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CRIMINAL VICTIM COMPENSATION IN MARYLAND

In recent years considerable attention has been directed toward the procedural rights of the criminal, but "one of the most neglected subjects in the study of crime is its victims. . . ." One commentator attributes this neglect to a lack of organization among victims of crime; the comparison to the cohesiveness of such politically influential groups as workmen and veterans is striking. The relief and benefit programs afforded by the public to the latter logically would seem to call for relief to crime victims.

Victims of crime suffer in a variety of ways. They may experience personal injury, property damage, loss of earnings due to incapacity, emotional distress, or family hardship. The need for victim compensation is accentuated by great increases in the numbers of offenses of all types. The cost of crimes against the person alone is staggering. For example, the estimated economic loss from wilful homicide is $750,000,000. This figure takes into account both the economic loss of a productive worker to the community and the loss of a source of income to the victim's family and dependents. Although the victim has a cause of action in tort against the criminal offender, in many instances this remedy is illusory. There will be no one to sue if the offender has not been identified or apprehended. If there is a defendant, the victim may be unable to afford the expense of litigation. Even if these barriers to litigation are surmounted, the result may be a Pyrrhic victory: the criminal offender is often in poor financial condition and has no appreciable assets. (The state is partially responsible for this since imprisonment of the offender prevents him from earning money which could help compensate the victim.) For these reasons victim compensation, if it is to be effected at all, must be derived from other sources.

The purpose of this comment is to discuss various alternatives available to a victim seeking relief from sources other than the criminal offender himself. These sources are, of necessity, public in nature; special emphasis is placed on those alternatives available in Maryland. This discussion is not intended to be exhaustive, but is instead designed to give the practicing attorney an overview of victim compensation.

There are two theories upon which the victim of crime may obtain compensation from the government. The first lies in tort, founded upon the government's negligent failure to provide the victim protection against crime. This approach has been notably unsuccessful in producing relief, despite certain boosts it has received from state statutes. The second rests upon a welfare theory: persons vic-

4. President's Commission on Law Enforcement 40. This study showed that the rate of victimization for certain indexed crimes (wilful homicide, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft) is two percent in a national survey and increases to from ten percent to twenty percent in individual districts in certain cities.

5. President's Commission on Law Enforcement 45.


7. For example, on the average only forty percent of homicide offenders were ultimately convicted or sent to juvenile court. Yet where the victim was acquainted with and could identify the offender, ninety percent of the homicides were "solved." President's Commission on Law Enforcement 37.

8. Wolfgang, Victim Compensation in Crimes of Personal Violence, 50 Minn. L. Rev. 223, 240 (1965). A study of victimization rates shows that victims of violent crimes are concentrated in the lowest income group and that the rates decrease at higher income levels. President's Commission on Law Enforcement 80, Table 11.

9. President's Commission on Law Enforcement 83; Wolfgang, supra note 8, at 240.


11. President's Commission on Law Enforcement 83.
timized by crime should receive public aid. This latter approach is a more recent development and promises to be more beneficial to the criminal victim.

I. THE TORT THEORY

At common law the basis for a victim's tort suit against the government is the latter's negligent failure to provide proper police protection. The primary obstacle to the establishment of common law state liability is the doctrine of sovereign immunity, founded on the English belief that "the King can do no wrong." When the individual sovereign was replaced by the broader conception of the modern state, the idea was carried over that to allow a suit against a ruling government without its consent was inconsistent with the very idea of supreme executive power." In Maryland, as elsewhere, the doctrine of sovereign immunity protects not only the State, but also its municipalities, agencies, and instrumentalities.

Several reasons have been advanced for raising the doctrine as a defense to an individual's suit against the state, its municipality or agency. Immunity is based on the public policy argument that an entire people's committing an unlawful act is an absurdity, on the theory that a state employee committing a tort is acting outside his scope of authority, and on the policy that public funds should not be used to compensate private injuries. More practical reasons for applying the doctrine are a desire to avoid the tax consequences and a fear of hampering the executive and his administrators in the performance of their duties.

Sovereign immunity only protects the state in its performance of a "governmental function"; when the state performs a "proprietary function," it may be held liable for its negligence. The proprietary function (sometimes called the "private" or "corporate" function)

12. Id.
13. This concept was first found in Russel v. Men of Devon, 2 T.R. 667, 100 Eng. Rep. 359 (1788).
16. See Leflar & Kantrowitz, Tort Liability of the States, 29 N.Y.U.L. Rev. 1363, 1365 (1954). This article surveys all the states (except Alaska and Hawaii) with respect to their view on sovereign immunity and notes to what extent statutes have been passed permitting suit. See also Antieau, Statutory Expansion of Municipal Tort Liability, 4 St. Louis U.L.J. 351 (1957).
has been defined as a service performed by the city which could just as well have been provided by a private corporation and for which the city collects revenue. Examples of proprietary functions for the negligent performance of which a municipality or agency has been held liable are the operation of public markets, the removal of ashes and household refuse, and the maintenance and repair of public highways. A governmental function has been defined as an act which is "sanctioned by legislative authority, is solely for the public benefit, with no profit or emolument inuring to the municipality, and tends to benefit the public health and promote the welfare of the whole public, and has in it no element of private interest . . . ." Examples of governmental functions are the maintenance and operation of public parks, schools, and public buildings.

The distinction between proprietary and governmental functions, with its effect on the attachment of public liability, is difficult to justify and has been criticized by the law reviews and occasionally by the courts. Nevertheless, the distinction continues to be made, and the labeling of functions as "governmental" leaves injured persons without a remedy.

In nearly all jurisdictions sovereign immunity prevents a victim from suing the municipality or the state for police misfeasance or non-feasance; police protection is considered a governmental function. There are several grounds for this characterization: police protection is prescribed by general law, is for the benefit of the public at large, and is provided as a necessity by the government.

Maryland law is in accord with this prevailing view, the leading case being *Wynkoop v. Mayor & City Council.* In that case a husband had become intoxicated and irresponsible and had assaulted his wife. The husband reached for a revolver in order to further harm his wife. His son intervened and grabbed the revolver, left the home, and called the police. When a policeman arrived, both son and mother pleaded with him to confiscate the revolver in order to prevent further trouble. The officer instead left the gun at the home, within the husband's reach. The wife later went to the police station where her appeals were again unavailing. The husband took the revolver; while roaming the streets, he entered the plaintiff's premises.

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31. *Id.* at 240-41.
32. 159 Md. 194, 150 A. 447 (1930).
and shot him. The plaintiff sued the municipality on a negligence theory; the court sustained the municipality's demurrer to the complaint, holding that:

The protection of the citizen against pestilence, disease, violence, or disorder is essentially a governmental function to be exercised by the state under its police power, through proper agents. And while in many cases it is difficult on the facts to mark the boundary between acts and duties which are in their essence governmental, and those which are of a corporate or municipal nature, that doubt does not exist in respect to the duties of agencies charged with the administration of the criminal laws, the conservation of the public peace, or the protection of the citizens from violence. But the acts of such agencies done in the performance of duties imposed upon them by law are almost everywhere regarded as governmental in their nature, and for the benefit of the entire public. 33

Thus it is firmly established in Maryland that police protection is a governmental function and that, therefore, sovereign immunity attaches. 34

An exception to placing police functions firmly within the doctrine of sovereign immunity is New York, which has virtually eliminated the defense by waiving immunity in section eight of its Court of Claims Act. 35 As a result of that waiver, New York courts can entertain ordinary negligence suits against the governmental unit.

33. Id. at 201, 150 A. at 450.
34. See State ex rel. Wilkerson v. Baltimore County, 218 Md. 271, 146 A.2d 28 (1958), where the plaintiff was fatally shot by a police officer without justification. In sustaining the county's demurrer, the court stated that it was the legislature's function, and not the court's, to enlarge the liability of municipal corporations. Id. at 273, 146 A.2d at 29.

An action against the individual state or municipal officer is subject to the defense of sovereign immunity where he was performing a governmental function. He is not liable for mere negligence, although he may be liable if malice is proven. Where there is malice, the official is deemed to have acted outside the scope of his authority; in that case the state itself will not be liable. See Carder v. Steiner, 225 Md. 271, 170 A.2d 220 (1961) (prison warden not liable for mere negligence of prison guard in closing a cell door on prisoner); State ex rel. Clark v. Ferling, 220 Md. 109, 151 A.2d 137 (1959) (superintendent of reformatory not liable for alleged negligence in allowing the relator to be killed by another inmate); State ex rel. Brooks v. Fidelity & Deposit Co., 147 Md. 194, 127 A. 758 (1925) (sheriff's malicious conduct would render him liable, but the surety of the sheriff's bond is not liable since such malicious conduct is outside the scope of the sheriff's official duty); State ex rel. Cocking v. Wade, 87 Md. 529, 40 A. 104 (1898) (sheriff not liable for negligently allowing a mob to lynch one of his prisoners). See also Md. Ann. Code art. 88B, § 4 (1969), pertaining to the Maryland State Police: "(a) The Superintendent, the deputy superintendent, and employees designated by the Superintendent as police employees shall have throughout the State the same powers, privileges and immunities, and defenses as sheriffs, constables, police officers, and other peace officers possessed at common law. . . ." (Emphasis added.) Md. Ann. Code art. 65, § 52 (1968) grants similar immunity to members of the State militia.

35. N.Y. Ct. Cl. Act § 8 (McKinney 1963): "The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the supreme court against individuals or corporations. . . ." The Act has also been applied to municipalities on the theory that their immunity is merely derived from that of the State. See Bernadine v. City of New York, 294 N.Y. 361, 62 N.E.2d 604 (1945).
alleged to be at fault. The leading New York case involving negligent police protection is *Schuster v. City of New York*. In that case the plaintiff's intestate, Schuster, recognized a notorious escaped criminal, Willie "The Actor" Sutton, and notified the police. After the police had arrested Sutton, publicly acknowledging Schuster's role in the apprehension, Schuster and his family received several anonymous threats. After notifying the police of these threats, Schuster was given limited police protection at his home and place of business; this protection was later suspended. He was subsequently shot and killed on a public street. The court held the municipality liable for negligently failing to exercise reasonable care once it had actively proceeded to protect the informer.

The *Schuster* court placed great emphasis on the special relationship between the police and the informer which was created by their collaboration in the apprehension of the criminal. Even New York, which has removed the sovereign immunity defense as a bar to actions founded in negligent police protection, is itself reluctant to find the requisite negligence in the absence of such a special relationship. In *Riss v. City of New York*, the plaintiff had been terrorized for six months by a rejected suitor. She pleaded for police protection, but her numerous requests were received with indifference. When she became engaged to another man, the plaintiff received the most threatening call; she again begged the police for help but was refused. On the next day a thug hired by the rejected suitor threw lye in her face. The trial court dismissed the complaint at the conclusion of the defendant's case. In sustaining, the New York Court of Appeals distinguished the case from *Schuster* on the ground that the police had not initially undertaken to protect the plaintiff. The court feared that to hold the city negligent for every failure to respond to an individual's request for police protection would seriously burden already limited police resources. It is apparent that the court will more readily find negligence in cases of misfeasance (where the police have actively undertaken to provide protection but have ultimately failed) as compared to instances of nonfeasance (where no active

38. The *Schuster* court relied on the rationale of Judge Cardozo in *H.R. Moch Co. v. Rensselaer Water Co.*, 247 N.Y. 160, 167, 159 N.E. 896, 898 (1928): "If conduct has gone forward to such a stage that inaction would commonly result, not negatively merely in withholding a benefit, but positively or actively in working an injury, there exists a relation out of which arises a duty to go forward." 5 N.Y.2d at 80, 154 N.E.2d at 863, 180 N.Y.S.2d at 901.
39. 5 N.Y.2d at 80-81, 154 N.E.2d at 537, 180 N.Y.S.2d at 269. See also *Municipality Liable*, supra note 37, at 501-02.
41. 22 N.Y.2d at 583, 240 N.E.2d at 861, 293 N.Y.S.2d at 899.
42. *Id.* at 582, 240 N.E.2d at 860-61, 293 N.Y.S.2d at 898-99. The dissent argued that this fear of financial disaster is a myth, alluding to the fact that the municipality has not gone bankrupt in paying other tort claims for which it is held liable. *Id.* at 585, 240 N.E.2d at 863, 293 N.Y.S.2d at 901.
measures of protection have been initiated). It is further appar-
ent from the Riss decision that a victim's common law tort action
against the government will be of little value, even where, as in
New York, there has been the broadest statutory consent to suit.
What, then, can a victim expect in Maryland, which has several
statutes which, to a more limited extent, waive the sovereign im-

maryland legislature recently enacted sections 60–70 of
article 41 of the Maryland Annotated Code, by which wrongful
actions of "special policemen" may render such policemen and the
requesting authority responsible. By the terms of this statute the
governor may appoint a special policeman upon application by any
of the following entities:

(1) Any state, or any subdivision or agency of any state, which
has an interest in property situated wholly or partly in this State;
(2) any municipal, county, or other governmental body of the
State of Maryland for the purpose of protecting any property
owned, leased, or regularly used by the governmental body or
any of its agencies; (3) any college, University or public school
system located in this State for the protection of its property or
students; (4) any firm, corporation, partnership, sole proprietor-
ship, or other entity existing and functioning for a legitimate
and legal business purpose, in order to protect its business

The importance of this statute lies in section sixty-nine, which rejects
any defense of sovereign immunity for the acts or omissions of a
special policeman requested by a state, municipality or subdivision.
The previous special police statute specifically held these govern-
mental bodies immune from liability for the special policeman's mis-
feasance or nonfeasance.

As the New York cases indicate, the loss of the sovereign immu-

nity defense does not lead automatically to recoveries by the vic-
tims of crimes against the governmental body charged with a duty
to prevent criminal conduct. The victim still must establish that the
defendant body was negligent, proof of which entails a showing of
both duty and its breach. Depending upon the Maryland courts'
liberal or conservative approach to this duty question, it will be rela-
tively easy or difficult for the victim to establish his cause of action.
There are no reported cases in which a governmental body has been
alleged to be liable on the basis of the amended special police statute.
Nor are there any reported cases under the previous statute. There
is, however, a line of relevant cases which deals with the liabilities
of special police who were appointed to protect corporate property

43. In instances of inaction or nonfeasance, no liability will attach since no duty
to the victim has arisen which can be breached.
45. Id. at § 64.
46. Id. at § 63.
48. Id. at § 66.
pursuant to a statute\(^49\) which was repealed by the enactment of the amended special police statute.\(^50\) The repealed statute specifically provided that the requesting corporation or individual was liable for any wrongful or negligent act of the appointed special policeman.\(^51\)

Several cases interpreting this provision permitted victims of criminal and tortious acts of a special policeman to recover from the requesting corporation. In *Baltimore & O.R.R. v. Deck*\(^52\) and *Tolchester Beach Improvement Co. v. Scharnagl*,\(^63\) the key issue was whether the special policemen were acting within the scope of their employment so as to render the requesting corporations liable to the plaintiff victims who were shot and assaulted, respectively. In both cases the court upheld jury verdicts for the plaintiff, finding sufficient evidence that the special policemen were acting under the orders and regulations established by the corporations in order to protect their property.\(^64\) Even stronger support for the relief of the victim is to be found in *Baltimore & O.R.R. v. Strube*,\(^55\) where the court stated, "If [the special policeman] was acting within the scope of his employment in making the arrest, the defendant would be responsible even if [the special policeman] acted maliciously or wilfully in committing the assault, because the whole occurrence was one transaction."\(^756\)

The significance of these cases lies in an assumption that the Maryland courts will apply the same liberal interpretation of scope of employment to cases where governmental bodies request special police in accordance with the recently amended statute. That they should is supported by two lines of reasoning: First, and foremost, the statute specifically waives governmental immunity for wrongful acts and omissions of the appointed special police;\(^57\) and, therefore,

\(^{50}\) MD. ANN. CODE art. 41, §§ 60-70 (Supp. 1969). Section 63(4) now provides for the appointment of special police to protect corporate and other business property. The business may request this protection, whereas the prior statute only allowed requests by governmental authorities.
\(^{51}\) MD. ANN. CODE art. 23, § 348 (1966).
\(^{52}\) 102 Md. 669, 62 A. 958 (1906), *affirming* 100 Md. 168, 59 A. 650 (1905).
\(^{53}\) 105 Md. 199, 65 A. 916 (1907).
\(^{54}\) *Baltimore & O.R.R. v. Deck*, 102 Md. 669, 675, 62 A. 958, 961 (1906); *Tolchester Beach Improvement Co. v. Scharnagl*, 105 Md. 199, 210, 65 A. 916, 917 (1907). *Cf. Tolchester Beach Improvement Co. v. Steinmeier*, 72 Md. 313, 20 A. 188 (1890), where the corporation was held not liable for assault and false imprisonment because its superintendent acted beyond the scope of his authority in ordering the special policeman to arrest the plaintiff. The court in *Steinmeier* also stressed the fact that the plaintiff was arrested away from the corporation's premises; therefore, the act was not done for the preservation of defendant's property. *Id.* at 319, 20 A. at 190. *See also* Baltimore C. & A. Ry. v. Ennalls, 108 Md. 75, 69 A. 638 (1908).
\(^{55}\) MD. ANN. CODE art. 41, § 64 (Supp. 1969) now holds the requesting authority responsible for "wrongful actions committed by [the special policeman] in the course of his duties as well as any abuse of powers granted by the commission either on or off the premises." (Emphasis added.)
\(^{56}\) 111 Md. 119, 73 A. 697 (1909).
\(^{57}\) Id. at 127-28, 73 A. at 700.
\(^{57}\) MD. ANN. CODE art. 41, §§ 64, 69 (Supp. 1969). For an example of liability for nonfeasance by a special policeman, see Bass v. City of New York, 305 N.Y.S.2d 801 (Sup. Ct. 1969). Here the New York City Housing Authority exercised its authority to maintain a special police force to protect inhabitants of one of its housing
ordinary tort and agency law should apply. Second, in common law
terminology, the purpose of the special police could be classified as
serving a proprietary rather than a governmental function. Sup-
plying special police to protect particular property is not the type of
activity which can only be performed by the general government.
There are numerous private agencies which can provide the same
type of service. Furthermore, the service is not for the benefit of the
general public, but only for the benefit of those empowered to request
the use of special policemen. Therefore, if in the absence of such a
statute the defense of sovereign immunity is questionable, the enact-
ment of a statute specifically waiving such immunity should encourage
the courts to liberally construe the facts of each case in order to grant
relief to the victim.

The Maryland legislature has also abolished the defense of sov-
ereign immunity in two very limited situations involving motor ve-
cicles. The State and its municipalities are liable by statute for
damages or injuries caused by the negligence of one of their police-
men where he has directed a motor vehicle operator to help enforce
the law or apprehend a violator thereof. The State or municipality
is also liable for damages or injuries sustained by a motor vehicle
operator when participating in a road block. The government's
willingness to be sued in these situations can be viewed as compen-
sation for services rendered. This generosity is not substantial, how-
ever. Cases of soliciting private aid are rare, and a recent statutory
amendment prohibits a police officer from directing the operator,
owner, or passenger of any motor vehicle to participate in a road-
block. In view of the amendment, an officer's directing one to
participate in a roadblock will probably be deemed to be an act be-

In view of recent civil disorders, a potentially important remedy
for victims may be found in Maryland's Riot Statute, which permits
the victim of a riot to recover, in certain situations, full property
damages from the county, incorporated town, or city within whose
jurisdiction the riot occurred. Similar riot or mob violence statutes

projects rather than utilizing the regular police. The victim, a nine-year-old girl, was
raped and murdered on the premises while the one policeman on duty was at lunch.
The City Housing Authority was held liable to her estate for its failure to provide
adequate special police protection.


and 180(b) the policeman must have been acting within the scope of his author-
ity, and the defenses of contributory negligence and last clear chance are avail-
able to the State or political subdivision. However, it is important to note that,
unlike section 180(a), the motor vehicle operator, for purposes of section 180(b),
need not prove that his injuries or damages resulted from the policeman's negligence.
Thus, in the absence of the enumerated affirmative defenses, this statute imposes strict
liability on the State or political subdivision.


62. Id. at § 1. Presumably, the responsibility of these governmental bodies is
concurrent.
exist in many jurisdictions; they are descendants of the English Riot Act of 1714.4

Originally, riot statutes were enacted as a deterrent to rioters, the theory being that public or governmental compensation to riot victims would result in such an increase in taxation that the taxpayer's inclination to riot would be dampened. It was further felt that these tax consequences would encourage innocent citizens to suppress or prevent riots. When viewed in the context of the massive, racially-oriented riots which recently have occurred in American cities, such considerations seem quaint indeed. Present day rioters are generally low-income ghetto residents who do not own property, and who, therefore, are little concerned with the tax consequences of their actions. Moreover, the non-rioters who, by their proximity to the activity, are in the "best" position to suppress the riots are from precisely the same ghetto neighborhoods and have a similar lack of pecuniary interest in possible governmental liability for the riot. Of course, these citizens may have an interest in protecting their property and neighborhood; but they are afraid of the mob and feel that the responsibility for controlling civil disorders rests with the police, not with themselves.

While the original theory behind the riot statutes is no longer applicable, the need for compensation by the government is more pressing than ever. As mentioned earlier, a victim's civil remedy against his criminal offender is often illusory. Nowhere is this truer than in the case of a riot victim. The rioter, usually having a low income, furnishes no source of compensation for the victim. Moreover, since it is extremely difficult even to identify individual rioters, a determination of which rioter caused the particular damage involved is virtually impossible. To compound the compensation problem, merchants and other property owners in riot-prone areas have great difficulty in obtaining adequate insurance. Thus public compensation may be the only way "to spread the burden of injury..."

65. See 33 ALBANY L. REV. 582, 583 (1969).
66. See The Aftermath of the Riot, supra note 63, at 691.
67. A study of self-reporting rioters in Detroit and Newark indicated that many were unemployed; approximately one-third earned less than $5,000; and less than nine percent earned in excess of $10,000. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 75 (1968) [hereinafter referred to as NATIONAL ADVISORY COMMISSION].
68. See The Aftermath of the Riot, supra note 63, at 691.
69. Id. The typical rioter in the summer of 1967 was economically in the same position as his neighboring non-rioter. NATIONAL ADVISORY COMMISSION 73.
70. The Aftermath of the Riot, supra note 63, at 691.
71. See notes 6-10 supra and accompanying text.
72. See Phillips Sheet & Tin Plate Co. v. Griffith, 98 Ohio St. 73, 76, 120 N.E. 207, 208 (1918); 68 COLUM. L. REV. 57, 68 n.99 (1968).
73. The Aftermath of the Riot, supra note 63, at 689.
Although there are cases pending which grew out of the Baltimore riots of 1968, the only reported cases involving Maryland’s Riot Act were concerned with disturbances precipitated by the Civil War. The first such case was Mayor & City Council v. Poulney; there rioters damaged and looted the plaintiff’s store in order to obtain guns and ammunition to meet oncoming Union troops. The importance of the case lies in the court’s approval of instructions listing the necessary elements for recovery under the Riot Act. The victim must prove that:

1. Property and goods were damaged as a result of a riot or tumultuous assemblage too strong to be resisted without the aid of city authorities; and
2. The city had notice of the riot in time to prevent it; and
3. The city had the ability by themselves, or with the aid of the citizens, to prevent the riot; and
4. The city did not use reasonable diligence in preventing or suppressing the riot.

The court further approved an instruction that, if the city is held liable, it must compensate the plaintiff for the full amount of any damage to his real property or goods damaged or looted as a result of the riot. Similar instructions were affirmed in Mayor & City Council v. Dechert, which additionally discussed the responsibility of city authorities to exercise their power to prevent and suppress riots.

It should be noted that recovery under the Riot Act is for property damage only and not for personal injuries; however, property damage alone from recent riots ran into millions of dollars. Because

74. See Baltimore Evening Sun, Aug. 13, 1970, § C, at 2, cols. 1 & 2, which states in part:
In a series of decisions in four test cases, the judge [Charles D. Harris of the Supreme Bench] yesterday knocked down the city’s defenses against liability for the riot destruction [resulting from the April 1, 1968 riots].
About 150 Superior Court suits claiming more than $5 million in damages will be affected by the ruling.

76. 25 Md. 107 (1866).
77. Id. at 107.
78. Id. at 108.
79. 32 Md. 369 (1870).
80. Id. at 386. See also Mayor & City Council v. Sehner, 37 Md. 180, 195 (1872).
of these tremendous potential damages, courts may be reluctant to find the city negligent in failing to prevent and suppress riots. "When a large portion of municipal finance is directed toward social welfare programs and essential city services such as police and fire protection, it would be an almost impossible burden for many cities, were they to be held accountable for the total damage resulting from a riot."

Even in the absence of court resistance, it would be difficult to prove negligence, i.e., that the city had the requisite ability to prevent or suppress the riot and that it failed to use "all reasonable diligence and all the powers entrusted to [it] for the prevention or suppression of such riotous or unlawful assemblages." It is generally believed that most cities do not have sufficient police power to prevent a sudden large riot. This alone could be viewed as a breach of duty by the city. However, such a breach is more of a moral rather than a negligent breach since the city's financial resources limit the size of the police force. Even if the city did have the requisite power, the standard of "reasonable diligence" is difficult to apply to modern riots. In considering what constitutes reasonable diligence in suppressing riotous conduct, the courts must weigh the social causes of the riot and decide to what extent force is appropriate to put down the disorder; they must consider what the repercussions of such force would be. If the city elects not to use force for fear of further aggravating the riot, there would seem to be a corresponding duty to the potential victims of the riot to employ other peaceful means of protecting their property. For example, even if the police have orders not to shoot rioters, the mere presence of a policeman in front of one's property is often sufficient to deter the rioters from looting that person's property. Yet this assumes the city's capability of utilizing a great number of policemen in the riot area without seriously impairing the police protection in other areas of the city. The weighing of such factors are "traditionally alien to judicial evaluation because of their inherently political character." In view of the judiciary's reluctance to decide political problems, it is questionable whether the riot victims will be able to recover against the city under the Riot Act.

Furthermore, "[r]etail businesses suffered a much larger proportion of the damage during the disorders than public institutions, industrial property, or private residences." Id. at 67.

82. 33 ALBANY L. REV. 582, 586 (1969).
83. MD. ANN. CODE art. 82, § 2 (1969) provides that:
   No such liability shall be incurred . . . unless the authorities shall have good reason to believe that such a riot or tumultuous assemblage was about to take place, or having taken place, shall have had notice of the same in time to prevent said injury or destruction, either by its own police or with the aid of the citizens . . . , it being the intention of this article that no such liability shall devolve on such county, town, or city unless the authorities having notice have also the ability of themselves, or with their own citizens to prevent such injury. . . .
(Emphasis added.)
84. MD. ANN. CODE art. 82, § 3 (1969).
85. See NATIONAL ADVISORY COMMISSION 173-74.
86. The Aftermath of the Riot, supra note 63, at 663.
87. Perhaps the only feasible source of compensation is the federal government; it might amend the Disaster Relief Act, 42 U.S.C. § 1855 (1964), to include riots in the definition of "Major Disaster." This is urged by the NATIONAL ADVISORY COMMISSION 197. Yet a sweeping revision of this Act, the Disaster Relief Act of 1969,
Perhaps a better approach would be to eliminate the requirement of negligence from the Riot Act and to base compensation on welfare theory. This approach would have several advantages over the present negligence system. In addition to eliminating the time and expense of litigating the negligence issue, the welfare approach would alleviate a municipality's fear of the bankruptcy which could result from the imposition of full liability under the present statute by limiting the amount of compensation to be paid the riot victims. While the victims would still suffer a net loss from the riot damage, limited compensation would be better than none, the result if a court fails to find the negligence required by the present statute. To minimize the possibility of a resulting tax increase to the entire populace, recovery could be given only to those who had contributed a certain sum of money annually, in effect purchasing riot insurance from the municipality.

II. Welfare Theory

Recognizing the hardship faced by victims of all types who do not possess an adequate civil remedy, some states and municipalities have recently passed statutes which provide relief to such victims without requiring them to bear the burden of proof required in civil suits. Maryland has several statutes in this category, one such being the Unsatisfied Claim and Judgment Fund. While this law applies to cases against uninsured motorists in general, it is relevant to this discussion because of its provisions protecting one who is the victim of a hit-and-run accident, which is a crime in Maryland. Such a victim can sue the Board of Motor Vehicles when the identity of the offender is unknown and cannot be ascertained, even if the victim hopes eventually to sue the owner or operator. Thus, if the hit-and-run victim is insured and cannot locate or ascertain the offender, the State will compensate him or his representative for his personal injury or death.

The most important source of public compensation for the victim of a criminal act is the Criminal Injuries Compensation Act, en-
acted by the Maryland legislature in 1968. This statute permits unreimbursed victims of crime to be compensated by the State for personal injuries and loss of earnings if the victim would otherwise suffer serious financial hardship.

The movement towards public compensation programs, while achieving real momentum only in the last decade, actually dates back to the Code of Hammurabi, under which victims of robberies were compensated by the city. The first successful contemporary victim compensation program was enacted by New Zealand in 1963; it was followed by one in Great Britain in 1964. In this country, California was the first state to adopt such a program in 1965, followed by New York in 1966.

There are several reasons underlying these programs. As mentioned, a victim's civil remedy is often inadequate. The state has an economic motive in preventing the burden which an incapacitated or destitute member presents to the rest of society. Moreover, these victims are generally injured through no fault of their own; and, therefore, many regard it a moral obligation to aid them. While public compensation programs do not rest on a theory of negligence, they nevertheless "suggest that state authorities conceded an inability to ameliorate to any great degree the threat of violent crime, and that they assume as public burden the consequences of such crime."

The mechanics and scope of the Maryland Criminal Injuries Compensation Act may best be understood by examining certain

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97. Sections 22-24 of the Code of Hammurabi (about 2250 B.C.) provide: If a man practice brigandage and be captured, that man shall be put to death. If the brigand be not captured, the man who has been robbed, shall, in the presence of God, make an itemized statement of his loss, and the city and the governor, in whose province and jurisdiction the robbery was committed, shall compensate him for whatever he lost. If it be a life [that was lost], the city and governor shall pay one mina of silver to his heirs.
30 Albany L. Rev. 325 n.1 (1966). The Code's aim was not a welfare one; it was designed to encourage a city to apprehend criminals. Id. at 325.
102. See Geist, State Compensation to Victims of Violent Crime, President's Commission on Law Enforcement 157.
103. Id. This motive is reflected in Maryland's Criminal Injuries Compensation Act, Md. Ann. Code art. 26A (Supp. 1969), in the declaration of policy and legislative intent:
    The legislature recognized that many innocent persons suffer personal physical injury or death as a result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer, disability, incur financial hardships or become dependent upon public assistance. The legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly it is the legislature's intent that aid, care and support be provided by the State, as a matter of moral responsibility, for such victims of crime. Id. at § 1 (emphasis added).
pertinent provisions of the Act. Section 3(a) establishes a three-man Criminal Injuries Compensation Board, appointed by the governor, to decide the claims of victims; only one Board member need be a lawyer. (The composition of such boards in other jurisdictions is disparate: although New York requires that all of its board members be lawyers, the New Zealand Minister of Justice advocated non-legal personnel as board members under New Zealand’s program, believing that public confidence would be greater in a board which decided claims “on the basis of what is fair and reasonable rather than on the application of strict rules and precedents.”) Despite section 3(a)’s requirement of only one lawyer, all the members appointed to date have been attorneys. The fear of strict procedural rules has been alleviated by the informal nature of the Board’s hearings, especially the relaxation of common law and statutory rules of evidence and procedure.

Sections 5(a)(1)–(3) provide that not only the victim, but in the case of his death his surviving spouse, children or other dependents shall be eligible for awards. This provision apparently stems from the State’s desire to lessen the burden on society by compensating all of those qualified people affected by the crime. Sections 5(a)(4)–(6) incorporate a good-samaritan concept by compensating a victim, or his family and dependents, if the injury or death resulted from apprehending a criminal or attempting to prevent a criminal act. This reflects a public policy of encouraging citizens to enforce the law and of insuring that they do not undergo financial hardship because of such efforts. Fraudulent claims against the State are discouraged by two provisions of the Act.

105. Similar boards are used in the programs in New Zealand, [Act No. 134 of 1963], Great Britain, [CMD. No. 2323 (1964)] and New York [N.Y. Exec. Law art. 22, § 622 (McKinney Supp. 1969)]. The other alternative is placing the administration of the act upon the judiciary, as in Massachusetts’ program. Mass. Gen. Laws Ann. ch. 258A, § 2 (1968). This latter approach has been criticized because it places a substantial additional workload on the courts, results in delay in adjudication of claims, and involves stricter procedural rules than board determinations. See Floyd, Massachusetts’ Plan to Aid Victims of Crime, 48 B.U.L. Rev. 360, 363 (1968).


107. Geist, supra note 102, at 161.

108. Interview with Martin I. Moylan, Executive Director of the Maryland Criminal Injuries Compensation Board, in Baltimore City, Mar. 17, 1970.

109. See also Baltimore City’s Good Samaritan Law. BALTIMORE, Md., Ordinance 1085, July 12, 1967, adding new § 110 to BALTIMORE, Md. Code art. 1 (1966). This law was passed prior to the enactment of the Criminal Injuries Compensation Act and provided that the State law, when passed, should have precedence. However, there are two aspects of the Ordinance which are still effective since not covered by the State statute. A “good-samaritan” victim, under the Ordinance, can recover for actual property damage as well as for personal injuries of less than $100. Ordinance 1085, §§ 1(c)(1), (ii).

110. The same policy appears in the motor vehicle laws. See note 59 supra and accompanying text.

111. Section 5(b) declares ineligible for award any person responsible for the crime, the accomplice of such a person, and any member of such person’s family; the State does not wish to compensate a person for his own wrong-doing. Section sixteen imposes a stiff penalty on anyone asserting a false claim. Such a person is guilty of a misdemeanor and subject to a fine of not less than $500 or one year imprisonment or both.
Section eight provides that each claim is to be decided by a single Board member, but that the claimant may appeal the decision to the full Board pursuant to section nine. As of March, 1970, there have been eight such appeals, three of which have resulted in reversal of the denial of a claim by the single Board member. Section ten permits the State attorney general to seek judicial review if the decision by the full Board is deemed to be improper; in practice, such review is used to challenge an excessive award. The statute does not expressly allow a claimant to seek judicial review if he thinks the award is inadequate. Whether a claimant has such a right has not yet been contested; this right may be available to a claimant under section 255(a) of the Maryland Administrative Procedure Act. Rule XVIII(b) of the Board states that appeals from the Board shall be governed by the Maryland Administrative Procedure Act. Even where statutes make no such provision, "Maryland Courts will review allegedly arbitrary agency action. . . ."

Section twelve lists several prerequisites to the granting of an award. Section 12(a)(2) allows an award only in cases of personal injury or death, thus excluding compensation for property damage (an approach typical to this type of statute). There are valid reasons for excluding compensation for property damage: crimes against property are highly susceptible to fraud; the expense of such compensation would be prohibitive; insurance is available for property; and concern for the man himself is greater than that for his property.

Section 12(a)(3) requires that the claimant must have reported the crime to the police within forty-eight hours unless there are extenuating circumstances. This provision reflects a legislative policy to aid law enforcement and to encourage the prompt reporting of crimes to the police. This policy is further reflected by section 12(a)(3)'s denial of award to any claimant who has not fully cooperated with the police.

Relief under the Maryland Criminal Injuries Compensation Act is not available to all victims of crimes against the person. Section 12(d) provides that no award shall be given to the extent that the

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113. The claim is decided "regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal responsibility or other legal exemption." Md. Ann. Code art. 26A, § 8(c) (Supp. 1969).

114. Interview with Executive Director of Board, supra note 108.

115. Id.


119. The fear of higher taxes resulting from the financing of Maryland's program was eliminated by charging an additional $5 in court costs in criminal cases. Thus criminals are financing this program. Md. Ann. Code art. 26A, § 17 (Supp. 1969).


121. Although some serious crimes are not reported by victims, they are much more likely to be reported than lesser offenses. President's Commission on Law Enforcement 40.
victim is already receiving compensation from the criminal himself or from any other public or private source (such as welfare or insurance). Sections one and 12(f), read together, make it clear that an award (which is based on out-of-pocket expenses and loss of earnings, but limited to the amount allowed under the Workmen's Compensation Benefit Schedules) shall only be given to that victim who will suffer serious financial hardship as a result of his injury. The rules and regulation of the Board provide that all of the claimant's financial resources are to be considered in determining serious financial hardship. However, the following assets of the claimant are exempt from consideration:

1. A homestead;
2. Personal property consisting of clothing and strictly personal effects;
3. Tools and equipment necessary for the claimant's trade, occupation or business;
4. Household furniture, appliances and equipment;
5. A family automobile;
6. Life insurance except in death claims, in the face amount of $1,000.00 for the claimant and a similar sum of $1,000.00 for the claimant's spouse or each dependent child; and
7. Savings in an amount equal to the claimant's annual net income.

Generally, claimants will be in the upper-lower or lower-middle class income brackets since these people are barely able to support themselves and suffer most from the unexpected financial loss which often attends victimization by crime. In particular, the widows and dependents of such deceased victims are prone to suffer serious financial hardship from the loss of their income producer. However, in view of the exemptions applicable in determining financial hardship, a victim of more substantial means might also fall within the criterion of suffering "serious financial hardship" if his injury results in present inability to earn income.

Although the Criminal Injuries Compensation Board has been in existence since July 1, 1968, it took almost a year to iron out its operational problems and to hire claim investigators. As a result,

122. CRIMINAL INJURIES COMPENSATION BOARD RULES & REGULATIONS, Rule XII.
123. Id. at Rule XIII.
124. Interview with Executive Director of Board, supra note 108.
125. See awards granted in claims nos. 7-D-69, 29-D-69, 63-D-69, 69-D-69 (on file with the Criminal Injuries Compensation Board).
126. For example, consider a professional person who owns an expensive, well-furnished home, an expensive car, and has savings of less than his annual net income. If being victimized results in a termination of his professional practice, such a claimant (assuming the absence of any insurance) may well qualify as suffering a serious financial hardship.
127. See Baltimore Evening Sun, Mar. 23, 1970, § C, at 1, cols. 3-5.
the Board issued only ten awards (totalling about $20,000) in 1969, while denying about one hundred and twenty-five claims. Now that the Board is ready to assume a large workload (and because of additional publicity as to the availability of this form of compensation), it is anticipated that more victims of crime will file claims with the Board.

III. CONCLUSION

It is apparent that the victim of crime has little, if any, chance of winning compensation from the state or municipality on a negligence or tort theory. The doctrine of sovereign immunity serves to bar most common law actions instituted against the government. Even where the government has relaxed the doctrine by statute, the negligence theory places a difficult burden on the victim; as a consequence, these statutes are often as illusory as the victim's civil remedy against his offender.

The welfare theory appears to be the best method of assuring that the victim will be compensated. Although the welfare theory, as reflected in the Maryland Criminal Injuries Compensation Act, does not afford relief to all victims, its readily available compensation to the hardship victim is a most desirable step toward alleviating the pressing problem of criminal victim compensation.

128. Id. at col. 3. New York, on the other hand, handles almost 2,000 claims annually. This discrepancy can be attributed to several factors. New York's program does not have the limited manpower that Maryland's has had. Members of New York's board are full-time employees of the program, whereas Maryland's Board members work on a part-time basis. Compare N.Y. Exec. Law art. 22, § 622(4) (McKinney Supp. 1969) with Md. Ann. Code art. 26A, § 3(d) (Supp. 1969). Due to the tremendous difference in population, New York would, moreover, be expected to have more claimants.