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LEGISLATIVE RESEARCH COMMISSION

REPORT

TO THE

1977

GENERAL ASSEMBLY OF NORTH CAROLINA



COMPENSATION OF

VICTIMS OF CRIME

RALEIGH, NORTH CAROLINA

LEGISLATIVE

RESEARCH COMMISSION

REPORT

NO. 1

1971

GENERAL ASSEMBLY OF NORTH CAROLINA



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VICTIMS OF CRIME

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



January 12, 1977

TO THE MEMBERS OF THE 1977 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits
the Report on Compensation of Victims of Crime of its
Committee on Criminal Law and State Property Matters.

Respectfully submitted,

James C. Green

John T. Henley

Co-chairmen

KFN7609-44, 955

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INTRODUCTION

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes (G.S.), is a general-purpose study group consisting of legislators. A list of the membership of the Legislative Research Commission will be found in Appendix A. Among the Commission's duties is that of making or causing to be made, upon the direction of the Co-chairmen of the Commission,

such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner [G.S. 120-30.17(1)].

Section 1 of Chapter 851 of the 1975 Session Laws directed the Legislative Research Commission to conduct a variety of studies, among which was an examination of the need for compensation of victims of crime in this state. Relevant portions of that Chapter are attached as Appendix B. Section 9 of that law specified that the Commission was to examine the experience and cost of other jurisdictions' victims' compensation programs; the types of situations in which compensation ought to be awarded; which North Carolina state agency should be designated to administer such a program, if enacted; and federal and other sources of revenue to offset the cost of such a program.

The Commission assigned the study of need for a crime victims' compensation program to its Committee on Criminal Law and State Property Matters (hereafter referred to as the "Committee"). Representative Liston B. Ramsey was appointed to chair the Committee. Senator Thomas H. Suddarth* and Representative William H. McMillan were appointed Co-chairmen. The other members of the Committee on Criminal Law and State Property Matters were Representatives Laurence A. Cobb*, John Ed Davenport, Conrad R. Duncan, Jr., H. Parks Helms and Aaron W. Plyler; Senators Cy N. Bahakel*, Henson P. Barnes, Luther J. Britt, Jr., Melvin R. Daniels, Jr., J. J. Harrington, Donald R. Kincaid, and Thomas E. Strickland*; and Messrs. Zebulon D. Alley, an attorney and former Senator, and Nathan T. Lassiter, past president of the North Carolina Magistrates Association.

Besides compensation of victims of crime, the Committee was directed to study three other areas. Because of the limitations on its time and finances and of the pressing nature of some of the studies, the Committee decided to study the assigned topics in the following order: unjustified paperwork in the administration of criminal procedure, the office of magistrate, the effect of tax exempt State-owned property upon local governmental revenue, and compensation of victims of crime.

The Committee through its chairman instructed its staff to obtain information relevant to the issue of creating a crime victims' compensation program in North Carolina. The information

* This individual is not a member of the 1977 General Assembly.

obtained included copies of other states' legislation creating these programs, the costs both of awards and of administration of these programs, and copies of federal legislation that might have partially funded these state programs. These materials are on file in the Legislative Library in the State Legislative Building in Raleigh.

BRIEF OVERVIEW OF COMPENSATION OF VICTIMS OF CRIME PROGRAMS

The idea of the community compensating the victim of a crime has ancient roots. The Code of Hammurabi (about 1775 B.C.) provided that:

If a robber has not been caught, the robbed man shall declare his lost property in the presence of the god, and the city and governor in whose territory and district the robbery was committed, shall replace for him his lost property.
. . . If it was a life that was lost, the city and Governor shall pay one mina of silver to his heirs/quoted in Edelherte and Geis, Public Compensation to Victims of Crime, Prager Publishers, New York, (1974) p. 27 .

New Zealand in 1964 established the first modern program to compensate victims of crimes. That same year Britain established a similar program. Other nations having a compensation program include Australia, Canada, and Sweden.

The following eighteen jurisdictions in the United States have adopted legislation on compensation of victims of crime: Alaska, California, Delaware, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Dakota, Rhode Island, Tennessee, and Washington. The citations to these statutes are contained in Appendix C. These systems generally provide monetary awards to persons suffering personal injuries from crimes and to dependents of those victims killed during the perpetration of a crime. Those awards may compensate medical and hospital expenses, loss of earnings or support, funeral and burial

expenses, and sometimes pain and suffering.

The states' programs are administered by various agencies. In the majority of jurisdictions, among them, Alaska, Maryland and New York, the programs are administered by an independent board or commission. In other states, these programs have been placed under the courts (Massachusetts and Rhode Island, for example). In the State of Washington, the crime victims' compensation program is administered together with that state's workmen's compensation plan by the Department of Labor and Industries.

In establishing their programs for compensation of victims of crime, the states have addressed themselves to a number of policy questions besides that of which agency is to administer the program. Among the issues addressed by other states' legislation are the following:

1. What type of injury is compensable? Should losses resulting from physical injuries, death, property damages, and pain and suffering be reimbursed?
2. How long a period should a victim have to make a claim under the program?
3. Should victims who are relatives of the offender be permitted to receive an award under the program?
4. Should awards under the program be restricted on the basis of need (e.g., only to those suffering "serious financial hardship")?
5. Should there be a statutory maximum amount of compensation that an individual may receive under this program?

Most of the state programs for crime victims' compensation

are funded in whole or in part by appropriation by the legislatures. In Maryland, Delaware, and other states, additional costs or fines are imposed in certain types of criminal actions, and these monies are used to offset the cost of the crime victims' compensation program.

A constitutional question would arise in North Carolina if legislation were enacted imposing an additional fine or penalty on convicted criminal defendants to defray the costs of a crime victims' compensation program. Section 7 of Article IX of the North Carolina Constitution, in part, provides that:

the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

During the last few years, several pieces of legislation were introduced in the United States Congress which would have provided matching grants to the states to establish and fund crime victims' compensation programs. The Congress has failed to enact any of the proposals.

The cost of such state programs depends upon a variety of factors. Among these factors are the population of the State, the incidence of crime within the state and provisions of the statute relating to limitation of amount of award, the type of injury for which awards will be made, the type of individual entitled to an award, and the agency to administer the program.

The Fiscal Research Division, upon the request of the Chairman of the Committee, examined the administrative and award costs of ten state programs for the latest reporting fiscal year of those programs. The Fiscal Research Division estimated that the operation of a crime victims' compensation program would have an initial cost of \$670,000 a year. That figure includes the estimated costs of both administration and award payments. It should be noted that this figure is based on limited and arbitrary assumptions which combine various provisions of minimum awards in selected states.

The Chairman of the Committee, on the request of a Committee member, asked the Attorney General to give his legal opinion on the question whether legislation establishing a program that compensates victims of crimes violates Section 32 of Article I of the North Carolina Constitution which forbids any person from receiving

exclusive or separate emoluments or privileges from the community but in consideration of public service.

The opinion of the Attorney General's Office that such a program would be constitutional is found in Appendix D.

The General Assembly has provided a limited plan for certain victims of crimes. If a private citizen who, after being asked by a law-enforcement officer to render aid, is injured or killed while assisting a law-enforcement officer in making an arrest or preventing an escape, then that citizen

is entitled, to the same degree as a law-enforcement officer,
to retirement, death, and workmen's compensation benefits
(G.S. §15A-405, see Appendix E).

FINDING AND RECOMMENDATION

FINDING. The Legislative Research Commission's Committee on Criminal Law and State Property Matters has not had the time or the finances to devote to the study on compensation to victims of crime which that subject deserves. In view of the complexity of the questions of public policy, of administration, and of the financing of crime victims' compensation programs, the Committee declines to recommend the adoption or rejection of legislation establishing such a program.

RECOMMENDATION. The Committee recommends that if legislation that would compensate victims of crime is introduced in the General Assembly that the committees to which that legislation is referred study the proposals carefully employing the information gathered by this Committee and available in the Legislative Library.

APPENDICES

Appendix A

LEGISLATIVE RESEARCH COMMISSION MEMBERS

1975-76

<u>Name</u>	<u>Business Address</u>	<u>Phone</u>
Speaker James C. Green Co-Chairman	Box 185 Clarkton, N.C. 28433	(919) 647-4191
Sen. John T. Henley Co-Chairman	200 S. Main Street Hope Mills, N.C. 28348	(919) 424-0261
Sen. Bob L. Barker	P.O. Box 30069 Raleigh, N.C.	(919) 782-1314
Sen. Luther J. Britt, Jr.	P.O. Box 1015 Lumberton, N.C. 28358	(919) 739-2331
Sen. Cecil James Hill	The Legal Bldg. Brevard, N.C. 28712	(704) 884-4113
Sen. William D. Mills	P.O. Box 385 Swansboro, N.C. 28584	(919) 326-8743
Rep. Glenn A. Morris	P.O. Box 1111 Marion, N.C. 28752	(704) 652-2453
Rep. Liston B. Ramsey	Marshall, N.C. 28753	(704) 649-3961
Rep. Hector E. Ray	310 Green Street Fayetteville, N.C. 28303	(919) 483-8188
Rep. J. Guy Revelle, Sr.	Route 1, Box 123 Conway, N.C. 27820	(919) 587-4257
Rep. Thomas B. Sawyer	Suite 527-528 Northwestern Bldg. Greensboro, N.C. 27401	(919) 275-4150
Sen. Willis P. Whichard	P.O. Box 3843 Durham, N. C. 27702	(919) 682-5654

Appendix B

H. B. 296

CHAPTER 851

AN ACT TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY VARIOUS MATTERS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is directed to study the following issues, designing the individual study efforts as described in the other sections of this act:

. . .

(8) Need for compensation of victims of crimes (H. 1202);

. . .

Sec. 9. In its study of the need for compensation of victims of crimes the Legislative Research Commission shall analyze all problems surrounding the establishment of a plan by which victims of crimes committed within North Carolina might be compensated for the injuries that they sustain. The Legislative Research Commission is specifically directed to study the following areas:

(1) the types of crimes and of injuries for which compensation should be awarded;

(2) the experience of other jurisdictions in administering similar programs, the problems that these jurisdictions have encountered and the cost of such programs;

(3) whether such a program should be administered separately or under the auspices of an existing State department or agency;

(4) the estimated cost of administration of a program and of awarding compensation under it; and

(5) any actual or potential sources of aid either federal or otherwise to help this State defray the costs of such a program.

. . .

Sec. 15. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 25th day of June, 1975.

Appendix C

CITATIONS TO STATE STATUTES PROVIDING VICTIM COMPENSATION

<u>State</u>	<u>Citation</u>
Alaska	ALASKA STAT. § 18.67.010 <u>et seq.</u>
California	CAL. GOV'T CODE §§ 13959-13974
Delaware	DEL. CODE ANN. tit. 11, § 9001 <u>et seq.</u>
Georgia	GA. CODE ANN. § 47-518 <u>et seq.</u>
Hawaii	HAWAII REV. LAWS ch. 351
Illinois	ILL. REV. STAT. ch. 70, § 71 <u>et seq.</u>
Kentucky	KY. REV. STAT. ch. 364
Louisiana	LA. REV. STAT. 46:1801 <u>et seq.</u>
Maryland	MD. ANN. CODE art. 26A
Massachusetts	MASS. GEN. LAWS ch. 258A
Minnesota	MINN. STAT. ANN. § 299B.01 <u>et seq.</u>
Nevada	NEV. REV. STAT. § 217,010 <u>et seq.</u>
New Jersey	N.J. REV. STAT. § 52:4B-1 <u>et seq.</u>
New York	N.Y. EXEC. LAW § 620 <u>et seq.</u>
North Dakota	N.D. CENT. CODE § 65-13-01 <u>et seq.</u>
Rhode Island	R.I. GEN. LAWS ANN. § 12-25-1 <u>et seq.</u>
Tennessee	Public Act 736
Washington	WASH. REV. CODE ANN. § 7.68-010 <u>et seq.</u>

Appendix D



State of North Carolina

Department of Justice

P. O. Box 629
RALEIGH
27602

RUFUS L. EDMISTEN
ATTORNEY GENERAL

December 3, 1976

Honorable Liston B. Ramsey, Chairman
Committee on Criminal Law and State
Property Matters
North Carolina General Assembly
House of Representatives
State Legislative Building
Raleigh, North Carolina 27611

Dear Representative Ramsey:

Your letter dated November 22, 1976 concerning the constitutionality of establishing a crime victims compensation program has been referred to the undersigned for reply.

The exact question presented in your letter is as follows:

Is a State program which compensates victims of violent crimes for injuries with public funds constitutional in view of the language of Section 32 of Article I of the Constitution of North Carolina which forbids any person from receiving "exclusive or separate emoluments or privileges from the community but in consideration of public services"?

The principle of compensating victims of violent crime is not new. In about 1775 BC the ancient Babylonian Code of Hammurabi provided that "If a robber has not been caught, the robbed man shall declare his lost property in the presence of the god, and the city and governor in whose territory

and district the robbery was committed, shall replace for him his lost property" and that "if it was a life that was lost, the city and governor shall pay one mina of silver to his heirs." Edelhertz and Geis, PUBLIC COMPENSATION TO VICTIMS OF CRIME, Prager Publishers, New York, (1975). One commentator has theorized, in this case, the victim compensation principle is based on the supposition that potential offenders would be deterred and the victim or his family would be less inclined toward retribution. Geis, State Compensation to Victims of Violent Crime. The President's Commission on Law Enforcement and Administration of Justice, CRIME AND ITS IMPACT (1967).

From the Code of Hammurabi, through the works of Jeremy Bentham to those of contemporary commentators, there is at least an implicit recognition that the primary duty of government is to protect its citizens. While a Justice of the United States Supreme Court, Arthur J. Goldberg made the following suggestion:

Whenever the government considers extending a needed service to those accused of crime, the question arises: But what about the victim? We should confront the problem of the victim directly; his burden is not alleviated by denying necessary services to the accused. Many countries throughout the world, recognizing that crime is a community problem, have designed systems for government compensation of victims of crime. Serious consideration of this approach is long overdue here. The victim of a robbery or an assault has been denied the "protection" of the laws in a very real sense, and society should assume some responsibility for making him whole. Arthur J. Goldberg, Equality and Government Action, 39 N.Y.U.L.R. 224 (April 1964).

In 1964, New Zealand became the first modern state to establish a victim compensation program. Australia and provinces in Canada initiated programs in 1967. At least eight (8) of ten (10) Canadian provinces have programs.

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Sweden established a victim compensation program in 1971. The first States in the United States to have crime victim compensation programs were: California (1965), New York (1966), Hawaii (1967), Maryland (1968), Massachusetts (1968), and New Jersey (1971). The following States have also initiated crime victim compensation programs: Alaska, Delaware, Georgia, Illinois, Kentucky, Louisiana, Minnesota, Nevada, North Dakota, Rhode Island, Tennessee, and Washington.

In our opinion a crime victims compensation program would not run afoul of Section 32 of Article 1 of the Constitution of North Carolina. One of the leading cases supporting this conclusion is BRUMLEY v. BAXTER, 225 N.C. 691, 369 S.E.2d 881 (1945). This was an action to set aside legislation creating a public corporation for the benefit of veterans in Charlotte. Under the act, veterans were to receive various benefits -- held not a violation of Article 1 of Section 7 (now Section 32). The motivation was public service -- the Court said the following: "The constitutional limitations contained in Article 1 Section 7 has been frequently invoked by the Court to strike down legislation concerning special consideration not in consideration of a public purpose (citations omitted). But where the motivation is for a public purpose and in the public interest, and does not confer exclusive privilege, the legislation has been upheld...."

The idea of granting relief to classes of people who have suffered loss due to unforeseeable events is not new. In GRAHAM v. INSURANCE COMPANY, 274 N.C. 115, 161 S.E.2d 485 (1968), the Supreme Court of North Carolina held that it was not unconstitutional to protect all citizens from tuberculosis by providing free treatment to indigent patients in state hospitals.

Another case interpreting this Section is STATE EDUCATIONAL ASSISTANCE AUTHORITY v. BANK OF STATESVILLE, 276 N.C. 576, 174 S.E.2d 551 (1970). In this case the Supreme Court of North Carolina pointed out that education served a public purpose and therefore student loans to individuals

Honorable Liston B. Ramsey

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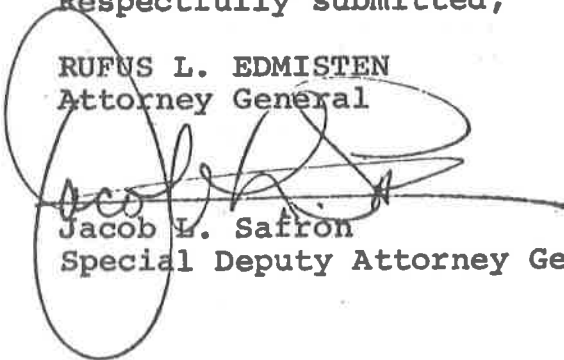
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were not violative of Article 1 Section 7 (now Section 32). "Of course it is expected that a student loan will inure to the private benefit of the person who obtains it. It is equally true that the education provided throughout our entire school system inures to the benefit of the individual who obtains it. However, the fact that the individual obtained a private benefit cannot be considered sufficient grounds to defeat the execution of a public purpose." *AUTHORITY v. BANK*, supra, at 587-88.

The intent of the criminal law is to protect individuals by deterring the commission of crime. The proposed act to compensate victims of crime therefore appears to have a valid public purpose and in our opinion is not in contravention of Section 32 of Article 1 of the Constitution of North Carolina.

Respectfully submitted,

RUFUS L. EDMISTEN
Attorney General



Jacob L. Safron
Special Deputy Attorney General

JLS/msh

Appendix E

CH. 15A. CRIMINAL PROCEDURE ACT

§ 15A-405. Assistance to law-enforcement officers by private persons to effect arrest or prevent escape; benefits for private persons. — (a) Assistance upon Request; Authority. — Private persons may assist law-enforcement officers in effecting arrests and preventing escapes from custody when requested to do so by the officer. When so requested, a private person has the same authority to effect an arrest or prevent escape from custody as the officer making the request. He does not incur civil or criminal liability for an invalid arrest unless he knows the arrest to be invalid. Nothing in this subsection constitutes justification for willful, malicious or criminally negligent conduct by such person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force.

(b) Benefits to Private Persons. — A private person assisting a law-enforcement officer pursuant to subsection (a) is:

- (1) To be treated as a citizen duly deputized as a deputy by a sheriff or other law-enforcement officer in an emergency for the purposes of G.S. 143-166(m) (Law-Enforcement Officers' Benefit and Retirement Fund);
- (2) Entitled to the same benefits as a "law-enforcement officer" as that term is defined in G.S. 143-166.2(4) (Law-Enforcement Officers', Firemen's and Rescue Squad Workers' Death Benefit Act); and
- (3) To be treated as an employee of the employer of the law-enforcement officer within the meaning of G.S. 97-2(2) (Workmen's Compensation Act).

The Governor and the Council of State are authorized to allocate funds from the Contingency and Emergency Fund for the payment of benefits under subdivisions (1) and (3) when no other source is available for the payment of such benefits and when they determine that such allocation is necessary and appropriate. (1868-9, c. 178, subch. 1, s. 2; Code, s. 1125; Rev., s. 3181; C. S., s. 4547; 1973, c. 1286, s. 1.)

