**Proposal to compensate Crime Victims for Legal Representation**

**Dignity for All Act**

**By: Mothers On a Mission to Stop Violence**

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Crime victims are essential to the criminal legal process because their cooperation and participation allows the state to enforce its laws. Crime Victims’ rights that are enacted by the states recognize the significance of protecting every crime victim’s ability to participate throughout the criminal legal system. Each state’s Crime Victims’ Rights statutes serves two fundamental purposes: ensures that crime victims fully participate throughout the legal system after reporting a crime to law enforcement and implements procedures to protect the rights of crime victims. When crime victims are ignored, forgotten or excluded from participating in the legal process they are put at risk of becoming further victimized by the system. Illinois’ Violent Crime Victims Assistance Act states: “The General Assembly finds that when crime strikes, the chief concern of criminal justice agencies has been apprehending and dealing with the criminal, and that the victim or witness is frequently forgotten or further victimized by the criminal justice system” (240/2), 1983). Therefore, legislation must be enacted to provide crime victims with legal representation to ​*reasonably*​ inform the court when their rights, which protects their interests are violated during the criminal legal process. Crime victims cannot effectively inform the court of their grievances to remedy a rights violation without access to legal representation. Crime victims are not legal experts and may experience the criminal legal process for the first time in response to the primary victimization. Further, crime victims are not represented by the prosecutor or State’s Attorney’s Office. In his interview with the Daily Herald, Lake County State’s Attorney Michael Nerheim said, “Often times our interests align with the victim and we support them, but we do not legally represent them" (Filas, 2016).

This proposal requests Congress to amend Title 42 – The Public Heath and Welfare Chapter 112 Victim Compensation and Assistance statute and provide crime victims with compensation for attorney’s fees to receive legal representation to effectively enforce their rights in a court of law. The state already provides that crime victims have standing during the criminal legal process. However, the State of Illinois requires crime victims to retain legal representation at their expense and prohibits the courts from appointing attorneys to crime victims who cannot afford or retain legal representation to enforce their rights. The right to receive compensation for an attorney remains a legislative lacuna that burdens crime victims with the arduous and expensive task of enforcing their rights. The absence of legal representation puts victims at risk of becoming further victimized by the system, and precludes crime victims’ rights from being enforceable in law and in practice. By amending Sec. 10601. Crime Victims Fund. [Section 1402] and Sec. 10602. Crime victim compensation **[Section 1403] states would be required to include “legal representation and court costs related to the enforcement of crime victims’ rights” under their Crime Victim Compensation programs. This Amendment does not increase the state’s portion of funding into their program but rather relies on the existing funds that have been appropriated to provide legal representation to enforce crime victims’ rights as a compensable expense. Legal representation is limited to the enforcement of the rights that are enacted under the state’s crime victims’ rights statutes. Legal representation will provide crime victims who are further victimized by the system with access to the courts to file a complaint against criminal justice agencies that have a legal obligation to implement the rights of crime victims.** International Crime Victims’ Rights expert and researcher, Professor Edna Erez of the University of Illinois at Chicago states: “…victims often rank the secondary victimization, namely, their experiences as the system processed their victimization, as more difficult than the primary one -- the crime itself. Victims may expect to be mistreated by the offender or his attorney, but they would not even imagine that the legal system will ignore their preferences, neglect their needs, silence them, and from their perspective-- victimize and fail them” (Erez, 2015).

**Legal Representation Benefits Crime Victims and the State**

The purpose of​​Sec. 2. of the (725 ILCS 120/) Rights of Crime Victims and Witnesses Act​​is

“to implement, preserve and protect the rights guaranteed to crime victims by Article I, Section 8.1 of the Illinois Constitution to ensure …the effectiveness of the criminal justice system by affording certain basic rights and considerations to the witnesses of violent crime who are essential to prosecution.” ​When crime victims report a violent crime they provide a service to the state by allowing the state to enforce its laws. ​Senator Lindsay Graham said, "More people are coming forward. More people are telling us that 'we feel better able to come forward because the system is more understanding.' The lawyer being provided to the victim has been received very well." ​[http://www.c-span.org/video/…](http://www.c-span.org/video/%E2%80%A6)

According to the National Crime Victim Law Institute, “Each of us has a constitutional right to petition the government for redress of grievances; key to this right is the right to report crime to law enforcement if a victim chooses. ... Victims in every jurisdiction have the right to be heard at sentencing proceedings. The right is found in state constitutions, statutes and rules” (Institute, 2014). Furthermore, the legislative intent and findings pursuant to the (725 ILCS 240/) Violent Crime Victims Assistance Act states: “The General Assembly finds that ... the single most important determinant of whether a case is resolved is the information and assistance provided by the victim or witness. It is, therefore, the intent of the General Assembly to provide ways of improving attitudes of victims and witnesses toward the criminal justice system and to provide for faster and more complete victim recovery from the effects of crime” (1983).

**Conclusion**

Crime Victims need access to representation that provides them with the full ambit of benefits and privileges that legal counsel affords. That is why Congress must enact legislation to require states to provide crime victims with legal representation to enforce victims’ rights as a compensable expense in their Crime Victim Compensation programs. The Legal Assistance Foundation states: “The American legal system is complex for anyone. But for someone who is … unable to hire an attorney, our legal system is downright intimidating. [A]ttorneys…give their clients individualized attention. Their work results in such successes as an order of protection or justice for a victim….making the legal system accessible changes their lives and gets them back on track.”

Crime victims have a right to be treated with fairness and with respect for their dignity. Unfortunately, this right is frequently violated when criminal justice agencies ignore or exclude crime victims from participating in the legal process. In fact, crime victims are treated unfairly when their rights are violated and become further victimized by the system. Therefore, our effort to enact the proposed amendment will be entitled:“Dignity for All Act.”

Research has shown that ‘procedural justice’— whether litigants have the opportunity to present their side to authorities, whether they are treated with respect and dignity—influence victims’ satisfaction with justice to the same degree, or even more, than case outcomes. In other words, procedural justice is just as important as substantive justice. Research has also shown that to preserve victims’ well-being and to allow reasonable recovery from the difficult experience of victimization they must experience procedural justice --victims need someone who will inform them of their rights and how to exercise them, someone who will represent or advise them, and guard their interests -- a practice already in place in continental legal systems that process serious victimizations, such as *partie civile* in France, or *Nebenklage* in Germany – Professor of Criminology, Law, and Justice at the University of Illinois at Chicago, September 21, 2015.

Senator Lindsey Graham stated “we need to create a legal system that people feel if they file a complaint they will be fairly treated” (Graham, 2013). The Dignity for All Act will ensure that all crime victims are provided with a legal system that fully protects their interests.

# References

240/2), (. I. (1983, November 14). Violent Crime Victims Assistance Act. Illinois.

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Filas, L. (2016, 14 November). Ingleside woman pushing bill to provide attorney at no charge to victims of violent crime. Ingleside, Illinois, USA.

Graham, S. L. (2013, November 20). U.S. Senate Sexual Assualt in the Military.

Institute, N. C. (2014, December 5). Fighting for a Victim’s Right to Report Crime. Portland, Oregan, USA.

**Proposed Amendment: Dignity for All Act (highlighted in yellow)**

 **Title 42 – The Public Health and Welfare**
**Chapter 112 – Victim Compensation and Assistance**

**Sec. 10601. Crime Victims Fund. [Section 1402]**

**(a) Establishment**.
There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the ''Fund'').

**(b) Fines deposited in Fund; penalties; forfeited appearance bonds.**
Except as limited by subsection (c) of this section, there shall be deposited in the Fund -

(1) all fines that are collected from persons convicted of offenses against the United States except -

(A) fines available for use by the Secretary of the Treasury pursuant to -

(i) section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)); and

(ii) section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d)); and

(B) fines to be paid into -

(i) the railroad unemployment insurance account pursuant to the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.);

(ii) the Postal Service Fund pursuant to sections 2601(a)(2) and 2003 of title 39 and for the purposes set forth in section 404(a)(8) of title 39;

(iii) the navigable waters revolving fund pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(iv) county public school funds pursuant to section 3613 of title 18;

(2) penalty assessments collected under section 3013 of title 18; [1]

(3) the proceeds of forfeited appearance bonds, bail bonds, and collateral collected under section 3146 of title 18;

(4) any money ordered to be paid into the Fund under section 3671(c)(2) of title 18. [1] [Recodified at 3681(c)(2) of Title 18: and

(5) any gifts, bequests, or donations to the Fund from private entities or individuals, which the Director is hereby authorized to accept for deposit into the Fund, except that the Director is not hereby authorized to accept any such gift, bequest, or donation that—

(A) attaches conditions inconsistent with applicable laws or regulations; or

(B) is conditioned upon or would require the expenditure of appropriated funds that are not available to the Office for Victims of Crime.

**(c) Retention of sums in Fund; availability for expenditure without fiscal year limitation**
Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this chapter for grants under this chapter without fiscal year limitation. Notwithstanding section 1402(d)(5), all sums deposited in the Fund in any fiscal year that are not made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.

**(d) Availability for judicial branch administrative costs; grant program percentages**
The Fund shall be available as follows:

(1) Repealed. Pub. L. 105-119, title I, Sec. 109(a)(1), Nov. 26, 1997, 111 Stat. 2457.

(2)

(A) Except as provided in subparagraph (B), the first $10,000,000 deposited in the Fund shall be available for grants under section 10603a of this title.

(B)

(i) For any fiscal year for which the amount deposited in the Fund is greater than the amount deposited in the Fund for fiscal year 1998, the $10,000,000 referred to in subparagraph (A) plus an amount equal to 50 percent of the increase in the amount from fiscal year 1998 shall be available for grants under section 1404A.

(ii) Amounts available under this subparagraph for any fiscal year shall not exceed $20,000,000.

[Section (2) shall be implemented so that any increase in funding provided thereby shall operate notwithstanding any dollar limitation on the availability of the Crime Victims Fund established under the Victims of Crime Act of 1984. Pub. L. 106-177]

(3) (A) Of the sums remaining in the Fund in any particular fiscal year after compliance with paragraph (2), such sums as may be necessary shall be available only for —

(i) the United States Attorneys Offices and the Federal Bureau of Investigation to provide and improve services for the benefit of crime victims in the Federal criminal justice system (as described in section 3771 of title 18, United States Code, and section 503 of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607) through victim coordinators, victims' specialists, and advocates, including for the administrative support of victim coordinators and advocates providing such services; and

(ii) a Victim Notification System.

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| (iii) including but not limited to legal expenses and court  |
| costs related to the enforcement of the crime victim's rights.  |

Sec. 10602. Crime victim compensation. **[Section 1403]**

**(a) Authority of Director; grants**

(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

(2) If the sums available in the Fund for grants under this section are insufficient to provide grants of 40 percent in fiscal year 2002 and of 60 percent in subsequent fiscal years as provided in paragraph (1), the Director shall make, from the sums available, a grant to each eligible crime victim compensation program so that all such programs receive the same percentage of the amounts awarded by such program during the preceding fiscal year, other than amounts awarded for property damage.

(3) Not more than 5 percent of a grant made under this section may be used for training purposes and the administration of the State crime victim compensation program receiving the grant.

(B) Amounts made available under subparagraph (A) may not be used for any purpose that is not specified in clause (i), ~~or~~ (ii) or (iii) of subparagraph (A).

**(b) Eligible crime victim compensation programs**
A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if -

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for -

(A) medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) funeral expenses attributable to a death resulting from a compensable crime; and

(D) such program provides that a crime victim or another person may be compensated for legal expenses and court costs related to the enforcement of the crime victim's rights;