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CRIMINAL LAW & PROCEDURE:
Procedure for Carrying Out the
Violent Crime Victims Assistance Act

Honorable J. William Roberts
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County Building, Room 204
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Dear Mr. Roberts:

I have your letter wherein you raise several questions concerning the Violent Crime Victims Assistance Act (Ill. Rev. Stat. 1983 Supp., ch. 70, par. 501 et seq.) [the Act], which establishes a program to provide comprehensive services to victims and witnesses of violent crime. To implement this program State-wide, the Act provides for the establishment of victim/witness assistance centers. The program is funded by fines imposed upon persons convicted of committing offenses designated in section 10 of the Act (Ill. Rev. Stat. 1983 Supp., ch. 70, par. 510), which provides:

"Violent Crime Victims Assistance Fund.

(a) The 'Violent Crime Victims Assistance Fund' is created as a special fund in the State Treasury to provide monies for the grants to be awarded under this Act.

(b) When any person is convicted in Illinois after January 1, 1984 of an offense listed below, the court which enters the conviction shall impose, in addition to any other penalty authorized by law, a fine in accordance with the following schedule:

(1) \$25.00, for conviction of a crime of violence, as defined in Section 2(c) of the 'Crime Victims Compensation Act', approved August 23, 1973, as amended;

(2) \$20.00, for conviction of any other felony or misdemeanor;

(3) \$10.00, for conviction of any offense listed in Section 6-205 of 'The Illinois Vehicle Code', approved September 29, 1969, as amended; and

(4) \$3.00, for any other offense under 'The Illinois Vehicle Code', exclusive of offenses enumerated in Section 6-204(a)(2) of that Code, and exclusive of any offenses enumerated in ARTICLE VI of Chapter 11 of The Illinois Vehicle Code relating to restrictions, regulations and limitations on the speed at which a motor vehicle is driven or operated.

If any offense falls into more than one of the above categories, the fine imposed by this Act shall be the amount applicable to the most serious offense.

(c) All fines collected in accordance with this Section shall be transferred to the State Treasurer, who shall retain such moneys separate in the 'Violent Crime Victims Assistance Fund'. The Treasurer shall provide the Attorney General a monthly status report on the amount of money in the Fund.

(d) Monies from the fund may be granted on and after July 1, 1984."

Your questions concerning the procedures to be followed in carrying out the above-quoted provisions of the Act are as follows:

1. Who imposes the fines established under the Act?
2. For what offenses and in what amounts should fines be imposed under the Act?
3. When should those fines be imposed?
4. Can fines be imposed under the Act only when some other fine has been imposed?
5. Can fines be imposed under the Act upon defendants who are placed on court supervision?
6. Who collects the fines?
7. How are the fines to be collected?
8. Once collected, how are the fines to be held?
9. Once collected, how are the fines to be transferred into the Violent Crime Victims Assistance Fund?
10. Should fines collected under the Act be transferred to the State Treasurer in one lump sum with fines collected under the provisions of other Acts?
11. How often should collected fines be transferred to the State Treasurer?

In contrast to other Acts which establish similar special funds, the Violent Crime Victims Assistance Act is

silent as to the express procedures for imposing, collecting, and transferring the fines established by its provisions. The Illinois Police Training Act (Ill. Rev. Stat. 1983, ch. 85, par. 501 et seq.), for example, establishes a program for training and educating law enforcement officers, and is funded by a special fine imposed upon offenders convicted of criminal or traffic offenses. Pursuant to section 9.1 of the Illinois Police Training Act (Ill. Rev. Stat. 1983, ch. 85, par. 509.1), the fines collected are paid into the Traffic and Criminal Conviction Surcharge Fund created pursuant to section 9 of the same Act. The amount of the penalty assessment and the procedures for the transfer of the fines into the Traffic and Criminal Conviction Surcharge Fund are explicitly set out in the Unified Code of Corrections. (Ill. Rev. Stat. 1983, ch. 38, par. 1005-9-1.)

Similarly, section 16-104a of The Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 16-104a) imposes an additional fine on convictions for traffic offenses to fund driver's education programs. That section of the Act contains specific procedures for collecting the fines and depositing them with the State Treasurer.

Although the Violent Crime Victims Assistance Act mandates the imposition of additional fines upon certain enumerated offenses and requires the transfer of those fines to

the State Treasurer, it does not expressly establish the procedures to be followed in doing so. Most of your questions are occasioned by the failure of the Act to establish such procedures.

Where an Act such as the Violent Crime Victims Assistance Act does not establish adequate procedures for carrying out its provisions, such procedures may be implied by construing the statute in such a way as to carry out its underlying purpose. When interpreting the provisions of any legislative enactment, the primary goal is to ascertain and give effect to the General Assembly's intent. (People v. Savaino (1976), 66 Ill. 2d 7, 15.) As a general rule, the intent of the General Assembly is ascertained primarily from the language of the enactment (Rushton v. O'Malley (1980), 89 Ill. App. 3d 103, 104), and must be effectuated through its provisions. When necessary language has been omitted from a statute, or when an Act does not appear to be complete on its face, however, the Act can be assumed by implication to contain such provisions as are needed to carry out its purpose. (Roesch-Zeller, Inc. v. Hollembeak (1955), 5 Ill. App. 2d 94, 107.) Provisions can be included in a statute by implication when without those terms the statute would produce absurd consequences. (People ex rel. Board of Education of Junior

College Dist. No. 300 v. Collins (1966), 34 Ill. 2d 349, 352-53.) The implied provisions then become as much a part of the Act as that which is expressed. People ex rel. Keeney v. City of Chicago (1894), 152 Ill. 546, 552.

Moreover, a grant of authority or an imposition of a duty on public officials to carry out the provisions of an Act may be implied from its substantive provisions. Although public officers generally possess only those powers or duties granted by statute (McKenzie v. McIntosh (1964), 50 Ill. App. 2d 370, 376-77), when an enactment contains express grants of authority or power, or requires the performance of some duty, it carries with it by implication a grant of those powers necessary or appropriate to carry out the intent of the General Assembly. (DuPage County v. Jenks (1872), 65 Ill. 275, 285; McKenzie v. McIntosh (1964), 50 Ill. App. 2d 370, 377; People ex rel. Cook v. Board of Education of Chicago (1938), 295 Ill. App. 41, 56.) Thus, a statute includes by implication those powers and duties necessary to carry out the intent of the General Assembly. (Roesch-Zeller v. Hollembeak (1955), 5 Ill. App. 2d 94, 107.) The nature of such implied powers and duties may be gathered from a single statutory provision or from several, and the determination of what powers or duties can be reasonably implied may be gathered both from the language of the statute from which that power is purported to stem, and also from other similar statutes. Chicago School Transit, Inc. v. City of Chicago (1966), 35 Ill. 2d 82, 84.

The intent and purpose of the Violent Crime Victims Assistance Act is clear. The Act calls for the imposition of special fines upon conviction for certain enumerated offenses, which fines are to be deposited and maintained in the Violent Crime Victims Assistance Fund to be used to provide comprehensive services and assistance to victims and witnesses of violent crime. Since the Act itself does not set forth specific procedures to be followed in carrying out its purposes, the appropriate procedures must be implied from the language of the Act, from the intent of the General Assembly, and from other statutes which set forth procedures for collecting and disbursing similar fines and penalties. In this context I will address the questions raised in your letter.

You first ask who is responsible for imposing the fines established under the Act. Subsection 10(b) of the Act provides in pertinent part that "the court which enters the conviction shall impose, in addition to any other penalty authorized by law, a fine" in accordance with the fine schedule set out therein. Thus, it is my opinion that the judge who enters the conviction must impose the appropriate fine or fines established under the Act. Further, it is my opinion that the imposition of these fines is mandatory, and consequently, when a conviction is entered against a defendant, the trial court is required to assess the fine established by the Act. See Cooper v. Hinricks (1957), 10 Ill. 2d 269, 272.

In People ex rel. Ward v. Salter (1963), 28 Ill. 2d 612, the Supreme Court considered language similar to that in question in a statute establishing fines for violation of limitations on the weight of trucks using State highways. According to the court:

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* * *

In examining the present statute it is apparent that the legislature established a comprehensive schedule of fines with increasing severity, thereby tending to weigh the seriousness of the violation and to adjust the punishment accordingly. We held in People v. Munziato, 24 Ill. 2d 432, 437, that the nature, character and extent of penalties are matters almost wholly legislative, and that the courts have jurisdiction to interfere with such legislation only where the penalty shocks the conscience of reasonable men. In many provisions of the Criminal Code and also of the Motor Vehicle Act the legislature has set forth maximum and minimum penalties, thereby giving to the trial court a discretion in assessing a penalty. On the present subject, however, the legislature has seen fit to provide for an inflexible schedule of fines to be assessed upon a determination of guilt. In so doing they have clearly eliminated the discretion ordinarily vested in a trial court to determine a penalty within a statutory minimum and maximum. If the legislature had intended to provide for discretion in the trial court in regard to the amount of fine, consistency would have required them to provide minimum and maximum fines. This they did not do. We, therefore, believe that it was the intention of the legislature to provide for a fixed and inflexible schedule of fines for truck overweight violations which must be applied upon a finding of guilt.

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(Emphasis added.) (28 Ill. 2d at 614-15.)

The Supreme Court's rationale is applicable to the fines set out in the Violent Crime Victims Assistance Act. The General Assembly could have established maximum and minimum fines, or it could have otherwise provided that the fines set are not mandatory, thus leaving the court discretion in imposing the fines. Instead, the Act sets out a graduated schedule of fines which does not allow for discretion in imposition. Therefore, it is my opinion that subsection 10(b) is mandatory, requiring the court to impose fines in accordance with the schedule set forth therein.

Moreover, subsection 10(b) clearly states that fines imposed thereunder are "in addition" to other fines. Consequently, the fines established by the Act cannot be deducted from the substantive fine imposed for the offense, but rather, must be imposed as an additional amount over and above all other fines and penalties imposed. If the court fails to expressly impose these fines in addition to other fines and penalties, the fines established under the Act cannot be collected and transferred into the Violent Crime Victims Assistance Fund.

You next ask what offenses require assessment of the special fines and in what amounts the fines should be imposed under the Act. Subsection 10(b) of the Act imposes fines in the amount of \$25, \$20, \$10, and \$3 for different classes of offenses. Additionally, subsection 10(b) provides that, if an

offense falls into more than one category, the higher fine is to be imposed.

Pursuant to subsection 10(b)(1) of the Act, \$25 fines are imposed "for conviction of a crime of violence, as defined in Section 2(c) of the 'Crime Victims Compensation Act'" (Ill. Rev. Stat. 1983, ch. 70, par. 71 et seq.). Section 2 of the Crime Victims Compensation Act (Ill. Rev. Stat. 1983 Supp., ch. 70, par. 72) has been amended several times, both prior to and subsequent to the enactment of the Violent Crime Victims Assistance Act. By referring to the provisions of subsection 2(c) of the Crime Victims Compensation Act in subsection 10(b)(1) of the Violent Crime Victims Assistance Act, it is clear that the General Assembly intended subsection 10(b)(1) to both expressly and impliedly include all amendments to the definition of "crime of violence" in subsection 2(c) of the Crime Victims Compensation Act. See discussion of adoption by reference in Certain Taxpayers v. Sheahan (1970), 45 Ill. 2d 75; Kloss v. Suburban Cook County Tuberculosis Sanitarium Dist. (1949), 404 Ill. 87.

Subsection 2(c) of the Crime Victims Compensation Act provides:

"'Crime of Violence' means and includes any offense defined in Sections 9-1, 9-2, 10-1, 10-2, 12-1, 12-2, 12-3, 12-4, 12-4.1, 12-5, 12-13, 12-14, 20-1 or 20-1.1 of the 'Criminal Code of 1961' and reckless homicide, as defined in

Section 9-3 of that Code, and driving under the influence of intoxicating liquor or narcotic drugs as defined in Section 11-501 of 'The Illinois Vehicle Code', if a conviction for driving under the influence has been entered, and if none of the said offenses occurred during a civil riot, insurrection or rebellion. 'Crime of violence' does not include any other offense or accident involving a motor vehicle except those vehicle offenses specifically provided for in this paragraph."

Anyone convicted of a "crime of violence" as defined in this subsection must be assessed an additional fine of \$25 under subsection 10(b)(1) of the Violent Crime Victims Assistance Act.

Subsection 10(b)(2) of the Act requires the imposition of a \$20 fine for conviction of any other felony or misdemeanor. Because subsection 10(b) provides that offenses which fall into more than one category are to be assessed the highest applicable fine, subsection 10(b)(2) requires the imposition of a \$20 fine for all felonies or misdemeanors other than those offenses defined as "crimes of violence" under subsection 2(c) of the Violent Crime Victims Compensation Act.

Subsection 10(b)(3) of the Act establishes a \$10 fine for conviction of any offense listed in section 6-205 of The Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 6-205). All of the offenses listed in section 6-205 are either felonies or misdemeanors, and some of the offenses listed are also "crimes of violence" as defined in subsection 2(c) of the Violent Crime Victims Assistance Act. Again, because section 10 requires the imposition of the highest applicable fine, the

offenses currently listed in section 6-205 of The Vehicle Code carry either a \$25 or a \$20 fine. For this reason, the \$10 fine is not applicable to those offenses.

It should be noted that, pursuant to Public Act 83-1344, effective January 1, 1985, felony and misdemeanor conservation offenses, as defined in Supreme Court Rule 501 (Ill. Rev. Stat. 1983, ch. 110A, par. 501), will be specifically excluded from the purview of subsection 10(b)(2) of the Act, which presently requires the imposition of a \$20 additional fine upon conviction for such offenses. Further, Public Act 83-1344 specifically provides for the imposition of a \$10 additional fine for conservation offenses under subsection 10(b)(3). Therefore, on the effective date of the aforementioned Act there will be one category of offenses for which a \$10 fine is to be imposed.

Subsection 10(b)(4) of the Act establishes a \$3 fine for conviction of any offense in The Illinois Vehicle Code excluding those enumerated in subsection 6-204(a)(2) of the Code (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 6-204(a)(2)) and in article VI of chapter 11 of that Code (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 11-601 et seq.).

The following is a table listing the fines applicable to various offenses as established by section 10 of the Act:

<u>Chapter</u>	<u>Section(s)</u>	<u>Crime</u>	<u>Fine</u>
38	9-1	Murder.....	\$25
38	9-2	Voluntary Manslaughter.....	\$25
38	9-3	Reckless Homicide.....	\$25
38	10-1	Kidnapping.....	\$25
38	10-2	Aggravated Kidnapping.....	\$25
38	12-1	Assault.....	\$25
38	12-2	Aggravated Assault.....	\$25
38	12-3	Battery.....	\$25
38	12-4	Aggravated Battery.....	\$25
38	12-4.1	Heinous Battery.....	\$25
38	12-5	Reckless Conduct.....	\$25
38	12-13	Criminal Sexual Assault.....	\$25
38	12-14	Aggravated Criminal Sexual Assault.....	\$25
38	20-1	Arson.....	\$25
38	20-1.1	Aggravated Arson.....	\$25
95 1/2	11-501	Driving under the Influence.....	\$25
95 1/2	4-102		
	- 4-108	Anti-Vehicle Theft.....	\$20
95 1/2	6-303	Driving While Suspended or Revoked.....	\$20
95 1/2	8-101		
	- 8-116	Vehicles used for Transportation of Passengers.....	\$20
95 1/2	9-101		
	- 9-110	Owners of Vehicles for Hire or Rent.....	\$20
95 1/2	11-401	Leaving the Scene.....	\$20
95 1/2	11-503	Reckless Driving.....	\$20
95 1/2	11-504	Drag Racing.....	\$20
95 1/2	18-702	No ICC Certificate.....	\$20

All other misdemeanors or felonies, including
conservation offenses so classified until
December 31, 1984.....\$20

After December 31, 1984, all
conservation offenses as defined
in Supreme Court Rule 501.....\$10

Other Vehicle Code Violations which are not classified as
misdemeanors or felonies, excluding those enumerated in
section 6-204(a)(2) and excluding those enumerated in
article VI of chapter 11 of The Illinois Vehicle Code.....\$ 3

Thirdly, you question when the fines established under the Act should be imposed. Subsection 10(b) of the Act provides that the fines established under the Act are to be imposed "in addition to any other penalty authorized by law". This language implies that the penalties established under the Violent Crime Victims Assistance Act are to be imposed at the time the court imposes all other fines and penalties. As noted above, the court must specifically impose the fines in question separately from all other fines and penalties.

Additionally, you have inquired whether fines can be imposed under the Act only when some other fine has been imposed. There are, in fact, statutory fines designed to be imposed only if some other fine is imposed upon conviction. For example, under the Illinois Police Training Act, the amount of a defendant's fine payable into the Traffic and Criminal Conviction Surcharge Fund is computed as part of the total fine imposed for the offense. (See Ill. Rev. Stat. 1983, ch. 38, par. 1005-9-1(c).) Thus, if no other fine is imposed against a defendant, no special fine can be imposed under that Act.

Under the Violent Crime Victims Assistance Act, however, the imposition of special fines is not contingent upon the imposition of any other fine. Subsection 10(b) of the Act requires that special fines be imposed "in addition to any other penalty". This language implies that the nature or

amount of other fines and penalties is not to be considered when fines are imposed under the Act. As has been noted, the language used in subsection 10(b) of the Act is mandatory rather than contingent. (See People ex rel. Ward v. Salter (1963), 28 Ill. 2d 612, 614-15.) For this reason, it is my opinion that fines specified under the Act must be imposed regardless of whether any other fine or monetary penalty has been imposed.

Your fifth question is whether fines can be imposed under the Act against defendants placed on court supervision. Subsection 10(b) of the Act provides that fines are to be imposed by "the court which enters the conviction". A disposition of supervision imposed by the court is not a conviction. (Ill. Rev. Stat. 1983, ch. 38, par. 1005-6-3.1; 1982 Ill. Att'y Gen. Op. 69, 72.) Because the imposition of fines under the Act is contingent upon the entry of a conviction, it is my opinion that such fines may not be imposed upon a defendant who is placed on supervision.

The issue of who collects the fines was also raised in your letter. As discussed above, the Act does not expressly establish procedures for the collection of fines, and therefore, it is necessary to imply such procedures from the substantive provisions of the Act. Pursuant to section 3 of

"AN ACT fixing and providing for the payment of the salaries of state's attorneys and their assistants, etc." (Ill. Rev. Stat. 1983, ch. 53, par. 18a), it is the duty of the several State's Attorneys to assure that all fines imposed in criminal cases are paid. However, it is generally the responsibility of the clerk of the court which imposes fines to receive payment of those fines from defendants. Moreover, clerks of the courts collect special fines such as those imposed for the Drivers' Education Fund or the Traffic and Criminal Conviction Surcharge Fund as well as ordinary fines and costs imposed. (See Ill. Rev. Stat. 1983, ch. 38, par. 1005-9-1(c).) Inasmuch as clerks of the courts normally collect fines imposed by the court, it is my opinion that clerks of the courts should also collect fines established by the Act.

Your seventh question relates to the collection of those fines. Again, because the Act does not specify how the fines imposed under the Act are to be collected, it is reasonable to conclude, by implication, that they are to be collected in the same manner as other fines.

The clerk of the court is generally responsible for receiving payment of all other fines imposed against a defendant. The State's Attorney is responsible for prosecuting defendants who fail to pay fines imposed by the court. (Ill. Rev. Stat. 1983, ch. 53, par. 18a.) Fines imposed under this Act should be collected in the same manner. It must again be

stressed, however, that these fines must be expressly imposed by the court. Absent express action by the court, the clerk may not designate part of any other fine for the Violent Crime Victims Assistance Fund, nor may the clerk add fines established by the Act to the amount actually imposed by the court.

Once the fines have been collected, the question which arises is how the monies are to be held. Some statutes imposing special fines require that, once collected, those fines be transferred to the county treasurer who must hold them until they are deposited in the appropriate special fund. (See, e.g., section 9.1 of the Illinois Police Training Act, Ill. Rev. Stat. 1983, ch. 85, par. 509.1.) Other statutes require that the public officer collecting special fines hold them until they are deposited in the appropriate fund. (See, e.g., section 16-104a of The Illinois Vehicle Code, Ill. Rev. Stat. 1983, ch. 95 1/2, par. 16-104.) In the absence of express procedures to the contrary, it is my opinion that the circuit clerk must retain such fines in a separate account until they are transferred into the Violent Crime Victims Assistance Fund.

Your ninth question involves the mechanics of the transfer of collected fines into the Violent Crime Victims Assistance Fund. Subsection 10(c) of the Act requires the

finances to be transferred to the State Treasurer, who shall retain the collected fines in the Fund. Therefore, it is my opinion that the circuit clerk must send collected fines directly to the State Treasurer, who must then deposit those fines into the Violent Crime Victims Assistance Fund.

Your tenth question is whether fines collected under the Act should be transferred to the State Treasurer in one lump sum together with fines collected under the provisions of other statutes. As was previously noted, fines collected under the Act must be retained by the clerk in a separate account. Under the Act, the Treasurer is also directed to hold those fines in a separate fund. Furthermore, other statutes require the distribution of collected fines to officers other than the State Treasurer, such as the county treasurer or the treasurer of some other unit of local government. (See, e.g., Ill. Rev. Stat. 1983, ch. 95 1/2, par. 16-105; Ill. Rev. Stat. 1983, ch. 85, par. 509.1.) In order to maintain these fines separate from other monies under the control of either the clerk or the Treasurer, and to simplify accounting procedures necessary for the orderly transfer of those fines into the Violent Crime Victims Assistance Fund, it is my opinion that circuit clerks must send fines collected under the Act to the State Treasurer separate from any other funds.

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Your final question concerns the frequency of transfer of collected fines to the Treasurer. Pursuant to subsection 10(c) of the Act, the State Treasurer is required to provide the Attorney General with a monthly status report on the amount of money in the fund. Since the Treasurer is to account monthly for the amount of money in the fund, it is my opinion that the several circuit clerks must transfer all fines collected pursuant to the Act to the office of the State Treasurer on a monthly basis.

Very truly yours,


A T T O R N E Y G E N E R A L