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Congressional Record S. 1359-62 - Bill to Provide Compensation for Persons injured by Criminals

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CONGRESSIONAL RECORD—SENATE

S 1359

S. 750—INTRODUCTION OF A BILL TO PROVIDE COMPENSATION FOR PERSONS INJURED BY CERTAIN CRIMINAL ACTS

Mr. MANSFIELD. Mr. President, the U.S. Senate in the past Congress, in my estimation, achieved an outstanding record in the area of crime control. It focused its attention squarely on every proposal submitted as a crime-fighting tool. It considered fully every recommendation offered against the criminal. And it passed an abundance of legislation. Hopefully, its efforts in the fight against crime will be effective.

For my own part in the fight, I introduced legislation which would increase penalties and make them mandatory for all persons convicted of crimes involving the use of guns. That measure was enacted into law. With it, the criminal gun user is on notice that his act of violence will be met squarely with a separate and certain penalty.

But in directing our full attention to how we can best combat the alarming crime rise we have ignored, unfortunately, certain aspects of the problem. The point has been reached, for example, where we must give consideration to the victim of crime—to the one who suffers because of crime. For him, society has failed miserably. Society has failed to protect its members adequately. To those who suffer, society has an obligation.

At the very least, the victim of crime should be made whole for suffering personal injury. To that end, at the close of the last Congress, I submitted a proposal to compensate those who suffer from criminal violence. Under it, any person who is personally injured in the perpetration of any crime would receive pecuniary compensation. There would be established a Federal Violent Crimes Compensation Commission which would make direct awards to the victim for injuries suffered in the course of the crime committed within the Federal criminal jurisdiction. In addition, a system of revenue sharing in the form of grants would underwrite similar State compensation commissions for the victims who suffer from crimes within State and local criminal jurisdictions.

I would only reiterate that, when the protection of society is not sufficient to prevent a person from being victimized, society then has the obligation to compensate the victim for that failure of protection. The measure I suggest covers everyone. The unsuspecting victim of rape. The policeman ambushed answering a routine call. The fireman shot by a sniper when responding to an alarm. The ghetto dweller. The suburbanite. In short, this proposal provides for all who suffer personal injury from criminal violence.

Mr. President, this is a time for bold action. This is a time for Congress to demonstrate to the people of America that it is as interested in the problems and suffering of victims of criminal acts as it is in protecting rights of accused criminals.

The time has come to give these matters early attention, and I hope that the Judiciary Committee can schedule early consideration of this and other measures which are designed to give long overdue consideration to the victim.

I submit my bill and ask unanimous consent, as it concerns the general criminal laws, that it be appropriately referred and that its text be printed at this point in the Record.

The PRESIDING OFFICER (Mr. BALLENG). The bill will be received and appropriately referred; and, as requested by the Senator from Montana, the bill will be printed in the Record.

The bill (S. 750) to provide for the compensation of persons injured by certain criminal acts, to make grants to States for the payment of such compensation, and for other purposes; introduced by Mr. Mansfield, was referred to the Committee on the Judiciary, and ordered to be printed in the Record, as follows:

S. 750

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND DEFINITIONS

Section 1. This Act may be cited as the "Criminal Injuries Compensation Act of 1971"

DEFINITIONS

Sec. 102. As used in this Act the term—

(1) "child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child, and a child conceived prior to but born after the death of the victim;

(2) "Commission" means the Violent Crimes Compensation Commission established by this Act;
(3) "dependent" means those who were wholly or partially dependent upon the income of the victim at the time of the death of the victim, for whom the victim was legally responsible;

(4) "personal injury" means actual bodily harm, including but not limited to pain, suffering, disfigurement, residual pain, disability, mental anguish, physical impairment, loss of use of a limb, dismemberment, or loss of a physical function; and

(5) "relative" means the spouse, parent, grandparent, grandchild, child, stepfather, stepmother, sibling, or child, stepchild, of the whole or half blood, spouse's parent, children, grandchild, siblings of the whole or half blood, spouse's parent;

(6) "employee" means any person who is injured, killed, or dies as a result of injuries caused by any act or omission of any other person engaged in any business, employment.

§ 504. AN INDEPENDENT AGENCY WITHIN THE EXECUTIVE BRANCH

(a) There is hereby established an independent Agency within the executive branch of the Federal Government to be known as the Violent Crimes Compensation Commission. Such Commission shall be composed of members, to be appointed as provided in subsection (b) of this section, and shall perform such duties as the President shall direct. The Commission shall prescribe the manner in which it shall perform its duties.

(b) The Commission shall be an independent Agency within the executive branch of the Federal Government. The Commission shall be subject only to the direction of the Administrator of General Services, the officers of which are appointed by the President by and with the advice and consent of the Senate. The Commission shall have the following powers:

(1) To receive and process applications for compensation for personal injury resulting from violent acts or any injury for which the head of the Agency is authorized to make grants to any public agency or private nonprofit organization; and

(2) To prescribe regulations, procedures, and forms for the processing of applications for compensation.

(3) To designate representatives of the Commission to perform such functions as the President may designate.

(4) To make grants to any public agency or private nonprofit organization in accordance with such regulations, procedures, and forms.

(5) To establish procedures for the coordination of the activities of the Commission with other Federal agencies.

(6) To establish procedures for the coordination of the activities of the Commission with other State and local agencies.

(7) To establish procedures for the coordination of the activities of the Commission with other agencies of the government.

(8) To establish procedures for the coordination of the activities of the Commission with other agencies of the government.

(9) To establish procedures for the coordination of the activities of the Commission with other agencies of the government.

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(14) To establish procedures for the coordination of the activities of the Commission with other agencies of the government.

(15) To establish procedures for the coordination of the activities of the Commission with other agencies of the government.

§ 505. TERMS AND COMPENSATION OF COMMISSION MEMBERS

(a) The terms of office of the members of the Commission shall be as follows:

(1) The terms of office of the members of the Commission shall be for one year, except that the terms of office of the members of the Commission appointed before the effective date of this Act shall be for one year.

(2) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(3) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(4) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(5) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(6) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(b) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(7) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(8) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(c) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(d) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(e) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.

(f) The terms of office of the members of the Commission appointed after the effective date of this Act shall be for two years.
or the later than January 31 of each year for the previous calendar year;

(b) In the case of death of the victim, to any other person or persons who suffered pecuniary loss with relation to funeral expenses.

(c) For the purposes of this Act, a person shall be deemed to have intended an act or omission notwithstanding that by reason of age, infirmity, or other circumstances, or otherwise he was legally incapable of forming a criminal intent.

(d) In determining whether to make an order under this section, or the amount of any award, the Commission may consider any circumstances, including the behavior of the victim which directly or indirectly contributed to his injury or death, that resulted from the victim's own attempt to prevent the commission of a crime or to apprehend an offender.

(e) No order may be made under this section unless the Commission, supported by substantial evidence, finds that:

(1) such an act or omission did occur; and

(2) the injury or death resulted from such act or omission.

(2) An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act or omission. Upon application from the Attorney General or the Administrator of any person alleged to have caused the injury or death, the Commission shall suspend proceedings under this Act until such application is withdrawn or until a proceeding for an offense arising out of such act or omission is no longer pending or imminent. The Commission may suspend proceedings in the interest of justice if a civil action arising from such act or omission is pending or imminent.

NATURE OF THE COMPENSATION

Sec. 305. The Commission may order the payment of compensation under this Act for:

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) loss of earning power as a result of total or partial incapacity of such victim;

(3) pecuniary loss to the dependents of the deceased victim;

(4) pain and suffering of the victim; and

(5) any other loss resulting from the personal injury or death of the victim which the Commission determines to be reasonable.

FINALITY OF DECISION

Sec. 306. The orders and decisions of the Commission shall be reviewable in the appropriate courts, except that the trial de novo of the facts determined by the Commission shall be allowed.

LIMITATIONS UPON AWARDING COMPENSATION

Sec. 307. (a) No order for the payment of compensation shall be made under section 501 of this Act unless the application has been made within two years after the date of the personal injury or death.

(b) No compensation shall be awarded under this Act to or on behalf of any victim in an amount in excess of the benefits of such victim provided by any private or public insurance policy or other source.

(c) No compensation shall be awarded if the victim was at the time of the personal injury or death living with the offender as the common law or statutory husband of the victim, except that if the Commission, at its discretion, feels unjust enrichment to or on behalf of the offender would result, it may award compensation to a third party.

TERMS AND PAYMENT OF THE ORDER

Sec. 308. (a) Except as otherwise provided in this section any order for the payment of compensation shall be made no later than one year from the date of the event causing such compensation to be awarded.

(b) The Commission shall deduct from any payments awarded under section 301 of this Act any payments received by the victim or by any of his dependents from the offender, or from any person on behalf of the offender, or from the United States (except those received under this Act for personal injury or death compensable under this Act, but only to the extent that the sum of such payments and any compensation paid pursuant to this section exceeds the total compensable injuries suffered by the victim as determined by the Commission.

ATTORNEYS' FEES

Sec. 304. (a) The Commission shall publish regulations providing that an attorney shall, at the conclusion of proceedings under this Act, file with the Commission the amount of fee charged in connection with his services rendered in such proceedings.

(b) The fee information is filed by an attorney under subsection (a) of this section. The Commission may determine, in accordance with such published rules or regulations as it may provide, that such fee charged is excessive and direct such findings to the attorney of this determination, the Commission and the attorney fail to agree upon a fee, the Commission, within ninety days after the receipt of the information required by subsection (a) of this section, petition the United States district court in the district in which an appearance is held, and the court shall determine a reasonable fee for the services rendered by the attorney.

(c) Any attorney who willfully charges, demands, receives, or collects for services rendered in connection with any proceedings under this Act any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

EFFECT ON CIVIL ACTIONS

Sec. 302. Any order for the payment of compensation under this Act shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

TITLE V—VIOLENT CRIMES COMPENSATION GRANTS

Sec. 303. The Attorney General shall make grants to States to pay the Federal share of the costs of establishing programs to compensate victims of violent crimes.

ELIGIBILITY FOR ASSISTANCE

Sec. 304. (a) A State is eligible for assistance under this subsection only if the Executive Secretary, after consultation with the Attorney General, determines, pursuant to objective criteria established by the Commission under section 304, that such State has enacted legislation of general applicability within such State—

(1) establishing a State agency having the capacity to hear and determine claims under this Act for personal injuries or death resulting from offenses in categories established pursuant to section 304;

Sec. 305. The Commission may order the payment of compensation under this Act for—

(2) providing for the payment of compensation for personal injuries or death resulting from offenses in categories established pursuant to section 304;

(3) providing for the payment of compensation for—

(4) establishing a State agency having the capacity to hear and determine claims under this Act for personal injuries or death resulting from offenses in categories established pursuant to section 304;

(5) providing for the payment of compensation for—

(1) establishing a State agency having the capacity to hear and determine claims under this Act for personal injuries or death resulting from offenses in categories established pursuant to section 304;
tim which the Commission determines to be reasonable, and which is based on a schedule substantially similar to that provided in title III of this Act.

(4) containing adequate provisions for the recovery of compensation substantially similar to those contained in title IV of this Act.

STATE PLANS

Sec. 503. (a) Any State desiring to receive a grant under this title shall submit to the Commission a State plan. Each such plan shall—

(1) provide that the program for which assistance under this title is sought will be administered by or under the supervision of a State agency;

(2) set forth a program for the compensation of victims of violent crimes which is consistent with the requirements set forth in section 502;

(3) provide assurances that the State will pay from non-Federal sources the remaining cost of such program;

(4) provide that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the State under this title; and

(5) provide that the State will submit to the Executive Secretary—

(A) periodic reports evaluating the effectiveness of payments received under this title in carrying out the objectives of this Act; and

(B) such other reports as may be reasonably necessary to enable the Executive Secretary to perform his functions under this title, including such reports as he may require to determine the amounts which local public agencies of that State will be required to receive for any fiscal year, and assurances that such State will keep such records and afford such access thereto as the Executive Secretary may find necessary to assure the correctness and verification of such reports.

(b) The Executive Secretary shall approve a plan which meets the requirements specified in subsection (a) of this section and he shall not finally disapprove a plan except after reasonable notice and opportunity for a hearing to such State.

BASIC CRITERIA

Sec. 504. As soon as practicable after the enactment of this Act, the Commission shall by regulations prescribe criteria to be applied under section 502. In addition to other matters, such criteria shall include standards for—

(1) the categories of offenses for which payment may be made;

(2) such other terms and conditions for the payment of such compensation as the Commission deems appropriate.

PAYMENTS

Sec. 505. (a) The Executive Secretary shall pay in any fiscal year to each State which has a plan approved pursuant to this title for the fiscal year the Federal share of the cost of such plan as determined by him.

(b) The Federal share of programs covered by the State plan shall be 75 per centum for any fiscal year.

(c) Payments under this section may be made in installments, in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments.

(d) Grants made under this section pursuant to a State plan for programs and projects in any State shall not exceed in the aggregate 15 per centum of the aggregate amount of funds authorized to be appropriated under section 603.

WITHHOLDING OF GRANTS

Sec. 506. Whenever the Executive Secretary, after reasonable notice and opportunity for a hearing to any State, finds—

(1) that there has been a failure to comply substantially with any requirement set forth in the plan of that State approved under section 503; or

(2) that in the operation of any program assisted under this Act there is a failure to comply substantially with any applicable provision of this Act; the Executive Secretary shall notify such State of his findings and that no further payments may be made to such State under this Act until he is satisfied that there is no longer any such failure to comply, or the noncompliance will be promptly corrected.

REVIEW AND AUDIT

Sec. 507. The Executive Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, to any books, documents, papers, and records of a grantee that are pertinent to the grant received.

DEFINITION

Sec. 508. For the purpose of this title the term "State" means each of the several States.

TITLE VI—MISCELLANEOUS

REPORTS TO THE CONGRESS

Sec. 601. The Commission shall transmit to the President and to the Congress annually a report of its activities under this Act including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the number and amount of grants to States under title V.

PENALTIES

Sec. 602. The provisions of section 1001 of title 18 of the United States Code shall apply to any application, statement, document, or information presented to the Commission under this Act.

AUTHORIZATION OF APPROPRIATIONS

Sec. 603. (a) There are authorized to be appropriated for the purpose of making grants under title V of this Act—

(1) for the fiscal year ending June 30, 1973; $— for the fiscal year ending June 30, 1973; and

(2) for the fiscal year ending June 30, 1974.

(b) There are hereby authorized to be appropriated such sums as may be necessary to carry out the other provisions of this Act.

EFFECTIVE DATE

Sec. 604. This Act shall take effect on January 1, 1971.