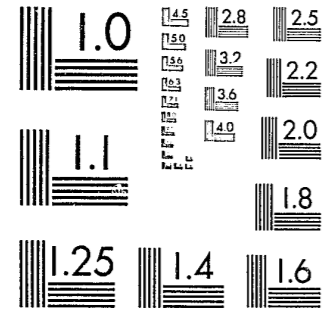


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OFFICE OF PROGRAM DEVELOPMENT & RESEARCH

NEW YORK STATE DIVISION of CRIMINAL JUSTICE SERVICES

PROPOSAL FOR THE
DEVELOPMENT OF A
PENALTY ASSESSMENT SYSTEM
IN NEW YORK STATE

November 25, 1981

82364



CK sent
1-1-82

Frank J. Rogers
Commissioner

William T. Bonacum
Deputy Commissioner

Henry Paquin
Director, Office of Program Development and Research

PROPOSAL FOR THE
DEVELOPMENT OF A
PENALTY ASSESSMENT SYSTEM
IN NEW YORK STATE

November 25, 1981

Bureau for Municipal Police

Bureau of Program Development & Planning

William McMahon
Deputy Commissioner

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NCJRS

MAR 6 1982

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PENALTY ASSESSMENT

Various theoreticians and practitioners involved in the criminal justice system have advocated the development of strategies which would transfer some of the fiscal burden of operating the system from the taxpayer to the offender, while at the same time, improving the quality of programs and enhancing the sense of "justice being done." Although the use of restitution and community service have received the greatest attention in this area, the concept of penalty assessment has warranted increased attention.

Penalty assessment systems represent a form of taxation selectively levied on offenders upon their conviction of certain criminal acts or traffic offenses. The use of fines has been underutilized in most states, even in the face of the staggering increases in the cost of operating the criminal justice system. It has been argued that many offenders, especially those who receive non-incarcerative sentences, should be required to contribute toward the cost associated with the processing of their cases. A recent report from the District Attorney's office in New York County showed that in the first quarter of 1980, 64% of the defendants who pled guilty to Class A misdemeanor offenses received sentences which did not involve incarceration. Such offenders would be particularly appropriate candidates for a special taxation system.

Systems for the use of penalty assessment have been developed by approximately 24 states, with the first such system having been established by California in 1959. These systems generally mandate that a surcharge be levied upon fines imposed for violation of criminal or traffic codes. Funds raised through the surcharge are sent by each court to the state treasurer and are earmarked for special usage rather than appropriated through the

regular budgetary process. Although these taxes have generally been used to support police training or victim compensation funds, the concept has also been proposed for use by probation and parole departments, where probationers and parolees would be charged a nominal weekly fee toward the cost of their supervision. In New York State, for example, the imposition of a supervision fee of one dollar per week, per probationer/parolee would raise more than three million dollars annually.

Although, as noted above, most states have limited the use of funds obtained through penalty assessment systems to support police training (Table 1) or victim compensation (Appendix D), the magnitude of revenues* collected suggests that these programs could be used to support other criminal justice activities (i.e., domestic violence programs, victim/witness assistance programs, alcohol and drug abuse programs).

Issues Relating to Penalty Assessment Systems

Several areas of concern should be considered in the development of a penalty assessment system. These issues are summarized below:

Constitutionality:

A preliminary review of the NYS Constitution indicates that there are no provisions which would bar the use of penalty assessment in New York State. However, a more in-depth review should be undertaken. It is worth noting that the penalty assessment system developed in Michigan was declared

*California estimates that revenues to be raised in 1982-83 through its penalty assessment system will be approximately 80 million dollars.

TABLE I

PENALTY ASSESSMENT IN THE UNITED STATES-1981

State	Assessment Revenue Collected	Assessment	Who Collects
Arizona	\$2,000,000	2.00 or 10% whichever is greater on all criminal and motor vehicle offenses; does not include parking violations.	Court
California	\$20,000,000	\$5 on every \$20 of fine; \$5 on every \$20 bail on all criminal and motor vehicle offenses except offenses related to parking or registration or offenses by pedestrians.	Court
Delaware	In development stage		
Connecticut	\$ 900,000	10% of fine in motor vehicle violations and on first \$90.00 for for infractions.	Court
Florida	\$ 750,000	\$1.00 against every person convicted or bailed (labelled court cost) except non-moving vehicle violations.	Court
Illinois	\$2.5 million to \$6.5 million	\$2 minimum to 10% of fine, moving traffic violations, criminal offenses and bond forfeitures.	State Attorneys (D.A.'s)
Indiana	\$ 800,000	\$2 of each State Prosecutor's fee.	Courts
Kansas	\$ 850,000	\$1.00 to \$5.00 all State and Municipal Court cases	Courts
Kentucky	\$6 million	\$15 per fine traffic and criminal.	
Maryland	In development stage		
Massachusetts	\$ 400,000	25% of all criminal fines	Court
Nebraska	\$ 390,000	\$1 on all criminal and moving traffic fines.	Court
New Hampshire	\$ 500,000	\$2 or 10% on all criminal and traffic fines	Court
Ohio	In development stage		
Oklahoma	\$172,000	\$3 on criminal fines	Court
Oregon	\$2.5 million	\$2 to \$25 on all criminal and traffic fines except for parking.	Court clerk County treasurer
Rhode Island	In development stage		
South Carolina	\$2 million	\$1 to \$15 on all criminal and traffic fines over \$5.	Court
South Dakota	\$ 220,000	\$2 or 5% (whichever is greater) on all moving motor vehicle fish and game and park violations, local ordinances related to motor vehicle except parking.	Court
Texas	\$2.9 million	\$1 on every criminal conviction (less 5% admin cost to locals)	Municipal & County Treasurers
Utah	In development stage		
Washington	\$2.8 million	\$3 to \$15 on criminal and traffic bail forfeitures	Court
Wisconsin	\$2.7 million	10% surcharge added to bail forfeiture or fine on violations of state law or municipal & county ordinance.	Court

to be unconstitutional (see People v. Barber, 14 Mich. App. 395, 165 N.W. 2d 608 (1968), while the constitutionality of a Florida statute regarding penalty assessment was upheld in State v. Champe, 373 So. 2d 874 (FLA-1978).

Indigency:

Penalty assessment systems can be construed as a discriminatory burden upon the indigent offender. Although the indigent offender will feel the weight of this form of taxation more than one with greater financial resources, it seems appropriate that the offender bear the cost of programs occasioned by his/her offense rather than the taxpayers in general. It should be noted that judges often exercise discretion involving the imposition of both fine and assessment and, therefore, can ameliorate this problem, particularly if the fine or assessment will pose unfair hardship upon an offender's dependents. In addition, community service sentences may provide a reasonable alternative to either a fine or penalty assessment for the indigent offender.

Police Professionalism:

An assessment system may be challenged as providing incentives for police to increase their enforcement activities as they themselves benefit from the funds so raised. However, there has been no indication that police have responded to the introduction of penalty assessment systems with an increase in enforcement activities. South Carolina reports that not a single formal complaint has been registered against its' assessment system as unfair or prejudicial. In addition, California and Idaho report that there appears to be no relationship between their assessment systems and the volume of citations issued.

Cooperation of the Courts:

Generally, penalty assessment systems have relied upon the courts to function as collection agents. It can be anticipated that the increased administrative burden introduced by such a system in New York State will further burden an already backlogged judiciary. Some states have provided the courts with a portion of the levied assessment as a means of providing needed fiscal relief to the collecting courts.

Special Fund:

New York State has endeavored to reduce the number of special "off-budget" funds to enhance executive and legislative discretion and budgetary decision-making as evidenced by the State's new Generally Accepted Accounting Principles System (GAAP). The creation of a special police training fund or funds for other criminal justice purposes would run counter to the underlying assumptions of this new accounting system. However, the potential fiscal relief to both the State and local governments created through an assessment system should weigh heavily in any decision regarding its development and implementation in New York. In addition, it seems appropriate that funds raised through assessment of penalties on certain criminal or motor vehicle offenses be used to defray the costs to both the State and localities of crime-related programs or activities.

Level of Assessments:

Several methods of assessing a penalty are in use and should be considered, including:

- a) Fixed Fee - a flat fee is assessed regardless of the amount of fine and may be imposed in the event a fine is not assessed.
- b) Percentage - a fixed percentage is assessed, often at the

rate of 5% or 10% of the fine imposed (California assesses 25-30%).

- c) Sliding Scale - a fixed amount is assessed depending on the amount of fine imposed (i.e., current legislative proposals - see appendices). For example:

<u>FINE</u>	<u>ASSESSMENT</u>
\$ 5.00 - 24.99	\$ 2.00
25.00 - 49.99	3.00
50.00 - 99.99	4.00
100.00 - 499.99	5.00
500.00 and above	10.00

- d) Combination - a fixed amount or a percentage of the fine is assessed, whichever is greater.

It should be noted that the court system might favor a fixed amount approach, since this strategy facilitates calculation, collection, reporting and distribution of assessed monies. The fixed fee technique is also seen as less arbitrary than the other assessment methods outlined above. In addition, the level of assessment should not be unduly harsh upon the indigent offender, and be realistically collectable so as to minimize the use of incarceration in dealing with non-compliance.

Collection:

It is unclear to what degree it can be expected that offenders will or will not be able to pay assessment levies. Since a large portion of convictions will involve motor vehicle offenses, collection should not be a problem in this area; it may be more difficult, however, to collect for assessments on certain criminal convictions. It should be noted that approximately 24 states have developed assessment systems and several, including California and Connecticut, have reported no significant collection difficulties.

Apportionment and Fund Use:

Currently, assessment systems have generated substantial funds in several states. Given the size of the revenue projected, it is necessary for New York State to determine what criminal justice activities would be appropriate for support through assessment funding. Nineteen states use assessment levies to support police training activities. Thirteen states support victim compensation programs with assessment levies. In addition, assessment systems are used to support such purposes as high school driver education, fish and game agencies, police retirement and victim/witness assistance programs.

Currently in New York, the State and units of local government must bear the full cost of police training, the minimum level of which is mandated by the State through the Municipal Police Training Council (MPTC). Both localities and the State also bear the full cost of the entire criminal justice system. Allocation of a portion of the funds raised through a penalty assessment system to the support of police training would allow New York State to:

1. ease the financial burden incurred by local governments in the provision of police training,
2. facilitate the introduction of new police educational and training techniques and enhance the standardization of instruction throughout the State,
3. provide a stable revenue source for certain criminal justice purposes including police training, particularly in light of severe federal budgetary cuts,

4. provide budgetary relief to the State through funding of the Bureau for Municipal Police, and
5. institutionalize the State's Highway Safety Program currently supported largely with federal funds.

In addition, penalty assessment systems are particularly attractive to local governments as the burden for funding police training and other related activities would fall upon individuals who have violated the law and occasion the need for police intervention, rather than upon taxpayers in general.

In the broader sense, these funds would be used to offset other criminal justice costs and to provide some funds for the development of innovative criminal justice programs that would be operated on a trial basis while their impact on improving the administration of justice was studied. Successful programs would be replicated and supported in regular State/local budgets.

Summary of Current Proposed Legislation in New York

Three pieces of legislation regarding the use of penalty assessment in New York State include bills introduced by Senator Volker (hereinafter referred to as the Volker bill), Senator Marino and Assemblyman Fink (hereinafter referred to as the Fink bill), and Senator Weinstein (hereinafter referred to as the Weinstein bill).

The Volker and the Weinstein bills establish a fund to finance the training of police officers and also the cost of the operation of the Bureau for Municipal Police of the Division of Criminal Justice Services. The Weinstein bill goes further than the Volker bill by providing funding to the Crime Victims Compensation Fund. The Fink bill allocates assessed funds to compensate crime victims exclusively.

All three bills have the following characteristics:

1. they provide potential budgetary relief to the State, and
2. they raise revenue by assessing a penalty against the offender that is in addition to any other sentence imposed by the court.

The Volker and Weinstein bills contain several additional provisions which result in the following benefits:

1. reduction of the financial burden incurred by local governments in the provision of police training,
2. facilitation of the introduction of new police educational and training techniques, and their standardization statewide.
3. provision of a stable revenue source for police training statewide, particularly in light of severe federal budget cuts, and
4. provision of budgetary relief to the State through funding of the Bureau for Municipal Police.

The Volker and Weinstein bills contain a penalty assessment scale as follows:

- a. When fine or forfeiture is up to and including \$10.00, the penalty shall be \$2.00.
- b. When fine or forfeiture is \$10.01 to \$25.00, the penalty shall be \$5.00.

- c. When fine or forfeiture is \$25.01 to \$50.00, the penalty shall be \$10.00.
- d. When fine or forfeiture is in excess of \$50.00, the penalty shall be 20% of the amount to the nearest dollar.

Parking and other standing traffic violations are specifically excluded from these assessments. All other fines and bail forfeitures are included.

The Weinstein and Fink bills are similar in that they both provide a revenue source to compensate crime victims. The Fink bill establishes the following assessment schedule to provide funding to the Crime Victims Compensation Fund:

1. Felony - \$31
2. Misdemeanor - \$21
3. Violation - \$16

(This schedule does not include traffic infractions. However, each levy provides one dollar to localities for administrative expenses.)

The Weinstein bill also levies a monetary penalty which varies by class of offense. However, the language of the bill is unclear regarding the disposition of funds raised through the following schedule and as to the imposition of a penalty assessment in addition to the mandatory monetary assessment. The following table indicates the mandatory monetary assessment to be imposed by class:

<u>Offense</u>	<u>Mandatory Penalty Amount</u>
Class A I felony	\$250
Class A II or Class B felony	\$200
Class A III or Class C felony	\$150
Class D felony	\$100
Class E felony	\$ 75
Class A or Unclassified Misdemeanor	\$ 40
Class B Misdemeanor	\$ 20

Of the three bills, the Weinstein bill appears to be the most comprehensive in that it addresses some of the deficiencies in both the Volker and Fink bills. First, the bill provides for mandating penalties for certain felony and misdemeanor offenses against which an additional penalty assessment might be levied. Second, the Weinstein bill provides that funds raised through the penalty assessment system be used to support purposes such as the Crime Victims Compensation Fund as well as law enforcement training. However, all these bills are generally limited as to their potential application or areas of funding. In addition, the assessment scale established by the Weinstein and Volker bills are too detailed; funds apportioned to the Crime Victims Compensation Fund and/or law enforcement training are done so without consideration of surplus or deficiencies, and separate funds are established outside the regular legislative appropriation system in contradiction to the Generally Accepted Accounting Principles (GAAP) system recently introduced in New York State.

Although these bills have certain deficiencies, there is concrete merit to the concept of offenders supporting the training of law enforcement officers, compensation for victims and defraying State and local criminal justice expenditures.

A more extensive discussion of each bill is contained in the attached appendices.

Recommendations

It is recommended that New York State adopt a penalty assessment system to help defray the cost of supporting a broad range of criminal justice

activities by assessing levies upon those individuals whose improper actions (whether criminal or motor vehicle related) occasion the need for State or local justice intervention. This concept is particularly attractive as current budgetary constraints are severe, federal criminal justice funds have been eliminated, other states have successful penalty assessment systems, and a great number of defendants pass through the criminal justice system without any penalty being exacted against them. It is recommended that the Division of Criminal Justice Services support the passage of penalty assessment legislation in the form of a bill that would provide for a wider distribution of these funds across the spectrum of criminal justice activities.

It is recommended that the penalty assessment system developed for New York State contain the following provisions:

A. Motor Vehicle Offenses

1. an additional fixed levy of \$11.00 be imposed upon convictions and bail forfeitures levied as a penalty for violations or offenses related to the operation of a motor vehicle, except for parking and other standing violations;
2. these funds are to be used to establish a law enforcement improvement fund which is to be used to defray the costs of establishing, maintaining, and operating training schools for municipal, county and state employees who are part of the police forces of these government units. Eligible expenditures would include trainees' salaries, instructors' salaries, trainees' food, lodging and travel costs, and the cost of operating and maintaining police training facilities. In addition, this fund would be used to support the Bureau for Municipal Police

of the Division of Criminal Justice Services, the State agency responsible for supervision and monitoring of local police training activities. In order to allow for the support of special priority programs, it is further recommended that 10% of this fund be allocated to the Crime Control Planning Board as discretionary funding to be dispersed by that body in accordance with their statutory authority and purposes. One dollar of each penalty assessment would be retained by the collecting court to defray administrative costs.

- 3. Fiscal Implications: revenue generated through this program could completely fund the Bureau for Municipal Police and the State-mandated basic police training program. In addition, cost of supervisory and other in-service training could be substantially defrayed.

Revenue: Traffic Law violations and offenses could generate revenue for the law enforcement improvement fund according to the following schedule:

<u>Offense</u>	<u>1980 Convictions</u>	<u>\$10.00 Assessment</u>
Speeding	527,362	\$ 5,273,620
Reckless Driving	2,592	25,920
DWI/DWAI	43,040	430,400
Others	673,644	6,736,440
TOTAL	1,246,638	\$12,466,380

Expenditures

- 1. Bureau for Municipal Police - \$2,000,000
- 2. Police Trainees' Salaries Basic Course - \$6,337,000*
- 3. Police Supervisory Trainees' Salaries - \$219,000
 - New York City - unknown
 - Upstate - \$219,000

- 4. Highway Safety Trainees' Salaries - \$1,200,000
 - New York City - unknown
 - Upstate - \$1,200,000
- 5. TOTAL -- \$8,956,000

*Based upon State-mandated 285 hour basic course. Average length of course in upstate New York is 400 hours and 700 hours in New York City.

B. Criminal Offenses

- 1. A mandatory minimum level of assessment should be established for all criminal convictions and violations (excluding Traffic Law convictions) according to the following schedule:

Felony	\$31
Misdemeanor	\$21
Violations & Local Ordinances	\$16

- 2. These funds are to be used to supplement funds currently appropriated to the Crime Victims Compensation Fund. It is further recommended that 10% of these funds be allocated to the Crime Control Planning Board as discretionary funding to be disbursed by that body in accordance with their statutory authority and purposes. One dollar of each penalty assessment would be retained by the collecting court to defray administrative costs.
- 3. Fiscal Implications: The Office of Court Administration reported 195,000 criminal convictions during 1980 of which 24,000 were felony convictions. The remaining 171,000 were reported as misdemeanors (and/or violations). The following table displays projected minimum penalty assessments that could be generated through the above fine scale:

<u>Offense</u>	<u>Number of Offenses</u>	<u>Penalty Assessment</u>
Felonies	24,000	\$ 720,000
Misdemeanors/ Violations	171,000	3,420,000
TOTAL	195,000	\$4,140,000

It should be noted that these figures represent minimum revenues as the number of convictions involving local ordinances is unknown at this time.

The \$4.1 million generated through a penalty assessment on criminal convictions would be directed to the Crime Victims Compensation Fund representing approximately 80% of the Fund's 1981-82 appropriation.

Apportionment of Funds

It is recommended that 10% of collected assessment funds be allocated to, and administered by, the Crime Control Planning Board within the Division of Criminal Justice Services which has the responsibility to "review, approve, and maintain general oversight of all policies, plans and regulations for distribution of grants from funds made available to the State of New York pursuant to the Federal acts and such other laws or programs as the governor may direct" (Executive Law §844). In accordance with this responsibility, the board has reviewed thousands of grant applications from all areas of the criminal justice system.

The board, composed of 29 members representing State and local government crime and juvenile agencies, education and private citizens, is appointed by the Governor with the advice and consent of the Senate. It is recommended that Executive Law §843 be amended to provide for equal

representation of legislators from both major political parties to insure equality in the decision-making process.

It is further recommended that the proposed funds collected by the courts be forwarded to the State Comptroller to be accounted for and made available as follows:

A. Traffic Assessments

Those amounts necessary for the operation of the Bureau for Municipal Police within the Division of Criminal Justice will be made available to the Commissioner of the Division from the penalties assessed on fines generated from traffic offenses.

Those amounts necessary for the reimbursement of costs associated with local law enforcement training schools should be disseminated pursuant to rules and regulations and procedures established by the Commissioner with the advice and consent of the Municipal Police Training Council (MPTC).

Ten percent of the monies received from traffic assessments will be made available to the Crime Control Planning Board for the purpose of making awards to eligible criminal justice programs.

B. Criminal Offense Assessments (other than traffic)

Penalties assessed on criminal offenses will be made available to the Crime Victims Compensation Board to be awarded as payments to crime victims, supplementing legislative appropriations. Rules and regulations are already in place for the dissemination of funds to victims of crime pursuant to Article 22 of the Executive Law.

Ten percent of the monies received from penalty assessments on criminal offenses will be made available to the Crime Control Planning Board for the purpose of making awards to eligible criminal justice programs.

APPENDICES

- Appendix A - S. 4298 (Volker)
- Appendix B - S. 4663 (Weinstein)
- Appendix C - S. 5447 (Marino)
- Appendix D - Victim Compensation Programs

APPENDIX

A

BILL MEMORANDUM

Bill Number: Assembly: 5845 Senate: 4298

Sponsors: Assembly: R. Stephen Hawley, Raymond M. Kisor
Senate: Dale M. Volker

Title of Bill: An act to amend the state finance law, in relation to establishing a law enforcement improvement fund.

Purpose or General Idea of Bill: This bill establishes a "Law Enforcement Improvement Fund" which finances the training of all police officers throughout the state, and also the cost of the operation of the Bureau for Municipal Police of the Division of Criminal Justice Services.

Summary of Specific Provisions: This bill adds new section 90-a to the state finance law to establish the "Law Enforcement Improvement Fund" to finance training of police officers. The purposes of the fund include maintenance and operation of the training schools, publication of informational material, research, and administration.

The fund is created through a surcharge levied upon fines and bail forfeiture according to the following schedule:

- a) when fine or forfeiture is up to and including \$10.00, the penalty shall be \$2.00.
- b) when fine or forfeiture is \$10.01 to \$25.00, the penalty shall be \$5.00.
- c) when fine or forfeiture is \$25.01 to \$50.00, the penalty shall be \$10.00.
- d) when fine or forfeiture is in excess of \$50.00, then the penalty shall be 20% of the amount to the nearest dollar.

Parking and other standing violations are specifically excluded from these assessments.

The "Law Enforcement Improvement Fund" is to be administered by the Commissioner of the Division of Criminal Justice Services. Specifically the funds will be used to support the following purposes:

• to reimburse local police departments for expenses incurred in the training of police officers, including expenditures for salaries, lodging, food, and travel.

• to reimburse localities for the operation and maintenance of regional training facilities.

• to support the operation of the Bureau for Municipal Police of the Division of Criminal Justice Services in the area of police training and administration.

Statements in Support of the Bill: Currently, localities must bear the full cost of police training, the minimum level of which is mandated by the State through the Municipal Police Training Council (MPTC). This bill will do several things, including:

- (1) ease the financial burden incurred by local governments in the provision of police training;
- (2) facilitate the introduction and updating of new police educational and training techniques;

(3) provide stable revenue source for police training statewide, particularly in light of severe Federal budgetary cuts;

(4) provide budgetary relief to the State through funding of the Bureau for Municipal Police;

(5) funding of these services through assessment of those individuals necessitating the services.

In addition, the State may be able to finance additional police training and further improve the quality of police performance provided the level of income to the Law Enforcement Fund is sufficient. It should be noted that 19 other states have already introduced some form of penalty assessment with 4 others in the developmental stage.

Statements in Opposition to the Bill: Several problems or shortcomings in the current bill should be noted, including:

(1) Limited in Scope: the sources of funding are limited to moving traffic violations and criminal offenses where fines are imposed. Excluded are parking and other standing violations and a wide range of criminal convictions which currently do not carry fines. These areas could provide substantial revenue for penalty assessment.

(2) Fee Schedule: the fee schedule may be too detailed. It could be simplified by a straight percentage with a minimum assessment.

(3) Local Assistance: assistance to localities is not limited to a certain percentage of eligible expenditures or linked directly to funding only State mandated costs, particularly as some localities provide training far in excess of minimum standards.

(4) Benefactors: potential uses of penalty assessment income are limited. Other uses, such as contribution to the Crime Victims Compensation Board, might be considered.

(5) Administration: the bill does not consider the costs incurred by judicial districts or municipalities in administering the program.

(6) Separability Clause: the bill contains no provision to allow other portions of the bill to remain law in the event that any particular section is declared unconstitutional.

(7) GAAP System: the establishment of separate funds outside the regular appropriation system runs counter to the underlying principles of the new General Acceptable Accounting Principles (GAAP) system recently introduced in New York State. Therefore, this proposal may incur opposition from the State Comptroller.

Known Position of Others

New York State Association of Chiefs of Police, Inc.: in favor of penalty assessment legislation feels it is necessary to address problems of quality and quantity in Law Enforcement Training; eliminate state and reduce local financial burden with respect to law enforcement training; and will allow state institutionalization of Highway Safety Program to compensate for reduced federal funding.

Law Enforcement Training Directors Association of New York State: in favor of the Volker Bill. Feels fund is necessary to improve law enforcement training in New York State.

New York State Federation of Police, Inc.: supports the Penalty Assessment Legislation. Necessary to alleviate cost of police training to the taxpayer and maintain high quality of training.

New York State Association of Magistrates : DOES NOT support this legislation. Disapproves of having a "tax" on a fine levied in a local court., Believes this is an improper judicial role. Should benefit court and taxpayer, not police.

Legislative History: this bill has been introduced each session beginning in 1976, including:

- 1976 - S 10384 (Volker)
- 1977-78 - S 611 (Volker); A 5831 (Greco)
- 1979-80 - S 431 (Volker); A 457 (Greco)
- 1981-82 - S 4298 (Volker); A 5845 (Hawley)

Each session the bills have been referred to the respective fiscal committee for each house. No action has been taken.

Statutory History: None.

Fiscal Implications: The bill provides that the Commissioner of Criminal Justice Services consider such factors as trainee salaries, instructor salaries, costs of food, lodging and the operation and maintenance of training facilities in determining the apportionment of the Law Enforcement Improvement Fund for purposes of police training. The following analysis presents those costs that are potentially fundable under provisions of the bill including:

Police Training Basic (285 hr) - upstate	\$2,392,000 (est)
(Trainees Salaries) - NYC	\$3,945,000 (est)
Police Training Supervisory - upstate	\$ 219,000 (est)
(Trainees Salaries) - NYC	unknown
Police Training Highway Safety - upstate	\$1,200,000 (est)
(Trainees Salaries) - NYC	unknown
Bureau for Municipal Police(FY 1981-82)	\$1,000,000
Instructors Salaries	unknown
Training Facilities	unknown
Food, Travel, Lodging	unknown
Total Expenditures	\$8,756,000

The following analysis presents potential sources of revenue as authorized under provisions of this bill, including:

Vehicle and Traffic Law Violations (excluding parking)	
Speeding - 20% penalty assessment -	\$2,109,000
Reckless Driving - 20% penalty assessment -	26,000
DWI/DWAI - 20% penalty assessment -	1,377,000
Other traffic - 20% penalty assessment -	1,347,000
Conservation -	94,000
Penal & CPL -	430,000
Total Revenue	\$5,383,000

It is clear that there is substantial shortfall between projected expenditures and estimated revenues. In addition it should be noted that several expenditure categories are at this point unknown and that costs are based upon the minimum number of hours mandated by the State. However, revenue estimates do not include penalties on bail, bond forfeitures, nor is it clear that all other sources have been identified at this point. Ultimately the relationships between expenditures and revenues will be impacted by the level of local assistance established for localities.

Effective Date: September 1, following the date that bill becomes law.

Recommendations: It is recommended that the Division of Criminal Justice Services oppose the Law Enforcement Improvement Fund Bill (S.4298) in its present form. The concept of penalty assessment is sound and is in use in many other states including California and Massachusetts. However, the political and fiscal climate is such as to justify a more extensive and comprehensive penalty assessment package, including such elements as the following:

- (1) A more extensive use of fines across all categories of offenses including felonies, misdemeanors, and other violations either by themselves or in conjunction with other sentencing dispositions.
- (2) The allocation of penalty assessment funds and/or certain fines to additional uses other than police training such as funding of the Crime Victims Compensation Fund or Domestic Violence programs.
- (3) Linkage to other user supported services such as the Probation Supervision Fee.
- (4) The assessment of a flat fee on all parking violations (such as \$1.00).

Note: These figures represent trainees salaries based on the State mandated 285 hr. basic training course. Total salary costs are estimated at more than 13 million dollars as actual training for exceeds the mandated minimum hrs on average.

APPENDIX

B

BILL MEMORANDUM

Bill Number: Senate: 4663

Sponsor: Senate: Weinstein

Title: An act to amend the state finance law and the penal law, in relation to establishing a crime victims compensation law enforcement improvement fund.

Purpose or General Idea of Bill: This bill establishes a crime victims compensation law enforcement improvement fund for the purpose of financing the crime victims compensation board with respect to victim payments, the training of police officers throughout the state, and the cost of the operation of the Bureau for Municipal Police of the Division of Criminal Justice Services.

Summary of Specific Provisions: This bill adds a new section 90-A to the State Finance Law to establish a "Crime Victims Compensation Law Enforcement Improvement Fund" to finance crime victims compensation and the training of police officers.

The fund is created through a surcharge levied upon fines and bail forfeitures according to the following schedule:

- a) when fine or forfeiture is up to and including \$10.00, the penalty shall be \$2.00.
- b) when fine or forfeiture is \$10.01 to \$25.00, the penalty shall be \$5.00.
- c) when fine or forfeiture is \$25.01 to \$50.00, the penalty shall be \$10.00.
- d) when fine or forfeiture is in excess of \$50.00, then the penalty shall be 20% of the amount to the nearest dollar.

Parking and other standing violations are specifically excluded from these assessments.

The "Crime Victims Compensation Law Enforcement Improvement Fund" is to be divided equally between the Crime Victims Compensation Board and the Division of Criminal Justice Services. Specifically, the funds will be used to support the following purposes:

- to compensate victims of crime;
- to reimburse local police departments for expenses incurred in the training of police officers, including expenditures for salaries, lodging, food, and travel.
- to reimburse localities for the operation and maintenance of regional training facilities.
- to support the operation of the Bureau for Municipal Police of the Division of Criminal Justice Services in the area of police training and administration.

To aid in generating more dollars for the proposed fund, a new section 60.30 of Penal Law is added which provides for a mandatory monetary penalty for certain offenses in addition to any sentence imposed by the court including:

- a) Class A - I felony - \$250
- b) Class A - II or Class B felony - \$200
- c) Class A - III or Class C felony - \$150
- d) Class D felony - \$100
- e) Class E felony - \$ 75
- f) Class A or unclassified misdemeanor - \$ 40
- g) Class B misdemeanor - \$ 20

These additional penalties are to be used as revenue for the Crime Victims Compensation Law Enforcement Improvement Fund.*

Statements in Support of Bill: The funding of the Crime Victims Compensation Fund currently includes state purposes appropriations and private gifts.

Currently, localities must bear the full cost of police training, the minimum level of which is mandated by the State through the Municipal Police Training Council (MPTC). This bill will do several things, including:

1. compensate the victims of crime;
2. ease the financial burden incurred by local governments in the provision of police training;
3. facilitate the introduction and updating of new police educational and training techniques;
4. provide stable revenue source for police training and victim compensation statewide, particularly in light of severe Federal budgetary cuts;
5. provide budgetary relief to the State through funding of the Bureau for Municipal Police and the crime victims compensation Fund;
6. introduce funding of these services through assessment of those individuals necessitating the services;
7. provides an escalating assessment based upon the severity of the offense.

In addition, the State may be able to finance additional police training and further improve the quality of police performance provided the level of income to Law Enforcement raising is sufficient. It should be noted that 19 other states have already introduced some form of penalty assessment with 4 others in the development stage.

Statements in Opposition to the Bill: Several problems or shortcomings in the current bill should be noted, including:

1. Limited in Scope: the sources of funding are limited to moving traffic violations and criminal offenses where fines are imposed. Excluded are parking and other standing violations. These areas could provide substantial revenue for penalty assessment.
2. Fee Schedule: the fee schedule may be too detailed. It could be simplified by a straight percentage with a minimum assessment.

*Language is unclear and subject to differing interpretations.

3. Local Assistance: assistance to localities is not limited to a certain percentage of eligible expenditures or linked directly to funding only State mandated costs, particularly as some localities provide training far in excess of minimum standards.

4. Administration: the bill does not consider the costs incurred by judicial districts or municipalities in administering the program.

5. Separability Clause: the bill contains no provision to allow other portions of the bill to remain law in the event that any particular section is declared unconstitutional.

6. GAAP System: the establishment of separate funds outside the regular appropriation system runs counter to the underlying principles of the new General Acceptable Accounting Principles (GAAP) system recently introduced in New York State. Therefore, this proposal may incur opposition from the State Comptroller.

Fiscal Implications:

Appropriation of funds is initially set in the proposed legislation at 50% for the purpose of Law Enforcement training and 50% for compensation to crime victims.

a. Revenues: Potential revenues sources include Vehicle and Traffic Law Infractions (excluding parking) and all felony and misdemeanor offenses.

Vehicle & Traffic (20% Penalty Assessment)

Speeding	\$2,109,000
Reckless Driving	26,000
DWI/DWAI	1,377,000
<u>Other Traffic</u>	<u>1,347,000</u>
Total	\$4,859,000

Criminal*

Felony (Estimated)	\$2,652,000
Misdemeanor (Estimated)	3,420,000
<u>Total Criminal</u>	<u>\$6,072,000</u>

*Subject to differing interpretation of the intent of new section 60.30 of the Penal Law proposed herein.

b. Expenditures: appropriations to the Crime Victims Compensation Fund approximated \$5.2 million during FY 1981-82. Costs for Police Officer Training include the following:

Police Training Basic (285 hr) - upstate	\$2,392,000 (est)
(Trainees Salaries) - NYC	\$3,945,000 (est)
Police Training Supervisory -upstate	\$ 219,000 (est)
(Trainees Salaries) -NYC	unknown
Police Training Highway Safety -upstate	\$1,200,000 (est)
(Trainees Salaries) - NYC	unknown
Bureau for Municipal Police (FY 1981-82)	\$1,000,000
Instructors Salaries	unknown
Training Facilities	unknown
Food, Travel, Lodging	unknown

Total Expenditures \$8,756,000

It is clear that 100% funding of the Crime Victims Compensation Fund and Law Enforcement training is not possible based on estimated revenues. However, revenue estimates do not include penalties on bail bond forfeitures; nor is it clear whether the level of the mandatory penalty assessed for felonies and misdemeanors is itself subject to an additional assessment. In addition, it is not clear that the mandatory assessment itself is to be included with penalty assessments as funding for the Crime Victims Compensation Fund.

Note: These figures represent trainees salaries based on the State mandated 285 hour basic training course. Total salary costs are estimated at more than 13 million dollars as actual training far exceeds the mandated minimum hours on average.

APPENDIX

C

BILL MEMORANDUM

Bill Number: Senate: 5447
Assembly: 7517

Sponsors: Senate: Marino
Assembly: Fink, et. al.

Title of Bill: An act to amend the Penal Law, the Criminal Procedure Law and the State Finance Law, in relation to the imposition of a levy upon conviction for certain crimes and the disposition and use of monies resulting therefrom.

Purpose or General Idea of Bill: This bill establishes an additional mandatory compensation levy for all felonies, misdemeanors and violations to finance the Crime Victims Compensation Fund.

Summary of Specific Provisions: This bill adds a new Section 60.35 of the Penal Law requiring a mandatory compensation levy in addition to any sentence imposed by the courts for felonies, misdemeanors and violations as follows:

- a. Felony - \$31
- b. Misdemeanor - \$21
- c. Violation - \$16

This provision requires levy only on the highest degree of conviction if more than one conviction results from one act or omission. The funds derived from this levy will be credited to the Crime Victims Compensation Fund except for \$1 from each such levy which is to be retained by the clerk of the court to defray processing costs. If payment is not made and the offender is incarcerated, this section provides that the facility head, where the offender is located, be notified of failure to pay and shall pay the levy from any monies brought into the facility by the offender or earned by the offender while incarcerated.

Section 420.35 of the Criminal Procedure Law is amended making collection procedures for fines applicable to the levy created by this bill, which may result in possible imprisonment for failure to pay.

Section 259-i of the Executive Law is amended in paragraph C to provide that payment of this levy be considered when granting parole.

Section 623 of the Executive Law is amended to require an accounting of compen-

sation levies to the governor and the legislature in the Crime Victims Compensation Board's Annual Report.

A new section 632-b of the Executive Law is added requiring deposit of the levies to the credit of the Crime Victims Compensation Fund created by a new Section 97-T of the State Finance Law.

The sole purpose of the fund is to compensate crime victims or their legal representatives.

Statements in Support of Bill: The funding sources of the Crime Victims Compensation Fund presently includes state support and gifts. This bill would provide a new resource which does several things, including:

1. compensate the victims of crime,
2. ease the financial burden incurred by State government,
3. provide compensation by assessing offenders,
4. consider the costs incurred by administering bodies, and
5. provides a severability clause if any portion is declared invalid.

Statements in Opposition to the Bill: This bill has several notable deficiencies as follows:

1. Limited in Scope - the sources of funding are limited to a flat levy on felonies, misdemeanors, and violations. Traffic infractions are not included, thereby eliminating a potential revenue source.
2. Fee Schedule - the fee schedule does not appear to have any rational connection to the offense. It does not take into consideration the grade of offense (i.e., class A and class B felony); nor does it allow for a higher assessment depending on severity of offense.
3. Benefactors - potential uses of levy income are limited. Such other uses could include law enforcement training, or other areas of the criminal justice system.
4. GAAP System - the creation of funds outside the regular appropriation system runs counter to the General Acceptable Accounting Principles (GAAP) system recently introduced in New York State. Therefore, this proposal may incur opposition from the State Comptroller.
5. Penalty for Non-Payment - potential imprisonment for non-payment does not take into account alternatives such as community service orders in lieu of fine if indigency is shown.

Fiscal Implications:

- A. Revenues - The Annual DCJS Crime and Justice Report for 1980 reported 24,823 felony convictions for calendar year 1980. A \$30 assessment fee would result in approximately \$745,000 to the Crime Victims Compensation Fund. The Office of Court Administration reported 195,922 criminal convictions during calendar year 1980. If 24,823 of these were felonies, then there were 171,099 other convictions (misdemeanor and/or violation). An average assessment of \$18 per offense could generate approximately \$3.0 million. Total revenues could approximate \$3.7 million. However, it is uncertain whether these figures include the universe of all violations during calendar 1980.

B. Expenditures - Appropriations for payments to victims to the Crime Victims Compensation Board approximated \$5.2 million during FY 1981-82.

C. Options - The State could use revenues received under provisions of this bill to offset current State liabilities to the Crime Victims Compensation Fund or to increase the total funds available through the Crime Victims Compensation Fund.

Effective Date: September 1, following the date that the bill becomes law.

Recommendations: It is recommended that the Division of Criminal Justice Services oppose this bill (S.5447) in its present form. The concept of having offenders compensate victims is both just and necessary in light of the political and fiscal climate in New York State. However, this bill is limited in scope and, therefore, a more comprehensive penalty assessment package should be considered, including the following elements:

1. an extensive use of an additional penalty assessment on all other fines levied including moving and non-moving traffic infractions,
2. more extensive allocation of funds to include law enforcement training and other areas of the criminal justice system, and
3. linkage to other user supported services such as the probation supervision fee.

Appendix D - Victim Compensation Programs

California	\$10 penalty assessment for each felony conviction; \$5 penalty assessment for each misdemeanor. Encourages courts to fine convicted violent offenders. Proceeds deposited in the Indemnity Fund.
Connecticut	\$10 charge imposed against all persons convicted of any crime or certain motor vehicle offenses. Funds are placed in the Criminal Injuries Compensation fund.
Delaware	10 percent additional penalty is levied on every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses; court may also order persons convicted of crimes resulting in personal injury or death to pay a compensating fine. Monies are deposited in the Victim Compensation Fund.
Florida	5 percent surcharge imposed on all fines or civil penalties; 5 percent surcharge on bail bonds.
Maryland	\$10 additional cost imposed on the court costs of all persons convicted of any crime. Motor vehicle offenses are not included. All sums are paid into the state's general funds.
Indiana	\$10 criminal court cost for all Class A misdemeanors and felonies. Funds are deposited in a Violent Crime Victims Compensation Fund.
Kansas	\$1 fee assessed on every civil and criminal case filed with the district court. Funds deposited in the state general fund.
Montana	6 percent of the fines assessed and bail forfeited on all offenses involving violation of a state statute or city ordinances relating to motor vehicles. Funds placed in a crime victims compensation account of the earmarked revenue fund.
Ohio	\$3 addition to court costs for all persons convicted of any offense other than non-moving traffic offenses. Funds are deposited in the reparations special account.
Pennsylvania	\$10 additional costs imposed on all persons pleading guilty or non contented or convicted of any crime. Monies deposited in the state General Fund.
Tennessee	\$21 privilege tax on all convicted offenders; offenders unable to pay will have the \$21 deducted from any earnings they may make while in prison. \$2 privilege tax on all persons convicted of moving traffic violations. Funds deposited in special account.
Texas	\$15 additional court cost imposed on persons convicted of a felony, \$10 additional court cost imposed on persons convicted of a misdemeanor punishable by imprisonment or fine of over \$200. All funds are deposited in a special Compensation to Victims of Crime Fund.
Virginia	\$10 additional cost imposed on all persons convicted of treason, a felony, or a Class 1 or Class 2 misdemeanor. All sums deposited in Criminal Injuries Compensation Fund.

END