LAMBERT V. NEBRASKA CRIME VICTIM'S
REPARATIONS BOARD: JUSTICE FOR VICTIMS
OF CRIME IN NEBRASKA?

INTRODUCTION

Violent crimes occur with staggering frequency in America — from 1973 to 1979 there were an estimated 40,035,000 rape, robbery, and assault victimizations and 118,096 victims of homicide.\(^1\) While the numbers are overwhelming, it must be remembered that these "statistics" represent human lives. The tremendous increase in violent crime in recent decades has been accompanied by developments in criminal law advocating the rights of those accused of crimes and those convicted of crimes.\(^2\)

In seeking protection for the rights of criminals, however, the rights of the victim were lost from view.\(^3\) The Victim and Witness Protection Act of 1982 stated: "All too often the victim of serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim."\(^4\) Recognizing the injustice rendered to innocent victims of crime, many states enacted victim compensation programs to ease the plight of the crime victim.\(^5\)

This Comment will establish the validity of victim compensation programs through a review of the history of victim compensation and through discussion of the theoretical and practical justifications for governmental victim compensation programs. The adequacy of other remedies available to crime victims will also be examined. A summary and analysis of Lambert v. Nebraska Crime Victim's Reparations Board,\(^6\) which was the first case involving the Crime Victim's Reparations Board to reach the Nebraska Supreme Court, will be given. The remainder of the Comment will review the Nebraska Crime Victim's Reparations Act and the rules and regulations under which the Board operates.

3. Id.
HISTORY AND JUSTIFICATION OF VICTIM COMPENSATION

Historical Perspective

The concept of compensation for crime victims is not a modern development but is one which has manifested itself throughout history. The earliest reference to victim compensation dates back over 4,000 years to the Code of Hammurabi. Criminal law in primitive and early Western societies was based on personal reparation to the victim by the offender or his family.

While compensation under the Code of Hammurabi applied mainly to property damage, the early Hebrew culture developed a compensation scheme which applied to personal injuries as well. Under the Old Testament law, a man who injured another had to compensate the victim for his loss of time and provide for his complete cure. The concept of victim compensation was also found within the Greek, Roman, and ancient Germanic societies. Homer eluded to the practice of compensation in the Ninth Book of the Iliad. The ancient German practice of compensation was stated by Tacitus: “[E]ven homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state.”

The early Anglo-Saxon legal system was a system of tribal jus-
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The family or kinship group was considered the injured party. The family was also considered to have committed the crimes of its members and thus had to either atone or carry out the blood-feud. The organization of Saxon society changed under feudalism and the influence of Christianity, with the blood-feud being replaced by a system of money payments as compensation for injury.

The development of a humanistic attitude toward the criminal and the replacement of early compensation systems by state prosecution of criminals left the crime victim in the shadows with limited chance of remedy for his injuries. The plight of the crime victim and the need for victim compensation was revived in the nineteenth century through the writings of Jeremy Bentham and the Italian criminologists Garofalo and Ferri. Bentham suggested that a public obligation to crime victims existed: "Has a crime been committed? Those who have suffered by it, either in their person or their fortune, are abandoned to their evil condition. The society which they have contributed to maintain, and which ought to protect them, owes them, however, an indemnity, when its protection has not been effectual." Garofalo and Ferri viewed victim compensation as a public responsibility and contended that penal law should include state indemnification of crime victims.

The contemporary revival of interest in crime victim compensation is attributable to the work of English social reformer Margery Fry. Fry contended that enlightened social policy demanded an ob-

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16. Id.
17. Id. at 655. The feud was a kinship matter and occurred only between kinship groups. The blood-feud contained within it the idea of collective responsibility. The clan was responsible as a group for the offenses of its members, and thus for their atonement. Id.
18. Id. The wer or wergild was monetary compensation paid to a family if a member of that family were killed or injured; the bot was paid as compensation for injuries less than death; the wite was a public fine payable to a lord or king. Id.
19. Note, supra note 2, at 90.
20. H. EDELHERTZ & G. GEIS, supra note 7, at 8.
21. Childres, supra note 7, at 448-49.
22. 1 THE WORKS OF JEREMY BENTHAM 579 (J. Bowring ed. 1843).
23. Wolfgang, supra note 7, at 227. Ferri argued that "the state should take into account the rights of the victim, paying him an immediate satisfaction, especially when blood has been shed, looking to the offender to reimburse it for its expense, as well as for the expense of trial." Id. at 232 (quoting FERRI, CRIMINAL SOCIOLOGY 511-12 (1917)).
24. H. EDELHERTZ & G. GEIS, supra note 7, at 10. In her book, ARMS OF THE LAW, Fry appealed for a return to compensation for victims of crime, stating:

Have we not neglected overmuch the customs of our earlier ancestors in the matter of restitution? We have seen that in primitive societies this idea of
ligation of the state to ameliorate the deprivation suffered by its members.25 Largely due to the determined efforts of Fry, the authorities in New Zealand and Great Britain began to address the subject of victim compensation.26 In 1963, New Zealand became the first jurisdiction to enact legislation creating a special program for compensating crime victims.27 Great Britain soon followed, establishing a nonstatutory victim compensation program in 1964.28

The emergence of the New Zealand and Great Britain programs stirred an interest in victim compensation programs in the United States.29 In his 1964 lecture on equality and government action, Associate Justice Arthur J. Goldberg of the United States Supreme Court voiced support of crime victim compensation in America:

Whenever the government considers extending a needed service to those accused of crime, the question arises: But what about the victim? We should confront the problem of the victim directly; his burden is not alleviated by denying necessary services to the accused. Many countries throughout the world, recognizing that crime is a community problem, have designed systems for government compensation of victims of crime. Serious consideration of this approach is long overdue here.30

Led by California in 196531 and New York in 1966,32 a wave of legislation has swept the country in the past twenty years, with more than thirty states enacting programs to compensate crime victims.33 Whether victim compensation programs were merely a phenomenon of the 1960's and 1970's flowing from the tide of the times or whether the concept will flourish as part of the criminal justice system depends largely upon the foundational principles on which the programs rest.

"making up" for a wrong has wide currency. Let us once more look into the ways of earlier man, which may still hold some wisdom for us.

26. Id. at 11.
27. Id.
28. Id.
29. Id. at 12.
JUSTIFICATION RATIONALES

While a sense of justice and fairness seems to demand reparation for innocent victims of crime, legislation creating victim compensation programs must be predicated on a prescriptive theoretical foundation so that program policies can be effectuated. Although numerous reasons supporting the creation of compensation programs have appeared, there are three theories which are most frequently posited as rationales for victim compensation: (1) citizens have a legal right to compensation; (2) the state and its citizens have a social responsibility to aid innocent victims; and (3) the welfare state has a moral obligation to provide compensation for the injuries of crime victims.

Theoretical Justifications

The idea of a "legal right" to compensation is said to arise from the historic separation of the victim from the criminal process. From a historical standpoint:

The evolution of modern criminal law has been one of gradual preemption of the victim's rights to private redress. While the need for public law enforcement does not automatically erase the victim's private interests, the public system has in fact evolved at the expense of the victim, i.e., the relegation of his historically superior rights to a secondary, often impotent position.

The United States Attorney General's Task Force on Violent Crime reported that the government owes a duty to protect its citizens as a result of citizens giving up the right to "personally enforce the law and to collect their own retribution." Thus, it is argued that the state, having usurped the victim's remedy, owes a legal obligation to compensate the victim.

36. Id. For discussion of this rationale, see notes 40-49 and accompanying text infra.
37. Id. For discussion of this rationale, see notes 50-60 and accompanying text infra.
38. Id. For discussion of this rationale, see notes 61-67 and accompanying text infra.
41. TASK FORCE REPORT, supra note 1, at 88.
42. Harland, Compensating the Victims of Crime, 14 CRIM. L. BULL. 203, 206
Another rationale supporting a "legal right" to compensation maintains that the victim is entitled to compensation because the state has failed to adequately protect him. Justice Arthur J. Goldberg argued that "[t]he victim of a robbery or an assault has been denied the 'protection' of the laws in a very real sense, and society should assume some responsibility for making him whole." This rationale echoed in the writings of Margery Fry when she argued: "The state which forbids our going armed in self-defense cannot disown all responsibility for its occasional failure to protect." The state's demand that the citizen rely upon it for law enforcement creates a special relationship between itself and the crime victim. Thus, a citizen who has fallen victim to crime acquires a legal right to compensation, as the state has failed in its protective function upon which the citizen has relied.

While the existence of a legal right seems to be a strong argument for justifying victim compensation, it is not one which the states have generally accepted. The "sovereign immunity" barrier protects the states from liability for failures of police protection. Courts have held that the state does not assume any liability for indemnification of crime victims' injuries by enacting compensation legislation, nor do they abandon any immunity which they possess. The states are therefore able to rely on sovereign immunity to prevent any strict liability for injuries suffered by crime victims.

The second justification offered for victim compensation is that the state has a social responsibility to aid innocent victims of crime. The social responsibility argument develops along two lines: (1) the responsibility of the state exceeds that of the victim; and (2) given the premise that criminal violence is endemic to society, the only tol-

43. Note, supra note 35, at 95. See also Brooks, supra note 34, at 479; Haas, supra note 42, at 192; Harland, supra note 42, at 206.
44. Goldberg, supra note 30, at 224.
47. Comment, supra note 5, at 535. See also Note, supra note 35, at 95-96.
48. Comment, supra note 5, at 535.
erable way to sustain the damage is to share it in common.\(^{50}\)

The first line of reasoning holds that society is largely responsible for violent criminal behavior and therefore has an obligation to compensate crime victims.\(^{51}\) The state’s social responsibility for victim compensation arises from its failure to correct societal problems which contribute to the development of criminals.\(^{52}\) Justice Goldberg stated the argument as follows:

Attempts to understand the roots of crime take us into a complex of factors, including economic deprivation, alienation, racial discrimination, and ignorance. In a fundamental sense, then, one who suffers the impact of criminal violence is also the victim of society’s long inattention to poverty and social injustice. It is only right that society, through a program of public compensation, recognize its obligation toward these victims.\(^{53}\)

If society tolerates the sources of crime—such as ghettos, slums, drug-addiction, and organized crime—then it should be responsible for compensating crime victims for the resultant damage.\(^{54}\)

The other line of social responsibility reasoning holds that since criminal violence is endemic to society, its damages should be shared in common. This has been labeled the “risk-sharing” theory\(^{55}\) and is analogous to the principles upon which workers’ compensation\(^{56}\) and products liability\(^{57}\) are based.

The purpose of a crime victim compensation plan is to shift the cost of society’s failures and distribute them among its members.\(^{58}\) The goal of workers’ compensation is to shift the burden of accidental injuries from the employee to the industry and the employer, who can distribute the loss among consumers.\(^{59}\) Thus, the risk of being a victim of crime, just as the risk of accidental injury while working, is distributed equally among all citizens.

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50. Childres, supra note 7, at 455.
52. See id. Wolfgang’s thesis is that “violence in American society is the product of two factors: (1) the acculturation of children into patterns of violence; and (2) the exclusion of certain groups from responsible channels of political communication.” Id. at 6.
54. Childres, supra note 7, at 456.
56. Comment, supra note 40, at 84-87. See also Childres, supra note 7, at 458; Note, supra note 2, at 94.
57. Comment, supra note 40, at 87-89. See also Comment, supra note 55, at 228.
59. Comment, supra note 40, at 85.
A similar analogy which justifies victim compensation programs can be drawn from the theory of products liability. Just as the losses suffered from injuries caused by defective products are distributed by the manufacturer among all consumers, so too can the losses suffered by innocent crime victims be distributed by the government among all citizens. The state, therefore, has a social responsibility to compensate crime victims so that their loss can be shared equitably by all of society.

The third major rationale offered for justifying victim compensation programs is based on a view of our society as a "welfare state," imposing upon the government a moral obligation to provide compensation to crime victims. This argument calls on the conscience of the citizens, contending that "[j]ust as modern humanistic thinking dictates public assistance for the disabled veteran, the sick, the unemployed and the aged, so should the suffering victim of crime also be assisted." The "moral obligation" rationale is supported by those who favor victim compensation but who do not want to make it a legal right—compensation remaining something the state ought to do but not something it must do. Several states have clearly followed this theory, enacting programs which make payments on an ex gratia basis. Programs which are based on the "social welfare" theory generally restrict payments on a financial need basis. Such programs have been criticized as lacking legal foundation and as acting merely as another welfare service.

Some writers contend that no theoretical justification is necessary to adopt a victim compensation program. Rather, it is suffi-
cient that such a program is advantageous to the public interest—a need exists and the state has the capacity to meet it. While theory may seem unnecessary, "the lack of a theoretical justification still leaves one with difficult questions to answer whereas a theoretical justification pretty well carries with it a mandate for handling subsequent considerations." As well as the ample theoretical justifications which exist, there are several pragmatic reasons for maintaining victim compensation programs.

**Practical Justifications**

While theoretical principles are a necessary foundation for legislation, important practical considerations also exist which justify victim compensation programs. The most prominent reasons include the enhancement of crime prevention, i.e., deterrence, and meeting the needs of the crime victim.

It has been stated that crime prevention is the most valid justification for victim compensation legislation. The Executive Director of the Victim's Assistance Legal Organization (VALOR) contends that deterrence is one of the most important concepts in the area of victim advocacy and assistance. Many law enforcement goals could not be reached without the cooperation of the victim, but the victim seldom realizes any benefit for his efforts. It is no wonder that a large percentage of crimes are not even reported by their victims, who feel they may have more to lose than to gain by reporting the crime to the police. If a crime victim has the opportunity to receive

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I am content to do without theoretical justifications for compensation of victims of violence. After all, these are questions of public welfare and they should be determined by public opinion. . . . If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out . . . .


69. *Id.* at 485.

70. *Id.* at 486.

71. McAdam, *supra* note 65, at 353.


By getting involved by going to the police, not only will the victim be faced with the near certainty of not receiving any compensation regardless of whether or not the offender is ever apprehended, he will also face the probability of losing whatever time the state thinks necessary should it need him to testify if the offender is apprehended and brought to trial. . . . For the individual who may have already suffered loss of income as a result of not being able to work following a criminal attack it is simply more realistic not to risk losing more time off the job by pressing a grievance.

*Id.*
compensation from the state, he is more apt to report the crime.\textsuperscript{75} The United States Attorney General's Task Force on Violent Crime acknowledged this fact in a recent report:

\begin{quote}
[\textit{E}xperience has shown that victims and witnesses are much more apt to report crimes in the first place, and, secondly, to cooperate with the authorities once a case is brought to their attention, if they perceive that the government cares about them and will do everything feasible to protect their rights. If victims and witnesses cooperate fully with the criminal justice system, it will be much easier to bring to justice and punish those responsible for breaking the law.]\textsuperscript{76}
\end{quote}

Most states have effectuated these crime prevention opportunities in their compensation programs by requiring that the crime be reported to the police within a specified number of hours or days and that the victim cooperate with the police in the investigation.\textsuperscript{77} Many states also encourage participation in the fight against crime by providing compensation to "good Samaritans" who are injured while attempting to aid victims or the police.\textsuperscript{78} Victim compensation programs serve as an incentive for the victim to become involved in and cooperate with the criminal justice system and as a result enhance crime prevention.

Another practical justification for victim compensation programs is derived from the fact that the criminal justice system has neglected the needs of crime victims in many ways.\textsuperscript{79} In attempting to protect the rights of the defendant, the needs and rights of crime victims have often been neglected.\textsuperscript{80} The Committee on the Judiciary of the United States House of Representatives recognized this in its report on the Victims of Crime Act of 1977, stating:

\begin{quote}
[I]t seems that we step over the body of the victim to give medical and other services to the criminal, it also seems that we step over the victim's fundamental right to life, liberty, and the pursuit of happiness to grant constitutional rights to the one who took the victim's rights away.]\textsuperscript{81}
\end{quote}

Victim compensation proponents seek a balancing of concern and expenditures which have previously been directed toward the criminal

\textsuperscript{75} \textit{Id.} at 496.
\textsuperscript{76} \textit{TASK FORCE REPORT, supra} note 1, at 88.
\textsuperscript{77} \textit{See} Hoezel, \textit{supra} note 33, at 490-91 (for a summary of the operation of victim compensation programs in 27 states).
\textsuperscript{78} \textit{Comment, supra} note 5, at 537.
\textsuperscript{79} \textit{TASK FORCE REPORT, supra} note 1, at 22.
\textsuperscript{80} \textit{Comment, State Legislation in Aid of Victims and Witnesses of Crime, 10 J. LEGIS.} 394, 394 (1983).
\textsuperscript{81} \textit{H.R. REP. NO. 337, 95th Cong., 1st Sess. 4 (1977) (reprinted in House Miscellaneous Reports on Public Bills V 13172-75).}
to the exclusion of the crime victim.\textsuperscript{82}

Lack of information about the criminal justice system\textsuperscript{83} and the possibility of facing intimidation and retaliation\textsuperscript{84} jeopardize the crime victim after he has already suffered victimization. Victims face such problems as “encountering the defendant, the defendant’s friends and family, and the community; obtaining medical, financial, or psychological services when needed; and understanding the administration of criminal justice.”\textsuperscript{85} The Attorney General’s Task Force on Violent Crime reported that:

In the past several years, the realization has grown that victims of violent crime all too frequently are twice victimized: first, by the perpetrator of the violent criminal act and, second, by a criminal justice system unresponsive to the particular needs of violent crime victims. . . . Victims of violent crime are particularly vulnerable because of the physical, emotional, and financial stresses they are subject to as a result of their unique status in the criminal justice system.\textsuperscript{86}

The Task Force recommended that the Attorney General “take a leadership role in ensuring that the victims of crime are accorded proper status by the criminal justice system.”\textsuperscript{87} Psychologists, sociologists, and social service agencies have also called for better protection and assistance for victims of crime.\textsuperscript{88} While a compensation program cannot erase the physical and psychological injuries suffered by crime victims, it can prevent additional suffering by compensating for the financial loss which results from the victimization.

The foregoing discussion was set forth to show that there is substantial justification for the existence of victim compensation programs—in history, in theory, and in fact. Another justification may lie in the inadequacy of other remedies available to crime victims.

**Other Available Remedies**

While governmental victim compensation programs are seen by some as the most effective means of assuring the crime victim a remedy,\textsuperscript{89} there are three alternative remedies available for reparation: (1) civil action in tort; (2) private insurance; and (3) restitution.\textsuperscript{90}

\textsuperscript{82} Brooks, \textit{supra} note 34, at 481.
\textsuperscript{83} Comment, \textit{supra} note 80, at 395.
\textsuperscript{84} Id. at 399.
\textsuperscript{85} Id. at 394. See also Task Force Report, \textit{supra} note 1, at 22 (discussing problems facing the victim at the investigation and prosecution stage).
\textsuperscript{86} Task Force Report, \textit{supra} note 1, at 22.
\textsuperscript{87} Id.
\textsuperscript{88} Comment, \textit{supra} note 80, at 394.
\textsuperscript{89} Note, \textit{supra} note 2, at 113.
\textsuperscript{90} R. Glatfelter, \textit{For the Victims of Crime: A New Approach} in \textbf{Victimology}:
These remedies have generally been criticized, however, as unsatisfactory and inherently inadequate for compensating crime victims.

Civil Action in Tort

A crime victim may have recourse to a civil action against the criminal. Such actions as assault, battery, trespass, conversion, and wrongful death suits are viewed by some as adequate remedies. It is generally held, however, that civil tort actions offer almost no hope for adequate relief because of the many problems associated with civil recovery. Recovery in civil action "has been rejected as insufficient because many criminals are never apprehended; even if they are, many lack the financial resources to satisfy a judgment, if the victim has the time, money and stamina to pursue litigation." The initial problem is that the criminal must be apprehended before he can be tried in court, a problem compounded by the fact that less than forty percent of reported crimes result in arrest. Even if the criminal is arrested, the victim must prove his own damages as well as the criminal's identity and liability. A judgment in favor of the victim may be futile because "[t]he offender may have exhausted his assets to pay his defense counsel in his criminal trial, placed them beyond the reach of the law, have to use them first to provide for his dependents if sentenced to imprisonment, or he may simply never have had any assets initially." Thus, while the crime victim may have a right to bring a civil action in tort, his chances of recovery are minimal.

Private Insurance

Some critics of victim compensation argue that it should be up to the individual to insure himself against the potential costs of crime. Yet private insurance has not met the needs of crime victims. While life, accident, and health insurance is "available in the sense that if one has the price demanded by the insurer he can purchase a

A New Focus (Vol. II) 139, 142 (I. Drapkin & B. Viano eds. 1973). See also McAdam, supra note 65, at 347-49.

91. McAdam, supra note 65, at 349.
92. R. GLATFELTER, supra note 90, at 145.
94. Brooks, supra note 34, at 498.
95. Comment, supra note 5, at 534-35.
96. Note, supra note 35, at 92.
97. Id.
98. Id. at 92-93.
99. McAdam, supra note 65, at 348.
100. Brooks, supra note 34, at 500.
policy, it is not available in the sense that those most likely to become crime victims can afford to purchase a policy.\textsuperscript{101} It has been proven that those people most likely to be victimized, and thus most in need of criminal insurance coverage, are those whose income barely provides adequate housing and food.\textsuperscript{102} These persons typically live in high crime areas, which raises the cost of premiums they would be required to pay, and concomitantly lessens their chance of obtaining insurance coverage.\textsuperscript{103}

Another problem with private insurance is that many policies have specific exclusions precluding recovery when the injury or death is a result of any violation of law or illegal act.\textsuperscript{104} Thus, even if the individual could afford insurance, he might find it provides no recovery when he becomes a victim of crime. Even though private insurance provides indemnity in some situations, "both the high cost and limited availability of insurance preclude it as an adequate form of compensation for, or protection from, financial loss to the victim of a crime."\textsuperscript{105}

\textbf{Restitution}

The third alternative remedy to governmental compensation of crime victims, and to some the most viable,\textsuperscript{106} is the theory of restitution.\textsuperscript{107} Restitution looks to the offender for payment to the victim in restoration for the injury caused by the criminal act.\textsuperscript{108} It therefore serves correctional purposes, and in effect, is part of the offender's sentence.\textsuperscript{109} There are, however, a number of variables which must occur before restitution can take place.\textsuperscript{110}

The first difficulty with restitution is that apprehension of the offender and a guilty verdict are necessary prerequisites to recov-

\textsuperscript{101} Id.
\textsuperscript{102} R. Glatfelter, supra note 90, at 142. Forty-two percent of the families in the United States with income under the $5,000 level had no insurance. Id.
\textsuperscript{103} Lamborn, supra note 46, at 454.
\textsuperscript{104} Note, supra note 2, at 116. See also Brooks, supra note 34, at 500.
\textsuperscript{105} R. Glatfelter, supra note 90, at 143.
\textsuperscript{106} Note, supra note 35, at 94.
\textsuperscript{107} See generally Lamborn, supra note 46, at 450-53; Wolfgang, supra note 7, at 243; Note, supra note 2, at 113-15.
\textsuperscript{108} Schafer, supra note 7, at 610.
\textsuperscript{109} Id.
\textsuperscript{110} R. Glatfelter, supra note 90, at 143.

In order for restitution to occur, it assumes that (1) the crime is reported (2) the criminal is identified (3) the criminal is convicted (4) the victim has sufficient time and funds to obtain a lawyer who will present his claim in court and (5) the criminal has sufficient income or income potential to provide restitution.

\textit{Id.}
Statistics have shown that roughly twenty percent of all reported crimes are followed by police arrests, and of these, only twenty-eight percent of those arrested for serious felonies are convicted. Another problem arises, in that even if the offender's guilt can be proven, his indigency may preclude adequate restitution. This is the case for a large percentage of convicted felons. In a victim compensation program, the victim is provided relief whether the offender is apprehended or not, but "with restitution the victim receives only what the offender can be made to provide."

Other criticisms of restitution include resentment on the part of the offender, undue hardship caused to the offender's family, and impairment of the offender's probation chances. Because of its limitations, restitution can benefit only a small portion of the victims of crime. The three major alternatives to governmental compensation—civil action in tort, private insurance, and restitution—are all inadequate for providing just compensation to victims of crime.

LAMBERT V. NEBRASKA CRIME VICTIM'S REPARATIONS BOARD: FACTS AND BOARD DECISION

Ruby Smith Lambert Hardin had two children by her first marriage and was separated from her second husband Alan V. Hardin. On November 1, 1980, Alan V. Hardin entered the home of Ruby Hardin by driving his car through one of its exterior walls and shot Ruby Hardin to death in the presence of her two children. The children were six and eight years old at the time. Alan V. Hardin was subsequently convicted of second degree murder and sentenced to a life term in the Nebraska Penal and Correctional Complex. A sister of the deceased mother, Barbara Jones, was appointed guardian for the children by the Douglas County Court. She has provided for their residence and care since the death of their mother.

Barbara Jones filed a claim with the Nebraska Crime Victim's Reparations Board (the Board) to recover for the pecuniary loss suf-

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111. McAdam, supra note 65, at 348-49.
112. R. GLATFELTER, supra note 90, at 143.
113. Lamborn, supra note 46, at 452.
114. Id. at 453.
116. McAdam, supra note 65, at 349.
118. Id. at 819, 336 N.W.2d at 322.
119. Id. at 822, 336 N.W.2d at 323.
120. Id. at 819, 336 N.W.2d at 322.
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ferred by the children due to the loss of their mother.122 Ruby O. Smith, the mother of Ruby Hardin, also filed a claim to recover the funeral expenses she incurred in the burial of her daughter.123

A hearing officer appointed by the Board found that the children were eligible for compensation as dependents of a deceased victim.124 The hearing officer found, however, that the children had failed to show any pecuniary loss or financial need arising from the loss of their mother and recommended to the Board that they be awarded no compensation.125 The hearing officer recommended that Ruby Smith be awarded $3,514.20 for the funeral expenses she incurred.126 The Board followed the hearing officer's recommendation and denied all recovery to the children, while reducing the award for funeral expenses to $750.00.127

District and Supreme Court Holdings

Barbara Jones and Ruby Smith appealed the Board's decision to the District Court of Douglas County, contesting the denial of compensation to the children and the reduction in the funeral expenses award.128 The district court found that the Board's decision was arbitrary and capricious and granted $10,000.00 to each of the children and $3,867.83 to Ruby Smith.129 The district court also awarded statutory attorney's fees totaling nearly $1,200.00.130

The Board appealed the district court decision, arguing that the court erred in failing to consider the availability of appropriated funds and the plaintiffs' need for financial aid.131 The supreme court disagreed with the Board's finding that the children did not demonstrate financial need and its finding that their mother's death did not render any pecuniary loss.132 The supreme court held that loss of future financial support is a pecuniary loss which is compensable under

122. Id. at 1.
123. Id.
124. Lambert, 214 Neb. at 819, 336 N.W.2d at 322. See notes 193-201 and accompanying text infra for a discussion of the requirements for award eligibility.
125. Id. at 820-21, 336 N.W.2d at 323. See notes 212-34 and accompanying text infra for a discussion of the financial need requirement and other limitations on recovery.
126. Id. at 821, 336 N.W.2d at 323.
127. Id. at 818, 336 N.W.2d at 321.
129. Id. at 1-2.
130. Id. at 2. The Nebraska Crime Victim's Reparations Act provides that the hearing officer or the Board may determine and allow reasonable attorney's fees not to exceed five percent of any compensation awarded. If the decision of the hearing officer or the Board is appealed, the court determines reasonable attorney's fees. Neb. Rev. Stat. § 81-1812 (Reissue 1981).
131. Lambert, 214 Neb. at 818, 336 N.W.2d at 321.
132. Id. at 822-23, 336 N.W.2d at 323-24.
the Nebraska Crime Victim’s Reparations Act (the Act). The court affirmed the district court’s holding that the Board’s denial of recovery was arbitrary and capricious. The award for funeral expenses to Ruby Smith was reduced by the supreme court to $3,514.20 which, the court held, was the amount supported by the evidence.

ANALYSIS

The Board decision to deny compensation to the Lambert children rested primarily on two grounds: (1) failure to show financial need; and (2) lack of available funds. The financial need requirement has been a controversial point for many victim compensation programs. Insufficient funding is a problem which has plagued the Board since its inception.

Barbara Jones and her husband provided support for the Lambert children with child support payments made by their father ($150.00 per month) and with social security benefits received due to their mother’s death. The Board determined that the children had no immediate financial need or pecuniary loss and were, therefore, precluded from recovery because their relatives had voluntarily assumed the burden of supporting them. The supreme court stated, however, that the Board’s position would effectively preclude recovery for any dependents of a deceased crime victim who are thereafter supported by anyone, whether under a legal obligation or not.

The Board’s hearing officer determined that the Lambert children were not deprived of anything which they had prior to their mother’s death as they were receiving care from the Jones’ and monetary support from the social security and child support payments. The Act states, however, that social security payments are not considered collateral compensation which is to be deducted from an award. The Board based its finding of an absence of financial need partially on the existence of social security benefits. In doing so, the Board was in effect deducting these benefits from the award as

133. Id. at 824, 336 N.W.2d at 324.
134. Id.
135. Id. at 824-25, 336 N.W.2d at 324.
136. Id. at 820-21, 336 N.W.2d at 323.
137. Id. at 825, 336 N.W.2d at 325.
138. McAdam, supra note 65, at 355. See notes 225-34 and accompanying text infra for a discussion of the financial need requirement.
139. See notes 235-40 and accompanying text infra.
140. Lambert, 214 Neb. at 821-22, 336 N.W.2d at 323.
141. Id. at 822, 336 N.W.2d at 323.
142. Id.
143. Id. at 820, 336 N.W.2d at 323.
145. Lambert, 214 Neb. at 820, 336 N.W.2d at 323.
collateral compensation. The child support payments from the father were unrelated to the mother's murder and thus should also not have been used as the basis for denial of compensation for the crime.

The main issue in dispute was whether the loss of future support constituted a pecuniary loss compensable under the Act. The supreme court found that the mother supported the children, providing food, clothing, and a home, and held that the loss of this future financial support was a compensable pecuniary loss. The court stated that the Board's denial of recovery was "contrary to the letter of and intent behind this Act, and was arbitrary and capricious."

Prior to Lambert, there was no Nebraska case law dealing with pecuniary loss under the Act. Pursuant to section 81-1814 of the Act, which directs the court to look to other laws of the state, the court construed the meaning of pecuniary loss as used in the Nebraska Wrongful Death Act. In Dow v. Legg, the court said: "A pecuniary loss has been defined as 'a loss of money, or of something by which money or something of money value may be acquired.'" The Lambert court reasoned that the children, having lost the financial support of their mother for at least the remainder of their minority, suffered a loss of money within the definition of "pecuniary loss" used in the past. The court recognized that this loss would total more than the $10,000.00 limit of any single award under the Act and thus affirmed the district court's award of $10,000.00 for each child.

The court's award of compensation for loss of future support is supported by case law in other jurisdictions. In Holmes v. Criminal Injuries Compensation Board, a claim was brought under the Maryland Criminal Injuries Compensation Act on behalf of seven minor children seeking recovery for loss suffered as a result of their

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146. Id., 336 N.W.2d at 321.
147. Id., 336 N.W.2d at 324.
148. Id., 336 N.W.2d at 323.
149. NEB. REV. STAT. § 81-1814 (Reissue 1981). "For the purpose of determining the amount of compensation payable . . . the board shall formulate standards for uniform application of this act and take into consideration rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States. . . ."
150. Lambert, 214 Neb. at 823, 336 N.W.2d at 324.
151. Id., 214 Neb. at 823, 336 N.W.2d at 324.
152. Id., 214 Neb. at 823, 336 N.W.2d at 324.
153. Id., 214 Neb. at 823, 336 N.W.2d at 324.
155. Lambert, 214 Neb. at 824, 336 N.W.2d at 324.
mother's murder.\textsuperscript{158} The Board denied the children any recovery, concluding that they were not under any serious financial hardship.\textsuperscript{159} The Board rejected the claimants' position that the pecuniary value of lost "maternal services" should be considered in determining whether the children suffered serious financial hardship.\textsuperscript{160} The court of appeals reversed the Board's decision, however, concluding that the monetary value of lost "maternal services" did constitute a loss of a pecuniary nature and must be considered in the determination of whether financial hardship was suffered.\textsuperscript{161}

In Gurley v. Commonwealth,\textsuperscript{162} the Massachusetts Supreme Judicial Court found that the statutory phrase "compensation for loss of earnings or support" included future lost earnings or support.\textsuperscript{163} The court stated that there was no reason why the victim's death should not be treated as a permanent loss of support.\textsuperscript{164}

The other ground for the Nebraska Board's denial of recovery to the Lambert children was the lack of available funds appropriated under the Act.\textsuperscript{165} While the Act gives the Board discretion to consider the availability of funds in the granting of awards,\textsuperscript{166} the court found the record devoid of any such information and dismissed this contention as grounds for denial.\textsuperscript{167}

The court's decision to include the loss of future support in the determination of compensation for pecuniary loss to dependents of a deceased crime victim is consistent with the provisions of the Act and fulfills the purpose for which the Board was created. In the Judiciary Committee hearings introducing the Act it was stated:

\[\text{[P]}\text{robably the most important thing that needs to be done is that there needs to be some immediate money available for the victim's family ... simply because a husband kills a wife doesn't mean that the wife is not the victim. She is and so are the kids ... so the one you should be concerned about would be the family, those who are alive.}\textsuperscript{168}

\begin{footnotes}
\item 158. \textit{Id.} at —, 359 A.2d at 85.
\item 159. \textit{Id.} at —, 359 A.2d at 86.
\item 160. \textit{Id.}
\item 161. \textit{Id.} at —, 359 A.2d at 89.
\item 162. 363 Mass. 595, 296 N.E.2d 477 (1973). Dependents of a victim of a violent crime filed a claim for compensation and appealed on denial of recovery.
\item 163. \textit{Id.} at —, 296 N.E.2d at 479.
\item 164. \textit{Id.}
\item 165. Lambert, 214 Neb. at 825, 336 N.W.2d at 325.
\item 166. NEB. REV. STAT. § 81-1814 (Reissue 1981). "For the purpose of determining the amount of compensation payable ... the board shall ... take into consideration ... the availability of funds appropriated for the purposes of sections 81-1801 to 81-1841."
\item 167. Lambert, 214 Neb. at 825, 336 N.W.2d at 325.
\end{footnotes}
Thus, the court effectuated the intent behind the Act and prevented a second injustice from being rendered to the Lambert children, who had already suffered the injustice of their mother's murder.

**NEBRASKA CRIME VICTIM'S REPARATIONS ACT**

The Nebraska Crime Victim's Reparations Act was passed in 1978 and became operative on January 1, 1979. The Act created the Crime Victim's Reparations Board and set forth the rules governing its operation. The following analysis will discuss key provisions of the Act and the rules and regulations under which the Board operates. The discussion will focus on the application and hearing procedures, award eligibility requirements, compensable losses, limitations on recovery, and the funding and publicity given the Board.

**Application Procedure**

Perhaps the initial question of a victim who learns of the victim compensation program is how to apply. The Act provides that any person who may be eligible under its provisions can apply for compensation on forms provided by the Board. If the person is a minor or is mentally incompetent, the application can be made by a

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169. 1979 CRIME VICTIM'S REPARATIONS BOARD ANN. REP. at 1. According to the annual reports published by the Board, there were 19 claims filed with the Board in 1979. A compensation award was given on four of the claims, five of the claims were denied, and 10 claims were left pending. Id. at 5. In 1980, there were 75 claims filed. Thirty-seven of the claims were awarded compensation, 27 claims were denied, and 19 claims were left pending. 1980 CRIME VICTIM'S REPARATIONS BOARD ANN. REP. at 5. In 1981, 69 claims were filed with the Board. Twenty-seven of the claimants received a compensation award, 17 claims were denied, and 24 claims were left pending. The average amount of compensation awarded was approximately $1,700 in 1979, $1,400 in 1980, and $1,500 in 1981. 1981 CRIME VICTIM'S REPARATIONS BOARD THIRD REP. at 5. A total of $111,506 in awards was granted during the first three years of the Board's operation. Figures were not yet available for 1982 and 1983. In 1981, the Board was merged with the Nebraska Commission on Law Enforcement and Criminal Justice. The Board functions the same as before but comes under the direction of the Executive Director of the Crime Commission for administrative and budgetary purposes and is considered a division of the Commission. Id. at 2.

170. See NEB. REV. STAT. §§ 81-1801 to -1842. (Reissue 1981). The Board consists of three members who are appointed by the governor subject to approval by the legislature. At least one of the Board members must be licensed to practice law in Nebraska. Board members serve a six-year term. NEB. REV. STAT. §§ 81-1802 to -1803 (Reissue 1981). The staff consists of an administrator of the program and a staff assistant, with support help from the staff of the Crime Commission. 1981 CRIME VICTIM'S REPARATIONS BOARD THIRD REP. at 2.

171. For a comparative analysis of the operation of victim compensation programs across the country see Hoelzel, supra note 33, at 485-96. See also Clark & Webster, Indiana's Victim Compensation Act: A Comparative Perspective, 14 IND. L. REV. 751, 756-77 (1981); McAdam, supra note 65, at 353-56; Comment, supra note 55, at 227-53; Comment, supra note 5, at 538-66.

parent or guardian. The Board’s regulations specify those who are eligible to file an application seeking compensation. To be eligible for compensation the application must be submitted to the Board within two years after the date of the injury or death, and the crime must have been reported to the police within three days of its occurrence.

An applicant is required to “submit available reports from any physician or surgeon who has treated or examined the victim in relation to the injury for which compensation is claimed . . . .” The Board regulations also require a statement signed by the applicant’s employer setting forth the net wages earned by the applicant if a claim for lost wages is brought. Additionally, the applicant must complete a Net Financial Resources Form which is included with the application.

The Board may render a decision upon the application itself or order that a hearing be held on the claim. If a claim is denied without a hearing, the applicant may request a hearing on the application. If no request for hearing is made within thirty days after receiving the Board’s decision, the decision is considered final.

**Hearing Procedure**

In ordering a hearing, the Board gives written notice to the applicant specifying a time and place for the hearing. The hearing is not a trial but rather provides the applicant with a forum to pres-
ent his claim or to have an attorney present it for him.\textsuperscript{184} The applicant and any other person who has a substantial interest in the proceeding may appear and introduce evidence.\textsuperscript{185}

The Board may appoint a hearing officer, who must be a licensed attorney, to conduct the hearing,\textsuperscript{186} or it may conduct the hearing itself.\textsuperscript{187} The Board is not bound by any common law or statutory rules of evidence or by any formal rules of procedure but rather by those guidelines set forth in its own rules and regulations.\textsuperscript{188} Power of subpoena is granted to the Board to compel the appearance of witnesses and the production of any relevant evidence.\textsuperscript{189} An independent investigation may also be conducted by the Board to discover any evidence relevant to resolution of the claim.\textsuperscript{190}

All decisions and awards made by the Board may be appealed to the district court of the county where the action of the Board was taken.\textsuperscript{191} To appeal the Board's decision, the claimant must file a petition in the district court within thirty days after service of the final decision by the Board.\textsuperscript{192}

\textbf{Award Eligibility Requirements}

There are various requirements, distinct from the requirements for application eligibility,\textsuperscript{193} which must be met before the claimant can receive a compensation award. In general, for an eligible applicant to recover, he must have suffered some pecuniary loss or incurred some expense as a result of injury or death caused by a criminal act.\textsuperscript{194} To be eligible for compensation, the applicant must have applied within two years after the injury or death occurred, and the crime must have been reported within three days of its occurrence.\textsuperscript{195} In addition, the eligible applicant may be denied recovery

\begin{footnotes}
\footnotetext{184} NEB. REV. STAT. § 81-1810(2) (Reissue 1981).
\footnotetext{185} Id.
\footnotetext{186} Id. at § 81-1806 (Reissue 1981).
\footnotetext{187} Id. at § 81-1810(1) (Reissue 1981).
\footnotetext{188} RULES AND REGS., ch. 5 § 001.
\footnotetext{189} NEB. REV. STAT. § 81-1810 (Reissue 1981).
\footnotetext{190} RULES AND REGS., ch. 5 § 002.
\footnotetext{191} RULES AND REGS., ch. 6 § 001. Eight claims were appealed to the district court in 1981, including the \textit{Lambert} case. One appeal was heard and dismissed, the resolution of the others is uncertain. 1981 CRIME VICTIM'S REPARATIONS BOARD THIRD REP. at 4.
\footnotetext{192} RULES AND REGS., ch. 6 § 001.
\footnotetext{193} Satisfying requirements for application eligibility does not guarantee that any given applicant will receive an award. This is evidenced by the \textit{Lambert} case, where the Board's hearing officer found the children to be eligible for compensation as dependents of a deceased victim, but not eligible for a compensation award because of the failure to show financial need. \textit{Lambert}, 214 Neb. at 819, 336 N.W.2d at 322.
\footnotetext{194} See note 174 supra. See also \textit{Lambert}, 214 Neb. at 822, 336 N.W.2d at 323.
\footnotetext{195} NEB. REV. STAT. § 81-1821 (Reissue 1981).
\end{footnotes}
for failing to cooperate with law enforcement officers investigating the crime, failing to cooperate with the Board in its investigation, or failing to qualify as an innocent victim of the crime.\textsuperscript{196}

Another requirement for eligibility is that the victim must not be injured as a result of the operation of a motor vehicle, boat, or airplane, unless the vehicle was used in a deliberate attempt to injure or kill the victim.\textsuperscript{197} In addition, compensation is not available if a victim "is a relative of the offender and aided or abetted the offender in the commission of the unlawful act."\textsuperscript{198} It must also be shown that the victim's injuries or death did not result from his violation of any penal law.\textsuperscript{199}

The Act also contains a "good Samaritan" provision.\textsuperscript{200} This provision grants eligibility for compensation to any person who suffers injury or death in attempting to prevent a crime, apprehend a criminal, or give aid to the police or a victim of crime.\textsuperscript{201}

\textit{Compensable Losses}

After the applicant has completed the application process and has met the eligibility requirements, the Board determines if compensable losses have been suffered. The Board may grant a compensation award for "[e]xpenses actually and reasonably incurred as a result of the personal injury or death of the victim."\textsuperscript{202} The Board regulations define "expenses actually and reasonably incurred" as medical, hospital, and pharmaceutical expenses and limit the award to actual costs for necessary services related to the injury.\textsuperscript{203} Since only personal injury is held compensable, no compensation is awarded for loss resulting from property damage.

Pecuniary loss suffered by the dependents of a deceased victim is compensable.\textsuperscript{204} Such loss includes loss of support to a surviving dependent and expenses actually and reasonably incurred by the victim for which his dependents are legally responsible.\textsuperscript{205} A surviving vic-

\begin{itemize}
\item \textsuperscript{196} RULES AND REGS., ch. 4 § 005.
\item \textsuperscript{197} NEB. REV. STAT. § 81-1822(4) (Cum. Supp. 1982).
\item \textsuperscript{198} Id. at § 81-1822(1) (Cum. Supp. 1982).
\item \textsuperscript{199} Id. at § 81-1822(3) (Cum. Supp. 1982).
\item \textsuperscript{200} Id. at § 81-1818 (Reissue 1981).
\item \textsuperscript{201} Id.
\item \textsuperscript{202} Id. at § 81-1819(1) (Reissue 1981). Personal injury is defined as actual bodily harm. NEB. REV. STAT. § 81-1801(3) (Reissue 1981). Recovery for claims brought by victims of sexual assault is generally limited to medical expenses resulting from the actual assault. The name of any victim of sexual assault who applies for compensation is not made public, pursuant to § 81-1842.
\item \textsuperscript{203} RULES AND REGS., ch. 4 § 001.01.
\item \textsuperscript{204} NEB. REV. STAT. § 81-1819(3) (Reissue 1981). Such loss does not include loss of love and affection. Lambert, 214 Neb. at 822, 336 N.W.2d at 323.
\item \textsuperscript{205} RULES AND REGS., ch. 4 § 001.03.
\end{itemize}
tim may receive compensation for lost wages due to his injuries, but only for the period during which he is unable to work as certified by a physician. Loss of earning power as a result of total or partial disability also classifies as compensable loss. To receive compensation for loss of earning power, total or partial disability must be proven. Reasonable expenses from job retraining or employment-oriented rehabilitative services are also considered losses for which the victim may be compensated.

If a claim is one for which compensation appears probable and the applicant will likely suffer undue hardship without immediate payment, an emergency award of up to $500.00 may be granted. The award is granted pending a final decision of the case.

**Limitations on Recovery**

Even if a claimant suffers compensable losses, there are limitations on the amount of compensation which may be awarded. There are a number of provisions within the Act which limit the amount of compensation a victim may recover. For example, the maximum award which may be granted to any one applicant for any single incident is limited to $10,000.00. There is also a limitation on the recovery of pecuniary loss by dependents of a deceased victim. For such claims, all surviving dependents are considered as one applicant, and the total award may not exceed the $10,000.00 maximum. The validity and justice of this limitation is questionable.

The supreme court found that sufficient pecuniary loss was suffered by the Lambert children to award each of them the maximum amount. If a

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208. *Rules and Regs.*, ch. 4 § 002.02.
210. *Id.* at § 81-1820.
211. *Id.* The amount of the emergency award is deducted from the final compensation award. If the emergency award is greater than the final compensation award, the excess must be repaid to the Board. *Id.*
212. *Id.* at § 81-1823 (Reissue 1981); *Rules and Regs.*, ch. 4 § 006. Maximum award amounts in other state victim compensation programs range from $10,000 to $50,000. Hoelzel, *supra* note 33, at 490-91. In the first five years of the Board's operation, six awards of the maximum $10,000 were granted—two in 1981, three in 1982, and one in 1983. The awards by the supreme court to the Lambert children are not included in these figures (figures provided by the Crime Victim's Reparations Board).
213. *Rules and Regs.*, ch. 4 § 002.03.
214. *Id.*
215. This limitation is found in the Board's Rules and Regulations, the effective date of which was February 19, 1983. It is questionable whether this limitation was created in response to the district court's award to the Lambert children on March 22, 1982.
216. See notes 153-55 and accompanying text *supra.*
case such as Holmes v. Criminal Injuries Compensation Board\textsuperscript{217} arose, where seven minor children were left victims of their mother's murder, it would be inequitable to limit their recovery to $10,000.00. This limitation seems contrary to the purpose for which the Board was created.\textsuperscript{218}

The amount of any compensation award is reduced by any collateral compensation which the victim receives from other sources.\textsuperscript{219} Such collateral source compensation may be money received from the offender or a person on behalf of the offender, payments from the state, or payments from private sources.\textsuperscript{220} Proceeds from life insurance and social security payments, however, are not treated as collateral source compensation.\textsuperscript{221} The collateral compensation limitation is present in all victim compensation programs\textsuperscript{222} and is consistent with the objective of providing compensation only for actual loss suffered.

Another factor which the Board takes into account in limiting awards is the availability of funds appropriated by the legislature for use in the compensation program.\textsuperscript{223} In a sense, the Board itself is a victim, due to inadequate funding with which to carry out its purpose.\textsuperscript{224} It seems to defeat the purpose of the Board to force it to deny or limit recovery merely because sufficient funds have not been made available to provide compensation.

The lack of available funds is not the only limitation which has caused problems in the Board's operation. A related problem is the financial need requirement placed on victim recovery. This is one of the most controversial limitations, and it has been criticized by numerous writers and program administrators.\textsuperscript{225} The Act does not specify financial need as an eligibility requirement, but rather lists it as a circumstance to be considered in determining whether to make

\begin{footnotesize}
\begin{enumerate}
\item[218.] See text at note 168 supra.
\item[219.] NEB. REV. STAT. § 81-1817 (Reissue 1981); RULES AND REGS., ch. 4 § 003.
\item[220.] Id.
\item[221.] Id.
\item[223.] NEB. REV. STAT. §§ 81-1814, -1834 (Reissue 1981).
\item[224.] See notes 239-40 and accompanying text infra.
\end{enumerate}
\end{footnotesize}
an award. The limitation, however, is one which frequently operates as a total exclusion from recovery. Another provision of the Act places a limitation on the victim's recovery based on his net financial resources which, in effect, is an intricate financial need requirement.

While at first instance it may seem that a victim of crime should be found to have financial need before being granted compensation, the victim may have incurred actual expenses and suffered substantial economic losses and still be found to have no financial need. The financial need requirement is criticized as both contrary to the theory of victim compensation and unnecessary as well as unjustifiable on either philosophical or practical grounds. The Uniform Crime Victim's Reparations Act states that the clear preference is to eliminate any financial needs test. The abandonment of the requirement is advocated for several reasons:

The cost savings underlying such an exclusion is over-estimated: administrative costs will be increased by requiring

227. Failure to show financial need was one of the grounds on which the Board denied recovery to the Lambert children. Lambert, 214 Neb. at 821, 336 N.W.2d at 322-23. This was also one of the issues on which the Board's appeal of the district court's ruling was based. Id. at 818, 336 N.W.2d at 321. Eight claims were denied by the Board in 1980 and 1981 because the victim was held to have suffered no financial loss. 1980 Crime Victim's Reparations Board Ann. Rep. at 5-12; 1981 Crime Victim's Reparations Board Third Rep. at 9-12.

Needs tests can result in substantial inequities. For example, the New York board attempted to ameliorate the harshness of its requirements by not counting savings as assets up to the amount of a claimant's annual income. The result: A person with a $25,000 annual income and $23,000 in savings could qualify for help, but one with a $6,000 annual income but $6,500 in the bank might not.

H. Edelhertz & G. Geis, supra note 7, at 271.
No compensation shall be awarded if the victim:

(6) Incurs an economic loss which does not exceed ten per cent of the claimant's net financial resources. For purposes of this subdivision a victim's net financial resources do not include the present value of future earnings and shall be determined by the board by deducting from the victim's total financial resources:

(a) One year's earnings;
(b) The victim's equity in his or her home, not exceeding thirty thousand dollars;
(c) One motor vehicle; and
(d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

231. Unif. Crime Victims Reparations Act, Commissioners' Prefatory Note, 11 U.L.A. 33, 33 (1974). The Commissioners' comment states that the needs test "appears to be accountable only as a cost-reduction factor" and advises that elimination of the requirement seems wise. Id. at 42-43.
detailed investigations into each claimant's resources; those likely to be screened out here probably already have been compensated by a collateral source or would be unlikely to seek the program's assistance for a small loss.\textsuperscript{232}

The integrity of a victim compensation program is threatened by the financial needs test because the test in essence "reads a welfare concept into a program not related to welfare."\textsuperscript{233} It is argued, rather, that "compensation should be based on the principle that all victims are equal before the law and that the gravity of the harm alone should govern the degree of compensation."\textsuperscript{234}

Based on the extensive criticism of the financial need requirement, it is questionable whether the financial need provisions in the Act are appropriate. The other limitations and the eligibility requirements contained within the Act should operate sufficiently to prevent any unwarranted compensation awards.

\textit{Cost and Funding}

The funding of a victim compensation program is a critical issue as a compensation board cannot operate effectively without adequate resources. The Act establishes a Victim Compensation Fund from which all awards are paid.\textsuperscript{235} An annual appropriation is made by the state legislature to the fund in an amount it determines to be reasonably sufficient to meet anticipated claims.\textsuperscript{236} The operation of the Board, including administrative costs and awards to claimants, is funded through the state's General Fund.\textsuperscript{237} If money in the Victim Compensation Fund is insufficient to pay the awards granted, the Board may request an emergency appropriation to satisfy such awards.\textsuperscript{238}

As stated earlier, the Board is a victim of inadequate funding. In two out of its first three years of operation, the Board was forced to request an emergency appropriation to meet awarded claims.\textsuperscript{239} In both of those years, the Board was forced to place a $300.00 limit on the payment of claims, with the exception of claims for lost wages,

\begin{itemize}
  \item \textsuperscript{232} Comment, supra note 5, at 553-54.
  \item \textsuperscript{233} UNIF. CRIME VICTIMS REPARATIONS ACT § 5(g), COMMISSIONERS' COMMENT, 11 U.L.A. 33, 42 (1974).
  \item \textsuperscript{234} Wolfgang, supra note 7, at 234.
  \item \textsuperscript{235} NEB. REV. STAT. § 81-1835 (Reissue 1981).
  \item \textsuperscript{236} Id.
  \item \textsuperscript{237} 1981 CRIME VICTIM'S REPARATIONS BOARD THIRD REP. at 1.
  \item \textsuperscript{238} Id.
  \item \textsuperscript{239} NEB. REV. STAT. § 81-1835 (Reissue 1981).
\end{itemize}

\begin{itemize}
  \item \textsuperscript{239} In 1980, the legislature appropriated $35,000 to the Victim Compensation Fund, but the Board awarded $32,856 in claims. 1980 CRIME VICTIM'S REPARATIONS BOARD ANN. REP. at 4. In 1981, $48,500 was appropriated to the Fund, while $55,378 was awarded. 1981 CRIME VICTIM'S REPARATIONS BOARD THIRD REP. at 5.
\end{itemize}
and had to defer the remainder of the awards subject to the availability of funds.\textsuperscript{240} The unavailability of funds may force the Board to resort to the questionable financial need requirement, as in the Lambert case, and deny compensation to victims who have suffered compensable losses. As public awareness of the Board increases, so will the number of claims brought before it. The legislature must approach with earnest its commitment to provide compensation to innocent victims of crime and provide increased funding to the Board so that it can award just compensation to all who are eligible.

\textit{Publicity}

One of the criticisms of victim compensation programs nationwide is the failure to inform victims of the availability of reparations programs.\textsuperscript{241} A victim compensation program will not serve its purpose if victims are unaware that they can receive compensation for their losses. The Nebraska Act provides that "[t]he Board shall make available all forms and educational materials necessary to promote the existence of the programs to persons throughout the state."\textsuperscript{242} Pursuant to the mandate to promote its existence, the Board has published a brochure which explains the program in general terms and which is given or sent to prospective claimants along with the application form.\textsuperscript{243} An information card is also distributed to all law enforcement agencies for distribution to crime victims.\textsuperscript{244}

The state legislature recognized the need to inform victims of their rights and obligations and enacted the Crime Victims and Witnesses Assistance Act\textsuperscript{245} in 1981. This Act creates a fund for providing assistance to crime victims and witnesses and sets forth guidelines for establishing victim and witness assistance centers.\textsuperscript{246} The effec-
tiveness of this program hinges as well, however, on the legislature's commitment to it through appropriation of funds.

CONCLUSION

The impetus of this Comment was the precedent-setting Lambert case, which brought to light some of the inadequacies of Nebraska's victim compensation program. The major problem with the Nebraska program is insufficient funding with which to operate and provide awards, a deficiency which forces the Board to resort to inequitable denial of recovery and to implement regulations which restrict the chances of recovery. It is incongruous to create a program to prevent injustice which renders injustice in its operation.

The recent surge of victim compensation programs throughout the country is evidence of their necessity in the criminal justice system. The Nebraska Legislature should revise those aspects of the Board's operation which have caused inequitable administration of compensation awards to innocent crime victims. It is hoped that the legislature will take appropriate action in order to actuate the goals which it triumphed in creating the Nebraska Crime Victim's Reparations Board.

Jay A. Vankat—'86

centers is assistance to victims in preparing claims for submission to the Crime Victim's Reparations Board. Id. at § 81-1847.