

MEMORANDUM

DATE: June 22, 1995
TO: Members, Committee on Land and Personal Rights
FROM: Legal Counsel
SUBJECT: Article I, Section 11: Victims of Crime

Attached for your ready reference please find the following:

1. A copy of 6 CMC section 4109 which gives the judge discretion at the time of sentencing to impose on the defendant restitution or compensation to the person damaged.

2. A copy of Senate Bill 9-67 which seeks to implement Article I, Section 11 by establishing an Office of Victim's Rights in the Office of the Attorney General and set up specific procedures for the compensation of victims.

The statute is in some ways broader and in other ways narrower than the Constitution in guaranteeing victim's compensation. It is narrower because it limits compensation to victims who have suffered bodily injury or death. The Constitutional provision applies to all crimes where restitution is appropriate, including property crimes. The statute is broader than the constitutional provision in that it does not limit restitution as a condition of probation or parole. Rather, the statute creates a right of compensation in a victim of specified crimes. The compensation is limited to \$10,000 less insurance proceeds or other recovery. The compensation is obtained upon application to a Commission specially created for the purpose. The money is paid out of certain earmarked funds. The Commission may pursue an independent action to recover the compensation paid to the victim from the perpetrator. Although the maximum recovery is low, it does assure some recovery to the victim even if the defendant is without the financial means to provide restitution.

Senate Bill 9-67 is currently pending the House Standing Committee on Judiciary and Governmental Operations.

6 CMC, Div. 4

Source: PL 3-71, §1205.

§4106. Consideration of Previous Conviction.

Before imposing or suspending the execution of sentence upon a person found guilty of a criminal offense, or in suspending the imposition of sentence and granting probation, evidence of good or bad character, including any prior criminal record of the defendant, may be received and considered by the court.

Source: PL 3-71, §1206.

§4107. Imposition of Fines; Procedure Upon Nonpayment of Fines.

Where an offense is made punishable by fine, the court imposing the fine may give such directions that appear to be just with respect to the payment of the fine. In default of payment of the fine or any part thereof, the court may order the defendant to be imprisoned for such period of time as it may direct. These directions may be given and orders for imprisonment made at any time, and may be modified if the court deems justice so requires, until the fine is paid in full or the imprisonment served which has been ordered in default of payment: provided, that the accused shall be given an opportunity to be heard before any such direction or order is given, made, or modified, except when that is done at the time sentence is imposed; and provided further, that no defendant shall be imprisoned for a longer period of time than that fixed by law for such offense.

Source: PL 3-71, §1207.

§4108. Orders Requiring Specified Residence.

The court may, in lieu of or in addition to other lawful punishment or as a condition of probation or suspension of sentence, direct that a person found by it to be guilty of a criminal offense shall establish his or her place of residence within a specified area and maintain it there for a period of time not exceeding the maximum period of imprisonment which may be imposed for the offense.

Source: PL 3-71, §1208.

§4109. Restitution, Compensation or Forfeiture.

If a defendant is convicted of any offense defined in this Title, the court may, in lieu of or in addition to other lawful punishment or as a condition of probation or suspension of sentence, order restitution or compensation to the owner or person damaged or the forfeiture of wrongfully obtained property to the Commonwealth.

Source: PL 3-71, §1209.

Commission Comment: See NMI Constitution, Article 1, §11.



The Senate

SEN. COMM.
(HOUSE)

9-38

NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

P.O. Box 129
Saipan, MP 96950

MAY 18 1994

Honorable Diego T. Benavente
Speaker
House of Representatives
Ninth Northern Marianas Commonwealth
Legislature
Saipan, MP 96950

Dear Mr. Speaker:

I have the honor to transmit herewith for your action Senate Bill No. 9-67, entitled, "A Bill for an Act to establish an Office of Victim's Rights within the Office of the Attorney General; to require informing victims of violent crimes of their rights; to provide for compensation to victims of violent crimes; to require victim's impact statements be incorporated in every felony pre-sentence report; and for other purposes.", which was passed by the Senate on Second and Final Reading on May 17, 1994, by the unanimous vote of the members present, a quorum being present, Ninth Northern Marianas Commonwealth Legislature, Sixth Special Session, 1994.

Sincerely,

Nicolasa B. Borja
Senate Clerk

Attachment

House Clerk
4-16-94 1:45 pm
CF

A BILL FOR AN ACT

To establish an Office of Victim's Rights within the Office of the Attorney General; to require informing victims of violent crimes of their rights; to provide for compensation to victims of violent crimes; to require victim's impact statements be incorporated in every felony pre-sentence report; and for other purposes.

BE IT ENACTED BY THE NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1 Section 1. Short Title. This Act shall be known and cited as the Victim's
2 Rights Act of 1994.

3 Section 2. Findings. The Legislature finds and declares that an effective
4 criminal justice system requires the protection and assistance of innocent victims
5 of criminal acts in order to preserve their individual dignity and to encourage
6 greater public cooperation in the apprehension and prosecution of criminal
7 defendants. It is the intent of the Legislature to provide method to compensate
8 and assist crime victims by recognizing and implementing fundamental rights of
9 crime victim's and by lessening the financial burden placed on those who suffer
10 bodily injury or death as a consequence of such criminal acts.

11 Further, the Legislature finds and declares that:

12 1. The financial, emotional, and physical effects of a criminal act on
13 the victim and the victim's family are among the essential factors to be
14 considered in the sentencing of the person responsible for the crime,

1 2. In order to impose a just sentence, the court must obtain and
2 consider information about the adverse impact of the crime upon the
3 victim and the victim's family as well as information from and about the
4 defendant; and

5 3. The victim of the crime or a relative of the victim is usually in the
6 best position to provide information to the court about the direct impact of
7 the crime on the victim and the victim's family.

8 Therefore, the purpose of this Act is to: (1) establish an Office of Victim's
9 Rights within the Office of Attorney General; (2) require that a victim's rights are
10 thoroughly explained immediately after a crime is reported; (3) require a victim's
11 impact statement be solicited and considered prior to sentencing a convicted
12 offender who has caused physical or emotional harm to a victim; and (4) assist in
13 the just compensation of a victim who suffers bodily injury or death as a
14 consequence of a criminal act suffered by a crime victim. The provisions of this
15 Act are to be liberally construed to accomplish these purposes.

16 Section 3. Definitions. As used in this Act, the following phrases have the
17 meaning indicated, unless the context clearly indicates otherwise:

18 (a) "Victim" means a person who suffers bodily injury or death as a
19 proximate result of a criminal act of another person, the victim's own good
20 faith and reasonable effort to prevent a criminal act, or his good faith
21 effort to apprehend a person reasonably suspected of engaging in a
22 criminal act. For the purposes of this Act, the term victim shall include,
23 other than a defendant, an immediate family member or legal guardian of a
24 minor or other incapacitated victim, or an immediate family member or
25 personal representative of a deceased victim.

1 (b) "Victim Impact Statement" means a statement providing
 2 information about the financial, emotional, and physical effects of the
 3 crime on the victim and the victim's family with specific information about
 4 the surrounding the commission of the crime, and the manner in which
 5 the crime was perpetrated.

6 (c) "Criminal Act" means an act committed or attempted in the
 7 Commonwealth which when committed by a legally competent actor is
 8 punishable by one year confinement in a jail or prison. For the purpose
 9 of this act, 'criminal act' shall include (1) charged and uncharged offenses,
 10 (2) juvenile offenses and offenses by those with an insanity or diminished
 11 capacity defense, and (3) and traffic offenses which are criminally
 12 prosecuted including but not limited to Driving Under the influence of
 13 Alcohol or Drugs (9 CMC §7105) and Homicide by Vehicle (9 CMC §7110). In
 14 order to be afforded the rights contained herein, there is no requirement
 15 that defendant the criminal act be successfully prosecuted.

16 (d) "Injury" means actual bodily harm; pregnancy; and death.

17 Section 4. Establishment of Office of Victims Rights. An Office of Victims
 18 Rights is hereby established within the Office of the Attorney General. The Office
 19 of Victim's Rights shall be headed by a Victim's Rights Officer. The Victim's
 20 Rights officer shall be designated by the Attorney General and shall report to the
 21 Director. The Victim's Rights officer may not hold any other position within the
 22 Office of the Attorney General. The Victim's Rights Officer shall have the
 23 necessary training in criminal procedure, victim's rights and compensation and
 24 counselling to be an advocate for the victim.

25 Section 5. Duties and Responsibilities. The duties and responsibilities of the
 26 Victim's Rights Officer shall include, but not be limited to:

1 (a) Preparation and dissemination of Victim's Bill of Rights cards
2 enumerating the rights contained in this Chapter to all appropriate
3 agencies;

4 (b) Assist victim's and victim's representative in securing full
5 benefit of said rights;

6 (c) Establish a victim's transportation program to ensure a victim's
7 access to all court appearance;

8 (d) Act as a liaison between the Criminal Division of the Attorney
9 General's Office; the Department of Public Safety (DPS); Public Defender's
10 Office; Department of Youth Services (DYS); and any victim support
11 agencies or groups such as Karidat;

12 (e) Oversee implementation of this Act; and

13 (f) Report quarterly to the Governor and the Legislature as to the
14 status and accomplishments of this office.

15 Section 6. Victims Bill of Rights.

16 (a) At the time of initial contact between a victim of a reported
17 crime and any personnel of the Department of Public Safety, (DPS), said
18 personnel shall provide to the victim written information concerning the
19 following:

20 (1) a statement and explanation of a victim's rights as
21 enumerated in this Act;

22 (2) the availability of victim assistance and medical and
23 emergency services;

24 (3) the availability of victim compensation benefits; including
25 the name, address, and telephone number of contact persons
26 responsible for administering the program,

1 (4) the addresses and phone numbers of appropriate victim
2 support and service groups.

3 (b) Immediately upon contact with any victim, DPS and DYS as the
4 case may be, personnel shall contact the Office of Victim's Rights and
5 provide them with any and all information available, including but not
6 limited to the name, address, the nature of any injuries and current
7 physical status and location of the victim. Such contact shall be within a
8 reasonable period of time after but in no case shall be later than two hours
9 after initial contact with the victim by DPS personnel.

10 (c) Once apprised of such information, the Office of Victim's Rights
11 shall make immediate contact with the victim and assist a victim in the full
12 realization of all rights and benefits under this Act.

13 (d) The Office of Victim's Rights shall promptly provide to the victim
14 the following:

15 (1) the address and telephone number of the prosecutor's
16 office;

17 (2) the case number and the names, addresses, and telephone
18 numbers of the Department of Public Safety officers assigned to
19 investigate the case;

20 (3) information concerning the availability of protection
21 from the defendant including protective court orders;

22 (4) whether the suspect has been taken into custody, and if
23 taken into custody, whether released, and any conditions attached to
24 the release; and

25 (5) a copy of the police report within (two) days of reporting
26 the crime, this may be an initial report and need not include all

1 information gathered in the follow-up investigation, provided such
2 follow-up is made available as soon as possible.

3 Section 7. Procedural Information. A Victim's Rights Officer shall inform a
4 victim of the following:

5 (1) relevant criminal justice procedures, including the date, time,
6 and place of the trial,

7 (2) the actual assignment of the case, including case number, and, if
8 available, the name, address and phone number of the prosecutor, and the
9 court to which assigned;

10 (3) the date, time, and address of all criminal court proceedings
11 relative to the disposition of the offense at which the victim has the right
12 to be present;

13 (4) the availability of victim compensation benefits, including the
14 name, address, and telephone number of contact persons responsible for
15 administering the program;

16 (5) the availability of any transportation or escort services to any
17 court proceeding; and

18 (6) victim's rights under this Act.

19 Section 8. Speedy Prosecution.

20 (a) A victim has the right to the speedy prosecution of the offense.
21 In any criminal-justice proceeding, the court, the prosecutor, and law
22 enforcement officials shall take appropriate action to ensure a speedy
23 prosecution of the defendant. A victim shall be informed by the
24 prosecuting attorney of a motion which would result in delay of the
25 prosecution and be allowed to object in writing.

1 (b) The court shall consider the adverse impact, including any
2 emotional or psychological harm, a delay may have on the victim. The
3 special needs and interests of child, elderly, and physically handicapped
4 victims and victims of sexual crimes shall also be considered. The court
5 shall make a finding on the record why any delay is consistent with these
6 considerations.

7 (c) This provision shall not be construed as creating any additional
8 rights for the defendant.

9 Section 9. Final Disposition Information. The Victim's Rights Officer shall
10 inform a victim of the following:

11 (1) the crimes for which the defendant was originally
12 charged, including a general description of the elements of the
13 crime;

14 (2) the crimes for which the defendant was convicted or
15 acquitted;

16 (3) the function of the presentence report, including the
17 name and phone number of the officer preparing the report and the
18 right of the victim to make a victim impact statement under this Act;

19 (4) the defendant's right to view the presentence report and
20 impact statement;

21 (5) the date, time, and place of any sentencing hearing;

22 (6) the victim's right to attend and to express an opinion at the
23 sentencing hearing of the appropriateness of any proposed
24 sentence for court consideration;

25 (7) the time and place of any hearing for the reconsideration
26 of the sentence imposed; and

1 (8) the right to receive information from DPS concerning
2 imprisonment and release.

3 Section 10. Appeal Information. The Attorney General's Office on appeal
4 shall inform the victim if the defendant seeks appellate review of a conviction or
5 sentence, the status of the case on appeal, and the decision of the appellate court
6 upon disposition.

7 Section 11. Submission of Victim Impact Statement to the Court.

8 (a) Prior to imposition of sentence in a felony case, the Office of
9 Victim's Rights shall prepare a written victim impact statement and append
10 it to the presentence report on the defendant prepared by the probation
11 department. The statement shall include applicable information obtained
12 during consultation with the victim or the victim representative. If the
13 victim or the victim representative cannot be located or declines to submit
14 information for the preparation of the statement, the probation
15 department shall include a notation to that effect in the statement. If there
16 are multiple victims and preparation of individual victim impact statements
17 is not feasible, the probation department shall submit one or more
18 representative statements.

19 (b) Prior to imposition of sentence in both felony and misdemeanor
20 cases, the victim or the victim representative may also submit a victim
21 impact statement in one or both of the following ways:

22 (1) By presenting an oral victim impact statement at the
23 sentencing hearing. However, where there are multiple victims, the
24 court may limit the number of oral victim impact statements

1 (2) By submitting a written statement to the probation
2 department, which shall append such statement to the presentence
3 report of the defendant.

4 Section 12. Access to Written Victim Impact Statements. The Court shall
5 make available copies of the statement to the defendant, defendant's counsel, and
6 the Attorney General's Office. These parties shall return all copies of the
7 statement to the court immediately following the imposition of sentence upon the
8 defendant.

9 Section 13. Consideration of the Victim Impact Statement. Any victim
10 impact statement submitted to the court under Section 6 of this Act shall be among
11 the factors considered by the court in determining the sentence to be imposed
12 upon the defendant.

13 Section 14. Limitation. This statute shall not be construed to require a
14 victim or victim representative to submit a victim impact statement or to
15 cooperate in the preparation of a victim impact statement.

16 Section 15. Victim Services. A victim must be informed by the Office of
17 victim's Rights as to the availability of the following services:

- 18 (1) volunteer support groups that work with crime victims;
19 (2) follow up support for victims and their families in order to
20 ensure that they receive necessary assistance;
21 (3) services for child victims directed to their special needs;
22 (4) services for elderly victims directed to their special needs;
23 (5) liaison with and referral to special counseling facilities and
24 community service agencies;
25 (6) transportation and household assistance to promote victim
26 participation in the criminal justice process.

1 (7) assistance in dealing with creditors and credit reporting
2 agencies as the result of financial exigency caused by the crime.

3 (8) translation services and bilingual information; and

4 (9) child-care services for a victim during testimony and interview
5 periods.

6 Section 16. Property Return. A victim has the right to prompt return of
7 the victim's property except property that is:

8 (1) necessary for the prosecution of a crime;

9 (2) contraband; or

10 (3) subject to evidentiary analysis.

11 Section 17. Victim's Right to Privacy.

12 (a) A victim has the right not to testify at any court proceeding
13 regarding the victim's address, telephone number, place of employment, or
14 other personal information unless the court finds it necessary to that
15 proceeding.

16 (b) The victim's address, telephone number, place of employment, or
17 other personal information shall not be in the court file, any court
18 documents or any public law enforcement agency records unless
19 determined by the court to be necessary.

20 Section 18. Victim's Right to be Kept Informed of the Progress of any
21 Prosecution. Unless inconsistent with the requirements of on going investigative
22 activities, a victim has the right after a crime be kept informed of the progress of
23 the prosecution including the filing decision, plea negotiations, dismissal, or
24 other disposition.

25 Section 19. Victim Safety. A victim or witness has a right to protection
26 from harm or harassment, intimidation, or retaliation arising from cooperating

1 in the reporting, investigation, and prosecution of a crime, including a right to
 2 be escorted to and from the courthouse and the courtroom by a court officer
 3 whenever there is a known danger to the victim or witness.

4 Section 20. Limitations on Employers. a victim may not be discharged or
 5 disciplined by the victim's employer for honoring a subpoena to testify or for
 6 necessary participation in the preparation of any criminal proceeding.

7 Section 21. Compliance with Act.

8 (a) Unless otherwise required, the information requirements of this
 9 Act can be accomplished either in writing or orally. The responsible
 10 agency must provide the information on a timely basis and must keep a
 11 victim informed as to significant changes.

12 (b) A victim has the responsibility to keep authorities informed as to
 13 any change of address.

14 (c) Failure to comply with this Act does not create a claim for relief
 15 or cause of action for money damages.

16 (d) A defendant has no standing to object to a failure to comply with
 17 this Act.

18 Section 22. Creation of the Criminal Injuries Compensation Commission.

19 There is within the government of the Commonwealth a Criminal Injuries
 20 Compensation Commission which shall be composed of five (5) members appointed
 21 by the Governor with the advice and consent of the Senate. One (1) member of
 22 the Commission shall be an attorney who is not a government attorney. One
 23 member shall participate in a victim's assistance program either with the
 24 Commonwealth Health Center or a private agency such as KARIDAT. The
 25 Commission is within the Department of Finance for administrative purposes
 26 Annually, the members shall elect a chairperson of the Commission

1 Section 23. Tenure of members. The term of office of each member of the
2 Commission shall be four (4) years or until his successor is appointed except that
3 the terms of office of the members first taking office shall expire as designated by
4 the Governor at the time of appointment as follows: One (1) at the end of one (1)
5 year, one (1) at the end of two (2) years, one (1) at the end of three (3) years, and
6 two (2) at the end of four (4) years. Any member appointed to fill the vacancy
7 occurring prior to the expiration of the term for which his predecessor was
8 appointed, shall be appointed for the remainder of the term. A vacancy in the
9 Commission shall not affect its powers. If any member of the Commission is unable
10 to act because of absence, illness or other sufficient cause, the Governor may
11 make a temporary appointment, and such appointee shall have all the powers and
12 duties of a regular member of the Commission for the period of his appointment.

13 Section 24. Powers and Procedures of Commission. Upon an application
14 made to the Commission under this Chapter, the Commission shall fix a time and
15 place for a hearing on such application and shall cause notice thereof to be given
16 to the applicant. The Commission may hold such hearings, sit and act at such
17 times and places, and take such testimony as the Commission may deem advisable.
18 Any three (3) members shall constitute a quorum. The concurring vote of three
19 (3) members shall be necessary to take any action. Any member of the
20 Commission may administer oaths or affirmations to witnesses appearing before
21 the Commission. The Commission shall have such powers of subpoena and
22 compulsion of attendance of witnesses and production of documents and of
23 examination of witnesses as are conferred upon the Superior Court. Subpoena
24 shall be issued under the signature of the Chairman. The Superior Court may,
25 upon the application of the commission, enforce the attendance and testimony of
26 any witness and the production of any documents so subpoenaed. Subpoena and

1 witness fees and mileage shall be the same as in criminal cases in the Superior
2 Court, and shall be payable from funds appropriated for expenses of
3 administration

4 Section 25. Hearings and evidence.

5 (a) Where any application is made to the Commission, the applicant
6 and the Commission's legal advisor shall be entitled to appear and be heard.
7 Any other person may appear and be heard who satisfied the Commission
8 that he has a substantial interest in the proceedings. In any case in which
9 the person entitled to make an application is a child, the application may be
10 made on his behalf by his parent or legal guardian. In any case in which
11 the person entitled to make an application is mentally defective, the
12 application may be made on his behalf by his guardian or such other
13 individual authorized to administer the estate.

14 (b) Where under this chapter a person is entitled to appear and be
15 heard by the Commission, that person may appear in person or by his
16 attorney. All hearings shall be open to the public unless, in a particular
17 case, the Commission determines that the hearing, or portion thereto,
18 should be held in private, having regard to the fact that the offender has
19 not been convicted or to the interest of the victim of an alleged sexual
20 offense.

21 (c) Every person appearing under this Chapter shall have the right
22 to produce evidence and to cross-examine witnesses. The Commission may
23 receive as evidence any statement, document information or matter that
24 may, in the opinion of the Commission contribute to its functions under
25 this Chapter, whether or not such statement, document, information or
26 matter would be admissible in court of law.

1 (d) If any person has been convicted of any offense with respect to
2 an act or omission on which a claim under this Chapter is based, proof of
3 that conviction unless an appeal against the conviction or a petition for a
4 hearing in respect of the charge is pending or new trial or rehearing has
5 been
6 ordered, shall be taken as conclusive evidence that the offense has been
7 committed.

8 Section 26. Medical examination. The Commission may appoint a impartial
9 licensed physician to examine any person making application under this Chapter,
10 and the fees for the examination shall be paid from funds appropriated for
11 expenses of administration.

12 Section 27. Attorney fees.

13 (a) The Commission may, as part of an order entered under this
14 Chapter, determine and allow reasonable attorney fees, which if the award
15 of compensation is more than One Thousand Dollars (\$1,000) shall not
16 exceed fifteen percent (15%) of the award, to be paid out of but not in
17 addition to the award, to the attorneys representing the applicant;
18 provided, that the amount of the attorney fees shall not, in any event,
19 exceed the award of compensation remaining after deducting that portion
20 thereof for expenses actually incurred by the claimant.

21 (b) Any attorney who charges, demands, receives or collects for
22 services rendered in connection with any proceedings under this Chapter
23 any amount in excess of that allowed under this section, shall be fined not
24 more than Two Thousand Dollars (\$2,000).

1 Section 28. Reconsideration by Commission; Judicial Review

2 (a) The Commission may, on its own motion or on the application of
3 any person aggrieved by an order or decision of the Commission,
4 reconsider the order or decision and revoke, confirm and verify the order
5 or decision, based upon the findings of the Commission.

6 (b) Any person aggrieved by an order or decision of the Commission
7 on the sole ground that the order or decision was in excess of the
8 Commission's authority or jurisdiction, shall have a right of appeal to the
9 Superior Court; provided, that the appeal is filed with the Commission
10 within thirty (30) days after service of an original or a certified copy of
11 such order or decision. Except as otherwise provided in this Section, orders
12 and decisions of the Commission shall be conclusive and not subject to
13 judicial review.

14 Section 29. Eligibility for Compensation.

15 (a) In the event any person is injured or killed by any act or
16 omission of any other person coming within the criminal jurisdiction of
17 the Commonwealth after the effective date of this Act, which act or
18 omission is within the description of the crimes enumerated in Section 31,
19 the Commission may, in its discretion, upon an application, order the
20 payment of compensation in accordance with this Chapter:

21 (1) To or for the benefit of the victim;

22 (2) To any person responsible for the maintenance of the
23 victim, where that person has suffered pecuniary loss or incurred
24 expenses as a result of the victim's injury or death;

25 (3) In the case of the death of the victim, to or for the benefit
26 of any one or more of the dependents of the deceased victim, or

1 (4) To a parent of an adult deceased victim, or to an adult son or
2 daughter of a deceased victim, where the parent or adult son or
3 daughter has incurred expenses on account of hospital, medical,
4 funeral and burial expenses as a result of the victim's injury and
5 death

6 (b) For the purposes of this Chapter, a person shall be deemed to
7 have intentionally committed an act or omission notwithstanding that by
8 reason of age, insanity, drunkenness or otherwise he was legally incapable
9 of forming a criminal intent.

10 (c) In determining whether to make an order under this Section,
11 the Commission may consider any circumstances it determines to be
12 relevant, and the Commission shall consider the behavior of the victim and
13 whether, because of provocation or otherwise, the victim bears any share
14 of responsibility for the crime that caused his injury or death and the
15 Commission shall reduce the amount of compensation in accordance with
16 its assessment of the degree of such responsibility attributable to the
17 victim.

18 (d) An order may be made under this Section whether or not any
19 person is prosecuted for or convicted of a crime arising out of an act or
20 omission described in Subsection (a) of this Section; provided that an arrest
21 has been made or such act or omission has been reported to the police
22 without undue delay. No order may be made under this Section unless the
23 Commission finds that:

24 (a) The act or omission did occur; and

25 (b) The injury or death of the victim resulted from the act or
26 omission.

1 (c) Upon application from the Attorney General, the Commission
2 may suspend proceedings under this Chapter for such period as it deems
3 desirable on the ground that a prosecution for a crime arising out of the
4 act or omission has been commenced or is imminent, or that release of the
5 investigation report would be detrimental to the public interest.

6 Section 30. Violent Crimes.

7 (a) The crimes to which this Chapter applies are the following and
8 no other:

- 9 (1) Murder (6 CMC §1101);
- 10 (2) Manslaughter (6 CMC §1102);
- 11 (3) Assault with a dangerous weapon (6 CMC §1204);
- 12 (4) Aggravated Assault and Battery (6 CMC §1203);
- 13 (5) Assault and Battery (6 CMC §1202);
- 14 (6) Kidnapping (6 CMC §1421);
- 15 (7) False Arrest (6 CMC §1422);
- 16 (8) Rape (6 CMC §1301);
- 17 (9) Rape of a Spouse (6 CMC §1302);
- 18 (10) Criminal Sodomy (6 CMC §1305);
- 19 (11) Criminal Oral Copulation (6 CMC §1307);
- 20 (12) Rape by object (6 CMC §1309);
- 21 (13) Sexual Abuse of a Child (6 CMC §1311)

22 (b) For the purpose of this Chapter, the operation of a motor vehicle,
23 boat or aircraft that results in an injury or death shall not constitute a
24 crime, unless the injuries were intentionally inflicted through the use of
25 such vehicle, boat or aircraft or the operator was under the influence of
26 alcohol and/or drugs in violation of 9 CMC §7105

1 (c) Upon termination of the Judicial Building Fund, any fine or fee
2 imposed by the courts of the Commonwealth pursuant to Title 6 and Title 9
3 of the Commonwealth Code shall be paid into the Criminal Injuries
4 Compensation Fund established by Section 37 of this Chapter.

5 Section 31. Award of Compensation. The Commission may order only from
6 available balances in the Criminal Injuries Compensation Fund the payment of
7 compensation under this Chapter for:

8 (1) Expenses actually and reasonably incurred as a result of
9 the injury or death of the victim;

10 (2) Loss to the victim of earning power as a result of total or
11 partial incapacity;

12 (3) Pecuniary loss to the dependents of the deceased victim;
13 and

14 (4) Any other pecuniary loss directly resulting from the
15 injury or death of the victim which the Commission determines to be
16 reasonable and proper. The Commission shall use when possible the
17 guidelines established by the Worker's Compensation Board in
18 determining appropriate monetary awards.

19 Section 32. Recovery from offender. Whenever any person is convicted of
20 an offense that includes any crime enumerated in Section 30 of this Chapter and
21 an order for the payment of compensation is or has been made under this Chapter
22 for injury or death resulting from the act or omission constituting such offense,
23 the Commission may institute a derivative action in the Superior Court against the
24 person or against any person liable at law on his behalf, in the name of the
25 victim or such of his dependents as have been awarded compensation under this
26 Chapter, for such damages as may be recoverable at common law by the victim or

1 such dependents without reference to the payment of compensation. The court
2 shall have jurisdiction to hear, determine and render judgment in any such
3 action. The time of the occurrence of the act or omission until conviction of the
4 offense and, thereafter, as long as the offender is in confinement for conviction
5 of the offense, shall not constitute any part of the time limited for the
6 commencement of the action by the Commission under the applicable statute of
7 limitations. Any recovery in the action shall belong to the Commonwealth
8 Government; provided, that the Commission shall amend its order of compensation
9 to provide for the payment of any portion of the recovery in excess of the amount
10 of compensation prescribed in the order to any of the persons entitled to receive
11 compensation under Section 29 of this Chapter in such proportions and upon such
12 terms as the Commission shall deem appropriate.

13 Section 33. Terms of order. Except as otherwise provided in this Chapter,
14 any order for the payment of compensation under this Chapter, any order for the
15 payment of compensation under this Chapter may be made on such terms as the
16 Commission deems appropriate. Without limiting the generality of the preceding
17 sentence, the order may provide for apportionment of the compensation, for the
18 holding of the compensation or any part thereof in trust, for the payment of the
19 compensation in a lump sum or periodic installments, and for the payment of
20 compensation for hospital, medical, funeral and burial expenses directly to the
21 person who has provided such services. All such orders shall contain words
22 clearly informing the claimant that all awards and orders for payments under
23 this Chapter are subject to the making of an appropriation by the Legislature to
24 pay the claim, except as otherwise provided in Section 35 of this Chapter.

1 Section 34. Limitations upon award of compensation.

2 (a) No order for the payment of compensation shall be made under
3 this Chapter unless the application has been made within eighteen (18)
4 months after the date of injury, or death.

5 (b) No compensation shall be awarded under this Chapter in an
6 amount in excess of Ten Thousand Dollars (\$10,000).

7 Section 35. Criminal Injuries Compensation Fund; When Payments
8 Authorized.

9 (a) There is hereby established a Criminal Injuries Compensation
10 Fund (the "Fund") separate and apart from other funds fo the
11 Commonwealth Government, from which the Commission may make
12 payments provided in Subsection (b) of this Section. The Director of
13 Finance shall be the certifying officer of the Fund, and all payments
14 therefrom shall be paid by him upon order of the Commission.

15 (b) Payment to the Criminal Injuries Compensation Fund shall be
16 from legislative appropriation, reimbursement and subrogation as
17 provided herein and from any contributions or grants specifically so
18 directed.

19 (c) Where the Commission has made an award pursuant to this
20 Chapter, the Commission shall make such payments from the Fund to or on
21 behalf of the victim, or to or for the benefit of one or more of the
22 dependents of a deceased victim, or to or for the benefit of other persons
23 who have suffered pecuniary loss or incurred expenses or account of
24 hospital, medical, funeral and burial expenses as a result of the victim's
25 injury or death. Payments made pursuant to this Section shall not exceed
26 the total amount of the award.

1 Section 36. Recovery from collateral source.

2 (a) In determining the amount of compensation to be awarded under
3 this Chapter, the Commission shall deduct amounts or benefits received or
4 to be received from any source, whether from the offender or from any
5 person on behalf of the offender, or from public or private funds
6 including any benefits received from any public or private insurance, and
7 which amounts or benefits result from or are in any manner, directly or
8 indirectly, attribute to the injury or death which gave rise to the award
9 provided, that no deduction shall be made for death benefits received or to
10 be received under any insurance policy covering the life of a deceased
11 victim.

12 (b) Where compensation is awarded under this Chapter and the
13 person receiving the same also receives any sum required to be, and that
14 has not been deducted under Subsection (a) of this Section, he shall refund
15 to the Commonwealth Government the lesser of the sum or the amount of
16 the compensation paid to him under this Chapter.

17 Section 37. Legal advisor. The Attorney General shall serve as legal advisor
18 to the Commission.

19 Section 38. Exemption from execution. No compensation payable under
20 this Chapter shall, prior to actual receipt thereof by the person or beneficiary
21 entitled thereto, or their legal representatives, be assignable or subject to
22 execution, garnishment, attachment or other process whatsoever, including
23 process to satisfy an order or judgment for support or alimony.

24 Section 39. Survival and Abatement. The rights of compensation created
25 by this Chapter are personal and shall not survive the death of the person or
26 beneficiary entitled thereto; provided, that if such death occurs after an

1 application for compensation has been filed with the Commission, the proceeding
2 shall not abate, but may be continued by the legal representative of the decedent's
3 estate.

4 Section 40. Rule-making powers. In the performance of its functions, the
5 Commission may adopt, amend and repeal, rules and regulations, not inconsistent
6 with this Chapter, prescribing the procedures for conducting its business, the
7 procedures to be followed in the filing of applications and the proceedings under
8 this Chapter and such other matters as the Commission deems appropriate.

9 Section 41. Commission staff. Supervisory, administrative and clerical
10 personnel necessary for the efficient functioning of the commission may be
11 appointed as provided by and provided further, the number of FTE's shall not
12 exceed five (5).

13 Section 42. Annual report. The Attorney General shall transmit annually
14 to the Governor and to the Legislature a report of the Commission's activities
15 under this Chapter, including the name of each applicant, a brief description of
16 the facts in each case, and the amount, if any, of compensation awarded. The
17 Attorney General shall transmit the report, together with a tabulation of the total
18 amount of compensation awarded, and a proposed bill appropriating funds
19 necessary to replenish the Fund for the compensation awarded.

20 Section 43. Appropriation Authorization. Fifty Thousand Dollars (\$50,000)
21 are authorized for appropriation from the General Fund to the Criminal Injuries
22 Compensation Fund, to be paid into such fund not later than ninety (90) days after
23 the passage of this Act.

24 Section 44. Funding. The Legislature shall within ninety (90) days from
25 the effective date of this Act enact a law appropriating funds, provided that the
26 Executive Branch identifies internal resources for the operation and activities of

1 the Office of Victim Rights. This law shall provide funds that are separate and
2 apart from the general operation and activities of the Office of the Attorney
3 General.

4 Section 45. Other Claims. Nothing in this Act shall preclude a crime victim
5 from bringing a private action to recover up to treble damages and attorneys fees
6 from the criminal, and when the likelihood of recovery is found by the court
7 having jurisdiction to be strong, it may appoint counsel for the victim.

8 Section 46. Severability. If any section of this Act or any regulation issued
9 under the authority of this Act should be declared invalid or unenforceable by a
10 court of competent jurisdiction, the judicial determination shall not affect the
11 validity of the Act or regulations as a whole, or any part thereof, other than the
12 particular part declared invalid or unenforceable.

13 Section 47. Effective Date. This Act shall take effect upon approval by the
14 Governor or upon its becoming law without such approval.

Date: 3/17/94

Introduced by: /s/ P.A. Manglona
SEN. PAUL A. MANGLONA