

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 832
HOUSE BILL 177

AN ACT PROVIDING COMPENSATION FOR INNOCENT VICTIMS OF CRIME.

The General Assembly of North Carolina enacts:

Sec. 1. A new Chapter is added to the General Statutes to read:

"CHAPTER 15B.

"Victims Compensation.

"§ 15B-1. Short title.—This Chapter may be cited as the 'North Carolina Crime Victims Compensation Act'.

"§ 15B-2. Definitions.—As used in this Chapter, unless the context requires otherwise:

(a) 'Allowable expense' means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of two thousand dollars (\$2,000) for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(b) 'Claimant' means any of the following persons who claims an award of compensation under this Chapter:

- (1) A victim;
- (2) A dependent of a deceased victim;
- (3) A third person other than a collateral source;
- (4) A person who is authorized to act on behalf of a victim, a dependent, or a third person who is not a collateral source.

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct.

(c) 'Collateral source' means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him from any of the following sources:

- (1) The offender;
- (2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;
- (3) Social security, medicare, and medicaid;

- (4) State-required, temporary, nonoccupational disability insurance;
- (5) Worker's compensation;
- (6) Wage continuation programs of any employer;
- (7) Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;
- (8) A contract providing prepaid hospital and other health care services, or benefits for disability.

(d) 'Commission' means the Crime Victim's Compensation Commission established by G.S. 15B-3.

(e) 'Criminally injurious conduct' means conduct that occurs or is attempted in this State which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this State. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle.

(f) 'Dependent' means an individual wholly or substantially dependent upon the victim for care and support and includes a child of the victim born after his death.

(g) 'Dependent's economic loss' means loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(h) 'Dependent's replacement service loss' means loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(i) 'Director' means the director of the Commission appointed pursuant to G.S. 15B-6(2).

(j) 'Economic loss' means economic detriment consisting only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment.

(k) 'Noneconomic detriment' means pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.

(l) 'Replacement services loss' means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(m) 'Victim' means a person who suffers personal injury or death proximately caused by criminally injurious conduct.

(n) 'Work loss' means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain services in lieu of those he would have performed for income, reduced by any

income from substitute work actually performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

"§ 15B-3. Crime Victims Compensation Commission.—(a) There is established the Crime Victims Compensation Commission of the Department of Crime Control and Public Safety, consisting of five members to be appointed as follows:

- (1) Three members by the Governor, one of whom shall be a physician and one of whom shall be an attorney;
- (2) One member by the General Assembly upon the recommendation of the President of the Senate under G.S. 120-121; and
- (3) One member by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.

(b) Members shall serve terms of four years. A member shall continue to serve until his successor is duly appointed, but a holdover under this provision does not affect the expiration date of the succeeding term.

(c) In case of a vacancy on the Commission before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (a). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(d) The Commission shall elect one of its members as chairman to serve until the expiration of his term.

(e) A majority of the Commission constitutes a quorum to transact business.

(f) Members shall receive compensation and reimbursement for expenses as provided in G.S. 138-5.

"§ 15B-4. Award of compensation.—Subject to the limitations of G.S. 15B-22, the Commission shall award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for an award of compensation have been met.

"§ 15B-5. Attorney General to represent State.—The Attorney General shall represent the interest of the State when:

- (1) A decision of the Commission is appealed to the courts; and
- (2) When the State is sued or when it brings or enters a lawsuit pursuant to this Chapter.

"§ 15B-6. Powers of the Commission.—In addition to powers authorized by this Chapter and Chapter 150A, the Commission may:

- (1) Establish and maintain a principal office and other necessary offices within this State;
- (2) Employ a Director, investigators, and other necessary personnel;
- (3) Publicize widely the availability of compensation and information regarding the filing of claims for compensation; and
- (4) Adopt rules necessary to carry out the purposes of this Chapter.

"§ 15B-7. Filing of application for compensation award; filing fee; contents.—(a) A claim for an award of compensation is commenced by filing an application for an award

with the Commission. Each application shall be accompanied by a filing fee of ten dollars (\$10.00) unless waived pursuant to G.S. 15B- 8(b). The application shall be in a form prescribed by the Commission and shall contain the following information:

- (1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim;
- (2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;
- (3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;
- (4) The law enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;
- (5) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;
- (6) The total amount of the economic loss that the victim, a dependent, or the claimant sustained as a result of the criminally injurious conduct, without regard to the financial limitations set forth in G.S. 15B-11(f) and (g).
- (7) The amount of benefits or advantages that the victim, a dependent, or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;
- (8) Whether the claimant is the spouse, parent, child, brother, or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;
- (9) A release authorizing the Commission and the Commission's staff to obtain any report, document, or information that relates to the determination of the claim for an award of compensation;
- (10) Any additional relevant information that the Commission may require. The Commission may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or a State officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent application is guilty of a misdemeanor if the application is for a claim of not more than four hundred dollars (\$400.00). If the application is for a claim of more than four hundred dollars (\$400.00), the person is guilty of a Class I felony.

"§ 15B-8. Procedure for filing application; indigent applicants.—(a) The Commission shall establish a procedure for the filing, recording, and processing of applications for an award of compensation.

(b) If an applicant files an affidavit stating that he is indigent and that payment of the filing fee would create a financial hardship for him, the Commission may accept the application for filing without payment of the filing fee. If the application is accepted without payment of the filing fee and an award is made pursuant to the application, the amount of the award shall be reduced by the amount of the filing fee.

"§ 15B-9. Administrative Procedure Act applicable.—Except as otherwise provided in this Chapter, Chapter 150A applies to the Commission.

"§ 15B-10. Initial investigation and decision; appeal.—(a) The Director shall assign each claim to an investigator as soon as it is filed.

(b) The investigator who investigates the claim shall file a report with the Director. The Director shall make an initial decision on the claim based on the application, the investigator's report, and any other written evidence he thinks necessary.

(c) If the claimant is satisfied with the Director's decision, it shall be submitted to the Commission for its approval.

(d) If the claimant is not satisfied with the Director's decision, the claimant may appeal to the Commission for a full hearing.

(e) The Commission may not employ hearing officers but shall conduct its own hearings. The Director shall represent the interest of the State at a full hearing before the Commission.

"§ 15B-11. Grounds for denial of claim or reduction of award.—(a) The Commission may not approve an award of compensation:

- (1) To a claimant who did not file his application for an award within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award;
- (2) If the criminally injurious conduct upon which the claim is based was not reported to a law enforcement officer or agency within 72 hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the 72-hour period;
- (3) To a claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of compensation may not be made to the spouse of, or to a person living in the same household with, the offender or an accomplice of the offender, or to the parent, child, brother, or sister of the offender or his accomplice;
- (4) If the injury occurred while the victim was confined in any state, county, or city prison, correctional facility, or local confinement facility.

(b) The Commission, upon a finding of contributory misconduct by the claimant or by a victim through whom he claims, may deny a claim or reduce an award of compensation.

(c) The Commission, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for the award, may deny a claim, reduce an award of compensation, and may reconsider a claim already approved.

(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Commission shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission. The Commission shall reduce an award or deny a claim for an award that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from collateral sources. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g).

(e) Compensation may not be awarded if the economic loss is less than one hundred dollars (\$100.00).

(f) Compensation for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars (\$200.00) per week.

(g) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or the death of that victim, together with attorney fees awarded under G.S. 15B-15, may not exceed twenty thousand dollars (\$20,000) in the aggregate.

(h) The Commission's right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review.

"§ 15B-12. Evidence.—(a) The hearing shall be conducted so as to disclose all material facts and issues. The Commission may examine or cross-examine witnesses. The Commission may call witnesses or require evidence not produced by the parties and may continue the hearing until some subsequent time to permit a more complete presentation of the claim. A claimant may appear in his own behalf or may be represented by counsel. The usual common law and statutory rules of evidence do not apply at the hearing. The Commission may hear any information that will assist it in determining the factual basis of the claim.

(b) There is no privilege, except the privileges arising from the attorney-client relationship and the North Carolina and United States Constitutions, as to communications or records that are relevant to the physical, mental, or emotional

condition of the claimant or victim in a proceeding under this Chapter in which that condition is an element.

(c) If the mental, physical, or emotional condition of a victim or claimant is material to a claim for an award of compensation, the Commission may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person who performs the examination or autopsy to file with the Commission a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis, and other conclusions, and reports of earlier examinations of the same conditions. On request of the person examined, the Commission shall furnish him a copy of the report. If the victim is deceased, the Commission on request, shall furnish the claimant a copy of the report.

(d) The Commission may request that law enforcement officers employed by the State or any political subdivision thereof provide it with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The Commission may also request that prosecuting attorneys, law enforcement officers, and State agencies conduct investigations and provide information necessary to enable the Commission to determine whether, and the extent to which, a claimant qualifies for an award of compensation. Information obtained pursuant to this subsection is subject to the same privilege against public disclosure that may be asserted by the providing source.

(e) The Commission may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(f) The Commission may not request the victim or the claimant to supply any evidence that would not be admissible at a trial under G.S. 8-58.6.

(g) Notwithstanding any provision to the contrary relating to the confidentiality of juvenile records, the Commission shall have access to the records of juvenile proceedings which bear upon an application for compensation, but to the extent possible, it shall maintain the confidentiality of those records.

(h) The Commission may exclude from a hearing of any matter at issue all persons, except those engaged in the hearing, during the taking of medical information and law enforcement investigative records and information as evidence.

(i) The Commission shall make available for public inspection all final orders, decisions, and opinions together with the hearing records and all materials that were before it at the time the final order, decision, or opinion was made, except that medical information, law enforcement investigative records and information, and other materials for good cause held confidential shall not be open to the public.

"§ 15B-13. Contempt sanction not available.—If a person refuses to comply with an order under this Chapter or asserts a privilege except one authorized by G.S. 15B-12(b)

so as to withhold or suppress evidence relevant to a claim for an award of compensation, the Commission may make any just order, including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the Commission may petition the superior court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a mental or physical examination.

"§ 15B-14. Effect of prosecution or conviction of offender.— (a) The Commission may approve an award of compensation whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or a writ of certiorari is pending, or a rehearing or new trial has been ordered.

(b) The Commission may, upon a request of the Attorney General, suspend the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.

"§ 15B-15. Attorney and witness fees.—(a) As part of an order, the Commission shall determine and award reasonable attorney fees, commensurate with services rendered, to the attorney representing a claimant in a proceeding under this Chapter. Attorney fees may be denied upon a finding that the claim or appeal is frivolous. Attorney fees may be awarded whether or not an award of compensation is approved. An attorney may not contract for or receive any larger sum than the amount allowed under this section.

(b) Each witness called by the Commission to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases.

"§ 15B-16. Manner of payment; non-assignability and exemptions.—(a) The Commission may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection (b), the part of an award that may not be paid in a lump sum shall be paid in installments.

(b) Upon request of the claimant, the Commission may commute future economic loss, other than allowable expense, to a lump sum but only upon a finding by the Commission that:

- (1) The award in a lump sum will promote the interests of the claimant; or
- (2) The present value of all future economic loss other than allowable expense does not exceed one thousand dollars (\$1,000).

(c) An award for future economic loss payable in installments may be made only for a period as to which the Commission can reasonably determine future economic loss. The Commission may reconsider and modify an award for future economic loss payable in installments upon its finding that a material and substantial change of circumstances has occurred.

(d) An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

"§ 15B-17. Award not subject to taxation or execution.—(a) An award is exempt from taxation.

(b) An award is not subject to execution, attachment, garnishment, or other process, except that, upon receipt of an award by a claimant, the part of the award that is for allowable expense is not exempt from such an action by a creditor to the extent that he provides products, services, or accommodations the costs of which are included in the award, and the part of the award that is for work loss is not exempt from such an action to secure payment of alimony, maintenance, or child support.

"§ 15B-18. Subrogation by State.—(a) If compensation is awarded, the State is subrogated to all the claimant's rights to receive or recover benefits or advantages for economic loss from a source that is, or if readily available to the victim or claimant would be, a collateral source, to the extent of the compensation awarded.

(b) The State is an eligible recipient for restitution under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the Commission prior written notice of the proposed action. After receiving the notice the Commission shall immediately notify the Attorney General who shall promptly:

- (1) Join in the action as a party plaintiff to recover compensation awarded;
- (2) Require that the claimant bring the action in his individual name as a trustee in behalf of the State to recover compensation awarded; or
- (3) Reserve its rights and do neither in the proposed action. If, as requested by the Attorney General, the claimant brings the action as trustee and recovers compensation awarded by the Commission, he may deduct from the compensation recovered in behalf of the State the reasonable expenses, including attorney fees, allocable by the court for that recovery.

(d) If a judgment or verdict separately indicates economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In an action in a court of this State arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

(e) Any funds recovered by the State pursuant to this section shall be paid to the General Fund.

"§ 15B-19. Subrogation by collateral sources prohibited.— Subrogation rights that a collateral source may have may not extend to a recovery from a claimant of all or any part of an award made under this Chapter. A collateral source may not apply in the name of a claimant or otherwise for an award of compensation based upon injury to a claimant to whose rights the collateral source may be subrogated.

"§ 15B-20. Publicity.—Any law enforcement agency that investigates an offense committed in this State involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his dependents concerning the

availability of an award of compensation and advise those persons that an application for an award may be obtained from the Commission.

"§ 15B-21. Annual report.—The Commission shall prepare and transmit annually to the Governor and the General Assembly a report of its activities. The report shall include the number of claims filed; the number of awards made and the amount of each award; a statistical summary of claims denied and awards made, including the average size of claims and awards; separate listing of the administrative costs, compensation of commissioners and Commission personnel, and the amount awarded as attorney fees. The Attorney General and State Auditor shall assist the Commission in the preparation of the report required by this section.

"§ 15B-22. Disbursements.—If the Commission cannot pay compensation awarded under this Chapter due to insufficient appropriations, the Commission shall delay payment until sufficient funds are available and shall make no further awards of compensation until sufficient appropriations are made."

Sec. 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(33) The Crime Victims Compensation Commission, as established by G.S. 15B-3."

Sec. 3. G.S. 143B-475 is amended by adding a new subsection to read:

"(e) The Crime Victims Compensation Commission established by Chapter 15B is vested in the Department of Crime Control and Public Safety. The Commission shall be administered as provided in Chapter 15B."

Sec. 4. Notwithstanding G.S. 15B-3, the initial five members of the Crime Victims Compensation Commission shall be appointed within 30 days after the effective date of this act, and shall serve initial terms as follows:

(1) The General Assembly's appointee recommended by the President of the Senate shall serve three years.

(2) The General Assembly's appointee recommended by the Speaker of the House of Representatives shall serve three years.

(3) The Governor's appointees shall serve four years except that one of the Governor's three appointees shall serve two years.

Sec. 5. Any funds appropriated to implement the provisions of this act that have not been expended at the end of the fiscal year do not revert.

Sec. 6. This act shall become effective when funds are appropriated by the General Assembly to the Department of Crime Control and Public Safety to implement the provisions of this act. No claims may be filed under this act for any criminally injurious conduct occurring before the effective date of this act or after December 31, 1991. Moneys remaining after payment of claims under this Chapter shall revert to the General Fund on July 1, 1993. This act is repealed effective July 1, 1993.

In the General Assembly read three times and ratified, this the 20th day of July, 1983.