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

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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. BEALL). 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 received, read twice by its title, 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 or those for whom the victim was legally responsible;

(4) "personal injury" means actual bodily harm and includes pregnancy, mental distress, nervous shock, and loss of reputation;

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

(6) "victim" means a person who is injured, killed, or dies as the result of injuries caused by any act or omission of any other person which is within the description of any of the offenses specified in section 302 of this Act;

(7) "guardian" means one who is entitled by common law or legal appointment to care for and manage the person or property or both of a child or incompetent; and

(8) "incompetent" means a person who is incapable of managing his own affairs, whether adjudicated or not.

TITLE II—ESTABLISHMENT OF VIOLENT CRIMES COMPENSATION COMMISSION

SEC. 201. (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. The Commission shall be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one of the members of the Commission as Chairman, who shall have been a member of the bar of a Federal court or of the highest court of a State for at least eight years.

(b) There shall be appointed by the President, by and with the advice and consent of the Senate, an Executive Secretary and a General Counsel to perform such duties as the Commission shall prescribe in accordance with the objectives of this Act.

(c) No member of the Commission shall engage in any other business, vocation, or employment.

(d) Except as provided in section 206(1) of this Act, the Chairman and one other member of the Commission shall constitute a quorum. Where opinion is divided and only one other member is present, the opinion of the Chairman shall prevail.

(e) The Commission shall have an official seal.

FUNCTIONS OF THE COMMISSION

SEC. 202. In order to carry out the purposes of this Act, the Commission shall—

(1) receive and process applications under the provisions of this Act for compensation for personal injury resulting from violent acts in accordance with title III of this Act;

(2) pay compensation to victims and other beneficiaries in accordance with the provisions of this Act;

(3) hold such hearings, sit and act at such times and places, and take such testimony as the Commission or any member thereof may deem advisable;

(4) promulgate standards and such other criteria as required by section 504 of this Act; and

(5) make grants in accordance with the provisions of title V of this Act.

ADMINISTRATIVE PROVISIONS

SEC. 203. (a) The Commission is authorized in carrying out its functions under this Act to—

(1) appoint and fix the compensation of such personnel as the Commission deems necessary in accordance with the provisions of title 5, United States Code;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 a day for individuals;

(3) promulgate such rules and regulations

as may be required to carry out the provisions of this Act;

(4) appoint such advisory committees as the Director may determine to be desirable to carry out the provisions of this Act;

(5) designate representatives to serve or assist on such advisory committees as the Director may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies developing or carrying out policies or programs related to the purposes of this Act;

(6) use the services, personnel, facilities, and information (including suggestions, estimates, and statistics) of Federal agencies and those of State and local public agencies and private institutions, with or without reimbursement therefor;

(7) without regard to section 529 of title 31, United States Code, to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of his functions, with any public agency, or with any person, firm, association, corporation, or educational institution, and make grants to any public agency or private nonprofit organization;

(8) request such information, data, and reports from any Federal agency as the Director may from time to time require and as may be produced consistent with other law; and

(9) arrange with the heads of other Federal agencies for the performance of any of his functions under this title with or without reimbursement and, with the approval of the President delegate and authorize the redelegation of any of his powers under this Act.

(b) Upon request made by the Administrator each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information (including suggestions, estimates and statistics) available to the greatest practicable extent to the Administration in the performance of its functions.

(c) Each member of a committee appointed pursuant to paragraph (4) of subsection (a) of this section shall receive \$—— a day, including traveltime, for each day he is engaged in the actual performance of his duties as a member of a committee. Each such member shall also be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

TERMS AND COMPENSATION OF COMMISSION MEMBERS

SEC. 204. (a) Section 5314, title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(55) Chairman, Violent Crime's Commission".

(b) Section 5315, title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(95) Members, Violent Crime's Commission".

(c) Section 5316, title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(130) Executive Secretary, Violent Crimes Commission

"(131) General Counsel, Violent Crimes Commission".

(d) The term of office of each member of the Commission taking office after December 31, 1971, shall be eight years, except that (1) the terms of office of the members first taking office after December 31, 1971, shall expire as designated by the President at the time of the appointment, one at the end of four years, one at the end of six years, and one at the end of eight years, after December 31, 1971; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(e) Each member of the Commission shall be eligible for reappointment.

(f) A vacancy in the Commission shall not affect its powers.

(g) Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(h) All expenses of the Commission, including all necessary traveling and subsistence expenses of the Commission outside the District of Columbia incurred by the members or employees of the Commission under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Executive Secretary, or his designee.

PRINCIPAL OFFICE

SEC. 205. (a) The principal office of the Commission shall be in or near the District of Columbia, but the Commission or any duly authorized representative may exercise any or all of its powers in any place.

(b) The Commission shall maintain an office for the service of process and papers within the District of Columbia.

PROCEDURES OF THE COMMISSION

SEC. 206. The Commission may—

(1) subpoena and require production of documents in the manner of the Securities and Exchange Commission as required by subsection (c) of section 18 of the Act of August 26, 1935, and the provisions of subsection (d) of such section shall be applicable to all persons summoned by subpoena or otherwise to attend or testify or produce such documents as are described therein before the Commission, except that no subpoena shall be issued except under the signature of the Chairman, and application to any court for aid in enforcing such subpoena may be made only by the Chairman. Subpoenas shall be served by any person designated by the Chairman;

(2) administer oaths, or affirmations to witnesses appearing before the Commission, receive in evidence any statement, document, information, or matter that may in the opinion of the Commission contribute to its functions under this Act, whether or not such statement, document, information, or matter would be admissible in a court of law, except that an evidence introduced by or on behalf of the person or persons charged with causing the injury or death of the victim, any request for a stay of the Commission's action, and the fact of any award granted by the Commission shall not be admissible against such person or persons in any prosecution for such injury or death.

TITLE III—AWARD AND PAYMENT OF COMPENSATION

AWARDING COMPENSATION

SEC. 301. (a) In any case in which a person is injured or killed by any act or omission of any other person which is within the description of the offenses listed in section 302 of this Act, the Commission may, in its discretion, upon an application, order the payment of, and pay, compensation in accordance with the provisions of this Act, if such act or omission occurs—

(1) within the "special maritime and territorial jurisdiction of the United States" as defined in section 7 of title 18 of the United States Code; or

(2) within the District of Columbia.

(b) The Commission may order the payment of compensation—

(1) to or on behalf of the injured person; or

(2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person;

(3) in the case of the death of the victim, to or for the benefit of the dependents or closest relative of the deceased victim, or any one or more of such dependents;

(4) in the case of a payment for the benefit of a child or incompetent the payee shall file an accounting with the Commission no

later than January 31 of each year for the previous calendar year;

(5) in the case of the death of the victim, to any one or more 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, insanity, drunkenness, 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 it determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's lawful 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.

(f) 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, or if such act or omission is the subject of any other legal action. Upon application from the Attorney General or the person or persons alleged to have caused the injury or death, the Commission shall suspend proceedings under this Act until such application is withdrawn or until a prosecution 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.

OFFENSES TO WHICH THIS ACT APPLIES

SEC. 302. The Commission may order the payment of, and pay, compensation in accordance with the provisions of this Act for personal injury or death which resulted from offenses in the following categories:

- (1) assault with intent to kill, rob, rape;
- (2) assault with intent to commit mayhem;
- (3) assault with a dangerous weapon;
- (4) assault;
- (5) mayhem;
- (6) malicious disfiguring;
- (7) threats to do bodily harm;
- (8) lewd, indecent, or obscene acts;
- (9) indecent act with children;
- (10) arson;
- (11) kidnaping;
- (12) robbery;
- (13) murder;
- (14) manslaughter, voluntary;
- (15) attempted murder;
- (16) rape;
- (17) attempted rape;
- (18) or other crimes involving force to the person.

APPLICATION FOR COMPENSATION

SEC. 303. (a) In any case in which the person entitled to make an application is a child, or incompetent, the application may be made on his behalf by any person acting his parent or attorney.

(b) Where any application is made to the Commission under this Act, the applicant, or his attorney, and any attorney of the Commission, shall be entitled to appear and be heard.

(c) Any other person may appear and be heard who satisfies the Commission that he has a substantial interest in the proceedings.

(d) Every person appearing under the preceding subsections of this section shall have the right to produce evidence and to cross-examine witnesses.

(e) If any person has been convicted of any offense with respect to an act or omis-

sion on which a claim under this Act is based, proof of that conviction shall, unless an appeal against the conviction or a petition for a rehearing or certiorari in respect of the charge is pending or a new trial or rehearing has been ordered, be taken as conclusive evidence that the offense has been committed.

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 agency a statement of the amount of fee charged in connection with his services rendered in such proceedings.

(b) After 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. If, after notice to the attorney of this determination, the Commission and the attorney fail to agree upon a fee, the Commission may, 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 the attorney maintains an office, 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.

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 pecuniary 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 court of appeals, except that no 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 \$25,000.

(c) No compensation shall be awarded if the victim was at the time of the personal injury or death living with the offender as his spouse or in situations when the Commission at its discretion feels unjust enrichment to or on behalf of the offender would result.

TERMS AND PAYMENT OF THE ORDER

SEC. 308. (a) Except as otherwise provided in this section any order for the payment of compensation under this Act may be made on such terms as the Commission deems appropriate.

(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), a State or any of its subdivisions, for personal injury or death compensable under this Act, but only to the extent that the sum of such payments and any award under this Act are in excess of the total compensable injuries suffered by the victim as determined by the Commission.

(c) The Commission shall pay to the person named in the order the amount named therein in accordance with the provisions of such order.

TITLE IV—RECOVERY OF COMPENSATION

RECOVERY FROM OFFENDER

SEC. 401. (a) Whenever any person is convicted of an offense and an order for the payment of compensation is or has been made under this Act for a personal injury or death resulting from the act or omission constituting such offense, the Attorney General may within — years institute an action against such person for the recovery of the whole or any specified part of such compensation in the district court of the United States for any judicial district in which such person resides or is found. Such court shall have jurisdiction to hear, determine, and render judgment in any such action.

(b) Process of the district court for any judicial district in any action under this section may be served in any judicial district of the United States by the United States marshal thereof. Whenever it appears to the court in which any action under this section is pending that other parties should be brought before the court in such action, the court may cause such other parties to be summoned from any judicial district of the United States.

(c) The Commission shall provide to the Attorney General such information, data, and reports as the Attorney General may require to institute actions in accordance with this section.

EFFECT ON CIVIL ACTIONS

SEC. 402. An 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

GRANTS AUTHORIZED

SEC. 501. Under the supervision and direction of the Commission the Executive Secretary is authorized to make grants to States to pay the Federal share of the costs of State programs to compensate victims of violent crimes.

ELIGIBILITY FOR ASSISTANCE

SEC. 502. (a) A State is eligible for assistance under this title only if the Executive Secretary, after consultation with the Attorney General, determines, pursuant to objective criteria established by the Commission under section 504, 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 brought by or on behalf of victims of violent crimes and order the payment of such claims;

(2) providing for the payment of compensation for personal injuries or death resulting from offenses in categories established pursuant to section 504;

(3) providing for the payment of compensation for—

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

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

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

(D) pain and suffering of the victim; and

(E) any other pecuniary loss resulting from the personal injury or death of the vic-

time 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 are eligible 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 that 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 one 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 \$_____ for the fiscal year ending June 30, 1972; \$_____ for the fiscal year ending June 30, 1973; and \$_____ 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.