

**REPORT OF
THE JOINT
SUBCOMMITTEE STUDYING**

Crime Victims' Compensation

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Report of the Joint Subcommittee
Studying Crime Victims' Compensation
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1986**

To: Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

INTRODUCTION

During the 1985 General Assembly Session, the Senate Finance Claims Subcommittee and the House Claims Committee had before them a bill for the relief of a female minor. Senator A. Joe Canada, Jr., introduced legislation to allow reimbursement by the Commonwealth to the child's family for psychiatric bills incurred after she was sexually molested. The molestation was committed by a person who, although not related to the child, was a boarder in the child's family home. The molestation occurred when the child was five years old, but went undiscovered for several years. The Joint Subcommittee, as well as the entire Senate Finance Committee, believe that relief should have been provided for this child and her family through the Criminal Injuries Compensation Fund. However, due to the inflexibility of the statutory language, the family was unable to receive compensation.

The Senate Finance Committee felt the Crime Victims' Compensation Act was drawn in such a way as to interfere with legislative intent, especially with regard to children who become the unfortunate victims of crime. Therefore, the Joint Subcommittee Studying Crime Victims' Compensation was formed to examine and propose changes to Virginia's laws governing compensation for victims of crime and their dependents. Specifically, the Joint Subcommittee was created to consider changes to Chapter 21.1 of Title 19.2 of the Code of Virginia which would provide statutory flexibility in the event of late discovery of crimes against minors.

HISTORICAL OVERVIEW

In 1976, the General Assembly, responding to a perceived need for governmental financial assistance for citizens who suffer injury or death as the result of victimization or of their efforts to prevent criminal activity, enacted House Bill No. 1093. By adopting this legislation, Virginia joined twelve other states with centrally administered victim compensation programs. The Virginia Act is, in a sense, a form of collective restitution. The legislation provides for payment by the offender of the costs directly associated with his crime. This frees the victim from the often unsuccessful burden of pursuing his offender in the civil courts. In fact, compensation of a victim is in no way contingent upon apprehension or conviction of the criminal involved, so long as it can be proved that a crime was actually committed.

House Bill No. 1093 established a special fund supported by fines assessed against persons convicted of felonies and Class 1 and 2 misdemeanors. Persons convicted of driving under the influence of alcohol or other intoxicants and public drunkenness are excepted from paying the assessment. The Division of Crime Victims' Compensation was established within the structure of the Industrial Commission to handle all facets of program administration, including public information and education, distribution of applications, investigation and disposition of claims, decisions concerning level of compensation, and administrative record keeping. Claimants dissatisfied with the outcome of their case may appeal to the full Commission and finally to the Court of Appeals.

Collections to the Criminal Injuries Compensation Fund began in July, 1976. One year later the Division began to accept claims against the fund. To be eligible for compensation, a claimant must be the victim of a crime or a person who attempted to prevent a crime or apprehend a criminal. In order to be compensated, physical injury must have resulted. In a case where the victim or good samaritan dies, legal dependents are eligible for compensation. Those deemed eligible are reimbursed for out-of-pocket expenses associated with their injury, including medical expenses and lost wages. A \$100 deductible is applied to all claims made by persons under 65 years of age.

A major prohibition to eligibility in the original Act was statutory language which automatically excluded an offender's family from participation in the program. "Family" is defined to include "(1) any person related to the offender within the third degree of

consanguinity or affinity, [or] (2) any person residing in the same household." See § 19.2-368.2 of the Code of Virginia . Although this provision was written into the law to exclude persons who were even indirectly criminally responsible from receiving compensation, and to prevent collusion or fraud, it proved to be a harsh rule. During the last two sessions of the General Assembly, significant action has been taken to ease the family exclusion. A 1985 change of major importance provided compensation for family members in all cases where the terms of the award could be structured in such a way as to prevent the criminally responsible person from benefitting from the crime.

A second prohibition to eligibility and one of the primary motivations behind the joint subcommittee study, is the Act's stringent statute of limitations. Language in the Act provides that a claim must be filed within 180 days, with an extension of this limitations period for up to a maximum of two years, if good cause is shown. See § 19.2-368.5 of the Code of Virginia . No exception was provided for minors who in cases of sexual assault or molestation frequently fail to disclose the crime. It is sometimes years after an incident before the crime is discovered.

Since its inception, the Crime Victims' Compensation Act has undergone significant revision by the legislature. In fact, changes have been made in the original language in eight of the last nine sessions of the General Assembly. These changes, summarized in Appendix 1, have liberalized Virginia's victim compensation law and enhanced the Division's ability to address the needs of victims.

JOINT SUBCOMMITTEE RECOMMENDATIONS

The Joint Subcommittee began meeting in August 1985, and a public hearing was held in September of that year. Through testimony received at this hearing, a wide variety of concerns about the Act and about the Division of Crime Victims' Compensation were brought to the attention of the Joint Subcommittee. The Joint Subcommittee discussed these problems and possible program improvements at a work session held November 12, 1985. A summary of these issues is included as Appendix 2. Although the Joint Subcommittee believes many of the issues raised during the course of this study should be addressed internally by the Industrial Commission, a number of recommendations for statutory change are made in this report. See Appendix 3.

To provide for situations where there is late discovery of a crime against a minor, the Joint Subcommittee recommends the amendment of § 19.2-368.5. The Joint Subcommittee suggests that in cases involving minors or persons who are mentally incompetent, the provisions of paragraph A of § 8.01-229 of the Code of Virginia be applied to toll the 180 day statute of limitations during the period of minority or disability. This change will maximize the Division's ability to compensate minors and other persons under a disability when there is failure by a child or incompetent, or a person acting on his behalf, to report a victimization in a timely manner.

The Joint Subcommittee heard testimony that awards to victims of sexual assaults might be hindered or even prevented because of statutory language regarding "contribution" by the victim to infliction of the injury. See § 19.2-368.12 of the Code of Virginia . The Joint Subcommittee discussed this issue in great detail. It was advised by representatives of the Industrial Commission that the statutory language has been construed to bar or reduce an award only where the victim in some way actively initiated or precipitated the infliction of the injuries. The Joint Subcommittee therefore decided that no change need be made to § 19.2-368.12. (See Appendix 4, Commission considerations regarding contribution.)

The Joint Subcommittee also recommends that § 19.2-368.7 be amended to extend the time limit for appeal of a decision to the full Commission from 15 to 20 days. The longer time period corresponds to the time applicable to appeals of other cases to the Commission.

The Joint Subcommittee further recommends expansion of language contained in § 19.2-368.17 pertaining to the Division's public information program. It recommends that language be added to this section to require the inclusion of brochures, posters, and public service announcements in the Division's public information program. The Joint Subcommittee believes that efforts to inform and educate the public and local service agencies on award eligibility under the Crime Victims' Compensation Act should be expanded. The Joint Subcommittee recognizes the efforts of the Division and encourages the Industrial Commission to develop uniform guidelines on the Division's policies, procedures, and award criteria. These initiatives should include an examination of possible improvements in the filing process, including simplification of applications.

The Joint Subcommittee, aware that the Industrial Commission has been mandated to assess

the financial, administrative, and legislative impact of participation by the Commonwealth in the federal Victims of Crime Act of 1984 (VOCA), requested an update on the study as part of its work. Although the Joint Subcommittee expected to have the Commission's final report before it, this did not prove to be possible. The Joint Subcommittee did, however, discuss with Commissioner O'Neill and the Director of the Division of Crime Victims' Compensation the possible implications of participation in the federal program. Based on the information received, the Joint Subcommittee does not recommend statutory changes which would bring Virginia into federal compliance.

As a matter of policy, a majority of the Joint Subcommittee does not believe that Virginia should permit access to the Crime Victims' Compensation Fund by non-residents unless the state in which the non-resident lives provides a similar remedy to a Virginia resident injured by a crime in that state. Furthermore, a majority believes that the amount of federal funds available under this short-term federal program is not sufficient to justify the long-term administrative costs which would be necessary to bring the program into federal compliance.

As proposed by the Industrial Commission, the Joint Subcommittee further recommends that the provisions governing the amount of certain awards under the Act be modified. See Appendix 3. The recommended changes are designed to be fairer to all victims and to provide greater stability to the Fund. Unemployed victims will no longer receive an award based upon a fictitious average weekly wage. However, payments for "scheduled losses" is liberalized for victims who were not employed at the time of the injury. Employed victims will receive awards based upon their actual wage losses, subject to a maximum payment of \$250 per week. All awards remain subject to the \$15,000 cap. The Joint Subcommittee believes that the recommended changes will facilitate administration of the award process and keep award payments within projected fund revenues.

The Joint Subcommittee was also troubled by the transfer of \$1 million from the balance existing in the Criminal Injuries Compensation Fund (Chapter 622, 1983 Acts of Assembly, § 3-1.01D) to the General Fund of the Commonwealth, since it believes this amount may soon be needed for the purposes of the Crime Victims Compensation Act. If this proves to be the case, the Subcommittee hopes that the amount transferred will be restored. Also, since claims by victims of crime against the Criminal Injuries Compensation Fund appear to be increasing, it hopes that this Fund will in the future be immune from further transfers to the General Fund.

Finally, during the 1985 General Assembly session, the Joint Legislative Audit and Review Commission (JLARC) was mandated to conduct a study of independent agencies. Although JLARC is scheduled to begin an in-depth examination of the Industrial Commission, there is some concern about the extent to which this study will examine the activities of the Division of Crime Victims' Compensation. To follow-up on the work of this Subcommittee, the Joint Subcommittee requests that JLARC incorporate a thorough review of the Division's activities into its study. JLARC is in an excellent position to assess and suggest improvements concerning the role of the Division within the structure of the Industrial Commission, the Division's staffing needs, the application of uniform policies and procedures, and the future health of the Criminal Injuries Compensation Fund.

Respectfully submitted,

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CRIME VICTIMS' COMPENSATION ACT
SUMMARY OF LEGISLATIVE ACTIONS
1977-1985

1977

(c. 215, 1977)

- ° Gives the Commission flexibility to delegate investigative responsibility to person other than a Commissioner.
- ° Includes legal dependents of victims as persons eligible for compensation.
- ° Reduces from thirty to fifteen days the time a claimant has to petition for a hearing before the full Commission.
- ° Amends judicial appeal procedure by reducing time to "within thirty days of the date of the report...." and requires that appeal be made to the Supreme Court of Virginia.

1978

(c. 122, 1978)

- ° Allows for continuation of investigation and determination of a claim while criminal prosecution is underway with approval of the Commonwealth's Attorney.

(c. 210, 1978)

- ° Includes full-time college students in the Commonwealth as persons eligible for compensation.

(c. 413, 1978)

- ° Allows Commission flexibility to rollover and award unexpended funds from a prior fiscal year.

1980

(c. 521, 1980)

- ° Increases funeral expenses from \$500 to \$1,000.
- ° Increases offender's assessment from \$10 to \$15.

1981

(c. 302, 1981)

- Adds language giving Commission discretion to declare claimant in default for failure to perfect a claim within 90 days of written notice.

(c. 474, 1981)

- Removes \$100 deductible for persons 65 years and older.

(c. 592, 1981)

- Includes residents of states with similar Victims' Compensation laws as persons eligible for compensation.

1982

(c. 367, 1982)

- Increases funeral expenses from \$1,000 to \$1,500.

1983

(c. 227, 1983)

- Adds language directing that any money recovered by the Commonwealth through subrogation be deposited into the Criminal Injuries Compensation Fund by the Comptroller.

(c. 418, 1983)

- Increases maximum award from \$10,000 to \$12,500.

(c. 541, 1983)

- Commonwealth's Attorneys authorized to submit Victim Impact Statements to the court.

(Regulatory Actions)

- Authority to install a toll-free telephone line.

1984

(c. 619, 1984)

- Amends the definition of "family" to include a "spouse."
- Gives the Commission authority to obtain an offender's arrest record.

- Repeals language requiring a victim to qualify for award through a hardship (financial stress) test.

(c. 703, 1984)

- Amends judicial appeal procedure by requiring that appeals be made to the Court of Appeals.

(c. 747, 1984)

- Allows awards to be made to offender's family members in cases involving a spouse (where there is a bona fide separation and the victim prosecutes the offender), incest, or mental derangement.

1985

(c. 230, 1985)

- Allows revenues deposited into the Criminal Injuries Compensation Fund to be made immediately available for payments of claims instead of being limited to collections from prior years.

(c. 446, 1985)

- Includes parents of a victim as persons eligible for compensation.
- Allows awards to be made to offender's family members in all cases where terms of the award can be structured in a manner which will prevent the criminally responsible person from benefiting.
- Increases maximum emergency award from \$1,000 to \$2,000.
- Extends from 48 to 120 hours the time limit on initial incident report to police.
- Increases maximum award from \$12,500 to \$15,000.

ISSUES UNDER CONSIDERATION
JOINT SUBCOMMITTEE STUDYING
CRIME VICTIMS' COMPENSATION

1. Statute of Limitations (exception for late discovery of crimes against minors). §19.2-368.5

Options Discussed:

- 2 years from date of conviction
- 2 years, except in case of conviction
- 2 years from termination of prosecution
- 5 years from criminal act
- 2 years from age of majority
- Division recommendation 2 (attached)

2. Uniform Education/Information Policy. §19.2-368.17

- A. Availability of uniform guidelines stating Division's policies, procedures and award criteria to service agencies.
- B. Establishment of ad hoc committee to assist Division with development of uniform guidelines (policy manual).
- C. Assignment of responsibility for dissemination of information and assistance at the local level.

Options Discussed:

- Victim/Witness programs
- Commonwealth's Attorneys
- Police (see Division recommendation 5 attached)
- Sheriffs
- Magistrates
- Clerk's offices
- D. Determining need to mandate local responsibility. Impact on localities.

3. Federal Conformity.

- A. Mental health counseling for victims. §19.2-368.2(5)

Options Discussed:

- Only in case of physical injury
- Regardless of physical injury
- Monetary cap on service

- B. Elimination of residency requirement (residency vs. domiciliary). §19.2-368.4(c)
 - C. Award eligibility for victims of federal crimes. §19.2-368.2(3)
 - D. Administrative costs of conformity/staffing needs of Division.
 - E. Federal VOCA84 sunset provision.
- 4. Simplification of Filing Process.
 - A. Simplification of application.
 - B. Elimination of preliminary application.
 - C. Elimination of telephone screening.
 - D. Use of Victim Impact Statement.
- 5. Written Explanation of Award Decision to claimant and service agency. §19.2-368.6(G)
- 6. Clarification of language defining "crime." (Division recommendation 1 attached) §19.2-368.2(3)
- 7. Removal of "residing in the same household" clause from definition of "family." §19.2-368.2(4)
- 8. Inclusion of psychic/mental trauma in definition of "victim." §19.2-368.2(5)
- 9. Clarification of "bona fide separation" rule. §19.2-368.4(B)(i)
- 10. Extension from 15 to 20 days the time limit for appeal to full Commission. (Division recommendation 3 attached) §19.2-368.7
- 11. Hasten availability of emergency awards. §19.2-368.9
- 12. Removal of \$100 deductible on claims. §19.2-368.11
- 13. Clarification of language relating to payments for "partial total incapacity." (Division recommendation 4 attached) §19.2-368.11
- 14. Removal or clarification of "contribution to injury" clause (clarify language so it applies only in clear cases such as cross assaults). §19.2-368.12

15. Improve health of Criminal Injuries Compensation Fund by discontinuing practice of removing money for other governmental purposes and explore methods of raising additional funds. §19.2-368.18
16. Crime Victim Compensation Studies.
 - A. Appropriations Act study (Item 682, Ch. 619, 1985).
 - B. Task Force on Victims' Compensation (Virginia Network for Victims and Witnesses).
 - C. JLARC Study of Independent Agencies (Item 11, Ch. 619, 1985).

1985-86 Legislative Proposals

1. 19.2-368.2. DEFINITIONS

3. "Crime". Amended to read - shall mean an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law; provided, however, that no act involving vehicular accidents which result in injury shall constitute a crime for the purpose of this chapter, unless the injuries were intentionally inflicted through the use of such vehicle.

EXAMPLE - Cases in which a vehicle was used as a weapon to inflict injury or death upon someone intentionally, would not be affected by this change. When a vehicle is used as a weapon, it is not classified by law as a vehicular accident. It is classified the same as any other crime in which a weapon was used to inflict injury or death.

By using the term "vehicle" instead of "motor vehicle," gives the Commission flexibility to include bicycles, mopeds, boats, airplanes, etc., in the exclusions under the definitions of crime.

Removing the term "unless the injuries were intentionally inflicted through the use of such vehicle," will reduce, if not eliminate, the constant argument of claimants/attorneys that hit-and-run and drunk driving accidents are intentional acts! They always key in on this terminology.

If accidentally inflicted injuries, such as hunting accidents, persons shot while cleaning guns, or guns that are accidentally discharged, etc., should be excluded from the Act, a sentence could be added to the definition of "Crime" such as this, "Injuries accidentally inflicted are excluded under the definition of crime unless such injury occurred when another criminal act was intentionally committed."

2. 19.2-368.5. Filing of claims; deferral of proceedings.

B. A claim must be filed by the claimant not later than 180 days after the occurrence of the crime upon which such claim is based, or not later than 180 days after the death of the victim; provided, however, that upon good cause shown, the Commission may extend the time for filing for a period not exceeding, under any circumstances, 2 years after such occurrence. No limitation of time provided in this Act for the giving of notice or making claim under this Act shall run against any person who is mentally incompetent or a minor dependent, so long as there has been no notification of a crime to their parent, guardian, trustee or committee.

3. 19.2-368.7. Review by Commission.

A. Change to read "twenty days" instead of fifteen days.

4. 19.2-368.11. Amount of Award.

A. Amended to read - Any award for loss of earnings shall be determined at the rate of two-thirds of the gross earnings for twelve months immediately preceding the date of the crime but shall not exceed the current maximum amount established under Workers' Compensation guidelines or be less than the minimum under guidelines unless it exceeds the gross earnings.

EXAMPLES - Loss of earnings includes employment secured at a specific rate and to begin immediately after the crime; the Commission has the discretion to determine the definition of "immediately."

If this section is not changed, the Fund could be responsible to compensate partial total incapacity, as defined under section 65.1-56, and compensate dependents of crime victims killed as outlined under section 65.1-66. We compensate surviving dependents now, but under the guidelines of 19.2-368.4.

This could mean expenditures in excess of two million dollars per year based on current statistics. The Fund is collecting approximately \$670,000.00 per year which would necessitate an appropriation from the General Fund to provide these benefits.

Based on other states' programs, Virginia is liberal in its compensation for wage loss. A number of states have a maximum amount of \$200.00 per week for actual wage loss.

5. 19.2-368.17. Public information program.

A. Etc.

B. All known victims shall be notified in writing on forms prepared by the Commission of their right to file a claim under this chapter by the law-enforcement authorities involved in the investigation.

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SENATE BILL NO. HOUSE BILL NO.

A BILL to amend and reenact §§ 19.2-368.5, 19.2-368.7 and 19.2-368.17 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 19.2-368.11:1, and to repeal § 19.2-368.11 of the Code of Virginia, relating to crime victims' compensation awards; minor victims; appeal time.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.5, 19.2-368.7 and 19.2-368.17 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 19.2-368.11:1 as follows:

§ 19.2-368.5. Filing of claims; deferral of proceedings.—A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is mentally incompetent, the claim may be filed on his behalf by his guardian or such other individual authorized to administer his estate.

B. A claim must be filed by the claimant not later than 180 days after the occurrence of the crime upon which such claim is based, or not later than 180 days after the death of the victim ; ~~provided, however, that~~ . *However, in cases involving claims made on behalf of a minor or a person who is mentally incompetent, the provisions of paragraph A of § 8.01-229 shall apply to toll the 180-day period. In all other cases,* upon good cause shown, the Commission may extend the time for filing for a period not exceeding, under any circumstances, ~~2~~ two years after such occurrence.

C. Claims shall be filed in the office of the Commission in person or by mail. The Commission shall accept for filing all claims submitted by persons eligible under subsection A of this section and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the Commonwealth's attorney of the jurisdiction wherein the crime is alleged to have occurred. If, within ten days after such notification, the Commonwealth's attorney so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court unless notification is received from the Commonwealth's attorney that no objection is made to a continuation of the investigation and determination of the claim. When such criminal prosecution has been concluded in the circuit court the Commonwealth's attorney shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided.

§ 19.2-368.7. Review by Commission.—A. The claimant may, within ~~fifteen~~ twenty days from the date of the report ~~make an application~~ , *apply* in writing ; to the Commission for consideration of the decision by the full Commission as provided by § 65.1-97.

B. Upon receipt of an application pursuant to subsection A of this section, or upon its own motion, the Commission shall review the record and affirm or modify the decision of the person to whom the claim was assigned. The action of the Commission in affirming or modifying such decision shall be final. If the Commission receives no application pursuant to subsection A of this section, or takes no action upon its own motion, the decision of the person to whom the claim was assigned shall become the final decision of the Commission.

C. The Commission shall promptly notify the claimant and the Comptroller of the final decision of the Commission and furnish each with a copy of the report setting forth the decision.

§ 19.2-368.11:1. Amount of award.—A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to sixty-six and two-thirds percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed \$250. The victim's average weekly wages shall be determined as provided in § 65.1-6.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to sixty-six and two-thirds of the difference between the victim's average weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed \$250 per week.

C. Compensation for Scheduled Loss: In construing this subsection the permanent loss of the use of a member shall be held equivalent to the loss of such member and the permanent partial loss or loss of use of a member shall be a basis for a proportionate compensation award.

1. The loss of both hands, both arms, both feet, both legs or both eyes, or any two thereof, or an injury resulting in total paralysis as determined by the Commission based upon medical evidence, or an injury to the brain resulting in incurable imbecility or insanity, shall constitute total and permanent incapacity and shall be compensated as a maximum award allowed under this section.

2. The loss of an arm or a leg or of the total vision of an eye, shall be compensated at forty percent of the maximum award allowed under this section.

3. The partial loss or loss of use of any body part or member specified in paragraphs 1 or 2, or a specific part thereof, including, but not limited to, a finger, hand, toe, foot, or percent vision loss, shall be compensated based upon such percent of loss of the whole member or part as may be determined to be in accordance with the Guides to Evaluation of Permanent Impairment of the American Medical Association, or as may be determined by the Commission based upon other medical evidence.

4. Any permanent and severely marked disfigurement of the body not mentioned above and determined by the Commission to adversely affect wage earning capacity of the victim, shall be compensated in an amount not to exceed twenty percent of the maximum award allowed under this section.

D. Compensation for Dependents of a Victim Who is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.1-65 and 65.1-66 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which would have been payable to the deceased victim under this section.

E. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc: Awards may also be made on claims, or portions of claims based upon the claimant's actual expenses incurred as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, if he had not been a victim of crime; (iii) expenses in any way related to funeral or burial, not to exceed \$1,500; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for.

F. Any award made pursuant to this section shall be subject to a deduction of \$100 from any and all losses, except that an award to a person sixty-five years of age or older shall not be subject to any deduction. Payments under this chapter for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered expenses shall not exceed \$15,000 in the aggregate.

§ 19.2-368.17. Public information program.—The Commission shall establish and conduct a public information program to assure extensive and continuing publicity and public awareness of the provisions of this chapter ; and . The public information program shall include brochures, posters and public service advertisements for television, radio and print media for dissemination to the public of information regarding the right to compensation for innocent victims of crime, including information on the right to file a claim, the scope of coverage, and the procedures to

be utilized incident thereto.

2. That § 19.1-368.11 of the Code of Virginia is repealed.

19.2-368.12. D. states "In determining the amount of an award, the Commission shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the Commission shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Commission may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence, or to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony."

In making a determination of contribution, two factors are considered. The first is outlined in a written guideline as listed:

Contribution

Contribution is determined by the action portrayed by the victim at the time of or immediately preceding the crime. While there is no set formula for calculating the percentage of contribution to be assessed, the following factors should serve as a guideline:

(1) If it appears that the victim was provoked by the defendant in a manner threatening bodily harm to the victim, and the victim acted in self-defense, no contribution should be assessed.

(2) If it appears that the victim was provoked by the defendant in a manner where bodily harm to the victim appeared unlikely and the victim used poor judgment because of intoxication or other drug involvement, a 25% contribution factor should be assessed.

(3) If it appears that the defendant was provoked by the victim in a manner where bodily harm appeared unlikely, a 50% contribution factor should be assessed.

(4) If the victim is injured as a result of his conduct not being that of a prudent person, a 50% contribution should also be assessed.

(5) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant appears intentional, a 75% contribution factor should be assessed.

(6) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant is unquestionable, a 100% contribution factor shall be assessed and the claim denied.

The second factor is whether or not the victim was an innocent victim. 19.2-368.1 states "The General Assembly finds that many innocent persons suffer physical injury or death as a result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disability, incur financial hardships or become dependent upon public assistance. The General Assembly finds and determines that there is a need for governmental financial assistance for such victims of crime. Therefore, it is the intent of the General Assembly that aid, care and support be provided by the Commonwealth as a matter of moral responsibility for such victims of Crime."

This statement of innocent persons is reiterated in 19.2-368.17 which states, "The Commission shall establish and conduct a public information program to assure extensive and continuing publicity and public awareness of the provisions of this chapter, and the right to compensation for innocent victims of crime, including information on the right to file a claim, the scope of coverage, and the procedures to be utilized incident thereto.

In making this determination, the actions of the victims are examined to find if the victim was involved in an illegal act in which there is a direct cause relationship between such illegal act and the infliction of the injuries to the victim. If such a finding is made, then the amount of the award will be reduced or the claim will be rejected.

These procedures of reducing and denying awards are practiced by nearly every Crime Victims Program in the country, and are supported by numerous cities.

