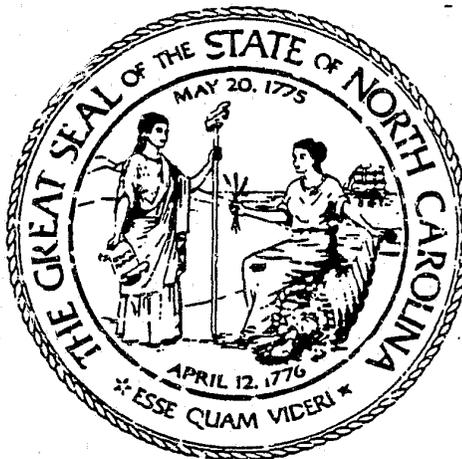


149541

LEGISLATIVE RESEARCH COMMISSION

THE RIGHTS OF VICTIMS OF CRIMES



REPORT TO THE 1993 GENERAL ASSEMBLY OF NORTH CAROLINA

149541

U.S. Department of Justice
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TABLE OF CONTENTS

Letter of Transmittal.....	i
Legislative Research Commission Membership.....	ii
PREFACE.....	1
COMMITTEE PROCEEDINGS.....	3
FINDINGS AND RECOMMENDATIONS.....	12
APPENDICES	
Relevant portions of Chapter 754 of the 1991 Session Laws authorizing the study and House Bill 1033 of the 1991 Session.....	A
Membership of the LRC Committee on The Rights of Victims of Crime.....	B
Staff Reports:	
Crime Victims Compensation	C
Victims Rights Amendments in other States.....	D
Statutes and rules in North Carolina on:	
Crime Victim's Compensation	E
Fair Treatment for Victims And Witnesses	F
Parole Notification	G
Amending the State Constitution	H
Implementation of Fair Treatment for Victims and Witnesses Act.....	I
Job Description for Victim/Witness Assistants	J
Senator Ballance's Proposal for Findings	K
Legislative Proposal I -- A BILL TO BE ENTITLED AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO ESTABLISH RIGHTS FOR VICTIMS OF CRIME	L

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



January 15, 1993

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on The Rights of Victims of Crime. The report was prepared by the Legislative Research Commission's Committee on The Rights of Victims of Crime pursuant to Section 2.1 (30) of Chapter 754 of the 1991 Session Laws.

Respectfully submitted,


Daniel T. Blue, Jr.
Speaker of the House


Henson P. Barnes
President Pro Tempore

Cochairmen
Legislative Research Commission

1991-1992

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

President Pro Tempore of
the Senate
Henson P. Barnes, Cochair

Senator Frank W. Ballance, Jr.
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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "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)).

At the direction of the 1991 General Assembly and the cochairs of the Legislative Research Commission, the Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of The Rights of Victims of Crime was authorized by Section 2.1 (30) of Chapter 754 of the 1991 Session Laws. That act states that the Commission may consider House Bill 1033 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 754 and House Bill 1033 are included in Appendix A. The Legislative Research Commission grouped this study in its Law Enforcement area under the direction of Representative David Redwine. The Committee was chaired by Senator Frank Ballance and Representative Edd Nye. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing

the committee minutes and all information presented to the committee is filed in the
Legislative Library.

COMMITTEE PROCEEDINGS

January 21, 1992

The initial meeting of the Committee was held with Representative Edd Nye presiding. Following introductions of the Committee members and staff, Catherine Smith, of the North Carolina Victims' Assistance Network (NC-VAN), introduced her organization as a nonprofit association representing innocent victims of violent crime. NC-VAN strives to educate North Carolinians about the devastating impact of crime and its effect on society, and works to ensure victim participation in the criminal justice.

Committee staff Brenda Carter and Michele Nelson presented a summary of the Crime Victims Compensation Program, including a historical background of relevant federal legislation and a description of North Carolina's Victims' Compensation Program. (Appendix C)

Art Ziedman, of Victim and Justice Services, responded to questions which arose regarding the North Carolina Victims' Compensation Program. In response to a question regarding collateral resources, Mr. Ziedman explained that when an employer pays for medical treatment for a victim whether through self-insurance, conventional insurance, or simply a donation, the amount is offset against the victim's claim for compensation.

Brenda Carter, Committee Counsel, reviewed what the State has done over the past ten years in the area of victims rights. In 1981, the legislature enacted the assistance program for victims of rape and sex offenses, in the Department of Crime Control and Public Safety. The program applies to victims of first or second degree rape or sexual offense, and provides that they may receive up to \$500 to cover short term medical expenses, ambulance services, and medical health services including counseling. In 1983, the legislature enacted the Victims Compensation Act to provide compensation for medical expenses, lost wages, or funeral expenses for innocent victims of crime. The Act established the Crime Victims Compensation Commission in the Department of Crime Control and Public Safety and set up requirements for eligibility and investigation of claims. The Act was to become effective when funds were appropriated, however, no funds were appropriated at that time. In 1987, the General Assembly amended the original Victims Compensation Act and made the first appropriation to the Victims Compensation Fund. The bill provided that victims of offenses occurring on or after August 13, 1987, when the first funds were appropriated, would be eligible to receive awards. The 1989 General Assembly further amended the Crime Victims Compensation Act to cover victims who are injured by impaired drivers. There were also amendments to cover injuries to North Carolina residents who are injured by crimes occurring in other states. The current law is set out in Appendix E.

In 1986, the General Assembly enacted the Fair Treatment for Crime Victims and Witnesses Act (Appendix F). The Act provided funds for each District Attorney's office to employ a Victim and Witness Assistant. The Act set out the responsibilities of law enforcement agencies, prosecutors, courts, and the correctional system in assisting crime victims and witnesses. The Act was amended in 1989 to provide additional protections for victims and witnesses. Also in 1989, the General Assembly enacted a law requiring notification of the District Attorney, the victim or his family, and the arresting law enforcement agency when certain prisoners are being considered for parole. The Parole Commission must then consider any information provided by parties entitled to notice and must provide such parties written notice of its decision within 10 days of the decision.

Michele Nelson, the Committee's Fiscal Analyst, discussed funding of North Carolina's Victims Compensation Act. In 1987, the General Assembly appropriated initial funding for the Act in the amount of \$1 million. This amount did not include administrative costs, but the General Assembly authorized the Department of Crime Control and Public Safety to use \$100,000 of the funds that were available for victims of rape and sexual offenses for administration of the programs. No additional staff was authorized, so duties were absorbed by existing staff within the Department. In 1989 the General Assembly appropriated additional funding for victim's compensation in the amount of \$600,000, as well as funding to provide three staff positions for the Division of Victim and Justice Services. These persons process and investigate claims. The expectation of the General Assembly at that time was that federal funding at 40% would offset the payment of claims to victims. There is now available approximately \$1.2 million of State funding for victims compensation. The State Auditor's Office reviewed the program in 1989. As a result of that review, during the 1991 appropriations process two of nine positions in claims management and investigation were scheduled for elimination, and a recommendation was made for automation of the claims management process.

The State's first victims compensation claims were reimbursed in January, 1988. Between that time and December 31, 1991 the State has awarded compensation for 4,731 claims in the amount of \$6.6 million. Of that amount, \$5.4 million was utilization of state funding and about \$863,000 represented federal funds.

The Chairman again recognized Art Ziedman, who told the Committee that funding for the Victims Compensation Fund for the 1991/92 fiscal year had been exhausted. The Commission is operating on funds received from the federal government on the 40% match received in the Fall of 1991, but those funds may be depleted by the end of the month. The next receipt of federal funds is expected no earlier than May, and should be in the amount of approximately \$600,000. Ziedman stated that last year federal funds were held up for a substantial period of time because the federal government was uncertain about how to count restitution. The issue was whether funds received by the State in restitution would decrease the net amount paid to victims, on which the 40%

match is based. While some states have dedicated victims compensation funds where restitution goes back into an account which is used to pay claims, in North Carolina only when restitution is recovered in the same year in which the claim is paid does the money recycle into the fund. If the restitution is paid in a subsequent year, the sum treated as general revenue.

Representative Robert Grady, who introduced House Bill 1033, expressed to the Committee his hope that the thrust of this study would be on the majority of the people who are victims, innocent people, who happen to be at the wrong place at the wrong time. He also urged the Committee to emphasize the rights of victims, rather than victims compensation.

Mr. Ziedman introduced Dick Adams, Chairman of the Victims Compensation Commission, who served his first term as an appointee of Speaker Liston Ramsey and was recently reappointed by Lieutenant Governor Jim Gardner. Ziedman also introduced Commission members Louis Pippin, who was appointed by the Governor, and Mark Donaldson, who was initially appointed by Lieutenant Governor Bob Jordan and recently reappointed by the Speaker. The Attorney General and the Secretary of Crime Control and Public Safety are ex officio members of the Commission.

Before adjourning the meeting, Chairman Nye asked the Committee members to reflect on what direction this study should take in the coming months.

February 25, 1992

Senator Frank Ballance, co-chair, presided over the second meeting of the Committee. Senator Ballance recognized C. Colon Willoughby, Jr., who is the District Attorney in Wake County and current President of the N.C. Conference of District Attorneys. Mr. Willoughby presented information on the implementation and effectiveness of the Fair Treatment for Victims and Witnesses Act. The Act, which took effect on October 1, 1986, defines standards of fair treatment for victims and witnesses in the criminal justice system. The Act defines the information and services to be provided, including simply providing information about how the court system works, what occurs in a particular court setting, helping victims get their property returned when they are victims of a property crime, and acting as a referral agency to make them aware of other services. The Act should give victims input into the process and keep them aware of any actions taken in the case. Part of the legislation provided for the funding of Victim Witness Assistants, and specified that at least one such position be provided in each prosecutorial district. There are now 37 prosecutorial districts in the State, and there is a total of 64 Victim Witness Assistants throughout the State. Some districts have as many as three assistants, some have as few as one. The determination is made by the Administrative Office of the Courts on the basis of geography and caseload.

Presently, the ratio of Victim/Witness Assistants to prosecutors is about one for every 4½ prosecutors Statewide.

Victim/Witness Assistants perform a lot of tasks that previously have been performed by prosecutors; many contacts with victims and witnesses were made by prosecutors or by the lead law enforcement officer or investigating agent. Mr. Willoughby told the Committee that over the last ten years or so the average caseload for each prosecutor has risen from some 200 cases to about 350 cases, and that it has been difficult to provide the same level of services. The Victim/Witness Assistants fill the void in maintaining important contacts with persons involved in cases, and trying to avoid unnecessary court appearances and keeping people informed about when court appearances will occur. The Conference of District Attorneys has some oversight responsibility for the Victim/Witness program, and a yearly report is made to the General Assembly on the level of services provided (See Appendix I). The Conference also provides training for Victim/Witness Assistants, wherein information is presented to both new and experienced workers on topics including victims compensation, scheduling of expert witnesses, restitution, parole policies and stress management. Mr. Willoughby indicated that the Conference of District Attorneys has monitored the program to ensure that the Victim/ Witness Assistants are being utilized appropriately, and has directed the Executive Secretary of the Conference to notify a District Attorney of any aspects of his program that do not appear to be in compliance with statutory requirements. The General Assembly made Victim/Witness Assistants responsible for coordinating the efforts of law enforcement and the judicial system in making a reasonable effort to provide services to victims. This duty is emphasized in their training and they are encouraged to take the initiative in working with other agencies.

Catherine Smith, Executive Director of the North Carolina Victims Assistance Network (NC-VAN), made comments to the Committee in support of a Victims Rights Amendment to the State Constitution. The Committee also heard from Jeff Dongvillo, State Director of Justice Fellowship, a division of Prison Fellowship Ministries, Inc.

March 31, 1992

The Committee held its third meeting, with co-chair Representative Edd Nye presiding. Representative Nye introduced Louis R. Columbo, Chairman of the N.C. Parole Commission. Mr. Columbo responded to questions from the Committee regarding parole notification. Current law provides that victims of certain crimes be notified if an offender is to be considered for parole (Appendix G). Victims are notified only if they make such request in writing. According to Mr. Columbo, many victims do not choose to follow up with offenders.

James Coman, Senior Deputy Attorney General in the Criminal Division of the N.C. Department of Justice, presented a draft of a proposed Victims Rights Constitutional Amendment from which the Committee might begin its consideration of the issue.

John Sanders, Director of the Institute of Government at UNC-Chapel Hill, provided general comments to the Committee on the proposal for a Victims Rights Amendment to the State Constitution. Mr. Sanders has worked with the State's Constitution over many years, and provided a historical perspective to the Committee. He indicated that North Carolina has not used its constitution as a place to express detailed provisions of policy and program, and as a result this State's constitution is one of the briefest in the nation. This reflects the fact that constitutional conventions over two hundred years have respected the General Assembly as capable of making wise, sound and responsible judgments on the affairs of the State. Mr. Sanders reminded the Committee that amending the constitution requires that the proposed amendment be passed by a three-fifths vote in each house and by a referendum of the people. Mr. Sanders also cautioned that rights, once granted in the constitution, are hard to revoke even if it is later found that they were unwisely granted.

Mr. Sanders mentioned a recent court decision which held that when people of the State have certain rights, they can enforce them in court against the officials of the State and against the State itself. If there is a right which has been violated the aggrieved victim may come in and demand money damages from the State. Mr. Sanders suggested that the Committee consider carefully the adequacy of the current statutory scheme for protecting the rights of victims and their survivors, whether by compensation or other means, and whether the desired objectives might be accomplished by statute enacted by the General Assembly. Mr. Sanders pointed out that the responsibility of public officials to respect the law is no greater for a constitutional expression than for a statutory expression of the legislative will; and that with a statute, the legislature has the opportunity to amend, adjust, add, or subtract as time and experience may suggest in the discretion of the General Assembly.

Robert Farb, also of the Institute of Government, addressed other issues related to the proposed constitutional amendment. Mr. Farb told the Committee it is difficult for any attorney to predict how the State's Supreme Court will interpret a constitutional amendment, whether it is next year or fifty years down the road. However, under a recent decision of the N.C. Supreme Court, it is apparent that one remedy for a person whose constitutional rights have been violated is to bring a civil lawsuit against the person or governmental unit that allegedly violated his rights. In the proposed Victims Rights Amendment, potential plaintiffs would include the people expressly mentioned in the amendment - victims, survivors and family of crime victims, as defined by the General Assembly. Potential defendants, those people who would possibly be sued, include those in the judicial system from court clerks to prosecutors or others. Other potential defendants include executive branch officials dealing with the parole and other notification procedures, state and local law enforcement agencies, as well as the State

and local governments. In Corum v. UNC, the N.C. Supreme Court held that in the absence of an adequate state remedy, one whose state constitutional rights have been abridged has a direct claim against the State. Regardless of whether the General Assembly has specifically created any right to sue based upon rights granted in the State Constitution, a person whose rights allegedly have been violated may bring a lawsuit. This could result in a money judgment against the State, the plaintiff could be awarded attorney fees, or injunctive relief could be ordered.

April 29, 1992

The Committee held its fourth meeting, with co-chair Representative Edd Nye presiding. Dallas A. Cameron, Jr., Assistant Director of the Administrative Office of the Courts, commented on the proposed Victims Rights Amendment in view of the impact it might have on the court system. Mr. Cameron discussed those portions of the amendment that require notification of court proceedings, information about how the criminal justice system works, the rights of victims and the availability of services, and the right to make a statement to the court at the time of sentencing. All these items could result in increased costs for court administration and court time, and may require additional staff.

Gregg Stahl, Assistant Secretary of Programs and Development in the Department of Correction, indicated that the Department is supportive of the victims right to notification and information, though they have no direct responsibility in those areas. They are indirectly involved because of their responsibilities with the Parole Commission.

Robert Powell, Deputy State Budget Officer, presented information to the Committee regarding the Emergency Prison Facilities Development Program which was established by the General Assembly in 1987. The program's primary concern was to begin addressing prison overcrowding and unacceptable conditions of confinement within the prison system, and to address court directives to relieve overcrowding in inmate dormitories and day rooms - to provide enterprise, vocational and classrooms for inmates and to provide other programmatic functions which the courts had deem to be deficient within the prison system. The program has been funded in phases over the past five years, and to date over \$291 million dollars have been made available for prison facility construction.

September 17, 1992

Following the 1992 Session, the Committee held its fifth meeting, chaired by Senator Frank Ballance. Committee Staff, Brenda Carter and Michele Nelson, presented information on enacted or proposed constitutional amendments supporting rights of victims in the following states: Arizona, California, Florida, Maryland, Michigan, Missouri, Rhode Island, Texas, Washington, and Wisconsin. The information included a summary of constitutional provisions, as well as a fiscal analysis. (Appendix D)

Margaret Baggett, Executive Secretary for the Conference of District Attorneys, presented information about the responsibilities of Victim/Witness Assistants. Employees in those positions perform specialized program support work in District Attorney offices, which requires implementing systems to ensure services for each victim and witness involved in a felony case. Working through and with local law enforcement agencies, key court personnel, and community organizations, the employee coordinates fair treatment services. The work is reviewed by the District Attorney for policy adherence and for the overall success of the program in meeting the needs of the public and the requirements of the statute. According to Ms. Baggett, the Victim/Witness Assistant reports directly to the District Attorney or to the office manager. A job description for Victim/Witness Assistants is found in Appendix J of this report.

October 15, 1992

The Committee held its sixth meeting with Representative Edd Nye presiding. The Committee heard from persons with direct involvement in victim services in various parts of the State.

Lynn Jones, of Columbus-Bladen-Brunswick Counties, and Catherine Prescott, of Pitt County, are Victim Witness Assistants in District Attorney Offices. They described their daily work and how their time is spent.

Jim Huegerich, with the Chapel Hill Police Department, is a mental health worker who manages a unit of three full-time staff. They work with victims of crime in addition to other crisis situations - psychiatric emergencies, involuntary commitments and potential suicides. They are available 24 hours a day, 7 days a week to respond to victims. They help to stabilize the victim, link them to a support system, help get them referred to appropriate services, advocate for them, and track them through the system.

The Committee also heard from Rosemary Haddock, a Victim Advocate with the Pitt County Sheriff's Department, and Lt. Jerry Browning, Administrator for Crime Prevention and Community Relations with the Burlington Police Department.

Cathy Purvis, Director of a Sexual Assault program in High Point, has been a victim advocate for eight years. She works with a nonprofit United Way Agency which received some State funding through sexual assault grants administered by the Department of Administration.

Sam Boyd, Executive Director of the N.C. Parole Commission, spoke to the Committee regarding procedures established to notify victims when individuals are being considered for parole. Notification is not made to victims unless they have requested to be notified in writing. Ninety days prior to a person becoming parole eligible, the Parole Commission conducts a parole review. The purpose is to determine if the case merits investigation on the surface. If so, they begin an information gathering process, which takes about 90 days. When requested, the Commission sends the victim involved a letter notifying him that an individual is being considered for parole. The Commission will subsequently notify the victim of its decision in the matter.

Franklin Freeman, Director of the Administrative Office of the Courts, presented information on victim services through the Victim and Witness Assistance Program. The 1986 legislation provided that each prosecutorial district would have one Victim/Witness Assistant. Since that time, the number of positions has increased from 36 to 69, and appropriations have increased from \$533,000 to \$1,972,000 for this fiscal year. In spite of limited resources, the General Assembly has increased the funding for the program by nearly 300% in the six years it has been in effect. Additional legislation enacted in 1986 and 1989 provides far-ranging coverage for victims of crimes and places a great deal of responsibility on the Victim/Witness Assistants. The 1989 General Assembly expanded the program to include cases that the District Attorney determines to be serious misdemeanors (primarily assaults).

Mr. Freeman indicated that the Conference of District Attorneys, in conjunction with the Institute of Government and the Administrative Office of the Courts, has the responsibility for establishing uniform statewide training for Victim/Witness Assistants. The Conference of District Attorneys also has responsibility for assisting, implementing, and supervising the program, and working with the Administrative Office of the Courts to make an annual report to the General Assembly. Portions of the 1992 Report are attached as Appendix I.

November 10, 1992

The Committee held its seventh meeting with Senator Frank Ballance presiding. Committee discussion focused on recommendations for its final report to the Legislative Research Commission.

Catherine Smith, Executive Director of NC-VAN, presented a revised version of a proposed Victims Rights Amendment which was developed in collaboration with the

Coalition for Victim's Rights, James Coman of the Attorney General's Office, and Jim Kimel and Tom Haigwood of the Conference of District Attorneys. Ms. Smith reviewed each section of the bill, and responded to questions raised by Committee members. The Committee Staff provided comparisons with similar provisions adopted by other states, along with an indication of which provisions are similar to those contained in the Fair Treatment for Victims and Witness Act (Appendix F).

Dave Morrison, General Counsel for the N.C. Academy of Trial Lawyers raised several issues related to the proposed constitutional amendment. He asked that the Committee provide a clearly defined scope of eligibility, particularly with respect to survivors and family members of victims. The Committee agreed with this point, and made additional recommendations for a draft proposal which will be considered for adoption at its next meeting. Mr. Morrison made several additional points which were discussed by the Committee. The Committee directed Staff to prepare a proposal incorporating the various changes that were discussed.

Judge James Booker, Chairman of the N.C. Industrial Commission discussed what fiscal impact the proposed amendment might have on his agency, in view of the potential for tort claims actions.

December 8, 1992

The Committee held its eighth and final meeting to discuss and adopt its recommendations and legislative proposal for the report to the Legislative Research Commission.

The Committee heard comments from Mr. Dick Adams, father of a homicide victim. Mr. Adams expressed his thanks to the Committee for its work, and urged the adoption of a legislative proposal for a Victims Rights Amendment to the State Constitution.

The Committee reviewed the draft version of its findings and recommendations, and after a discussion led by Senator Ballance, made one change in the language before adopting the draft. Senator Ballance expressed the view that the Committee should consider a recommendation for amendment of the Fair Treatment for Victims and Witnesses Act rather than a constitutional amendment, and presented an alternative set of findings to support that proposal. (Appendix K). After discussion by the Committee, Senator Ballance withdrew his request for a vote on the matter. The Committee then adopted Legislative Proposal I (Appendix L) for a Victims Rights Amendment to the State Constitution. The final report to the Legislative Research Commission was adopted by the Committee.

FINDINGS AND RECOMMENDATIONS

The Committee finds that the State has made notable progress in establishing programs to recognize and protect the rights of victims of crime. Within the past decade the General Assembly has enacted the Assistance Program for Victims of Rape and Sex Offenses and the North Carolina Crime Victims Compensation Act to provide compensation for innocent victims of crime. The Fair Treatment for Victims and Witnesses Act, enacted in 1986, began efforts to ensure that employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system make a reasonable effort to assure that each victim and witness be afforded fair treatment. The Committee finds that while these systems provide critical services, victims of crime and the survivors of victims of crime often feel disenfranchised from the criminal justice system.

The Committee finds that there is a perception that the scales of justice are out of balance. This perceived imbalance creates bitterness and frustration among victims and many who work with victims in the criminal justice system.

The Committee finds that equal treatment for victims in the criminal justice system can best be accomplished through the enactment of a Victims Rights Amendment to the State Constitution. The core right of participating in the prosecution of one who is accused of criminally harming the victim deserves to be written in our basic code of rights rather than to be treated as an unenforceable guideline. Adopting a constitutional amendment would grant permanence to victims' participatory rights. The Committee further finds that a State Constitutional Amendment would place victim rights alongside defendants rights, adding credibility and stability, since Constitutional rights may only be amended or removed by a vote of the people.

The Committee presents as its recommendation to the Legislative Research Commission Legislative Proposal I for a Victims Rights Amendment to the State Constitution, attached as Appendix L of this report.

APPENDIX A

CHAPTER 754
SENATE BILL 917

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES, AND TO MAKE OTHER AMENDMENTS TO THE LAW.

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1991."

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1991 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

(30) Rights of Victims of Crime (H.B. 1033 - Grady).

Sec. 2.7. Committee Membership. For each Legislative Research Commission Committee created during the 1991-93 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.8. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1992 Regular Session of the 1991 General Assembly or the 1993 General Assembly, or both.

Sec. 2.9. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.10. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART XXI.-----EFFECTIVE DATE

Sec. 21.1. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1991.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

.2

HOUSE BILL 1033
Committee Substitute Favorable 5/13/91

Short Title: LRC Study/Victims' Rights.

(Public)

Sponsors:

Referred to:

April 19, 1991

- 1 A BILL TO BE ENTITLED
- 2 AN ACT AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION
- 3 TO STUDY THE RIGHTS OF VICTIMS OF CRIME.
- 4 The General Assembly of North Carolina enacts:
- 5 Section 1. The Legislative Research Commission is authorized to
- 6 study the rights of victims of crime. The Legislative Research Commission
- 7 may study the following proposed rights of victims of crime:
- 8 (1) The right to be treated with fairness and respect for their
- 9 dignity and privacy throughout the criminal justice process.
- 10 (2) The right to timely disposition of the case following arrest of
- 11 the accused, provided that nothing in this subsection shall
- 12 prevent the accused from having a sufficient time to prepare a
- 13 defense.
- 14 (3) The right to be reasonably protected from the accused or any
- 15 persons acting on his behalf throughout the criminal justice
- 16 process. The availability of the right established under this
- 17 subsection shall not be a basis for any accused receiving more
- 18 favorable consideration for pretrial release or lower bail than
- 19 would have resulted without this subsection.
- 20 (4) The right to notification of court proceedings.
- 21 (5) The right to be given information about the crime, how the
- 22 criminal justice system works, the rights of victims, and the
- 23 availability of services.

- 1 (6) The right to attend trial and all other court proceedings to
- 2 which the accused has the right to attend.
- 3 (7) The right to confer with the prosecution.
- 4 (8) The right to make a statement to the court at the time of
- 5 sentencing prior to the adjudication of the sentence.
- 6 (9) The right to receive restitution, in such manner as established
- 7 by law, as a condition of the accused's sentence.
- 8 (10) The right to information about the conviction, sentence, and
- 9 release of the accused.
- 10 (11) The right to notification of proposed parole or pardon of the
- 11 accused, or reprieve or commutation of the accused's
- 12 sentence, and the right to present evidence to the Governor or
- 13 agency considering such action prior such action becoming
- 14 effective, in a manner established by law.
- 15 Sec. 2. The Legislative Research Commission may make an interim
- 16 report to the 1992 General Assembly, and shall make a final report to the 1993
- 17 General Assembly.
- 18 Sec. 3. This act is effective upon ratification.

APPENDIX B

RIGHTS OF VICTIMS OF CRIME
MEMBERSHIP - 1991-1992

LRC Member: Rep. E. David Redwine
P.O. Box 238
Shallotte, NC 28459
(919) 579-2169

Members:

President Pro Tempore's Appointments

Sen. Frank W. Ballance, Jr., Cochair
P.O. Box 616
Warrenton, NC 27589
(919) 257-1012

Sen John G. Blackmon
P.O. Box 33664
Charlotte, NC 28233-3664
(704) 332-6164

Sen. Robert L. Martin
P.O. Box 387
Bethel, NC 27812
(919) 825-4361

Mr. William H. McMillan
Post Office Drawer 1776
Statesville, NC 28677

Sen. Alexander P. Sands, III
P.O. Box 449
Reidsville, NC 27323-0449
(919) 349-7041

Sen. Lura S. Tally
3100 Tallywood Drive
Fayetteville, NC 28303
(919) 484-4868

Mr. Bobby Wall
P.O. Box 1316
Forrest City, NC 28043

Speaker's Appointments

Rep. Edd Nye, Cochair
209 Ben Street
Elizabethtown, NC 28337
(919) 862-3679

Rep. Jo Graham Foster
1520 Maryland Avenue
Charlotte, NC 28209
(704) 332-8269

Rep. Robert Grady
107 Jean Circle
Jacksonville, NC 28540
(919) 455-9359

Rep. James P. Green, Sr.
P.O. Box 1739
Henderson, NC 27536
(919) 492-2161

Rep. Mary E. McAllister
1506 Edgecombe Avenue
Fayetteville, NC 28301
(919) 483-2579

Rep. Edward L. McGee
3708 Hawthorne Road
Rocky Mount, NC 27804
(919) 937-4282

Rep. Richard T. Morgan
570 Pinehurst South
Pinehurst, NC 28374
(919) 295-4575

Mr. R. B. Nicholson
5202 Brenda Drive
Winston-Salem, NC 27107

Staff:

Ms. Brenda Carter (919) 733-2578
Ms. Michele Nelson (919) 733-4910

Clerk:

Ms. Nancy Joyce

Appendix C

Legislative Research Commission
on
Victims Rights
Summary of the Crime Victims Compensation Program

I. HISTORICAL BACKGROUND

A. Federal Legislation

The Victims of Crime Act (VOCA) was enacted by Congress in 1984, Title II, Chapter XIV (P.L. 98-473) and codified at 42 U.S.C. 10601, et seq. The Act is the vehicle to provide financial assistance to States for the purpose of compensating and assisting victims, and to provide funds to the [U.S.] Department of Justice to assist victims of Federal crime. The Act has been amended three times since its adoption - 1986 by the Children's Justice and Assistance Act (P.L. 99-401), 1988 by the Anti-Drug Abuse Act, Title VII, Subtitle D (P.L. 100-690) and 1990 Act, Title V (P.L. 101-647). A summary of each section of the Act, as currently authorized, follows.

The Act as initially authorized and subsequently amended provides the following:

- a Crime Victim Fund;
- Crime Victim Compensation;
- Crime Victim Assistance;
- funds for Child Abuse Prevention and Treatment grants;
- Administrative Provisions;
- an Office for Victims of Crime;
- guidelines for Victims Rights; and
- guidelines for Services to Victims.

The Crime Victims Fund (Section 10601) was established in the Treasury and receives funds annually from four sources: deposits of criminal fines (with specific exceptions) collected from convicted Federal defendants; new penalty assessments imposed on convicted Federal defendants; forfeited

appearance bonds, bail bonds, and collateral security posted by Federal defendants; and special forfeiture of collateral profits of crime (e.g. literary profits due certain convicted Federal defendants). The Act initially authorized a maximum deposit in the Fund of \$100 million, but the ceiling was increased to \$125 million between Fiscal Years 1988 and 1990 and to \$150 million through Fiscal Year 1994. Deposits to the Fund are authorized through September 30, 1994. Resources deposited into the Fund are distributed on a percentage basis for victim compensation programs; victim assistance programs; training and technical assistance programs, and services to Federal victims; and Child Abuse Prevention and Treatment Grants (refer to Appendix 1).

Crime Victims Compensation (Section 10602) provides financial assistance to victims and survivors of victims of criminal violence through State administered programs. Payments are made for medical expenses, including expenses for mental health counseling and care; lost wages attributable to a physical injury and funeral expenses attributable to a death resulting from a compensable crime. Some other compensable expenses are also included such as eyeglasses or other corrective lenses, dental services and devices and prosthetic devices. Each state establishes its own procedures for making application for crime victim compensation including establishing minimum and maximum award amounts, and criteria for approving claims.

The Office for Victims of Crime (Section 10605) created in 1988 administers VOCA and authorizes annual grant awards to eligible state crime victims compensation programs. The awards supplement state compensation payments to victims of violent crimes for compensable expenses outlined above. The amount of each award has been based upon 40 percent of the amount awarded from state funding sources during the preceding fiscal year since 1988. Initial grant awards were reimbursed at 35 percent.

In order to qualify for a crime victim compensation grant award, the State must meet prescribed eligibility requirements which are specified in the VOCA. In 1988, amendments to VOCA added new requirements which require states to expand efforts to assist victims of violent crimes. State compensation programs must now provide assurance that the state will offer compensation to victims and survivors of drunk driving and domestic violence, and provide compensation to residents of the state who are victims of crimes occurring in States which do not have crime victims compensation for which the victim is eligible.

A total of \$181,769,429 was awarded to eligible states, including the District of Columbia and the Virgin Islands, from Federal Fiscal Year (FFY) 1986, the first year that awards were made, through FFY 1990. Maine is the only State without a compensation program. Nevada has a compensation program, but currently does not participate in the VOCA compensation grant program. For FFY 1991, it is estimated that \$52,260,000 will be awarded to 44 states, which is more than double the amount awarded in FFY 1986. Refer to Appendix 2.

Crime Victim Assistance (Section 10603) outlines the availability of assistance in the form of grants. If all funding is not expended for compensation programs, the Office for Victims of Crime may disburse funds to states to support crime victim assistance programs that help victims of sexual assault, spousal abuse, or child abuse. There is emphasis on serving previously underserved populations of victims of violent crime.

Support for Child Abuse Prevention and Treatment grants (Section 10603) is available from the disbursement of Crime Victims Fund to be expended by the Secretary of Health and Human Services for grants through the Child Abuse Prevention and Treatment Act as amended in 42 USC §5013(d).

The Administrative Provisions (Section 10604) set forth the authority of the Director of the Office for Victims of Crime and the [U.S.] Attorney General to administer and oversee requirements of VOCA, recordkeeping responsibilities of each recipient of the Crime Victims Fund, and reporting requirements.

In 1990 VOCA was amended by adding two (2) sections: Victims' Rights (Section 10606) emphasizes the effort that staff employed by the [U.S.] Department of Justice and other agencies in the U.S. should take when charged with detection, investigation or prosecution of crime to preserve victims rights. These rights include fair treatment and respect of the victim's dignity and privacy; reasonable protection from the accused offender; notification of court proceedings; presence at all public court proceedings related to the offense, unless the court rules that testimony by the victim would be materially affected if the victim heard other testimony at trial. Additionally victims should have the right to confer with the attorney for the Government in the Case; receive restitution; and information about the conviction, sentencing, imprisonment and release of the offender.

Services to Victims (Section 10607) places the responsibility on personnel engaged in detection, investigation, or prosecution of crime to inform victims of available emergency medical services and social services; restitution or relief under VOCA or other laws; public and private programs that provide counseling, treatment, and other supportive services; and assistance in contacting service providers. Prosecutorial and investigative personnel should also notify victims of the status of the investigation of the crime, to the extent possible; the arrest of a suspected offender; filing of charges; scheduling of each court proceeding that the witness is required to or entitled to attend; release or detention status of an offender or suspected offender; acceptance of a plea of guilty or nolo contendere or the verdict following a trial; and the sentence of the offender, including date of eligibility for parole. Further consideration for the victim includes a suitable waiting area during the court proceeding; earliest possible notice of parole hearing; the escape, work release, furlough or other form of release of custody; death of the offender, if this occurs while in custody; protection of the victim's property held in evidence; payment of medical examination for a victim of sexual assault which the investigating officer considers evidentiary; and an explanation of the corrections process, including work release, furlough, probation and eligibility for each.

B. National Victim Organizations

In addition to the Federal and State initiatives in behalf of victims of crime, there are non-profit organizations that track legislation and/or compensation and provide advocacy for victims:

- National Organization for Victim Assistance (NOVA), Washington, D.C.
- National Association of Crime Victim Compensation Boards, Washington, D.C.
- National Victims Center, Arlington, VA
- National Victims Resource Center (toll free number)

II. NORTH CAROLINA'S PROGRAM

A. Legislative History

The Assistance Program for Victims of Rape and Sex Offense was established in the Department of Crime Control and Public Safety in 1981. A victim of 1st or 2nd degree rape, or 1st or 2nd degree sex offense, or attempted 1st or 2nd degree rape or sex offense may receive up to \$500 assistance to cover immediate and short-term medical expenses, ambulance services, and mental health services. To be eligible, the victim must report the crime within 72 hours, unless good cause is found for the delay.

The North Carolina Crime Victims Compensation Act was passed by the General Assembly in 1983 as an act "to provide compensation for innocent victims of crime", including compensation for medical expenses, lost wages, or funeral expenses. The act established the Crime Victims Compensation Commission in the Department of Crime Control and Public Safety, and set out requirements for eligibility, application, and investigation of claims. The act was to become effective when funds were appropriated to implement its provisions, however, no funds were appropriated in the 1983 session.

The 1987 General Assembly enacted legislation to clarify the law and to create the Crime Victims Compensation Fund. The bill, which became effective upon ratification on August 13, 1987, provided that victims of offenses occurring on or after that date would be eligible to receive awards only if the 1987 General Assembly made an appropriation to the Crime Victims Compensation Fund. The General Assembly did appropriate the anticipated funds, and the Crime Victims Compensation Act became operative.

The 1989 General Assembly amended the Crime Victims Compensation Act to include victims injured by "driving while impaired" offenders; to limit a claimant's recovery to economic loss; and to provide compensation to N.C. residents who are injured in a state that does not have a crime victims compensation program. Additional amendments were made to limit claims to the victim and persons who helped him; to allow the Crime Victims Compensation Commission to keep medical, law enforcement and juvenile records confidential; to allow the Director of the Commission to negotiate with service providers for a reduced rate; and to provide for the Director of the Commission to pursue restitution from convicted criminals. One further amendment extended from one to two years the time for which victims 10 years old or younger may receive compensation for economic loss from the Victims Compensation Fund.

The Crime Victims Compensation Act initially provided that no claims could be filed for criminally injurious behavior occurring after December 31, 1991, and that the Act would expire on July 1, 1993. The 1991 General Assembly removed the sunset date, and the provisions in the Act remain in effect.

B. Current Law

1. Structure

Crime Victims Compensation Commission - consists of five members, who serve 4-year terms. One member is appointed by the Governor, one by the President of the Senate, one by the Speaker of the House. The other members are the Attorney General and the Secretary of the Department of Crime Control and Public Safety, or their designees. The Commission is authorized to adopt rules to carry out the purposes of the Crime Victims Compensation Act and to establish general policies and guidelines for awarding compensation.

Director - is named by the Commission upon recommendation of the Secretary of Crime Control & Public Safety. Procedures for screening, filing, recording, investigating and processing claims are established by the Director in conformance with rules adopted by the Commission.

2. Who May File a Claim

A claim may be filed by a victim, a dependent of a deceased victim, a person who gratuitously "provided benefit to the victim or his family", or a person who is authorized to act on behalf of a victim or dependent. A victim is a person who suffers personal injury or death proximately caused by criminally injurious conduct; conduct which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death. (Except for driving while impaired violations, motor vehicle violations are not included).

3. The Application Process

A claim is commenced by filing the prescribed form with the director. Information required includes the nature of the criminally injurious conduct, the nature & extent of the victim's injuries, the amount of the victim's economic loss, the amount of benefits the victim or dependents may be entitled to from other sources, whether the victim/claimant has any relationship to the offender or an accomplice. The claimant may also be required to sign a release authorizing the Commission records necessary to substantiate the claim. A claimant who files a fraudulent/false claim will be subject to prosecution.

4. Investigation of the Claim

The Director is authorized, with the consent of the district attorney, to request that law enforcement officers provide copies of information that is gathered in the investigation of a crime that is the basis of a claim, and that prosecutors, police, and other state agencies conduct investigations and provide information necessary to determine whether a claimant qualifies for an award. The Director may require a claimant to supplement the application with any reasonably available medical or psychological data.

5. Awarding of Claims

The Director may decide awards for an initial or follow-up claim that does not exceed \$5,000 and does not include future economic loss. Other claims are decided by the Commission upon recommendation of the Director.

6. Grounds for Denial or Reduction of Claims

Claims will be denied when:

- the claim is not filed within one year after the date of the criminally injurious conduct;
 - the economic loss is incurred after 1 year from the date of the crime that caused the injury or death for which the award is sought (2 years if the the victim is 10 years old or younger at the time of the injury);
 - the crime was not reported within 72 hours of occurrence, and there was no good cause for delay;
 - an award would benefit the offender or his accomplice;
- or
- the crime occurred while the victim was confined in a correctional facility.

Claims may be denied or reduced:

- when there is a finding of contributory misconduct by the claimant/victim;
- the claimant/victim failed to cooperate with law enforcement agencies;
- to the extent that the claimant's economic loss is paid by a collateral source (the offender, social security, worker's compensation, insurance, etc.); or
- if the claimant's economic loss is less than \$100.

7. What Compensation May Be Paid

- allowable expenses including medical care, rehabilitation, medically related property, and other remedial treatment and care;
- lost wages, replacement services (such as child care);
- maximum of \$20,000 for any award, with an additional amount allowable of up to \$2,000 for funeral expenses if the victim dies because of the crime.

8. Manner of Payment

- Directly to service provider (doctors, hospitals, etc.)
- Claimant's out-of-pocket expenses may be paid directly to him upon documentation and verification
- Future economic loss may be commuted to a lump sum where appropriate. When paid in installments, the amount may be reconsidered and modified upon a material & substantial change in circumstances
- An award is not subject to taxation or execution

9. Appeal of Adverse Decisions - may be made under the provisions of the Administrative Procedure Act, and hearings are held before an Administrative Law Judge.

10. Crime Victims Compensation Fund - is kept on deposit with the State Treasurer, and is subject to the oversight of the State Auditor. If insufficient funds are available to pay compensation, payment will be delayed until funds are available. There is no absolute right to compensation.

C. Funding

In 1987 the General Assembly in accordance with Chapter 1086, Section 2 appropriated \$1 million to implement the provisions of North Carolina's Crime Victims Compensation Act that is administered by the Department of Crime Control and Public Safety, Division of Victim and Justice Services. The purpose of the funding is to provide compensation to eligible victims. Because funding was not available for administrative expenses, \$100,000 was transferred from the Assistance Program for Victims of Rape and Sex Offenses Fund in accordance with Chapter 1086, Section 118. At the time the Division assigned claims management and investigative responsibilities to existing staff.

In the 1989 Session the General Assembly appropriated \$674,248 for Fiscal Year 1989-90 and \$686,019 for Fiscal Year 1990-91 to address increased requirements for victim compensation and additional personnel. The added funding for victim compensation awards (\$600,000) was offset by anticipated Federal reimbursement of 40 percent. Special language adopted during the Session in Chapter 752, Section 110 authorized a review of the Crime Victims Compensation program with a report by May 1, 1990. A review of audit findings and recommendations in the 1991 Legislative Session resulted in the elimination of two (2) of the nine (9) positions assigned to the Crime Victims Compensation Program and the implementation of an automated claims processing system in accordance with Chapter 689, Section 76.

The State's first claims were reimbursed in January, 1988. Between January, 1988 and December 31, 1991 the State has awarded compensation for 4,731 claims in the amount of \$6,622,055 of which \$5,459,055 was State expenditure and \$863,000 was Federal.

Distribution of deposits in the Treasury for the [Federal]
Crime Victims Fund:

Any excess of these amounts does not become part of the Fund. The first \$2.2 million of excess funds will be made available to the Administrative Office of the U.S. Courts for administrative costs to carry out functions related to the collection of fines; the remaining excess will be deposited in the general fund of the U.S. Treasury.

Monies deposited in the Fund shall be made available in the following manner:

- Of the first \$100 million deposited in the fund:
 - 49.5% shall be made available for compensation programs;
 - 45% shall be made available for assistance programs;
 - 1% shall be made available for training and technical assistance and for services to Federal victims; and
 - 4.5% shall be made available for Child Abuse Prevention and Treatment Grants (Children's Justice and Assistance Act).

Of the 4.5% made available for Child Abuse Prevention and Treatment Grants, 15% shall be made available for assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation and prosecution of child abuse cases, especially child sexual abuse cases.

- Sums up to \$5,500,000 above the first \$100 million deposited in the Fund shall be made available for Child Abuse Prevention and Treatment Grants.

- Deposits in excess of \$105,500,000 but not in excess of \$110,000,000 shall be made available for victim assistance programming.

- Of deposits in excess of \$110,000,000:

- 47.5% shall be made available for compensation programs;
- 47.5% shall be made available for assistance programs;
- 5% shall be made available for services to victims of Federal crime by eligible crime victim assistance programs.

Crime Victims Compensation Awards

	GRT. NO	FY 86	FY 87	FY 88	FY 89	FY 90	FY91
STATE	90-VC- GX-	\$23,594,000 (39)	\$28,296,000 (40)	\$38,600,000 (38)	\$44,647,429 (42)	\$46,527,000 (42)	\$48,027,000 (41)
Alabama	0001	0	79,000	237,000	405,000	603,000	565,000
Alaska	0002	283,000	246,000	143,000	164,000	161,000	127,000
Arizona	0004	0	0	0	60,000	93,000	258,000
Arkansas	0005	0	0	0	0	0	110,000
California	0006	5,185,000	6,353,000	16,691,000	13,610,000	15,444,000	15,808,000
Colorado	0008	472,000	703,000	740,000	1,211,000	1,175,000	1,442,000
Connecticut	0009	442,000	478,000	509,000	431,000	422,000	774,000
Delaware	0010	123,000	172,000	165,000	173,000	267,000	292,000
Dist. Columbia	0011	85,000	112,000	80,000	167,000	122,000	191,000
Florida	0012	1,493,000	1,872,000	1,808,000	2,250,000	2,022,000	1,539,000
Georgia	0013	0	0	0	0	0	0
Hawaii	0015	150,000	165,000	179,000	142,000	214,000	135,000
Idaho	0016	0	0	0	25,000	125,000	95,000
Illinois	0017	1,242,000	921,000	921,000	1,025,000	820,000	0
Indiana	0018	117,000	147,000	0	434,000	734,000	1,337,000
Iowa	0019	57,000	106,000	155,000	212,000	203,000	312,000
Kansas	0020	116,000	131,000	134,000	189,000	146,000	231,000
Kentucky	0021	213,000	212,000	197,000	344,000	270,000	189,000
Louisiana	0022	77,000	114,000	222,000	326,000	220,000	206,000
Maine	0023	0	0	0	0	0	0
Maryland	0024	433,000	785,000	855,000	1,014,000	1,179,000	0
Massachusetts	0025	387,000	321,000	353,000	634,000	1,096,000	791,000
Michigan	0026	699,000	686,000	654,000	780,000	774,000	684,000
Minnesota	0027	190,000	284,000	276,000	466,000	496,000	589,000
Mississippi	0028	0	0	0	0	0	0
Missouri	0029	266,000	355,000	373,000	567,000	615,000	705,000
Montana	0030	129,000	136,000	118,000	67,429	0	0
Nebraska	0031	31,000	38,000	0	0	0	49,000
Nevada	0032	106,000	93,000	0	0	0	0
New Hampshire	0033	0	0	0	0	0	0
New Jersey	0034	1,243,000	1,910,000	1,332,000	2,080,000	1,159,000	1,513,000
New Mexico	0035	65,000	83,000	73,000	145,000	144,000	172,000
New York	0036	2,434,000	2,597,000	2,655,000	3,200,000	3,076,000	3,074,000
North Carolina	0037	0	0	0	0	225,000	638,000
North Dakota	0038	32,000	27,000	22,000	68,000	48,000	49,000
Ohio	0039	2,369,000	2,056,000	1,106,000	1,713,000	2,543,000	2,421,000
Oklahoma	0040	187,000	241,000	214,000	238,000	269,000	215,000
Oregon	0041	261,000	285,000	340,000	514,000	462,000	89,000
Pennsylvania	0042	888,000	776,000	701,000	798,000	662,000	385,000
Rhode Island	0044	123,000	231,000	277,000	340,000	443,000	250,000
South Carolina	0045	173,000	234,000	403,000	423,000	505,000	734,000
South Dakota	0046	0	0	0	0	0	0
Tennessee	0047	495,000	1,278,000	928,000	1,402,000	638,000	1,347,000
Texas	0048	1,472,000	2,223,000	3,193,000	6,023,000	6,068,000	6,446,000
Utah	0049	0	0	0	47,000	342,000	634,000
Vermont	0050	0	0	0	0	0	0
Virgin Islands	0078	62,000	26,000	73,000	26,000	25,000	10,000
Virginia	0051	186,000	280,000	349,000	578,000	274,000	511,000
Washington	0053	970,000	1,108,000	1,180,000	1,573,000	1,870,000	2,881,000
West Virginia	0054	53,000	64,000	593,000	423,000	173,000	191,000
Wisconsin	0055	285,000	368,000	322,000	336,000	365,000	0
Wyoming	0056	0	0	29,000	24,000	38,000	38,000

U.S Department of Justice, Office for Victims of Crime

ENACTED OR PROPOSED CONSTITUTIONAL AMENDMENTS SUPPORTING RIGHTS OF VICTIMS
(Maryland and Missouri Pending November Election, Wisconsin pending final legislative approval & referendum)
Note: In this chart, the letter "R" means on request of the victim

	ARIZ.	CALIF.	FLA.	MARYLAND	MICH.	MISSOURI	RHODE ISLAND	TÉXAS	WASH. (Felonies)	WISC.
Fair Treatment	X	-	-	-	X	-	X	X	X	X
Timely Disposition	X	-	-	-	X	X	-	-	-	X
Protection from Accused	X	-	-	-	X	X	-	X	-	X
Notification of Court Proceedings	R	-	X	X	X	X	-	R	R	X
Informed about Disposition	X	-	-	-	X	-	-	R	-	X
Right to Attend Court Proceedings	X	-	X	X	X	X	-	R/J	J	J
Right to Confer with Prosecutor	X	-	-	-	X	-	-	R	-	X
Right to be Heard (J=Discretion) (S=Sentencing) (P=Release)	S/P	-	J	J	S	R/J/S/P	S	-	R/J/S/P	S
Restitution	X	X	-	-	X	X	X	R	-	X
Notification of Release or Escape	X	-	-	-	-	X	-	-	-	X

Enforcement - Maryland includes a statement that these provisions may not be construed to establish a cause of action for violation of a victim's constitutional rights. Similarly, Missouri states that the provisions are not to be construed to create a cause of action for money damages against the State or local government or their agencies or employees. The Texas Constitution provides that the legislature may protect judges, prosecutors, or law enforcement officers from civil liability for failure or inability to provide for a victim's constitutional rights; both the State, through the prosecuting attorney, and the victim have standing to enforce those rights. Wisconsin authorizes the legislature to provide remedies for violation of a victim's constitutional rights, as does Michigan. In addition, Michigan authorizes the legislature to provide for assessment against convicted defendants to pay for victims' rights.

Appendix D

D-1

STATE

FISCAL
ANALYSIS

Arizona

None.

No fiscal note or analysis was prepared when legislation was authorized in December, 1991.

The Attorney General's Office administers Crime Victims' Compensation funds and develops procedures. Current budget appropriates \$376,000, which includes \$76,200 for personnel and \$300,000 for operating expenses.

Revenue derived from \$25.00 fine assessed against misdemeanors.

California

None.

Florida

None.

In 1988 State attorneys (DAs) were asked to submit cost to reflect increased responsibility. The response projected an additional cost statewide for State attorney offices of \$10 million. The projection was not used, and no additional funding was authorized for personnel or operating expenses of State attorneys' offices or other State departments.

Local Impact: No analysis available.

Maryland

A bill introduced in the Senate proposed to amend the Constitution. The amendment will appear on the ballot of the November, 1992 general election.

State Impact: A fiscal note initiated in February, 1992 and revised in March, 1992 projected an increase in general fund expenditures depending upon the number of persons who are informed of, present and heard at a criminal justice proceedings. State expenditures could increase by an indeterminate amount from 1) the notification requirement that could affect the State Attorney and Parole Commission; and 2) the additional court time resulting from the victim's presence. [Victims are currently present at trials and sentencing proceedings in most cases, but are not permitted to attend parole hearings, which are generally held in a correctional institution. The Department of Correction anticipated the cost to accommodate victims attendance at parole hearings could be managed by existing resources.]

STATE

FISCAL
ANALYSIS

Using existing data on the number of hearings and current number of victims requesting notification, the Parole Commission offered projections of increased requirements. The budget would increase as a result of employing new personnel by \$253,635 in FY 1993. The projected annual increase for salary and fringe benefits is 12%, and for operating expenses is 3.6%. By FY 1997 the annual cost is estimated to reach \$391,115.

Local Impact. The projected cost to local agencies is indicated as an indeterminate amount due to notification that could affect local State attorneys' offices (DAs), and clerks of court offices.

Michigan

In August, 1988 a House Joint Resolution was introduced to amend the constitution, and proposed an assessment against convicted defendants. The assessment could offset the State's appropriation to prosecutors authorized under the Crime Victim's rights Act. An analysis could not determine the amount or percentage of reduction to State resources.

Missouri

1991. A Senate Joint Resolution proposed an amendment to the Constitution for consideration on the ballot of the November, 1992 general election.

State impact: A fiscal analysis prepared in May, 1991 projected additional cost should not exceed \$100,000 annually. The Department of Correction did not anticipate increased administrative cost, as provisions partly duplicated existing legislation. The State Courts indicated potential areas of cost, depending upon enabling legislation:

- a) restitution provisions, if administered by the courts, would require additional amounts of clerk's time;
- b) notification of release or escape of defendants;
- c) notification of a scheduled criminal proceeding; and
- d) increased jail population due to denial of bail.

At the time the analysis was prepared, the responsibilities indicated above were not assigned specifically to the courts or other State departments. It was anticipated, however, that the courts, correctional institutions, and prosecutors would experience added costs in annual budgets.

Local Impact: Acknowledged that additional costs could arise for incarceration of defendants customarily released on bail.

No capital improvements or rental space noted.

STATE

FISCAL
ANALYSIS

1992. A fiscal note was prepared for a Senate bill that proposed to provide restitution as a condition of parole, and for claims of restitution to be filed in a civil case by the victim.

State Impact: The Department of Correction assumed the cost of the legislation (notification and restitution requirements, and added responsibilities of State departments), but excluding the need for additional facilities, would exceed \$100,000 annually.

Local Impact: None identified.

Rhode Island No response to inquiry as of 9/16/92 from Joint Committee on Legislative Services.

Texas Material mailed 9/14/92, but not received for inclusion in report. Can provide information at next LRC meeting.

Washington None.

State Impact: No fiscal analysis performed in 1989 because it was determined that no fiscal impact would occur because 1) responsibilities would be performed by the Victim Witness Assistants employed by the District Attorney offices; and 2) victims are required to inform the DAs offices of their interest in notification, and only when victims involved in felony cases.

Local Impact: No analysis available.

Wisconsin None.

State Impact: Because the legislation repeats or incorporates existing statutory language, no fiscal analysis was prepared in 1991. No expansion or reduction in services was anticipated, as a result of adopting the amendment. According to the analyst with the Legislative Fiscal Bureau, language in the authorizing legislation was a compromise. Wording in three areas underscores the legislature's authority to limit the State's liability, i.e., the phrases on lines 6 and 7 'as defined by law', and line 9 'as provided by law'; and, the sentence on lines 16 and 17, 'The legislature shall provide remedies for the violation of this section'.

Local Impact: No analysis available.

ARIZONA REVISED STATUTES
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*** THIS SECTION IS CURRENT THROUGH THE 1ST REGULAR ***
*** AND 4TH SPECIAL SESSIONS OF THE 40TH LEGISLATURE ***

CONSTITUTION OF THE STATE OF ARIZONA

ARTICLE 2. DECLARATION OF RIGHTS

A.R.S. Const. Art. 2, § 2.1 (1992)

§ 2.1. Victims' Bill of Rights

Section 2.1. (A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:

1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, negotiated plea, and sentencing.
5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the Legislature to ensure the protection of these rights.

12. To be informed of victims' constitutional rights.

(B) A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction sentence.

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

(D) The Legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(E) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the Legislature or retained by victims.

STORY: Last year in which legislation affected this section: 1990

DEERING'S CALIFORNIA CODES
(c) 1991 Bancroft-Whitney Company

THIS SECTION IS CURRENT THROUGH BALLOT MEASURES ADOPTED AT
THE NOVEMBER 6, 1990 GENERAL ELECTION

CONSTITUTION OF THE STATE OF CALIFORNIA

ARTICLE I. Declaration of Rights

Cal Const Art I § 28

§ 28. Victims' Bill of Rights

(a) The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern. The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) Restitution. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) Right to Safe Schools. All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pre-trial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence

ating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing in the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter. When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c).

HISTORY:

-Adopted June 28, 1982.

RESEARCH REFERENCES:

- Witkin & Epstein, Criminal Law (2d ed) @ 7, 8, 1253, 1325, 1453, 1474, 1487, 1492, 1497, 1509, 1526, 1527, 1777, 1997, 2241, 2321, 2557, 2833.
- Witkin Evidence (3d ed) @ 299, 1962, 8, 326, 624, 1313, 1791, 1911, 1968.
- Cal Jur 3d (Rev) Constitutional Law @ 10, Criminal Law @ 51, 54, 2040, 2215, 2582, 3131, 3167, 3247, Delinquent and Dependent Children @ 156.
- Modern Cal Discovery (4th ed) @ 18.8, 22.10
- Cal Trial Handbook 2d (BW, 1987) @ 11:6, 14:14, 19:19, 28:13, 28:36.
- Preservation of material evidence in California: does People v. Hitch survive California v. Trombetta. (1985) 13 Hast Const LQ 147.
- The "Safe Schools" provision of the California Constitution: Can a nebulous constitutional right be a vehicle for change (right to safe schools under the "Victims' Bill of Rights")? (1987) 14 Hast Const LQ 789.

FLORIDA STATUTES 1990

*** THIS SECTION IS CURRENT THROUGH THE 1990 SUPPLEMENT ***
*** (1990 REGULAR SESSION) ***

CONSTITUTION OF THE STATE OF FLORIDA
AS REVISED IN 1968
ARTICLE I DECLARATION OF RIGHTS

Fla. Const., Art. I, § 16

SECTION 16. Rights of accused and of victims

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation against him, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties he will be tried. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

HISTORY: HISTORY. Am. S.J.R. 135, 1987; adopted 1988.

CONSTITUTIONAL AMENDMENT
SENATE OF MARYLAND

21r0173

No. 647

E2

By: Senators Miller, Booser, Bromwell, Collins, Denis, Derr, Fowler, Garrott, Green,
Hoffman, Hollinger, Murphy, and Yeager
Introduced and read first time: January 31, 1992
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 13, 1992

CHAPTER _____

1 AN ACT concerning

2 Declaration of Rights - Victim's Rights

3 FOR the purpose of adding a new article to the Maryland Declaration of Rights
4 establishing the constitutional rights of a victim of crime to be informed of, to be
5 present at, and to be heard at appropriate criminal justice proceedings; providing
6 that the General Assembly may define the extent of these rights through legislation;
7 authorizing the General Assembly to define certain terms; providing for the
8 construction of this Act; providing that this Act may not be construed as limiting the
9 federal or State constitutional rights of an accused person; defining a certain term;
10 and submitting this amendment to the qualified voters of the State of Maryland for
11 their adoption or rejection.

12 BY proposing an addition to the Constitution of Maryland

13 Declaration of Rights

14 Article 47

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY
16 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
17 concurring), That it be proposed that the Constitution of Maryland read as follows:

18 Declaration of Rights

19 ARTICLE 47.

20 (A) A VICTIM OF A CRIME SHALL HAVE THE RIGHT TO BE INFORMED
21 ~~OF, TO BE PRESENT AT, AND TO BE HEARD AT APPROPRIATE AND TO BE~~
22 ~~PRESENT AT THE TRIAL OR PLEA OF A PERSON ACCUSED OF COMMITTING~~
23 ~~A CRIME AGAINST THE VICTIM AND TO BE INFORMED OF, TO BE PRESENT~~
24 ~~AT, AND TO BE HEARD WHEN APPROPRIATE AT SUBSEQUENT CRIMINAL~~
25 ~~JUSTICE PROCEEDINGS.~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

1 ~~(B) (1) A VICTIM OF A CRIME SHALL BE ENTITLED TO THOSE~~
 2 ~~RIGHTS AND REMEDIES AS MAY BE PROVIDED BY THE GENERAL~~
 3 ~~ASSEMBLY.~~

4 ~~(2) THE GENERAL ASSEMBLY MAY DEFINE ALL TERMINOLOGY~~
 5 ~~OF THIS ARTICLE, INCLUDING THE TERM "APPROPRIATE CRIMINAL~~
 6 ~~JUSTICE PROCEEDINGS"~~

7 ~~(C) FOR THE PURPOSES OF THIS ARTICLE, "A VICTIM OF CRIME"~~
 8 ~~MEANS:~~

9 ~~(1) A PERSON WHO HAS SUFFERED PHYSICAL OR~~
 10 ~~PSYCHOLOGICAL INJURY AS A RESULT OF A CRIME OR A VIOLATION~~
 11 ~~INVOLVING A PERSON OPERATING A MOTOR VEHICLE INVOLVING DRUGS~~
 12 ~~OR ALCOHOL, OR~~

13 ~~(2) IN THE CASE OF THE DEATH OR DISABILITY OF A VICTIM,~~
 14 ~~THE SPOUSE, PARENT, LEGAL GUARDIAN, CHILD, OR SIBLING OF THE~~
 15 ~~DECEDENT, OR ANOTHER PERSON APPOINTED BY THE COURT.~~

16 ~~(D) UNLESS AUTHORIZED BY THE GENERAL ASSEMBLY, NOTHING~~
 17 ~~IN THIS ARTICLE MAY BE CONSTRUED TO ESTABLISH A CAUSE OF ACTION~~
 18 ~~FOR MONETARY DAMAGES FOR A VIOLATION OF THIS ARTICLE.~~

19 (B) IN THIS ARTICLE, "VICTIM OF CRIME" MEANS:

20 (1) A VICTIM OF A CRIME OF VIOLENCE, CHILD ABUSE,
 21 DOMESTIC VIOLENCE, OR A CRIME THAT RESULTS IN DEATH;

22 (2) A PERSON WHO HAS SUFFERED PHYSICAL INJURY AS A
 23 RESULT OF A VIOLATION INVOLVING DRUGS OR ALCOHOL THAT ARISES
 24 OUT OF THE OPERATION OF A MOTOR VEHICLE; OR

25 (3) IN THE CASE OF DEATH OR DISABILITY OF A VICTIM, THE
 26 SPOUSE, PARENT, LEGAL GUARDIAN, CHILD, OR SIBLING OF THE VICTIM
 27 OR ANY OTHER PERSON APPROVED BY A COURT.

28 (C) THE GENERAL ASSEMBLY MAY DEFINE ALL TERMINOLOGY OF
 29 THIS ARTICLE AND MAY DEFINE THOSE RIGHTS AND REMEDIES TO
 30 WHICH A VICTIM OF CRIME MAY BE ENTITLED.

31 (D) NOTHING IN THIS ARTICLE MAY BE CONSTRUED TO ESTABLISH
 32 A CAUSE OF ACTION FOR A VIOLATION OF THIS ARTICLE.

33 (E) NOTHING IN THIS ARTICLE MAY BE CONSTRUED TO LIMIT THE
 34 FEDERAL OR STATE CONSTITUTIONAL RIGHTS OF AN ACCUSED PERSON.

35 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
 36 determines that the amendment to the Constitution of Maryland proposed by this Act
 37 affects multiple jurisdictions and that the provisions of Article XIV, Section 1 of the
 38 Constitution concerning local approval of constitutional amendments do not apply.

1 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
2 proposed as an amendment to the Constitution of Maryland shall be submitted to the
3 legal and qualified voters of this State at the next general election to be held in
4 November, 1992 for their adoption or rejection in pursuance of directions contained in
5 Article XIV of the Constitution of this State. At that general election, the vote on this
6 proposed amendment to the Constitution shall be by ballot, and upon each ballot there
7 shall be printed the words "For the Constitutional Amendments" and "Against the
8 Constitutional Amendments," as now provided by law. Immediately after the election, all
9 returns shall be made to the Governor of the vote for and against the proposed
10 amendment, as directed by Article XIV of the Constitution, and further proceedings had
11 in accordance with Article XIV.

Approved:

_____ Governor

_____ President of the Senate.

_____ Speaker of the House of Delegates.

LEVEL 1 - 5 OF 9 DOCUMENTS

MICHIGAN COMPILED LAWS

*** THIS SECTION IS CURRENT THROUGH THE 1990 SESSIONS ***

CONSTITUTION OF THE STATE OF MICHIGAN OF 1963

ARTICLE I. DECLARATION OF RIGHTS

MCL Const. 1963, Art. 1, § 24 (1991)

§ 24. Rights of crime victims; enforcement; assessment against convicted defendants.

Sec. 24. (1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

(2) The legislature may provide by law for the enforcement of this section.

(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims' rights.

HISTORY: Add. H.J.R. P, approved Nov. 8, 1988, Eff. Dec. 24, 1988.

FIRST REGULAR SESSION
(TRULY AGREED TO AND FINALLY PASSED)
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE JOINT RESOLUTION NO. 8
86TH GENERAL ASSEMBLY

434-3

JOINT RESOLUTION

Submitting to the qualified voters of Missouri, an amendment to article I of the Constitution of the state of Missouri, relating to the bill of rights by adopting one new section relating to the same subject.

Be it resolved by the Senate, the House of Representatives concurring therein:

That at the next general election to be held in the state of
2 Missouri, on Tuesday next following the first Monday in
3 November, 1992, or at a special election to be called by the
4 governor for that purpose, there is hereby submitted to the
5 qualified voters of this state, for adoption or rejection, the
6 following amendment to article I of the Constitution of the state
7 of Missouri:

Section A. Article I, Constitution of Missouri, is amended
2 by adding thereto one new section, to be known as section 32,
3 to read as follows:

Section 32. 1. Crime victims, as defined by law, shall have
2 the following rights, as defined by law:

H.C.S.S.J.R. 8

38 a municipality, or any of the agencies, instrumentalities, or
39 employees provided that the General Assembly may, by
40 statutory enactment, reverse, modify, or supercede any judicial
41 decision or rule arising from any cause of action brought
42 pursuant to this section.

43 4. Nothing in this section shall be construed to authorize
44 a court to set aside or to void a finding of guilt, or an acceptance
45 of a plea of guilty in any criminal case.

46 5. The general assembly shall have power to enforce this
47 section by appropriate legislation.

LEVEL 1 - 6 OF 9 DOCUMENTS

GENERAL LAWS OF RHODE ISLAND

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*** THIS SECTION IS CURRENT THROUGH THE 1991 SUPPLEMENT ***
*** (JANUARY SESSION, 1991) ***

CONSTITUTION OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ARTICLE I. DECLARATION OF CERTAIN CONSTITUTIONAL RIGHTS AND PRINCIPLES

R.I. Const. art. 1, § 23 (1991)

Section 23. Rights of victims of crime

A victim of crime shall, as a matter of right, be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process. Such person shall be entitled to receive, from the perpetrator of the crime, financial compensation for any injury or loss caused by the perpetrator of the crime, and shall receive such other compensation as the state may provide. Before sentencing, a victim shall have the right to address the court regarding the impact which the perpetrator's conduct has had upon the victim.

TEXAS STATUTES AND CODES

*THIS DOCUMENT IS CURRENT THROUGH THE 1991 SUPPLEMENT (All 1990 Session)

CONSTITUTION OF THE STATE OF TEXAS 1876

ARTICLE I. BILL OF RIGHTS

Tex. Const. Art. I. § 30 (1991)

§ 30. Rights of crime victims

Sec. 30. (a) A crime victim has the following rights:

(1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and

(2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the crime victim has the following rights:

(1) the right to notification of court proceedings;

(2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;

(3) the right to confer with a representative of the prosecutor's office;

(4) the right to restitution; and

(5) the right to information about the conviction, sentence, imprisonment, and release of the accused.

(c) The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.

(d) The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.

(e) The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.

THIS SECTION IS CURRENT THROUGH THE 1990 SUPPLEMENT (1990 SESSIONS)

CONSTITUTION OF THE STATE OF WASHINGTON

ARTICLE I DECLARATION OF RIGHTS

Wash. Const., Art. I, Section 35 (1990)

Section 35 VICTIMS OF CRIMES----RIGHTS

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

HISTORY: AMENDMENT 84, 1989 Senate Joint Resolution No. 8200. Approved November 7, 1989.

SENATE SUBSTITUTE AMENDMENT 1,
TO 1991 SENATE JOINT RESOLUTION 41

February 27, 1992 - Offered by COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS.

1 To create section 9m of article I of the constitution, relating to the
2 rights of victims of crime (first consideration).

3 Resolved by the senate, the assembly concurring. That:

4 SECTION 1. Section 9m of article I of the constitution is created to
5 read:

6 [Article I] Section 9m. This state shall treat crime victims, as
7 defined by law, with fairness, dignity and respect for their privacy.
8 This state shall ensure that crime victims have all of the following
9 privileges and protections as provided by law: timely disposition of the
10 case; the opportunity to attend court proceedings unless the trial court
11 finds sequestration is necessary to a fair trial for the defendant;
12 reasonable protection from the accused throughout the criminal justice
13 process; notification of court proceedings; the opportunity to confer with
14 the prosecution; the opportunity to make a statement to the court at
15 disposition; restitution; compensation; and information about the outcome
16 of the case and the release of the accused. The legislature shall pro-
17 vide remedies for the violation of this section. Nothing in this
18 section, or in any statute enacted pursuant to this section, shall limit
19 any right of the accused which may be provided by law.

APPENDIX E

N.C. CRIME VICTIMS COMPENSATION ACT

§ 15B-1. Short title.

This Chapter may be cited as the "North Carolina Crime Victims Compensation Act." (1983, c. 832, s. 1; 1991, c. 301.)

§ 15B-2. Definitions.

As used in this Chapter, unless the context requires otherwise:

- (1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of two thousand dollars (\$2,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

- (2) "Claimant" means any of the following persons who claims an award of compensation under this Chapter:

- a. A victim;
- b. A dependent of a deceased victim;
- c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;
- d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in subdivision c.

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

- (3) "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:

- a. The offender;
- b. 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;
- c. Social security, medicare, and medicaid;
- d. State-required, temporary, nonoccupational disability insurance;
- e. Worker's compensation;
- f. Wage continuation programs of any employer;
- g. Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;
- h. A contract providing prepaid hospital and other health care services, or benefits for disability.

- (4) "Commission" means the Crime Victims Compensation Commission established by G.S. 15B-3.
- (5) "Criminally injurious conduct" means conduct 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 the capacity to commit the crime under the laws of this State. Criminally injurious conduct includes conduct which amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a) but does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes.
- (6) "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.
- (7) "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.
- (8) "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.
 Dependent's replacement service loss will be limited to a 26-week period commencing from the date of the injury and compensation shall not exceed two hundred dollars (\$200.00) per week.
- (9) "Director" means the Director of the Commission appointed under G.S. 15B-3(g).
- (10) "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.
- (11) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.
- (12) "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.

Replacement service loss will be limited to a 26-week period commencing from the date of the injury, and compensation may not exceed two hundred dollars (\$200.00) per week.

- (12a) "Substantial evidence" means relevant evidence that a reasonable mind might accept as adequate to support a conclusion.
- (13) "Victim" means a person who suffers personal injury or death proximately caused by criminally injurious conduct.
- (14) "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.

Compensation for work loss will be limited to 26 weeks commencing from the date of the injury, and compensation may not exceed two hundred dollars (\$200.00) per week. A claim for work loss will be paid only upon proof that the injured person was gainfully employed at the time of the criminally injurious conduct and, by physician's certificate, that the injured person was unable to work. (1983, c. 832, s. 1; 1987, c. 819, ss. 1-8; 1989, c. 322, s. 1, c. 679, s. 1.)

§ 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 as follows:

- (1) One member to be appointed by the Governor;
- (2) One member to be appointed by the General Assembly upon the recommendation of the President of the Senate under G.S. 120-121;
- (3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (4) The Attorney General or his designee; and
- (5) The Secretary of the Department of Crime Control and Public Safety or his designee.

(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.

(g) The Commission shall name a Director upon the recommendation of the Secretary of Crime Control and Public Safety. The Director shall serve at the pleasure of the Commission. The Department of Crime Control and Public Safety

shall provide for the compensation of the Director and shall provide professional and clerical staff necessary for the work of the Commission. (1983, c. 832, s. 1; 1987, c. 819, ss. 9, 10.)

§ 15B-4. Award of compensation.

(a) Subject to the limitations in G.S. 15B-22, compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met. Compensation shall only be paid for economic loss and not for noneconomic loss. The Commission shall follow the rules of liability applicable to civil tort law in North Carolina.

(b) Compensation shall only be awarded for criminally injurious conduct that occurs or is attempted in this State except that criminally injurious conduct that occurs or is attempted against a resident of this State while in another state which does not have a victims compensation program of any type may be a basis of compensation. (1983, c. 832, s. 1; 1987, c. 819, s. 11; 1989, c. 322, s. 2.)

§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. (1983, c. 832, s. 1.)

§ 15B-6. Powers of the Commission and Director.

(a) In addition to powers authorized by this Chapter and Chapter 150B, the Commission may:

- (1) Adopt rules in accordance with Part 3, Article 1 of Chapter 143B and Article 2 of Chapter 150B of the General Statutes necessary to carry out the purposes of this Chapter;
- (2) Establish general policies and guidelines for awarding compensation and provide guidance to the staff assigned by the Secretary of the Department of Crime Control and Public Safety to administer the program;
- (3) Accept for any lawful purpose and functions under this Chapter any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm, or corporation, and may deposit the same to the Crime Victims Compensation Fund.

(b) The Director shall have the following authority:

- (1) With the consent of the district attorney, to request that law enforcement officers employed by the State or any political subdivision provide copies of any information or data gathered in the investigation of criminally injurious conduct that is the basis of any claim to enable the Director or Commission to determine whether, and the extent to which, a claimant qualifies for an award of compensation;
- (2) With the consent of the district attorney, to request that prosecuting attorneys, law enforcement officers, and State agencies conduct investigations and provide information necessary to enable the Director or Commission to determine

whether, and the extent to which, a claimant qualifies for an award of compensation; and

- (3) To require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports pertaining to the injury for which the award of compensation is claimed.

Information obtained pursuant to this subsection is subject to the same privilege against public disclosure that may be asserted by the providing source. (1983, c. 832, s. 1; 1987, c. 819, s. 12; 1989, c. 679, s. 2.)

§ 15B-7. Filing of application for compensation award; contents.

(a) A claim for an award of compensation is commenced by filing an application for an award with the Director. 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. (1983, c. 832, s. 1; 1987, c. 819, s. 13.)

§ 15B-8. Procedure for filing application.

(a) The Director shall establish procedures for screening, filing, recording, investigating, and processing applications for an award of compensation. The Director shall also establish the procedures and methods for processing follow-up claims for compensation. The procedures and methods established by the Director under this subsection shall conform to any rules adopted by the Commission.

(b) Repealed by Session Laws 1987, c. 819, s. 14. (1983, c. 832, s. 1; 1987, c. 819, s. 14.)

§ 15B-8.1. Privilege and records of the Commission.

(a) In a proceeding under this Chapter, the privileges set forth in G.S. 8-53, 8-53.3, 8-53.4, 8-53.7, 8-53.8, and 8-56 do not apply to communications or records concerning the physical, mental or emotional condition of the claimant or victim if that condition is relevant to a claim for compensation.

(b) All medical information relating to the mental, physical, or emotional condition of a victim or claimant and all law enforcement records and information and any juvenile records shall be held confidential by the Commission and Director. Except for information held confidential under this subsection, the records of the Division shall be open to public inspection. (1989, c. 679, s. 3.)

§ 15B-9. Repealed by Session Laws 1987, c. 819, s. 15, effective August 13, 1987.

§ 15B-10. Awarding claims.

(a) The Director shall decide the award of compensation for an initial claim or follow-up claim when the claim does not exceed five thousand dollars (\$5,000) and does not include future economic loss. The Director shall report all awards under this subsection to the Commission.

(b) The Director shall recommend the award of compensation for an initial claim or follow-up claim when the claim exceeds five thousand dollars (\$5,000) or involves future economic loss. The Commission shall decide the award of compensation for a claim based on a review of written evidence submitted to the Commission by the Director.

(c) In reporting a decision under subsection (a) or recommending a decision under subsection (b), the Director shall submit to the Commission documentation to establish the economic loss of the claimant by substantial evidence.

(d) The Director shall send each claimant a written statement of a decision made under subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with a decision may commence a contested case under Article 3 of Chapter 150B of the General Statutes. (1983, c. 832, s. 1; 1987, c. 819, s. 16.)

§ 15B-11. Grounds for denial of claim or reduction of award.

(a) An award of compensation will be denied if:

- (1) The claimant fails to file his application for an award within one year after the date of the criminally injurious conduct that caused the injury or death for which he seeks the award;
- (2) The economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award, except in the case where the victim for whom compensation is sought was 10 years old or younger at the time the injury occurred. In that case an award of compensation will be denied if the economic

loss is incurred after two years from the date of the criminally injurious conduct that caused the injury or death for which the victim seeks the award;

- (3) The criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay;
- (4) The award would 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; or
- (5) The criminally injurious conduct occurred while the victim was confined in any State, county, or city prison, correctional, youth services, or juvenile facility, or local confinement facility, or half-way house, group home, or similar facility.

(b) A claim may be denied and an award of compensation may be reduced upon finding contributory misconduct by the claimant or a victim through whom he claims.

(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon 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.

(d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Director shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission.

An award that has been approved shall nevertheless be denied or reduced to the extent that the economic loss upon which the claim is based is or will be recouped from a collateral source. 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 may not exceed twenty thousand dollars (\$20,000) in the aggregate in addition to allowable funeral, cremation, and burial expenses.

(h) The right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review. (1983, c. 832, s. 1; 1987, c. 819, ss. 17-21; 1989 (Reg. Sess., 1990), c. 898, c. 1066, s. 131.)

§ 15B-12. Evidence in contested cases.

(a) Except as provided in this section, evidence in a contested case shall be taken in accordance with Article 3 of Chapter 150B of the General Statutes.

(b) In a proceeding under this Chapter, the privileges set forth in G.S. 8-53, 8-53.3, 8-53.4, 8-53.7, 8-53.8, and 8-56 do not apply to communications or records concerning the physical, mental or emotional condition of the claimant or victim if that condition is relevant to a claim for compensation.

(c) If the mental, physical, or emotional condition of a victim or claimant is material to a claim for an award of compensation, the administrative law judge 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 administrative law judge 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 administrative law judge shall furnish him a copy of the report. If the victim is deceased, the administrative law judge on request, shall furnish the claimant a copy of the report.

(d) The administrative law judge 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 administrative law judge may also request that prosecuting attorneys, law-enforcement officers, and State agencies conduct investigations and provide information necessary to enable the administrative law judge 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 administrative law judge 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 administrative law judge may not request the victim or the claimant to supply any evidence that would not be admissible at a trial under G.S. 8C-1, Rule 412.

(g) Notwithstanding any provision to the contrary relating to the confidentiality of juvenile records, the administrative law judge 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 administrative law judge 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) Except for information held confidential by the administrative law judge, the official record in a contested case under this Chapter is open to public inspection. (1983, c. 832, s. 1; 1987, c. 819, s. 22; 1989, c. 679, ss. 4, 5.)

§ 15B-13. Repealed by Session Laws 1987, c. 819, s. 23.

§ 15B-14. Effect of prosecution or conviction of offender.

(a) An award of compensation may be approved 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) Upon a request of the Attorney General, the proceedings in a claim for an award of compensation may be suspended pending disposition of a criminal prosecution that has been commenced or is imminent.

(c) In making an award, any specific statement of loss to a victim that a trial court has included in its judgment in the case may be considered. (1983, c. 832, s. 1; 1987, c. 819, s. 24.)

§ 15B-15. Clerks of court to be notified.

The Director shall notify in writing the clerk of superior court of the county in which the offense occurred of any award made from the Crime Victims Compensation Fund to the victim. The clerk shall place the notice in the case file of any defendant charged with the offense that gave rise to the award to the victim. (1983, c. 832, s. 1; 1987, c. 819, s. 25.)

§ 15B-16. Manner of payment; non-assignability and exemptions.

(a) The Director shall pay award payments directly to the service provider on behalf of the claimant. Eligible out-of-pocket costs borne by the claimant shall be paid directly to the victim only if such costs can be documented and verified.

(b) Upon request of the claimant, future economic loss, other than allowable expense, may be commuted to a lump sum only on a finding 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 future economic loss can reasonably be determined. An award for future economic loss payable in installments may be reconsidered and modified upon a 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.

(e) The Director, even after an award made by the Commission, may negotiate with any service provider in order to obtain a reduction of the amount claimed by the provider in exchange for a full release of any claim against a claimant. (1983, c. 832, s. 1; 1987, c. 819, s. 26; 1989, c. 679, s. 6.)

§ 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. (1983, c. 832, s. 1.)

§ 15B-18. Subrogation by State.

(a) If compensation is awarded, the Crime Victims Compensation Fund 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 Crime Victims Compensation Fund 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 from the Crime Victims Compensation Fund, 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 Crime Victims Compensation Fund pursuant to this section shall be paid to the general fund.

(f) The Director may pursue any claim of the Crime Victim's Compensation Fund or the Commission set forth in this Chapter. At the request of the Director, or otherwise, the Attorney General is authorized to assert the rights of the Crime Victim's Compensation Fund or Commission before any administrative or judicial tribunal for purposes of enforcing a claim or right set forth in this Chapter. (1983, c. 832, s. 1; 1987, c. 819, s. 27; 1989, c. 679, s. 7.)

§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. (1983, c. 832, s. 1.)

§ 15B-20. Publicity.

Law enforcement agencies responsible for investigating offenses committed in the State may provide information to victims of those offenses and to their dependents concerning the existence of the Crime Victims Compensation Fund and the source of applications for compensation from the Fund. (1983, c. 832, s. 1; 1987, c. 819, s. 28.)

§ 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, the amount of each award, a statistical summary of claims denied and awards made, and the administrative costs of the Commission, including the compensation of commissioners. The Attorney General and State Auditor shall assist the Commission in the preparation of the report required by this section. (1983, c. 832, s. 1; 1987, c. 819, s. 29.)

§ 15B-22. Disbursements.

If compensation awarded under this Chapter cannot be paid due to insufficient funds in the Crime Victims Compensation Fund, payment shall be delayed until sufficient funds are available and no further awards of compensation shall be made until sufficient funds are available. (1983, c. 832, s. 1; 1987, c. 819, s. 31.)

§ 15B-23. Crime Victims Compensation Fund.

There is established the Crime Victims Compensation Fund. Any surplus in the Crime Victims Compensation Fund shall not revert. The Crime Victims Compensation Fund shall be kept on deposit with the State Treasurer, as in the case of other State funds, and may be invested by the State Treasurer in any lawful security for the investment of State money. The Crime Victims Compensation Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. (1987, c. 819, s. 30.)

§ 15B-24. Requiring defendant to pay restitution encouraged.

Pursuant to a Court's power to require restitution as a condition of probation, parole or work-release privileges, a Court may require a defendant to pay restitution to a victim, regardless of whether the victim receives compensation from the Crime Victims Compensation Fund, or to the Fund. It is the intent of the General Assembly that a victim's receipt of compensation from the Fund shall not discourage a Court from considering, where appropriate, payment of restitution by the defendant and alternatives to incarceration of the defendant. (1987, C. 819, S. 33.)

§ 15B-25 Compensation limits.

This chapter shall not be construed to create a right to receive compensation. Compensation payable under Chapter 15B shall only be available to the extent that the General Assembly appropriates funds for that purpose. (1987, c. 819, s. 36.)

APPENDIX F

FAIR TREATMENT FOR VICTIMS AND WITNESSES ACT

§ 15A-824. Definitions.

As used in this Article, unless the context clearly requires otherwise:

- (1) "Crime" means a serious misdemeanor as determined in the sole discretion of the district attorney, any felony, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony.
- (2) "Family member" means a spouse, child, parent or legal guardian, or the closest living relative.
- (3) "Victim" means a person against whom there is probable cause to believe a crime has been committed.
- (4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has been commenced. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 1.)

§ 15A-825. Treatment due victims and witnesses.

To the extent reasonably possible and subject to available resources, the employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to assure that each victim and witness within their jurisdiction:

- (1) Is provided information regarding immediate medical assistance when needed and is not detained for an unreasonable length of time before having such assistance administered.
- (2) Is provided information about available protection from harm and threats of harm arising out of cooperation with law-enforcement prosecution efforts, and receives such protection.
- (2a) Is provided information that testimony as to one's home address is not relevant in every case, and that the victim or witness may request the district attorney to raise an objection should he/she deem it appropriate to this line of questioning in the case at hand.
- (3) Has any stolen or other personal property expeditiously returned by law-enforcement agencies when it is no longer needed as evidence, and its return would not impede an investigation or prosecution of the case. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property whose ownership is disputed, should be photographed and returned to the owner within a reasonable period of time of being recovered by law-enforcement officials.
- (4) Is provided appropriate employer intercession services to seek the employer's cooperation with the criminal justice system

- and minimize the employee's loss of pay and other benefits resulting from such cooperation whenever possible.
- (5) Is provided, whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.
 - (6) Is informed of the procedures to be followed to apply for and receive any appropriate witness fees or victim compensation.
 - (6a) Is informed of the right to be present throughout the entire trial of the defendant, subject to the right of the court to sequester witnesses.
 - (7) Is given the opportunity to be present during the final disposition of the case or is informed of the final disposition of the case, if he has requested to be present or be informed.
 - (8) Is notified, whenever possible, that a court proceeding to which he has been subpoenaed will not occur as scheduled.
 - (9) Has a victim impact statement prepared for consideration by the court.
 - (9a) Prior to trial, is provided information about plea bargaining procedures and is told that the district attorney may recommend a plea bargain to the court.
 - (10) Is informed that civil remedies may be available and that statutes of limitation apply in civil cases.
 - (11) Upon the victim's written request, is notified before a proceeding is held at which the release of the offender from custody is considered, if the crime for which the offender was placed in custody is a Class G or more serious felony.
 - (12) Upon the victim's written request, is notified if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony.
 - (13) Has family members of a homicide victim offered all the guarantees in this section, except those in subdivision (1).

Nothing in this section shall be construed to create a cause of action for failure to comply with its requirements. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 2.)

§15A-826. Victim and witness assistants.

Victim and witness assistants are responsible for coordinating efforts within the law-enforcement and judicial systems to assure that each victim and witness is treated in accordance with this Article. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§15A-827. Scope.

This Article does not create any civil or criminal liability on the part of the State of North Carolina or any criminal justice agency, employee, or volunteer. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

APPENDIX G

1991 SESSION
CHAPTER 288
HOUSE BILL 442

AN ACT TO REQUIRE NOTIFICATION TO THE DISTRICT ATTORNEY, THE VICTIM, THE VICTIM'S FAMILY, AND THE ARRESTING LAW ENFORCEMENT AGENCY WHENEVER A PRISONER IS BEING CONSIDERED FOR PAROLE.

Section 1. G.S. 15A-1380.2 is amended by adding a new subsection to read:

"(k) Whenever the Parole Commission will be considering for parole a prisoner convicted of second-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, assault with a deadly weapon inflicting serious injury, or assault with a deadly weapon with intent to kill under any provision of this Article, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

- (1) The prisoner;
- (2) The district attorney of the district where the prisoner was convicted;
- (3) The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified; and
- (4) Any of the victim's immediate family members who have requested in writing to be notified."

Sec. 2. G.S. 15A-1371(b) reads as rewritten:

"(b) Consideration for Parole. -- The Parole Commission must consider the desirability of parole for each person sentenced as a felon for a maximum term of 18 months or longer:

- (1) Within the period of 90 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year; or
- (2) Within the period of 90 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must give the prisoner written notice of its decision. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must give the prisoner written notice of its decision at least once a ^{year} year; or
- (3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape, or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:
 - a. The prisoner;
 - b. The district attorney of the district where the prisoner was convicted;

- c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;
- d. Any of the victim's immediate family members who have requested in writing to be notified; and
- e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be notified.

The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, or any member of the victim's immediate family who has requested to be notified, written notice of its decision within 10 days of that decision."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

APPENDIX H

N.C. Constitution Article XIII

....

Sec. 4. Revision or amendment by legislative initiation. A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

Appendix I

REPORT

to the Joint Legislative Commission
on Governmental Operations

on

THE IMPLEMENTATION AND EFFECTIVENESS OF
THE FAIR TREATMENT FOR VICTIMS AND WITNESS ACT

from the Conference of District Attorneys
and the Administrative Office of the Courts

February 1, 1992

This report is submitted pursuant to G.S. 7A-348, which directs the Conference of District Attorneys, with the Director of the Administrative Office of the Courts, to report annually to the Joint Legislative Commission on Governmental Operations, beginning on or before February 1, 1987. It has been prepared by the Conference and approved by the Director of the Administrative Office of the Courts.

Report on Victim/Witness Assistance Program

I. INTRODUCTION

In 1986, the North Carolina General Assembly enacted the Fair Treatment for Victims and Witnesses Act (G.S. 15A-824 et. seq.). The Act, which took effect on October 1, 1986 defined standards of fair treatment for victims and witnesses in the criminal justice system. To coordinate efforts of the law enforcement and judicial systems in providing the enumerated services, the position of Victim and Witness Assistant was established in each District Attorney's office (G.S. 7A-347 and 7A-348). Prior to enactment of the law, only thirteen District Attorneys' offices had special staff to work with victims and witnesses and there were no statewide standards for services to be provided.

The Act gave the Conference of District Attorneys certain training and supervisory responsibilities in regard to the program. The Conference, with the Director of the Administrative Office of the Courts, was also directed to report annually to the Joint Legislative Commission on Governmental Operations concerning implementation and effectiveness of the program.

Reports on the program have been submitted to the Joint Legislative Commission on Governmental Operations for each of the past five years. These reports have shown that:

- within a few months of the Act's effective date, the program had been implemented in all prosecutorial districts;
- The General Assembly has added additional Victim and Witness Assistants to the program each year, which has resulted in an increasing number of victims and witnesses being served;
- the Conference of District Attorneys has conducted a statewide training for V/W Assistants each year and has provided a manual and supplementary materials for them;
- the V/W Assistants submit statistical reports on their activities to the Conference on a monthly basis;
- coordination with other agencies providing services to victims has continued at both the State and local levels;
- the Conference monitors the program to help assure ongoing compliance with the Fair Treatment Act.

This report covers the continuing implementation and operation of the program during 1991. Statistics from monthly reports submitted by the V/W Assistants for the past year have been incorporated into the report.

II. PROGRAM IMPLEMENTATION

This section of the report describes implementation of the program, including staffing and services.

Staffing

The Fair Treatment of Victims and Witnesses Act, which was effective October 1, 1986, allocated one Victim and Witness Assistant position to each District Attorney. These initial positions were all filled by March, 1987, in some cases by using the Witness Coordinator positions that existed in thirteen districts prior to the Act.

The 1987 Session of the General Assembly appropriated funds to establish ten new V/W Assistant positions for each year of the biennium, to be allocated by the Director of the Administrative Office of the Courts (AOC). The Conference's Executive Committee recommended that the Director allocate these positions according to the number of prosecutors in a district, except that no district should receive more than one of the additional positions. The AOC Director added two other criteria: first, the number of counties in a district, because of the problems in serving such districts; and second, that state funding would be used to continue positions that had been established under federal grants.

The 1989 Session appropriated funds to establish ten more Victim/Witness Assistant positions, effective September 1. Nine of these positions were established as follows:

September 1, 1989 - District 1
October 1, 1989 - District 3B
February 1, 1990 - District 12
March 1, 1990 - Districts 3A and 27B
April 1, 1990 - District 10
May 1, 1990 - Districts 18, 19A and 27A

The General Assembly was constrained to eliminate three positions due to budget shortfalls.

Victim/Witness Assistants presently total 64 statewide (or one for every 4.5 prosecutors). Of the 37 prosecutorial districts, four now have three V/W Assistants each: Districts 10, 12, 18 and 28. Fourteen districts have one V/W Assistant each: Districts 2, 6A, 6B, 11, 15A, 15B, 17A, 17B, 19A, 19B, 23 and 24. The remaining districts each have two. The Conference has previously recommended that one V/W Assistant position be allocated for every three prosecutors in an office. Presently there is an average of one V/W

Assistant for every four prosecutors. Therefore, staffing is still below what the Conference has been recommending.

The Fair Treatment Act specifically authorizes District Attorneys to use volunteer personnel in their victim assistance programs, but this practice is not widespread. The Conference has encouraged districts to use volunteers. However, the advantages of extra help may be outweighed by other factors, such as problems involved in recruiting, training, supervising volunteers, as well as a lack of office space for them to work. A substantial number of districts do use student interns, who are selected by their colleges and receive course credit for their work.

Training

The Conference, in cooperation with the Administrative Office of the Courts and the Institute of Government, holds an annual training session for Victim and Witness Assistants. This is pursuant to statutory provision (G.S. 7A-348) that uniform statewide training be provided.

The sixth annual training seminar, to have been held in October, was postponed due to the vacancy in the Executive Secretary position within the Conference. Now that the position has been filled, plans are proceeding for the annual training seminar to be held February 27 and 28, 1992.

Attendance at this seminar has been decreasing slightly over the past five years, from an attendance of 43 in 1987 to 35 in 1990. However, the Conference of District Attorneys is committed to the benefits of this training seminar. The training seminar helps ensure consistent application of the Fair Treatment Act, keeps Victim and Witness Assistants informed of developments that affect their work, and gives them an opportunity to exchange ideas.

The main reason for lower attendance appears to be that heavy workloads sometimes make District Attorneys reluctant to release staff for training. Also, most of the V/W Assistants have already participated in several training sessions, so may feel that they have less need to attend. Steps are now being taken to increase attendance through offering more relevant subject matter to both new and more experienced Assistants alike. Also, the Conference is working through the District Attorneys to encourage their Assistants' attendance.

The upcoming training seminar will follow a similar format to past seminars: a full day of lectures and panel discussions and a half day of workshops. The program has been developed by the Conference after surveying V/W

Assistants in order to identify their interests and needs. Following is a list of agenda presentations:

- understanding the process and requirements of the Victim Compensation Program, by the Director of the Victims' Compensation Commission;

- Victim/Witness Assistants' role in the criminal justice process, by a District Attorney;

- developing and improving human relations skills;

- the parole process, by the Administrator of the Parole Commission;

- restitution and the law, by the Assistant Director of the Institute of Government;

- witness fees and expenses, by a representative from the Administrative Office of the Courts.

Panel discussions:

- update on issues concerning victims, their rights and the laws;

- interagency cooperation.

On the second day, concurrent workshops will be held including (1) roundtable discussions between multi-county vs. single-county districts; (2) training for new V/W Assistants vs. working with prosecutors; and (3) working with parents of child victims vs. working with homicide victims.

At the conclusion of the seminar, evaluation forms will be distributed. Completion of these forms will enhance the Conference's efforts to meet the needs of the V/W Assistants as well as increase attendance at future training seminars.

Reporting and Monitoring

The V/W Assistants submit monthly statistical reports to the Conference. These reports include the following statistics:

- (1) the number of cases opened during the month in which the V/W Assistants expect to provide services;
- (2) the number of Victim Impact Statements distributed;
- (3) the number of victims assisted with preparing/filing victims' compensation claims; and
- (4) the number of contacts with victims and witnesses in person, by phone, and by letter.

The form also provides space for any comments or explanations that the Assistants may wish to make.

These statistics not only provide a basis for tracking the program's operation statewide, but provide a way to monitor individual districts. If the monthly statistics indicate an unusually low level of activity or other unexplained change in a district, the Conference staff contacts the V/W Assistant to learn the reason and determine whether there is a problem that should be addressed.

Tables showing the number of Victim Impact Statements distributed, by district, are given to District Attorneys several times a year, so they can compare their staff's activity with other districts. These tables, along with other aspects of the program, are regularly reviewed by the Executive Committee and, on occasion, discussed at meetings of the entire Conference.

G.S. 7A-347 provides that the "victim and witness assistant is responsible for coordinating efforts of the law-enforcement and judicial systems to assure that each victim and witness is provided fair treatment under ...[the act] and shall be used for no other purpose, except as may be approved pursuant to G. S. 7A-348." That statute directs the Conference to assist in the implementation and supervision of the Fair Treatment program.

The statutory definition of services for which Victim and Witness Assistants could be used was supplemented by a more specific list of appropriate tasks which the Conference Executive Committee adopted in 1987. The list defined the tasks that were considered to be appropriate for V/W

Assistants, while recognizing that a District Attorney might assign any other duties that were compatible with the Act.

The Conference has monitored the program to ensure that V/W Assistants are being used only for appropriate purposes, and has directed the Executive Secretary to notify a District Attorney of any aspects of his program that do not appear to be in compliance with statutory requirements. This continues to be done in those infrequent situations where problems are identified.

III. PROGRAM EFFECTIVENESS

This section of this report reviews the effectiveness of the Victim and Witness Assistance program, as shown by the provision of services. This report is based on statistics supplied by the Victim and Witness Assistants.

Scope of Services

As more V/W Assistants have been added to the program, services have been expanded so they are now available in all counties, at least to a limited extent. Because of this expanded service, the revised monthly report form does not call for statistics on the percent of cases in which all services will be available.

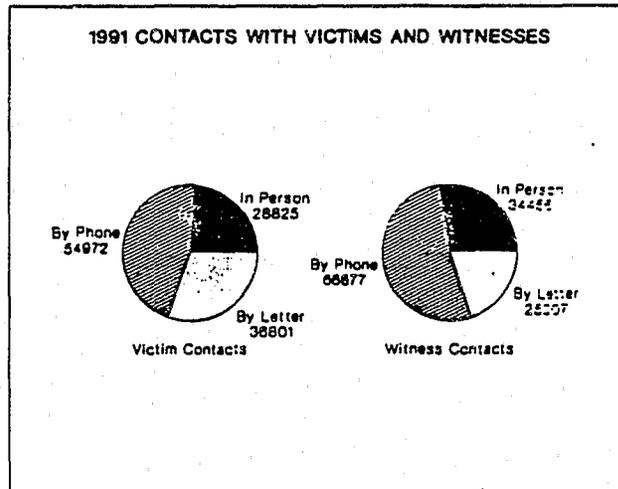
Some districts are still required, due to resource limitations, to serve only certain categories of felony victims or otherwise limit their programs. This is particularly true in the larger districts, which have a lower number of V/W Assistants per prosecutor.

Originally, services under the Fair Treatment Act were limited to serious felony cases. The Act was amended in 1989 to allow for the extension of services to "serious misdemeanors as determined in the sole discretion of the District Attorney." The number of victims served can be expected to be less than the number of eligible cases in any district because some cases (such as controlled substances) do not have identifiable victims, and some (such as program fraud), involve an agency that may not have a need for the services offered.

Contacts with Victims and Witnesses

The monthly report form requests that V/W Assistants show the number of contacts that they have made with victims and witnesses. Contacts made in person, by phone, and by letter are counted separately and are reported separately for victims and witnesses.

The pie chart on the following page shows the statewide totals for 1991. A chart showing statewide totals for contacts each month is included in the appendix. As might be expected, the totals vary considerably from month to month, depending on the amount of court held and other factors. The number of in-person and phone contacts are about the same for both victims and witnesses, but the kind of contacts differ. More letters go to victims, due to notification requirements, while there are more in-person and telephone contacts with witnesses.



The contacts reported are for all twelve months of 1991. Total contacts with victims increased 21% to 120,598 over 1990's total of 100,005. Contacts with witnesses increased 25% to 126,340 over 1990's total of 101,285. These increases are probably due to increases in caseload as well as an increase in the effectiveness of the Victim/Witness Assistants program.

Notification of Services

Many of the services enumerated in the Fair Treatment Act involve notification to victims and witnesses. The V/W Assistant is responsible for much of this notification, including the availability of protection from harm arising out of law enforcement and prosecution efforts, employer intercession services, available compensation, the possibilities of plea bargaining, the right to be present during the entire trial, and the fact that civil remedies may be available.

Most V/W Assistants first contact clients by letter, soon after the case comes into the office. This letter may be followed up by a phone call or office visit. Letters to victims usually explain the services which are available and enclose an Impact Statement form. In case of witnesses, the letter explains standby procedures. In some districts, a notice is stamped on the subpoena telling recipients to contact the Victim and Witness Assistant.

All forms and standard letters used in the program were reviewed by the Conference when the program went into effect, to ensure that they meet statutory requirements for notification, and districts are requested to submit any revisions to the Conference for review.

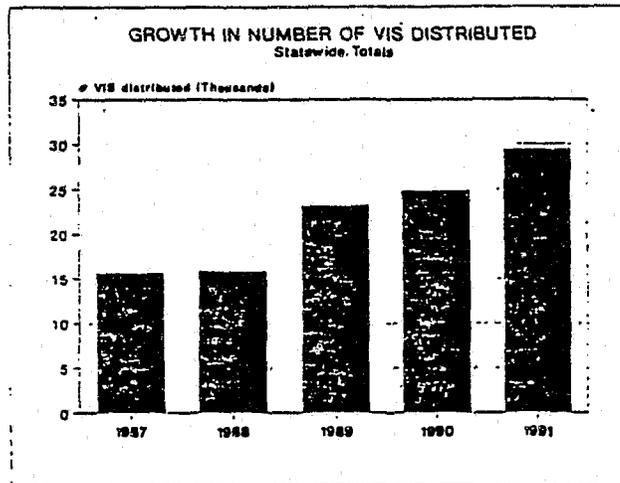
The Conference has developed two one-page brochures that V/W Assistants can reproduce on their copying machines

and give to victims and witnesses. One of these lists the services available and includes suggestions for witnesses. The other gives a brief overview of court procedures. Space is provided to add names and addresses of the District Attorney and V/W Assistant. Many districts now distribute these to all victims.

Victim Impact Statements

The statute specifies that each victim is to have an Impact Statement prepared for consideration by the court. No particular form, content or procedures are specified. Most districts now use a Victim Impact Statement similar to the one developed by the Conference and included in their manuals.

Statewide the number of Impact Statements distributed has increased 88% since the program has been in operation (1987). This increase reflects not only the continuing growth in criminal cases, but the increased number of V/W Assistants. However, in 1991 alone there was an 18% increase in the number of Victim Impact Statements distributed, while no new positions were added.



An increasing number of districts have a series of specialized VIS, which are tailored to different types of crimes. For example, special forms might be used for survivors of homicide victims, or for worthless check cases. Using forms developed by some districts as a basis, the Conference is developing a series of forms that will be available to any districts that want to take this approach.

A table showing the number of Victim Impact Statements distributed, as reported by individual districts, is included in the Appendix. The number of VIS distributed by

a district may vary considerably from month to month, due to case-related factors, such as the amount of court time, and to personnel factors, such as absence of the V/W Assistant due to sick leave. In one district (the 21st), Victim Impact Statements are distributed by law enforcement officers, rather than by the District Attorney's office.

Victim/Witness Assistants are not asked to record the number of Impact Statements that are returned to them, but this appears to vary considerably among districts. Those VIS that are returned are usually placed in the case file, so are available to the prosecutor in considering disposition of the case. The VIS may also be made available to the court at the appropriate time, although whether this is done generally depends on the judge and the prosecutor.

Notification of Outcome

The statute says that a victim is to be given the opportunity, on request, to be present during the final disposition of the case or to be informed of such disposition. Most districts include a space on the Victim Impact Statement where the victim can check whether he wants to be notified, then try to contact the victim before a plea is taken. This may not always be feasible, however, because of the volume of cases, problems in locating the victims, failure of the victim to return the VIS, or other reasons. Statistics on notification are not available.

Coordinating Efforts of Other Agencies

The General Assembly made Victim and Witness Assistants responsible for coordinating the efforts of law enforcement and the judicial system in making a reasonable effort to provide services to victims. This duty is emphasized in the Assistants' training and they are encouraged to take the initiative in working with other agencies.

Most of the V/W Assistants maintain effective liaison with the law enforcement agencies in their district. Some participate in interagency initiatives such as child abuse task forces, and one helped plan and implement special training for law enforcement personnel who work with child victims. Some are active members of private victims' organizations.

In 1990, particular efforts were made to improve coordination with the Victims Compensation Program. Victim/Witness Assistants are encouraged to assist victims with filing claims, although such assistance does not include any review of the merits of a claim, or verification of supporting documents. Monthly reports from V/W

Assistants now include the number of victims assisted with preparing or filing Victims' Compensation Claims. For 1991, a total of 2,255 victims were assisted in this manner. This is the first year these figures have been reported.

The statute requires notification to a victim before a proceeding is held at which the release of the offender from custody is considered, or if the offender escapes or is released from custody. This requirement applies only if the crime for which the offender was placed in custody was a Class G or more serious felony, and if the victim so requests. The duty to provide this notification rests on correctional agencies, but V/W Assistants cooperate by forwarding the victim's name and address to the agencies.

Conclusion

As it enters its sixth year of operation, the Fair Treatment for Victims and Witnesses program is well established in all thirty-seven prosecutorial districts and has increasingly made a significant impact on the criminal justice system.

Based on monthly reports it is estimated that Victim/Witness Assistants across North Carolina are distributing an average of 2,500 Victim Impact Statements per month. Contacts with victims in an average month include 3,067 letters, 4,581 phone calls and 2,402 in-person contacts. The V/W Assistants are also making about 10,528 contacts with witnesses per month through phone calls, in-person contacts and letters. The work activity of V/W Assistants has increased almost 25% over the past year without an increase in the number of Victim/Witness Assistant positions. This increase is due greatly to an increase in caseload. However, it may also be partially due to an increase in use efficiency of the Victim/Witness Assistants.

As in past years, samples of letters to Victim/Witness Assistants from some of the people they have helped are included in this report. The senders' names have been omitted to protect their privacy. These letters illustrate, more clearly than could any statistics, the impact of this program on victims and their relatives, and the effect the Fair Treatment Act has on the criminal justice system.

VICTIM WITNESS ASSISTANTS

<u>District</u>	<u>Name and Address</u>	<u>Telephone</u>
1	George Ryan Glenda Eubanks 202 E. Colonial Avenue Elizabeth City, NC 27909	(919) 335-0819
2	Ruth Spruill P.O. Drawer 1705 Washington, NC 27889	(919) 946-0141
3A	Kimberly Moody Katherine Prescott P. O. Box 8185 Greenville, NC 27834	(919) 830-6434
3B	Shyella R. Blow Nancy M. Tuttle P. O. Box 1468 New Bern, N.C. 28560	(919) 633-0060
4	Debbie Barnes Onslow County Courthouse Jacksonville, N.C. 28541	(919) 455-8008
	Mae Pinyatella Sampson Co. Courthouse Clinton, N. C. 28328	(919) 592-5143
5	Betty A. Barefoot LaTanya McGuire P.O. Box 352 Wilmington, N.C. 28402	(919) 341-4512
6A	Eugene Bryant P. O. Box 126 Halifax, NC 27839	(919) 583-4801
6B	Vacant P.O. Box 189 Murfreesboro, NC 27855	(919) 398-5771
7	Beth Watson Wilson County Courthouse Wilson, NC 27893	(919) 291-7503
	Pansy Bryan Post Office Box B Tarboro, N.C. 27886	(919) 823-7350

8	Flora G. Bass Post Office Box 175 Goldsboro, N.C. 27530	(919) 731-7913
	Wanda King Lenoir County Courthouse, Kinston, NC 28501	(919) 527-5505
9	Bonnie J. Riggan Granville Co. Courthouse Oxford, N.C. 27565	(919) 693-5773
	Jo Ann Finch Franklin Co. Courthouse 102 S. Main Street Louisburg, N. C. 27549	(919) 496-5104
10	Anna Hamburg Donna Kulpa Rose Hearn P.O. Box 31 Raleigh, N.C. 27602	(919) 755-4117
11	David Jones P. O. Box 1029 Courier Box 01-61-04 Smithfield, N.C. 27577	(919) 934-3071
12	Faye Highsmith Sharon L. Wright Renee Carter 117 Dick Street Suite 237 Fayetteville, N.C. 28301	(919) 678-2915
13	Deloris Lynn Jones Columbus County Courthouse Whiteville, N.C. 28472	(919) 642-4359
	Elena Peterson Brunswick County Courthouse Bolivia, N.C. 28422	(919) 253-4447
14	Valerie Wiley Candy Clark Suite 519, Durham County Judicial Building Durham, N.C. 27701	(919) 560-6840

15A	Glenda Carden 114 S. Maple St., Suite D Graham, N. C. 27253	(919) 227-4281
15B	Valeria Goransson 106 E. Margaret Lane Hillsborough, NC 27278	(919) 732-9334
16A	Carolyn Lester Hoke County Courthouse Raeford, NC 28376 Courier Box 03-61-03	(919) 875-9632
16B	Lee Sampson Robeson County Courthouse Lumberton, NC 28358 Courier Box 04-31-04	(919) 671-3300
17A	Carlotta Winstead P. O. Box 35 Wentworth, N.C. 27375-0035	(919) 342-8760
17B	Shirley Freeman P. O. Box 1063 Dobson, N. C. 27017-1063	(919) 386-8178
18	Catherine Shaw Joseph Davis P. O. Box 2378 Greensboro, N.C. 27402	(919) 574-4314
	Susan Taylor P. O. Box 2434 High Point, NC 27261	(919) 889-2866
19A	Kathryn Bryan Courier Box 05-03-06 Cabarrus County Courthouse Concord, N. C. 28025	(704) 786-6171
19B	Sandra Baucom 173 Worth Street Asheboro, N.C 27203	(919) 626-3524
20	Gloria Overcash Mary Shaw P. O. Box 1065 Monroe, NC 28110	(704) 289-8353 or 289-3340

21	Barbara Gregory Fox (one position vacant) Forsyth Co. Hall of Justice Winston-Salem, N.C. 27101 Courier Box 09-32-28	(919) 761-2214
22	Susan G. Fritts P.O. Box 1141 Lexington, N.C. 27292	(704) 249-0373
	Sandy Williams Iredell Hall of Justice Statesville, NC 28677	(704) 873-1821
23	Pamela J. Anderson Wilkes County Courthouse Post Office Box 10 Wilkesboro, N.C. 28697	(919) 667-6361
24	Ben Blackburn Watauga County Courthouse Box 8 Boone, N.C. 28607	(704) 265-5405
25	Paula Burch Catawba County Justice Center P. O. Box 566 Newton, N.C. 28658	(704) 464-6378
	Sharon Trube c/o District Attorney's Office Burke County Courthouse 201 S. Green Street Morganton, N.C. 28655	(704) 433-5001 757-1364
26	Ursula M. Peedin Barbara Gordon Courthouse Annex 3rd Floor 700 East Trade Street Charlotte, N.C. 28202	(704) 342-6746
27A	Joyce Parlier Traci Rosdahl 151 South Street Gaston County Courthouse Gastonia, N.C. 28052	(704) 868-5813
27B	Debbie Hardin Brenda Bolton Cleveland County Law Enforcement Center 100 Justice Place Shelby, N.C. 28150	(704) 484-4872

28	Marcia L. Hyatt Freda Hartman Katherine Turbyfill P. O. Box 7158 Buncombe County Courthouse Asheville, N.C. 28807	(704) 255-4737
29	Vacant P. O. Box 70 Rutherfordton, N.C. 28139	(704) 287-4295
	Kathryn Carpenter Henderson County Courthouse Hendersonville, NC 28739	(704) 697-4882
30	John T. Warren Macon County Courthouse Franklin, NC 28734	(704) 524-6421
	Ruth Ford Cherokee County Courthouse Murphy, NC 28906	(704) 837-7818

1991 NUMBER OF VICTIM IMPACT STATEMENTS DISTRIBUTED

District	Jan	Feb	Mar	Apr	May	June
1	77	16	30	43	92	95
2	100	60	46	20	15	21
3A	31	55	26	36	41	21
3B	63	37	37	61	57	56
4	100	191	108	161	93	138
5	125	140	60	102	95	91
6A	60	32	24	20	31	23
6B	37	18	37	21	29	33
7	42	142	21	50	29	68
8	76	78	110	74	73	71
9	125	130	140	130	120	79
10	83	105	102	98	65	116
11	40	45	62	66	61	42
12	149	177	182	202	180	172
13	29	29	35	40	39	39
14	111	136	137	142	96	118
15A	9	1	2	2	7	23
15B	14	-	15	25	20	44
16A	15	22	8	2	10	30
16B	16	13	24	20	15	18
17A	69	62	53	41	53	45
17B	48	56	51	65	49	70
18	142	368	236	243	295	163
19A	39	60	37	67	67	97
19B	17	81	14	17	13	6
20	251	205	127	141	179	248
21	53	120	236	120	186	127
22	52	116	68	46	78	67
23	35	22	20	39	11	21
24	23	14	5	15	-	16
25	19	17	21	18	9	19
26	102	88	83	85	101	113
27A	59	8	58	25	58	12
27B	61	57	71	60	32	45
28	51	46	58	85	45	104
29	187	45	1	31	43	63
30	63	40	33	31	49	47
Total	2573	2832	2378	2444	2436	2561
Average	69	76	64	66	68	69

1991 NUMBER OF VICTIM IMPACT STATEMENTS DISTRIBUTED

District	July	Aug.	Sept.	Oct.	Nov.	Dec.
1	126	91	117	112	143	75
2	17	70	53	65	38	60
3A	14	40	30	30	0	34
3B	57	46	62	26	39	76
4	139	121	61	36	39	42
5	91	197	-	-	-	-
6A	40	28	30	21	18	18
6B	*	*	*	*	*	*
7	91	38	43	43	29	55
8	42	62	67	52	57	20
9	109	116	168	127	122	115
10	108	85	82	112	129	85
11	30	62	43	26	51	37
12	262	173	181	159	179	179
13	19	17	23	20	15	19
14	190	147	131	183	127	156
15A	62	107	83	258	137	468
15B	16	21	30	-	-	-
16A	9	3	12	9	12	15
16B	23	20	23	19	30	22
17A	0	0	73	75	62	63
17B	51	15	0	0	0	0
18	265	228	215	137	129	35
19A	36	71	119	50	89	66
19B	8	10	1	10	22	42
20	112	183	205	105	167	132
21	117	126	170	132	126	78
22	44	52	110	54	33	9
23	14	16	26	7	14	10
24	19	14	28	11	20	11
25	23	26	32	24	30	7
26	144	104	73	85	25	58
27A	54	26	6	112	0	74
27B	55	86	63	39	20	68
28	74	76	54	91	73	67
29	72	10	17	32	106	17
30	36	50	60	42	41	62
Total	2,569	2,537	2,491	2,304	2,122	2,275
Average	71	70	71	68	62	67

*vacant position

1991 CONTACTS WITH VICTIMS AND WITNESSES

Month	Contacts With Victims				Contacts With Witnesses			
	In Person	By Phone	By Letter	Total	In Person	By Phone	By Letter	Total
January	2,600	4,891	2,912	10,403	3,017	6,367	2,198	11,582
February	2,403	4,531	3,522	10,456	2,845	5,147	1,758	9,750
March	2,291	5,057	2,976	10,324	2,943	5,495	1,863	10,301
April	2,611	4,921	2,711	10,243	2,915	6,307	1,881	11,103
May	2,974	5,020	3,138	11,132	3,158	5,798	2,205	11,161
June	2,186	4,310	2,925	9,421	2,731	5,229	1,966	9,926
July	2,630	4,891	3,163	10,684	3,385	5,764	2,067	11,216
August	2,296	4,868	3,072	10,236	2,593	6,150	2,020	10,763
September	2,466	4,344	3,245	10,055	3,066	5,927	2,679	11,672
October	2,632	4,768	2,969	10,369	2,999	5,609	1,987	10,595
November	1,942	3,828	2,831	8,601	2,420	4,857	2,177	9,454
December	1,794	3,543	3,337	8,674	2,384	4,227	2,206	8,817
TOTALS	28,825	54,972	36,801	120,598	34,456	66,877	25,007	126,340

Appendix J

44349

VICTIM AND WITNESS ASSISTANT

Distinguishing Features of the Class

Employees in this class perform specialized program support work in District Attorney offices, which consists of implementing systems to ensure services for each victim and witness involved in a felony case. Working through and with local law enforcement agencies, key court personnel, and community organizations, the employee coordinates fair treatment services. Work originates from the need to ensure compliance with standards set in G.S. 15A-825. The work is reviewed by the District Attorney for policy adherence and for the overall success of the Victim and Witness Program in meeting the needs of the public and the requirements of the statute.

Organizational Relationships

Reports to: District Attorney or the Office Manager
Cooperates with: Judicial officials and other key court officials; law enforcement officials; community organizations and agencies; and the general public and victims and witnesses
Supervises: May serve as lead worker in coordinating the administrative aspects of the program.

Examples of Duties Performed

Reviews the case file to identify all potential witnesses.
Notifies felony witnesses of any changes in court times and dates.
Instructs victims and witnesses on courtroom procedures, answers questions, and provides program information; may conduct tours of the courtroom for potential witnesses.
Coordinates the telephone stand-by system to maintain contact with witnesses regarding their appearance before the court.
Facilitates the preparation of a victim impact statement.
Makes travel and accommodation arrangements, including payment for out of town state's witnesses.
Notifies victims and officers of the status of their cases including final disposition.
Assists victims in recovering their property; may notify victims or their families if a defendant escapes or is released from prison.
Facilitates the provision of a secure waiting area for victims during court proceedings.
Presents community awareness programs and recruits and trains volunteers as needed.

Provides employer intercession services.
May serve as lead worker in coordinating the administration aspects of fair treatment services.
May write or edit newspaper articles or pamphlets concerning victim and witness services for community distribution.
Performs related duties as required.

Guidelines for Selection and Training

Ability to coordinate and schedule the daily operations of a program in meeting goals.

Skill in communicating with persons of diverse backgrounds.

Working knowledge of interviewing techniques and practices.

Ability to develop good rapport with ease and to convey reassurance.

Skill in developing public awareness programs and in public speaking.

Considerable knowledge of the Victim and Witness Program operating standards.

Considerable ability to insure provision of appropriate services to victims and to manage court appearances of victims and witnesses.

Ability to establish and maintain effective working relationships with law enforcement officers, officials of related agencies, and the general public.

Skill in recruiting, training, and motivating volunteer/student intern participants.

Recommended Minimum Education and Experience

Graduation from high school and completion of an associates degree from a community college or technical institute, and completion of two years at university level, preferably in a criminal justice or human services field, plus one year of paraprofessional legal, judiciary, social services program eligibility, or investigative work; or an equivalent combination of education and experience that provides the knowledge, skills, and abilities required to perform the work.

Fair Labor Standards Act Application

Positions in this class have been determined to be NON-EXEMPT from the provisions of the Fair Labor Standards Act based on the duties assigned and therefore subject to the overtime pay provisions.

August 1986

Revised: December 1987

Revised: January 1991

APPENDIX K

Proposed Findings and Recommendations - Senator Frank Ballance
December 8, 1992

The Committee should find that the State has made notable progress in establishing programs to recognize and protect the rights of victims of crime. Within the past decade the General Assembly has enacted the Assistance Program for Victims of Rape and Sex Offenses and the North Carolina Crime Victims Compensation Act to provide compensation for innocent victims of crime. The Fair Treatment for Victims and Witnesses Act, enacted in 1986, began efforts to ensure that employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system make a reasonable effort to assure that each victim and witness be afforded fair treatment. The Committee should find that these systems are effective in providing critical services to victims of crime and the survivors of victims of crime, and that through these enactments the General Assembly has demonstrated a commitment and sensitivity to the rights of crime victims.

The Committee should further find that the Fair Treatment for Victims and Witnesses Act is designed to ensure the desired "balance" in the scales of justice. While a proposed victims rights amendment appears to have strong support among victim advocates, there has been no showing that the current statutory scheme does not continue to be the best course for the State and all its citizens - including victims and their survivors.

The major complaint raised with the Fair Treatment for Victims and Witnesses Act by the victim rights advocates has been that the law lacks strength. The Committee should find that the policy objectives that are sought in the proposed amendment are mirrored in the current law, and that in many respects the law is already more expansive than the proposed amendment. The responsibility of public officials to respect the law is no greater for a constitutional expression than for a statutory expression of the legislative will. The statutes do provide for an opportunity to amend, adjust, or broaden as time and experience may suggest. The statutory law has effectively raised the consciousness of prosecutors, judges, and the public about the needs of victims in the criminal justice system.

The Committee should find that equal treatment for victims in the criminal justice system can best be accomplished through refinement of the Fair Treatment for Victims and Witnesses Act.

The Committee should present as its recommendation to the 1993 General Assembly a legislative proposal for amending the Fair Treatment for Victims and Witnesses Act.

APPENDIX L

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

92d-RV-001

THIS IS A DRAFT 30-DEC-92 15:26:10

Short Title: Victims' Rights Amendment.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO
3 ESTABLISH RIGHTS FOR VICTIMS OF CRIME.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article I of the Constitution of North Carolina is
6 amended by adding a new section to read:
7 "Sec. 37. Rights of victims' of crime.
8 (a) Crime victims or their lawful representatives, including the next
9 of kin in the case of homicide, shall have the following rights:
10 (1) The right to be treated with fairness, respect and dignity
11 throughout the criminal justice process.
12 (2) The right to be reasonably protected from the accused or any
13 persons acting on the accused's behalf throughout the criminal
14 justice process.
15 (3) The right to be given information about the crime, how the
16 criminal justice system works, the rights of victims and the
17 availability of services for victims.
18 (4) The right to reasonable notification of court proceedings and
19 notice of pretrial release of the accused.

- 1 (5) The right to attend trial and all other court proceedings to
2 which the accused has a right to attend, unless there is a
3 judicial determination to restrict crime victims' attendance.
4 (6) The right to make a sworn statement to the court, either
5 orally or in writing, in person or through counsel, at the time
6 of sentencing prior to the adjudication of the sentence.
7 (7) The right to receive restitution, in such manner as established
8 by law, as a condition of the accused's sentence.
9 (8) The right to information about the conviction or final
10 disposition and sentence of the accused.
11 (9) The right to notification of escape, release, proposed parole
12 or pardon of the accused, or notice of a reprieve or
13 commutation of the accused's sentence.
14 (10) The right to present their views and concerns to the Governor
15 or agency considering any action that could result in the
16 release of the accused, prior to such action becoming
17 effective, in a manner established by law.
18 (11) The right to confer with a representative of the prosecution.
19 (b) The General Assembly may provide by law for the enforcement
20 of the rights recognized in this section. The General Assembly may also
21 provide that a portion of the court costs assessed against convicted defendants
22 shall be used to provide compensation for the victims of crime.

23 Nothing in this section shall be construed to create a further cause
24 of action against the State of North Carolina, local governments, public
25 officials, or their agents and employees or a right to contest the disposition of
26 any charge, or a right to court-appointed counsel to enforce any of these
27 rights.

28 (c) The failure or inability of any person to provide a right or
29 service provided under this section may not be used by a defendant in a
30 criminal case, an inmate, or any other accused as a ground for relief in any
31 trial, appeal, post-conviction litigation, habeas corpus, civil action or any
32 similar criminal or civil proceeding."

33 Sec. 2. The amendment set out in Section 1 of this act shall be
34 submitted to the qualified voters of the State at an election to be held on
35 , 199__ , which election shall be conducted under the laws then governing
36 elections in the State. At that election, each qualified voter desiring to vote
37 shall be provided a ballot on which shall be printed the following:

38 " FOR Constitutional amendment adding Victims' Rights
39 Amendment."

40 AGAINST Constitutional amendment adding Victims's Rights
41 Amendment."

42 Those qualified voters favoring the amendment set out in Section 1
43 of this act shall vote by making an X or a check mark in the square beside the
44 statement beginning "FOR," and those qualified voters opposed to that

1 amendment shall vote by making an X or a check mark in the square beside
2 that statement beginning "AGAINST."

3 Notwithstanding the foregoing provisions of the section, voting
4 machines may be used in accordance with rules and regulations prescribed by
5 the State Board of Elections.

6 Sec. 3. If a majority of votes cast thereon are in favor of the
7 amendment set out in Section of this act, the State Board of Elections shall
8 certify the amendment to the Secretary of State, who shall enroll the
9 amendment so certified among the permanent records of this office, and the
10 amendment becomes effective upon such certification.

11 Sec. 4. This act is effective upon ratification.

END