

9-1-1994

CRIMINAL PROCEDURE Victim Compensation: Change Certain Definitions; Define Additional Terms; Repeal Certain Provisions; Change Certain Provisions; Change Powers of the Georgia Crime Victims Compensation Board

Thomas L. Nunnallee

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Thomas L. Nunnallee, *CRIMINAL PROCEDURE Victim Compensation: Change Certain Definitions; Define Additional Terms; Repeal Certain Provisions; Change Certain Provisions; Change Powers of the Georgia Crime Victims Compensation Board*, 11 GA. ST. U. L. REV. (1994).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol11/iss1/50>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

CRIMINAL PROCEDURE

Victim Compensation: Change Certain Definitions; Define Additional Terms; Repeal Certain Provisions; Change Certain Provisions; Change Powers of the Georgia Crime Victims Compensation Board

CODE SECTIONS: O.C.G.A. §§ 15-21-112 (amended), 17-15-2 to -4, -6 to -8 (amended), -14 (new)

BILL NUMBER: HB 690

ACT NUMBER: 1237

SUMMARY: The Act is a comprehensive revision of existing legislation providing compensation for crime victims. It changes certain definitions, adds new terms, and changes the powers of the Georgia Crime Victims Compensation Board. The Act also provides for direct payments to victims or other claimants for certain losses or reimbursements, provides for priority of payments, and provides for confidentiality of certain information. Additionally, the Act provides for awards to those suffering financial loss in aiding a crime victim, denies awards for property loss, and denies awards to certain currently incarcerated felons. Finally, the Act raises the maximum amount of an award to a victim, provides for maximum award amounts for certain categories of losses, authorizes awards for psychological counseling of family members of deceased victims, and allows for the expenditure of a portion of the available funds for public information purposes.

EFFECTIVE DATE: July 1, 1994

History

In 1988, the Georgia General Assembly, recognizing that many people suffer severe financial hardship, physical injury, or death as a result of criminal acts, enacted legislation to provide for financial awards to crime victims.¹ The Act was to become effective contingent on the ratification of a constitutional amendment which authorized the General Assembly to provide for the monetary compensation of crime victims.² The Act created the Georgia Crime Victims Compensation

1. 1988 Ga. Laws 591 (codified at O.C.G.A. § 17-15-1 to -13 (1990)).

2. *Id.* The proposed amendment to the Georgia Constitution was approved by a

Board and authorized it to hear and determine all claims for awards³ and to appoint a director of the Georgia Crime Victims Emergency Fund.⁴ Those eligible for awards were direct victims of a crime, dependents of a victim, and those suffering injury or death while attempting to thwart a crime, apprehend a criminal suspect, or aid a victim.⁵ Awards were limited to \$1000 in the aggregate.⁶ Funds for this program were originally appropriated by the General Assembly.⁷

In 1992, the Act was amended by the General Assembly with the Criminal Justice Coordinating Council serving as the Georgia Crime Victims Compensation Board.⁸ The 1992 amendment further specified that fines received pursuant to Code section 15-2-112 be used to fund the program.⁹

HB 690

This bill was introduced to raise the maximum award to persons eligible under Code section 17-15-7 from \$1000 to \$10,000.¹⁰ The

majority of the voters in the general election held on November 8, 1988 and the Act became effective on January 1, 1989. See GA. CONST. art. 3, § 6, ¶ 6 cmt. (Supp. 1994).

3. 1988 Ga. Laws 591 (codified at O.C.G.A. § 17-15-3 (1990)). The Board's five members are appointed by the Governor to five-year terms and receive the same per diem expense allowance as the members of the General Assembly. *Id.*

4. 1988 Ga. Laws 591 (codified at O.C.G.A. § 17-15-10 (1990)). Governor Joe Frank Harris appointed the first Board in the summer of 1990. David H. Moskowitz, *Letter to the Editor*, ATLANTA J. & CONST., Mar. 1, 1994, at A22.

5. 1988 Ga. Laws 591 (codified at O.C.G.A. § 17-15-7(a) (1990)).

6. 1988 Ga. Laws 591 (codified at O.C.G.A. § 17-15-8(c) (1990)). In the first year, fewer than 100 awards were made. Moskowitz, *supra* note 4.

7. Derrick Hinmon, *Two Crime Victims Get State Awards*, ATLANTA J. & CONST., Jan. 29, 1991, at D7. The program received \$100,000 for its first year of operation. *Id.*

8. 1992 Ga. Laws 2426 (formerly found at O.C.G.A. § 17-15-3(b) (Supp. 1993)).

9. 1992 Ga. Laws 1836 (formerly found at O.C.G.A. § 17-15-10(b)(1) (Supp. 1993)). Moneys for the Georgia Crime Victims Emergency Fund come from an additional penalty imposed for violations of Code section 40-6-391, relating to driving under the influence of alcohol or drugs, or violations of an ordinance of a political subdivision adopting by reference this Code section. 1992 Ga. Laws 1836 (codified at O.C.G.A. § 15-21-112(a) (Supp. 1992)). The additional penalty amounts to the lesser of \$25 or 10% of the original fine. *Id.* The legislation providing for this system of funding crime victims compensation was originally drafted by Mothers Against Drunk Drivers. Moskowitz, *supra* note 4.

10. HB 690, as introduced, 1994 Ga. Gen. Assem.; Telephone Interview with Rep. Roy Barnes, House District No. 33 (Mar. 24, 1994) [hereinafter Barnes Interview]. Rep. Barnes sponsored HB 690 as well as the original 1988 crime victims compensation legislation and the constitutional amendment enabling its enactment. *Id.* Rep. Barnes recognized the greater needs of crime victims and the need for a robust Crime Victims Emergency Fund capable of accommodating the increased needs and, therefore, proposed the increased maximum award. *Id.*

original bill proposed no other changes to the existing legislation.¹¹ The House Public Safety Committee amended the bill to reduce the maximum award from \$10,000 to \$5000.¹² The committee was concerned with the solvency of the Crime Victims Emergency Fund and wanted to raise the maximum award incrementally by initially setting it at \$5000 before raising it further.¹³ The Senate Committee on Public Safety then offered a substitute containing extensive administrative changes to the Act.¹⁴

The Senate Committee on Public Safety proposed an amendment to Code section 17-15-2 in which the term "Board" was redefined as the "Criminal Justice Coordinating Council" (the Board).¹⁵ The Criminal Justice Coordinating Council and the Georgia Crime Victim's Compensation Board now consist of the same people.¹⁶ The Senate Committee on Public Safety added the term "direct service provider" to the list of definitions and defined it as a public or nonprofit entity providing aid, care, and assistance to a crime victim.¹⁷ Additionally, the substitute bill included one who suffers financial hardship as a result of personal injury or death in the definition of "victim."¹⁸

An amended Code section 17-15-3 in the substitute bill deleted the provision for paying a per diem expense allowance to members of the Board.¹⁹ The Committee determined that members of the Board are already state employees, thereby making remuneration unnecessary.²⁰ The substitute bill provided an amended Code section 17-15-4 which lists the powers and duties of the Board and deletes the former powers to appoint employees as necessary and to contract for various services.²¹ This was done because the Board is now made up of the Criminal Justice Coordinating Council, which has the capability to perform all of the functions which the former hiring and contracting powers previously conferred.²² The amended Code section also contains language expanding the provisions concerning who may receive compensation payments.²³ The expanded language allows payment to direct service providers who do not receive grant funds for servicing

11. HB 690, as introduced, 1994 Ga. Gen. Assem.

12. HB 690 (HCA), 1994 Ga. Gen. Assem.

13. Barnes Interview, *supra* note 10.

14. *See* HB 690 (SCS), 1994 Ga. Gen. Assem.

15. *Id.*

16. *Id.*; O.C.G.A. § 17-15-3(b) (Supp. 1994).

17. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-2 (Supp. 1994).

18. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-2 (Supp. 1994).

19. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-3 (Supp. 1994).

20. Barnes Interview, *supra* note 10.

21. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-4 (Supp. 1994).

22. Barnes Interview, *supra* note 10.

23. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-4 (Supp. 1994).

crime victims and to victims who have made out-of-pocket payments to direct service providers and filed for reimbursement.²⁴

The substitute bill replaces Code section 17-15-7 with new language allowing for awards to persons who are not direct service providers, but who have assumed the cost of a crime victim's eligible expense regardless of the person's relationship with the victim.²⁵ The Committee determined that a person in this situation is no less a financial victim of the crime than a direct victim who has suffered financial loss or a direct service provider who has furnished assistance to the victim.²⁶ The new Code section also denies awards for loss of property.²⁷ The primary reason for this provision was the inability of the fund to compensate victims of automobile theft.²⁸ Finally, this Code section provides that "a victim or claimant who has been convicted of a felony involving criminally injurious conduct and who is currently serving a sentence therefor shall not be considered eligible to receive an award under this chapter."²⁹ The Committee determined that public confidence in the crime victims compensation system would be severely eroded if crime victims who subsequently became criminals themselves continued receiving awards from the state.³⁰

In addition to providing for an increase in the maximum award from \$1000 to \$5000, the substitute bill contained a schedule of maximum awards for various costs with the aggregate award not to exceed \$5000.³¹ Furthermore, the substitute bill provided for awards for psychological counseling expenses incurred by immediate family members of deceased victims.³² The Committee was careful to include everyone hurt by crime as beneficiaries of this program.³³

The substitute bill contained a new Code section 17-15-14 which provided that "[t]he board shall be authorized to designate and expend not more than 15 percent of the moneys collected and paid into the fund . . . for the purpose of disseminating materials regarding availability of compensation for victims of crime and public information purposes regarding the victim compensation program."³⁴

24. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-4 (Supp. 1994).

25. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-7(a)(5) (Supp. 1994).

26. Barnes Interview, *supra* note 10.

27. O.C.G.A. § 17-15-7(g) (Supp. 1994). This provision was added by the Senate Committee on Public Safety. HB 690 (SCS), 1994 Ga. Gen. Assem.

28. Barnes Interview, *supra* note 10.

29. O.C.G.A. § 17-15-7(h) (Supp. 1994). This provision was added by the Senate Committee on Public Safety. HB 690 (SCS), 1994 Ga. Gen. Assem.

30. Barnes Interview, *supra* note 10.

31. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-8 (Supp. 1994).

32. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-8(j) (Supp. 1994).

33. Barnes Interview, *supra* note 10.

34. HB 690 (SCS), 1994 Ga. Gen. Assem.; O.C.G.A. § 17-15-14 (Supp. 1994).

The House adopted the Senate Committee on Public Safety substitute bill with one amendment which provides that expenditures for program advertising may not exceed five percent of the moneys collected rather than the fifteen percent proposed by the Senate.³⁵ The Senate would not agree to the House amendment, however, and the House stood firm.³⁶ A Conference Committee convened and reached a compromise of ten percent.³⁷ The bill, as passed, was identical to the Senate substitute with the exception of the ten percent maximum on expenditures for program advertising.³⁸

Thomas L. Nunnallee

35. Barnes Interview, *supra* note 10.

36. *Id.*

37. HB 690 (SCS), 1994 Ga. Gen. Assem.

38. Barnes Interview, *supra* note 10; *see* O.C.G.A. § 17-15-14 (Supp. 1994).