penalties is at least "efficient" in terms of revenue generated to finance the projects. The simultaneous use of a number of fines, in fact, makes it possible to enlarge their application in the sense that they are levied on a greater number of persons. In the next section, I will look at the risk underlying this move.

TABLE 4

REVENUE OF THE CALIFORNIA
INDEMNITY PROGRAM
(1 January to 30 June 1982)38

FINES (Violent crime)	MONEY PENALTIES	FINES (Driving the influence)	TOTAL
\$140,453	\$9,734,925	\$190,076	\$10,065,454

The data in Table 4 show that the money amassed in connection with the fine for "driving under the influence" and violent crime amounts to much less than with the other money penalties. With regard to the first, we must take into account that it has been in force for only a very short time. According to officials contacted in that state, it must be expected that a certain time will elapse before substantial revenues are realized from the use of this penalty.

There is some delay relating to its implementation, for example until all the clerks of the courts are informed of its existence and the procedures for its application. In addition, there is always a gap between the time when the penalty is imposed and the time when it is paid; the accused person has a certain period to make payment.

With respect to the fine for crimes of violence, it is useful to recall here that it is imposed at the discretion of the judge, who must take into account the accused's ability to pay. Moreover, unlike the money penalties that are imposed on conviction for any crime and most offences, this fine is applied only in cases of violent crime.

The New Jersey situation is somewhat different. As already mentioned, the fines' area of application is more limited in that state. Only offences considered as "crime" and "common assault" are liable to these penalties. In spite of this restriction, however, the data in Table 5 show real progress in terms of revenue generated by this type of approach. The increase can be ascribed to the activity of the various agencies responsible for collection. I must mention here that there have been many efforts to develop these agencies' awareness and involvement in playing their part in this area.

For all this progress, however, the New Jersey program is mainly financed out of the state general revenue. The amounts taken in from fines are far from sufficient to pay the cost of the program, which, let us remember, is over \$2 million.

TABLE 5

REVENUE OF THE NEW JERSEY
COMPENSATION PROGRAM
(1980-81, 1981-82)³⁹

	MUNICIPAL COURTS	PROBATION	CONDITIONAL DISCHARGE	TOTAL
1980-81	\$175,612.50	\$ 94,812.05	\$ 635.00	\$271,059.55
1981-82	\$218,297.20	\$337,570.95	\$32,442.75	\$588,308.90

A bill⁴⁰ is in the works to increase the fines' area of application. This bill amends the 1980 act and allows the fine previously determined, \$25, to be imposed on anyone convicted of what is defined as a "disorderly person offence," rather than only for common assault. In addition, there is a new section providing for the imposition of a fine of at least \$10 for any conviction of a minor judged to be "delinquent".

When we come to Tennessee, it seems that the establishment of collection procedures at the county level, along with the amendments to the fining formula which were introduced in 1981, have opened the way for greater revenue production for the use of the program. In fact, the amount received in the first 6 months of 1981 was comparable to that collected over the entire previous year.

TABLE 6

REVENUE OF THE TENNESSEE
COMPENSATION FUND
(July 80 -- June 81)
(July 81 -- Dec. 81)⁴¹

	TAXES	CORRECTIONS DEPARTMENT DEPOSITS	TOTAL
July 80 -- June 81	\$352,084.06	\$419,822.33	\$711,906.39
July 81 -- Dec. 81	\$303,014.77	\$201,829.29	\$504,844.06

Despite this progress, the program is still facing financial difficulties due to greater numbers of claims and a significant increase in the average amounts of compensation granted.⁴² One of the Board of Claims report advocates removing the exemption for offenders liable to a fine under \$500 and/or non-imprisonment.

The State of Washington is in a special situation, as its new program has been in existence only since the month of March, 1982, when Bill 828 came into force. At the present time, only the provisions relating to money penalties are in effect. The other sections of the act do not come into force until the month of January, 1983, and these include the measures relating to the procedures for collecting the fines. As a result, the data on revenue

generated by these fines are very incomplete, and have to do only with the overall amounts deposited in the compensation fund.

TABLE 7

REVENUE OF THE WASHINGTON
COMPENSATION PROGRAM
(1 July 1982 to 27 September 1982)

JULY	AUGUST	SEPTEMBER	TOTAL
\$75,113.36	\$121,232.92	\$131,639.88	\$328,000.00

All we can see from the data given in Table 7 is a constant rise in revenue. At the present time, it would be premature to make any pronouncement about how efficient the collection methods and mechanisms are. Program officials did inform me, however, about certain difficulties they have encountered at this stage in the implementation of the new act.

A first kind of problem arises from the very wording of the provision in the law about the financing method. The act does not adequately define the offences to which the fines apply. For example, it states that these should be

imposed on "juvenile delinquents". Yet there is no mention in the act as to whether this includes juveniles who are subject to a diversion ruling.

The act also states that the fines are to be imposed for "most offences". The lawmaker's intent was to exclude the minor infractions of the highway code. Yet municipal by-laws create certain infractions that are punishable as "offences". The municipal court magistrates are wondering whether the law's intent is to impose such fines for offences as harmless as, for example, breaking a contract covered by a city by-law.

Lastly, there is another kind of problem in terms of the imposition of these fines. The members of victim/witness aid projects, to whom the act gives special responsibility for ensuring that they are imposed and collected, have to make a certain effort to persuade the judges to impose these penalties over and above other court costs. If this does not occur the counties are definitely the losers, for such practice involves the transfer of funds previously earmarked for other purposes.

Despite the problems and demands involved in this type of financing approach, however, all the programs

examined have chosen it to make themselves self-supporting. In some cases, California being an example, it even seems enough, or nearly, to cover the program costs.

Beyond this criterion of efficiency, I think it is essential to deal as well with the implications behind the approach. Such considerations form the subject of the next section, where I raise what are in my opinion the main risks associated with the choices made in terms of financing for crime victim compensation programs.

CONCLUSIONS
AND
PROPOSALS

In the last chapter, we could see that the crime victim compensation programs are now tending to finance themselves by the use of various money penalties. At the time when they were developed, these approaches were intended primarily for offences involving victims. At present, given the cutbacks in the states' financial contributions to the projects, they are mainly turning to this device in order to generate enough income to make them self-supporting. To get the funds to meet this objective, they have decided to enlarge the area of application and raise the levels of the fines, and hence these are now applied to greater numbers of offences.

The main justification for creating the compensation programs has been the fact that other avenues of financial assistance for crime victims were inadequate and/or impossible to use. Out of concern for social justice, the states resolved to mitigate this situation by taking responsibility for making good certain damages caused to these victims. In the name of social justice, then, they introduced an element of unfairness with regard to those persons subjected to these penalties.

Our system of justice is based on the principle of individual responsibility for prohibited acts. The

corollary of this principle is that no one should suffer injury by the act of another. This principle is now being violated by the compensation programs' options in terms of financing, since the penalties fall on persons who are not responsible for the injuries caused to the entire group of victims applying to the projects.

The decision to impose such penalties on them is founded on the belief that they, as members of a group, in this case the "offenders" group, bear special responsibility for the injuries done to the victims, which is contrary to the principle of individual responsibility. To the degree that we feel offenders ought to be held responsible for making good these damages, the equity principle requires that they do so on the same footing as all other members of the community. The current tendency would have them the only ones taking part in this compensation.

The rationale brought up by a number of people in the programs I looked at in the course of this study is that in any case, by committing a reprehensible act, the offenders are doing damage to society. In the event that this damage is considered to have been done to society, compensation should apply to it alone. As by definition society is an

entity, compensation can be only symbolic, since it is carried out with respect to all the individuals of which society is made up.

In my opinion, this concern for "social justice" can be made equitable for all. If for various reasons the states decide to cut back their contributions to these programs, one can imagine making an exception of the state compensation program financed out of public funds. By this I mean that it would come into play only when all other efforts had been made to find ways to compensate the victims for their injuries. From the viewpoint of a model of justice whose objective is essentially to solve the conflicts between members of society, redress by way of compensation can be seen as a route to be given precedence.

In this perspective, it seems to me that the present penal system is far from offering the best conditions for promoting the resolution of conflicts between individuals. It has been shown by a significant paper⁴³ that the system involves great social costs for those in custody, costs distinguished by the fact that they are distributed differentially in accordance with the individuals' social status. Moreover, this system is characterized first and foremost by its function of "handing out penalties" to

offenders. By the type of intervention it promotes, it takes away from the victim any possibility of controlling the conflict in which the victim is involved. In fact, the victim is present in the penal process simply as principal witness of an act that concerns him very directly, since he has sustained injury.

For these various reasons, it seems to me essential that compensation for damages caused to crime victims be at least placed in the civil stream in cases where it is not possible to proceed by even more informal ways. This strikes me as all the more important in that at present, there is a tendency to see compensation as a final move tacked on to the traditional objectives of the penal system. To my mind, the American experience is an excellent example of this perverted effect. It is stipulated in all the legislation examined that the various fines the purpose of which is to build up a fund for victim compensation are to be levied over and above any other sentence. This statement formalizes the use of several measures in a single conviction, and this could very often take the form of increased intervention and more severe sentences for accused persons.

It is not at all clear that judges are taking these "obligations" into account (payment of a money penalty, repayment, diversion of royalty earnings) when they deliver sentence. It should be mentioned at this point that such penalties are often imposed after sentence has been made. It seems to me very dangerous in terms of the accused person's right to allow such measures to be imposed by the agencies carrying out sentence, as stipulated in the Tennessee and Washington legislation.

Furthermore, the measure for diversion of royalty payments to convicted persons comes as a challenge to the fundamental right to free expression of all persons. Some of the legislation I analyzed contains a provision requiring that victims notify the state in cases where they have received compensation from an offender. It is impossible not to be taken aback by the fact that they have not set up identical procedures for royalties rather than trampling on a fundamental right and permitting such an invasion of people's private lives.

In the light of these considerations, my proposals are:

- 1) From the point of view that the justice system takes the resolution of social conflicts as one of its primary objectives, compensation measures for victims should be considered as the priority measure to this end. The use of compensation should be seen as a sentence in itself, not having to be accompanied by another measure in order to achieve the above objective.
- 2) The use of compensation as a means of resolving disputes between individuals should be placed in the context of the civil law.
- 3) State compensation programs are exceptional in nature in that they should intervene only in cases where it has not been possible to find other means of compensating for the injuries done to the victim.
- 4) Crime victim compensation programs should be financed wholly by the state, and as a result, the idea of using money penalties to subsidize them should be rejected. The use of such methods gives rise to unfairness to those subjected to them.

- 5) There should be research into the phenomenon of "staged sentences," as these seem increasingly to typify penal practice and contribute to the perversion of the reforms carried out in the penal justice system.

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- State of Washington (1981). Department of Labor and Industries. Actual Expenditures by Fiscal Year - Crime Victim Compensation.
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FOOTNOTES

1. Baril, M., Grenier, H., and Manseau, H. (1977). "Enquête de justice - Les petits commerçants victimes de vol à main armée" ("Justice Inquiry - Small business victims of armed robbery"). G.R.A.C. Report No. 5. Montreal: C.I.C.C.
2. Choice of these programs was conditioned by their place in the governmental structure, their extensiveness, and the type of financing methods they use.
3. Cal. Government Code, Sec. 13959-13969.1 (1981)
N.J. Code Ann. Sec. 52:4B-1-21 (1971)
Tenn. Code Ann. Sec. 29-13:101-208 (1976)
Wash. Rev. Code Sec. 7.68.010-.910 (1977).
4. N.J. ass. 452.
5. Wash. Bill 828 (1982).
6. State of New Jersey (1980-1981). Violent Crimes Compensation Board. Annual Report, p. 17.
7. State of Tennessee (1982). Board of Claims. Report to the General Assembly of Criminal Injuries Compensation Fund, p. 7.
8. State of Washington (1982). Crime Victims Program. Report by Year-Date of Receipt of Claims.
9. State of California (1981-1982). State Board of Control. Report to the California Legislative Victim Indemnification Program, p. 2.
10. State of California (1981-82). Report to the California legislature. Victim Indemnification Program, p. 12.
11. State of New Jersey (1980-81). Violent Crimes Compensation Board. Annual Report, p. 17.
12. State of Tennessee (1982). Board of Claims. Report to the General Assembly of Criminal Injuries Compensation Fund, p. 7.
13. State of Washington (1981). Department of Labor and Industries. Actual Expenditures by Fiscal Year -- Crime Victim Program.

14. From the start, this program was set up to be self-financing through the imposition of fines.
15. Cal. Government Code, Sec. 13966.
16. N.J. Code Ann., Sec. 52:48-20.
17. Tenn. Code Ann., Sec. 29-13-113.
18. Wash. Rev. Code., Sec. 7.68.120.
19. N.J. Sen. 434, Ass. 353.
20. N.J. Ass. 353.
21. Tenn., Code Ann., Sec. 29-13-201: 208.
22. Wash. Rev. Code, Sec. 7.68.200-7.68.280.
23. Cal. Government Code, Sec. 13602.5 (1967).
24. Cal. Government Code, Sec. 13967 (1973).
25. Tenn. Code Ann., Sec. 40-3207 (1980).
26. Tenn. Code Ann., Sec. 40-3207 (1977).
27. Wash. Rev. Code Sec. 7.68.035.
28. Cal. Government Code Sec. 1463.18 (1981).
29. Tenn. Code Ann. Sec. 40-3207 (1981).
30. Tenn. Code Ann. Sec. 40-3630.
31. Wash. Bill 828 (1982).
32. State of California. Office of Criminal Justice Planning. Victim Witness Program Funding. 1982.
33. State of California. Office of Criminal Justice Planning. FY 1982-83 Indemnity Fund Projections. 1982.
34. Tenn. Code Ann. 40-3207 (1981).
35. Wash. Bill 828 (1982).
36. State of California (1982). Office of Criminal Justice Planning. FY 1982-83: Indemnity Fund Projections.

37. Ibid.
38. State of California (1982). Office of Criminal Justice Planning. FY 1982-83: Indemnity Fund Projections.
39. State of New Jersey (1982). Violent Crimes Compensation Board. Report of Revenue for FY 1981-82 and 1980-81.
40. N.J. Ass. 953.
41. State of Tennessee (1982). Board of Claims. Report to the General Assembly of Criminal Injuries Compensation Fund.
42. State of Tennessee (1982). Board of Claims. Report to the General Assembly of Criminal Injuries Compensation Fund.
43. State of Washington (1982). Department of Labor and Industries. Report of First Quarter of Fiscal Year 1983.
44. Landreville, P., Blankevoort, V., and Pirès, A. (1980). "Les coûts sociaux du système pénal" ("The social costs of the penal system"). Montreal, School of Criminology.