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A Preliminary Analysis of the North Carolina Crime Victims Compensation Act

In 1982 more than twenty-six thousand North Carolinians were victims of violent crime.¹ Traditionally, the only means for a victim to recoup his losses was to institute a civil suit against the offender.² Two major practical problems, however, may destroy the usefulness of a civil suit: a civil suit requires that the offender be both apprehended,³ and wealthy enough to make the civil suit economically feasible. To aid the uninsured innocent victim, a majority of states have enacted crime victims reparations programs.⁴ In 1983 the North Carolina General Assembly joined this trend by enacting North Carolina General Statutes chapter 15B, the North Carolina Crime Victims Compensation Act.⁵

The purpose of the Act is simple: to compensate victims for losses caused by violent crimes. The Act, however, does not purport to compensate for every crime. Section 15B-4 requires that a victim have been injured by "criminally injurious conduct."⁶ This is defined as conduct that "by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death."⁷ The focus is solely on the perpetrator's conduct; the victim of the crime is compensated by the Act even if the perpetrator lacked the legal capacity to commit the crime.⁸ Because injury or death arising from the operation of a motor vehicle is expressly excluded from the Act,⁹ a victim will be unable to recover under the Act if his injuries are caused by one who,

1. CRIME IN NORTH CAROLINA, 1982 UNIFORM CRIME REPORTS 57. The Uniform Crime Report defines "violent crime" to include murder, rape, robbery, and aggravated assault. *Id.*

2. North Carolina, like many other states, affords its citizen-victims another avenue for compensation. A court can, as a condition to an inmate's probation, require him to make monetary restitution to his victim. *See* N.C. GEN. STAT. § 15A-1343(d) (1983). This remedy, however, is mostly illusory. First, it assumes that someone has been convicted of the crime. Second, the statute requires the court to consider the offender's financial status before awarding restitution. *Id.* These drawbacks severely hamper the remedy.

3. Of the 26,000 violent crimes reported in this state in 1982, only 17,000 arrests were made. CRIME IN NORTH CAROLINA, *supra* note 1, at 163. Thus, the civil remedy was available to, at best, ⅓ of the victims.

4. For a survey of 27 such programs, see Hoelzel, *A Survey of 27 Victim Compensation Programs*, 63 JUDICATURE 485 (1980). At least five justifications have been posited for these programs: (1) the state has assumed the responsibility for protecting its citizens, and when one is victimized, the state has breached that obligation; (2) the programs are a result of a moral duty to secure the public welfare; (3) the programs spread the risk of loss among all of society; (4) the programs prevent victims from being alienated by society; and (5) most civil remedies are inadequate. *See* Clark & Webster, *Indiana's Victim Compensation Act: A Comparative Perspective*, 14 IND. L. REV. 751, 753-54 (1981).

5. N.C. GEN. STAT. §§ 15B-1 to -22 (1983). Attorney General Rufus Edmisten urged the General Assembly to enact the program. Telephone interview with Representative Thomas C. Womble, D-Forsyth (Feb. 27, 1984).

6. N.C. GEN. STAT. § 15B-4 (1983).

7. *Id.* § 15B-2(5). The injurious conduct must have taken place within the state.

8. *Id.* Thus, even if the offender was legally insane when the crime was committed, the victim still can recover.

9. *Id.*

for example, intentionally assaults him with an automobile.¹⁰

Eligibility under the Act is governed by section 15B-2(2). To be eligible for recovery, a person must be a victim or a dependent of a deceased victim.¹¹ "Victim" is defined as one who "suffers personal injury or death proximately caused by criminally injurious conduct."¹² A perpetrator or his accomplice may not recover¹³ and a claim will be denied if it would benefit unjustly either one.¹⁴ The Act further provides that unless "the interests of justice require," a spouse, parent, child, sibling, or housemate of the offender or accomplice may not recover.¹⁵

Recovery under the Act is limited to out-of-pocket "economic loss arising from criminally injurious conduct."¹⁶ Economic loss includes any reasonable medical and burial expenses.¹⁷ Economic loss also includes any loss of income the victim suffers,¹⁸ as well as any expense the victim incurs hiring someone to perform the services he usually performs for his own or his dependents' benefit.¹⁹ If the victim dies as a result of the crime, economic loss also includes any monetary loss the dependents suffer as a result of the victim's death,²⁰ including any expense the dependents incur in hiring someone to perform the services the victim usually performed for their benefit.²¹

Recovery for "pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage," however, is excluded specifically.²² This limitation is consonant with the spirit of the Act—to compensate only for out-of-pocket economic loss. The Act does recognize, however, that such emotional damage may cause compensable economic harm.²³ The Act also excludes compensation for property losses, no matter how catastrophic they may be.²⁴

10. This aspect of the North Carolina Act differs from the Uniform Crime Victims Reparations Act. The latter excludes injuries arising out of the operation of motor vehicles unless the conduct was "intended to cause personal injury or death." See UNIF. CRIME VICTIMS REPARATIONS ACT, 11 U.L.A. 33 (1974) [hereinafter cited as UNIF. ACT]. See also *infra* notes 55-59 and accompanying text.

11. N.C. GEN. STAT. § 15B-2(2) (1983).

12. *Id.* § 15B-2(13). The North Carolina Act and Uniform Act also differ on this point. In North Carolina the injury or death must be "proximately caused" by the criminal conduct. *Id.* The Uniform Act, however, compensates those who suffer injury or death as a result of a crime, a good faith effort to prevent a crime, or a good faith effort to apprehend a suspect. See UNIF. ACT, *supra* note 10, § 1(i), at 37. See also *infra* notes 46-52 and accompanying text.

13. N.C. GEN. STAT. § 15B-2(2) (1983).

14. *Id.* §15B-11(a)(3).

15. *Id.*

16. *Id.* § 15B-4.

17. *Id.* § 15B-2(10). The Act labels these expenses "allowable expense[s]." A maximum of \$2000 is recoverable for burial expenses. *Id.* § 15B-2(1).

18. *Id.* § 15B-2(14) ("work loss").

19. *Id.* § 15B-2(12) ("replacement services loss").

20. *Id.* § 15B-2(7) ("dependent's economic loss").

21. *Id.* § 15B-2(8) ("dependent's replacement service loss").

22. *Id.* § 15B-2(10), (11).

23. *Id.* § 15B-2(10). Thus, although a victim cannot recover for pain and suffering per se, he may recover any lost wages that the pain and suffering cause him.

24. Exclusion of property losses is the overwhelming trend among the states. See Hoelzel, *supra* note 4, at 485. Louisiana, however, allows recovery for "catastrophic property loss," which is limited to "loss of abode." See LA. REV. STAT. ANN. § 46:1802(8)(c) (West 1982).

This exclusion is based primarily on the assumption that allowing compensation for property losses would be too costly,²⁵ and is a prime example of the Act's goal of compensating solely for personal injury.

The dollar limits of the Act are straightforward.²⁶ A maximum of 2000 dollars is allowed for burial expenses.²⁷ All other economic loss is compensable up to a maximum of 200 dollars per week,²⁸ and the maximum total compensation payable to any victim or his dependents is 20,000 dollars.²⁹ Furthermore, no compensation can be awarded if the victim's economic loss totals less than 100 dollars.³⁰

Compensation can be reduced or denied for several reasons. A claim must be denied if the claimant failed to file his application for compensation within two years of his injury.³¹ In addition, it is within the Commission's discretion to deny a claim if the victim failed to report the criminal act to police within three days of its occurrence.³²

A claim can be reduced in three situations. If a victim's misconduct contributed to his injury or death, the Commission may reduce the claim.³³ If a claimant failed to cooperate properly with any law enforcement agency, the claim may be reduced or denied.³⁴ Most importantly, the claimant's award is reduced by any amount he recoups from collateral sources.³⁵ This provision is designed to prevent double recovery.³⁶

To administer the Act, the Crime Victims Compensation Commission

25. See Note, *The Minnesota Crime Victims Reparations Act: A Preliminary Analysis*, 2 WM. MITCHELL L. REV. 187, 219-20 (1976).

26. These dollar limits illustrate the tension inherent in any compensation program. There is a strong philanthropic desire to aid the injured victim, but, financial reality places a limit on state largesse. As a result, the dollar limits represent a compromise of these competing interests.

27. N.C. GEN. STAT. § 15B-2(1) (1983).

28. *Id.* § 15B-11(f).

29. *Id.* § 15B-11(g).

30. *Id.* § 15B-11(e). The minimum loss provision has been justified on the ground that it "costs more to process [small] claims than the claim itself is worth." See Hoelzel, *supra* note 4, at 489.

31. N.C. GEN. STAT. § 15B-11(a)(1) (1983).

32. *Id.* § 15B-11(a)(2). The Commission can waive this requirement upon a showing of "good cause." *Id.* Presumably, the Commission can waive this requirement, and not the two-year statute of limitations of section 15B-11(a)(1), because of the relative shortness of a three-day period.

33. *Id.* § 15B-11(b).

34. *Id.* § 15B-11(c). This recovery requirement will encourage citizen interest in law enforcement. If a victim wishes to be aided by the State, he must cooperate with the police. See Hoelzel, *supra* note 4, at 487. It should be noted that the Act does not mention the necessity for cooperation with the state prosecutor. Presumably, however, a court could construe "law enforcement agency" to include a prosecutor.

35. N.C. GEN. STAT. § 15B-11(d) (1983). A collateral source is defined as a readily available source of benefits from, *inter alia*, the offender, any government agency, social security, medicare, medicaid, workers' compensation, or insurance. *Id.* § 15B-2(3).

36. See Hoelzel, *supra* note 4, at 488. The prevention of a double recovery is the antithesis of the tort concept known as the collateral source rule. Under this rule, courts generally hold that cash or in-kind benefits received by an injured plaintiff from a source collateral to and independent of the tortfeasor will not be set off against the plaintiff's recovery from the tortfeasor. Most courts reach this result to prevent awarding a "windfall" to the defendant. See, e.g., *Thompson v. Milam*, 115 Ga. App. 396, 397, 154 S.E.2d 721, 722 (1967) ("A tortfeasor can not diminish the

was created and granted broad powers.³⁷ The administrative machinery is set in motion when a victim files an application for compensation with the Commission.³⁸ Each claim is assigned to an investigator, who conducts an initial investigation.³⁹ Based on the application and the investigator's report, the Commission director makes an initial decision on the claim. To be awarded compensation, the claimant must prove by a preponderance of the evidence that the Act's requirements have been met.⁴⁰ The perpetrator need not be convicted for the claim to be successful; proof of conviction, however, is conclusive evidence that the crime was committed.⁴¹

If the claimant is satisfied with the initial decision, the claim is submitted to the Commission for its approval. If dissatisfied with the director's decision, the claimant can appeal to the Commission for a full hearing.⁴² The claimant may obtain judicial review of the Commission's decision in superior court.⁴³ Thereafter, appeals are taken to the court of appeals "under rules of procedure applicable in other civil cases."⁴⁴ If compensation ultimately is awarded, the State is subrogated to the claimant's rights to the extent of the compensation paid.⁴⁵

The General Assembly relied heavily on the Uniform Crime Victims Reparations Act.⁴⁶ In its final form, however, the North Carolina Act differs from its model in a number of significant ways. A "victim" is defined in the North Carolina Act as one "who suffers personal injury or death proximately caused by" the crime.⁴⁷ The Uniform Act, however, has a more comprehensive definition of "victim." Under that Act, a "victim" is one who suffers injury or death as a result of the crime, a good faith effort to prevent the crime, or a good faith effort to apprehend one suspected of the crime.⁴⁸ Thus, a key question is whether the North Carolina Act is to be construed so that the

amount of his liability by pleading payments made to the plaintiff under the terms of a contract between the plaintiff and a third party who was not a joint tortfeasor.")

In the compensation programs, however, there is no need to be concerned about a windfall for the offender; the victim and the state are the only interested parties. Since the aim of the program is to aid a victim whose losses will come out of his own pocket, the program limits recovery to those losses not covered by a collateral source.

37. N.C. GEN. STAT. §§ 15B-3, -6 (1983). The Commission consists of five members: three appointed by the Governor, one appointed by the Senate, and one appointed by the House. *Id.* § 15B-3(a).

38. The application includes information relating to the criminal act, the injury, and the victim's economic loss. *See id.* § 15B-7. The Commission can waive the \$10 application fee for claims brought by indigent victims. *Id.* § 15B-7(a).

39. *Id.* § 15B-10(a).

40. *Id.* § 15B-4.

41. *Id.* § 15B-14(a). Of course, the victim still must prove the other requirements of the Act.

42. *Id.* § 15B-10(b) to (d).

43. *Id.* §§ 15B-9, 150A-45.

44. *Id.* § 150A-52.

45. *Id.* § 15B-18(a). The State would have a civil remedy against the offender in the amount of compensation paid to the victim.

46. UNIF. ACT, *supra* note 10.

47. N.C. GEN. STAT. § 15B-2(13) (1983).

48. UNIF. ACT, *supra* note 10, § 1(i), at 37.

"proximately caused" language includes persons injured as a result of trying to prevent a crime or apprehend a suspected criminal.

Because the purpose of the Act is to compensate innocent victims of crime, it is irrational not to compensate "good samaritans" who are injured. Thus, the "proximately caused" language of the Act should be interpreted to include good faith intervenors.⁴⁹ In *Sutton v. Duke*⁵⁰ the North Carolina Supreme Court stated that for an act to be the proximate cause of a negligently-caused injury, all that is required is "that a person of ordinary prudence could have reasonably foreseen that such a result, *or some similar injurious result*, was probable under the facts as they existed."⁵¹ Since it is entirely foreseeable that a good samaritan might be injured while coming to a victim's aid, the North Carolina Act should be construed to allow compensation to good faith intervenors.⁵²

The North Carolina Act also differs from the Uniform Act by denying compensation to a victim whose injury occurred while he was confined in prison or jail.⁵³ This provision is practically meaningless. Since only economic loss is compensable, an inmate-victim ordinarily would recover only his lost wages and out-of-pocket medical expenses. The State already provides free medical care to inmates,⁵⁴ and few inmates earn a significant wage. Thus, even without the limitation found in section 15B-11, there is little chance an inmate would receive compensation.

The North Carolina and Uniform Acts also differ substantially regarding compensation for injuries arising out of the operation of motor vehicles. The North Carolina Act bars compensation for all injuries or deaths "arising out of the ownership, maintenance, or use of a motor vehicle."⁵⁵ The Uniform Act provides a similar limitation unless the crime was "intended to cause personal

49. The Act's sponsor, Representative Thomas C. Womble, stated that although the North Carolina Act is not as explicit as the Uniform Act, "victim" is to be interpreted to include injured good faith intervenors. Telephone interview with Representative Thomas C. Womble, D-Forsyth (Feb. 27, 1984).

The term "proximate cause" is borrowed from the law of negligence. Countless pages have been written on this complex and confusing subject. See, e.g., Agnihotri, *Too Much Ado About Something: Fate of Proximate Cause in Louisiana*, 3 S.U.L. REV. 1 (1976); Reynolds, *Limits on Negligence Liability*: Palsgraf at 50, 32 OKLA. L. REV. 63 (1979); Comment, *Civil Liability For Suicide: An Analysis of the Causation Issue*, 1978 ARIZ. ST. L.J. 573; Comment, *House v. Kellerman: Judge, Jury, and Intervening Cause in Kentucky Negligence Law*, 64 KY. L.J. 889 (1976).

50. 277 N.C. 94, 176 S.E.2d 161 (1970).

51. *Id.* at 107, 176 S.E.2d at 169.

52. The North Carolina Supreme Court has held that a person cannot be charged with contributory negligence if he acts neither rashly nor recklessly in coming to the aid of a victim of negligence. The tortfeasor's negligent act is seen as the proximate cause of the rescuer's injury. See *Caldwell v. Deese*, 288 N.C. 375, 380, 218 S.E.2d 379, 382 (1975).

53. N.C. GEN. STAT. § 15B-11(a)(4) (1983). Representative Womble noted that this limitation was enacted because it is not the intention of the Act to compensate an inmate injured, for example, in a prison riot. One state that did not have this limitation was deluged with applications from inmates so injured. Telephone interview with Representative Thomas C. Womble, D-Forsyth (Feb. 27, 1984).

54. See N.C. GEN. STAT. § 148-19 (1983).

55. See *id.* § 15B-2(5).

injury or death."⁵⁶ North Carolina should amend its Act to conform with the Uniform Act and allow compensation for intentional automobile-related injuries.⁵⁷ Otherwise, the Act creates the anomaly that a person can recover if someone shoots him, but not if someone intentionally strikes him with a car. A literal reading of section 15B-2(5) also might preclude recovery for a victim of a car bomb, since the injury arose "out of the . . . use of a motor vehicle." Although cost reduction is the usual justification for barring recovery when an automobile is involved,⁵⁸ the Uniform Act's approach—by allowing recovery for only *intentionally* inflicted injuries—would reduce costs while still compensating the handful of victims who are assaulted intentionally with an automobile.⁵⁹

The Uniform Act contains a controversial optional provision that North Carolina wisely did not adopt. The optional provision premises a victim's recovery on his financial situation; a claimant may recover only if he will suffer "financial stress" as a result of his economic losses. "Financial stress" is defined as an inability to maintain one's "customary level of health, safety, and education" for oneself and one's dependents "without undue financial hardship."⁶⁰ The purpose of this provision is to limit costs by not compensating those who can take care of themselves.⁶¹ This justification has three major faults. First, the financial stress test "reads a welfare concept into a program not related to welfare."⁶² The purpose of the Act is to compensate all innocent victims, not just those below a certain income level. Second, the program already has a large cost-reduction provision that disallows recovery to the extent the economic loss is recouped from collateral sources.⁶³ Third, it has been suggested that it may be as costly to require the Commission to evaluate the victim's financial need as it is to compensate all victims regardless of financial stress. Thus, any savings made by disallowing recovery by wealthy victims would be offset by the increased administrative costs.⁶⁴ Since the justification for the financial stress test is weak, North Carolina was wise not to adopt it.

56. UNIF. ACT, *supra* note 10, § 1(e), at 36. Texas follows the Uniform Act on this point. *See* TEX. REV. CIV. STAT. ANN. art. 8309-1, § 3(4)(D) (Vernon Supp. 1984).

57. Four reasons for disallowing recovery for victims of automobile-related crimes have been suggested. First, automobile liability insurance provides an adequate remedy for the injured victim. Second, it may be too difficult to prove that the injury was intentionally inflicted. Third, compensating these victims would be too costly. Fourth, "[m]otoring offenses are 'not the type of offense about which the public is concern[ed].'" Lamborn, *The Scope of Programs For Governmental Compensation of Victims of Crime*, 1973 U. ILL. L.F. 21, 30-32.

58. *See* Hoelzel, *supra* note 4, at 492.

59. *See* CRIME IN NORTH CAROLINA, *supra* note 1, at 21, 57.

Rep. Womble stated that the reason for total exclusion for motor-vehicle-related injuries is because the State should not become an automobile insurance company. Telephone interview with Representative Thomas C. Womble, D-Forsyth (Feb. 27, 1984).

60. UNIF. ACT, *supra* note 10, § 5(g)(1), at 41. Texas decided to adopt this optional financial stress test. *See* TEX. REV. CIV. STAT. ANN. art. 8309-1, § 6(b) (Vernon Supp. 1984).

61. *See* UNIF. ACT, *supra* note 10, at 42 (Commissioners' Comment).

62. *Id.*

63. *See* N.C. GEN. STAT. § 15B-11(d) (1983); UNIF. ACT, *supra* note 10, § 5(f)(1), at 41.

64. UNIF. ACT, *supra* note 10, at 42 (Commissioners' Comment). Thirty percent of the average program's expenses is consumed by administrative costs. Hoelzel, *supra* note 4, at 488. In all likelihood, this percentage is even greater in "financial stress" states.

In addition to the departures from the Uniform Act, there will be other problems in interpreting the North Carolina Act. In approaching the Act, one must decide whether to construe the Act liberally to facilitate recovery, or construe the Act strictly to save money. On the one hand, it is likely that any funding by the General Assembly will be inadequate to compensate all victims.⁶⁵ If the Commission or courts feel that the program is underfunded, they may construe the Act strictly to preserve funds. On the other hand, most programs with a humanitarian or social goal are construed liberally to facilitate recovery.⁶⁶ Because the program is designed to aid innocent crime victims, any ambiguity in the Act should be resolved in favor of the victim.

One such interpretation problem will be the Act's definition of "criminally injurious conduct." It is defined as conduct "which by its nature poses a substantial threat of personal injury or death."⁶⁷ This definition does not identify adequately the compensable crimes. If a crime is covered only if it intrinsically poses a "substantial threat" of injury, murder and assault clearly are covered; burglary, however, is not. The better view would be to determine if the criminal conduct poses a substantial threat of injury in light of the particular circumstances. This view is preferable because the words "substantial threat" modify the word "conduct." The emphasis is on the dangerousness of the conduct, not on the dangerousness of the underlying crime.⁶⁸ Thus, if the crime was dangerous as carried out, as opposed to dangerous as defined in the criminal code, the victim would be able to receive compensation.⁶⁹

Another interpretation problem is the definition of work loss. Compensable work loss is defined in part as "loss of income from work that the injured person would have performed if he had not been injured."⁷⁰ It has been argued that any loss of income caused by the crime should be covered under the program. Proponents of this view favor compensating the injured victim for wages lost because of a need to appear in court and testify against the offender. The Supreme Court of North Dakota, in *Hughes v. North Dakota Crime Victims Reparations Board*,⁷¹ held that such lost wages were not covered. The

65. For example, the future of Indiana's program looked gloomy from its inception in 1978 until 1980 because of funding woes. The Indiana Commission stopped processing claims for six months when the administrative funding was exhausted. See Clark & Webster, *supra* note 4, at 755-56.

66. See Note, *supra* note 25, at 199 ("[T]he Act is remedial in nature and thus should be accorded a liberal construction in favor of the remedy provided by law, or in favor of those entitled to the benefit of the statute."). See also *Ames v. Texas*, 656 S.W.2d 235, 238 (Tex. App. 1983) (Burdock, J., dissenting) (Act should be construed liberally in favor of victim). *But cf.* *Hughes v. North Dakota Crime Victim Reparations Bd.*, 246 N.W.2d 774, 776-77 (N.D. 1976) (when court feels Act is unambiguous, it will not be given liberal construction).

67. N.C. GEN. STAT. § 15B-2(5) (1983).

68. See Note, *supra* note 25, at 211.

69. See *id.* The "dangerous as carried out" approach has been adopted by the Minnesota Commission. *Id.* at 211 n.155. North Dakota avoided this interpretation problem by defining "criminally injurious conduct" as criminal conduct that "results in bodily injury or death." See N.D. CENT. CODE § 65-13-03(4) (Supp. 1983). Thus, in North Dakota the risk of injury or death attendant to a particular crime is unimportant.

70. See N.C. GEN. STAT. § 15B-2(14) (1983).

71. 246 N.W.2d 774 (N.D. 1976).

Hughes decision represents the proper interpretation. The statute clearly is aimed at compensating the victim for wage loss caused by the injury he suffered. In *Hughes* the victim's lost wages were not the result, directly or indirectly, of his injury. Even if the victim had not been injured, he still would have been required to testify against the offender.⁷² Section 15B-2(14) clearly states that the loss must be attributable to the injury, and not just to the crime.⁷³

North Carolina General Statutes section 15B-11(a)(3) also may present an interpretation problem. That section denies recovery if an award unjustly would benefit the offender or his accomplice. Furthermore, unless "the interests of justice require," an award may not be made to a spouse, parent, child, sibling, or housemate of the offender or his accomplice.⁷⁴ These two requirements must be interpreted together.⁷⁵ Thus, the interests of justice would require compensating an offender's innocent spouse unless the award would benefit unjustly the offender himself. If, for example, the offender and his victim are estranged spouses with no hope of reconciliation, an award would be proper since it would not benefit the offender unjustly. Similarly, an emancipated son who is assaulted by his father should recover. In this respect, North Carolina was wise to reject the approach taken by Maryland. Under the Maryland program, a victim cannot recover if he is a member of the offender's family.⁷⁶ This rule is too inflexible because it disallows recovery merely because of a legal, blood, or social relationship with the offender. The North Carolina approach, which emphasizes the unjust enrichment of the offender, represents a view more in keeping with the policies underlying the Act.

In addition to problems of interpretation, two problems may arise in implementing the North Carolina program. If the program is funded inadequately by the General Assembly, its effectiveness will be diminished severely. As originally drafted, the program was to be funded by increased criminal court costs.⁷⁷ This proposal was defeated.⁷⁸ Instead, the program will be funded with general state revenues through the Department of Crime Control

72. *Id.* at 777 n.1.

73. See N.C. GEN. STAT. § 15B-2(14) (1983).

74. See *id.* § 15B-11(a)(3).

75. Maryland, unlike North Carolina, has made no conscious effort to emphasize the unjust enrichment of the offender. See MD. ANN. CODE art. 26A, § 5(b) (1981). North Carolina's provisions were included so that an offender could not be benefited by an award. Assuming that a victim meets every other requirement of the Act, the logical conclusion is that "justice requires" compensating the victim if the award will not benefit the offender.

76. MD. ANN. CODE art. 26A, § 5(b) (1981). "Family" is defined as a person within the third degree of consanguinity or affinity, a sexual partner, or a housemate. *Id.* § 2(d).

77. See N.C. House Bill 177 (1983) (as originally introduced). The rationale behind this method of funding is to let the criminals pay for a program that is aimed at victims. Texas, for example, funds its compensation program in this manner. See TEX. REV. CIV. STAT. ANN. art. 8309-1, § 14 (Vernon Supp. 1984).

78. This proposed method of funding was defeated for two principal reasons. First, the majority of criminal cases are traffic offenses, and thus the increased court costs really would not be borne by "criminals." Second, the purpose of court costs is to pay the court's administrative expenses, not to fund other programs. Interview with James Drennan, Associate Professor, North Carolina Institute of Government (Feb. 27, 1984).

and Public Safety.⁷⁹ To date, no funds have been appropriated for the program. To operate effectively, the program must receive adequate funds. The Indiana program "had a precarious existence" from its inception in 1978 until 1980 because of inadequate funding.⁸⁰ This should not be allowed to happen in North Carolina.

The drafters of the Act attempted to protect against funding deficiencies. The Act expressly states that if compensation is awarded when there are insufficient funds to pay the award, it nevertheless will be paid as soon as funds become available.⁸¹ The Commission, however, probably would cease processing claims if its administrative expenses could not be paid.⁸² A backlog of unpaid claims would result. Thus, proper funding is imperative if the program is to have a meaningful existence.

If the Act is to be effective, it is necessary that the victims it was intended to benefit be made aware of the program. Even a properly funded program is ineffective unless crime victims know it exists.⁸³ The North Carolina Act encourages victim awareness by requiring law enforcement agencies to use "reasonable efforts" to introduce the program to injured victims.⁸⁴ Although this is a step in the right direction, it may not be enough. The Act does not provide for enforcement against an agency that is derelict in notifying victims. Such a provision should be considered by the legislature if it is serious about full implementation of the Act. Pursuant to its own power to publicize the program,⁸⁵ the Commission also could implement a comprehensive plan to educate the public. Although any publicity drive will be restricted by limited funds, the program could be featured in radio and television public service announcements.⁸⁶

By enacting the North Carolina Crime Victims Compensation Act, the

79. 1983 N.C. Adv. Legis. Serv. ch. 832, § 6. The majority of the states fund their programs with general state revenues. Hoelzel, *supra* note 4, at 492.

80. See Clark & Webster, *supra* note 4, at 755-56.

81. See N.C. GEN. STAT. § 15B-22 (1983).

82. In Indiana the Commission stopped processing claims when its administrative coffers were emptied. Clark & Webster, *supra* note 4, at 755.

83. "A major shortcoming of every program is that most of its customers, victims of violent crime, are not aware of it." H. EDELHERTZ & G. GEIS, PUBLIC COMPENSATION TO VICTIMS OF CRIME 281 (1974). The best gauge of public ignorance is the percentage of victims who use the programs. In California, for example, 200,000 people were victims of violent crime. Only 12,000—a mere 6%—applied for compensation. CRIM. JUST. NEWSLETTER, Nov. 7, 1983, at 1. Similarly, in 1974 only 3% of Alaska's, 12% of Hawaii's, 5% of Maryland's, and 2% of New York's eligible victims applied for compensation. See Note, *supra* note 25, at 230 n.261.

Incredible as it may seem, some state legislatures have been reluctant to publicize their programs. The Nebraska legislature, for example, would allow no money to be spent on publicity during the first year of the program (to limit the number of claims). Likewise, the Washington legislature was "distracted" about the widespread publicity of that state's program. Hoelzel, *supra* note 4, at 495.

84. See N.C. GEN. STAT. § 15B-20 (1983).

85. See *id.* § 15B-6(3).

86. Minnesota has a simple and relatively inexpensive program for informing potential claimants. When the police investigate a crime, they give the victim a card that tells the victim how to contact the compensation board. See Hoelzel, *supra* note 4, at 492.

Since the North Carolina Act allows compensation for reasonable attorneys' fees regardless of a claimant's success, see N.C. GEN. STAT. § 15B-15(a) (1983), it is likely that a large number of

General Assembly created a humanitarian program designed to aid injured crime victims. If the program is to serve this benevolent purpose, three considerations must be remembered. First, any ambiguities in the statute should be construed in favor of the victim; the adequacy or inadequacy of appropriation should not affect the construction given the Act. Second, it is imperative that the program be funded adequately. The General Assembly should look to other states to determine the level of funding a successful compensation program demands. Third, it is crucial that the program be publicized widely. Only if victims are aware of the program can it effectively serve both the citizens of the State and the policies it was intended to promote.

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victims will be made aware of the program by their attorneys. *See also* Hcelzel, *supra* note 4, at 495.