

CRIME VICTIMS' REPARATIONS ACT AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; AMENDING THE CRIME VICTIMS' REPARATIONS ACT TO ALLOW THE BOARD TO ALLOCATE MONIES TO OTHER VICTIM SERVICES; ELIMINATING THE TIME LIMIT FOR FILING A CLAIM; EXEMPTING CRIME VICTIMS REPARATIONS FROM THE ADMINISTRATIVE PROCEDURES ACT; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-25a-402, as last amended by Chapter 282, Laws of Utah 1998

63-25a-403, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-404, as last amended by Chapter 308, Laws of Utah 1997

63-25a-406, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-409, as last amended by Chapter 308, Laws of Utah 1997

63-25a-410, as last amended by Chapter 308, Laws of Utah 1997

63-25a-411, as last amended by Chapter 308, Laws of Utah 1997

63-25a-412, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-415, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-419, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-428, as renumbered and amended by Chapter 242, Laws of Utah 1996

REPEALS:

63-25a-425, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-426, as renumbered and amended by Chapter 242, Laws of Utah 1996

63-25a-427, as renumbered and amended by Chapter 242, Laws of Utah 1996

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63-25a-402** is amended to read:

63-25a-402. Definitions.

As used in this chapter:

(1) "Accomplice" means a person who has engaged in criminal conduct as defined in Section 76-2-202.

(2) "Board" means the Crime Victims' Reparations Board created under Section 63-25a-404.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Claim" means:

(a) the ~~[right of a victim to recover]~~ victim's application or request for a reparations award;
and

(b) the formal action taken by a victim to apply for reparations pursuant to Sections 63-25a-401 through 63-25a-428.

(5) "Claimant" means any of the following claiming reparations under this chapter:

(a) a victim;

(b) a dependent of a deceased victim;

(c) a representative other than a collateral source; or

(d) the person or representative who files a claim on behalf of a victim.

(6) "Child" means an unemancipated person who is under 18 years of age.

(7) "Collateral source" means the definition as provided in Section 63-25a-413.

(8) "Contested case" means a case which the claimant contests, claiming the award was either inadequate or denied, or which a county attorney, a district attorney, a law enforcement officer, or other individual related to the criminal investigation proffers reasonable evidence of the claimant's lack of cooperation in the prosecution of a case after an award has already been given.

(9) (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

~~(a)~~ (i) is or would be subject to prosecution in this state under Section 76-1-201;

~~(b)~~ (ii) occurs or is attempted;

~~(c)~~ (iii) causes, or poses a substantial threat of causing, bodily injury or death;

~~(d)~~ (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct possessed the capacity to commit the conduct; and

~~(e)~~ (v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs~~[-or]~~.

~~(f) is~~ (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. 2331 committed outside of the United States against a resident of this state. "Terrorism" does not include an "act of war" as defined in 18 U.S.C. 2331.

(10) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after his death.

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

(12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for his benefit if he had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.

(13) "Director" means the director of the Reparations Office.

(14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person:

- (a) convicted of a crime;
- (b) found delinquent; or
- (c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.

(15) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

(16) "Elderly victim" means a person 60 years of age or older who is a victim.

(17) "Fraudulent claim" means a filed claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible as provided in Section 63-25a-410.

(18) "Law enforcement officer" means a law enforcement officer as defined in Section 53-13-103.

(19) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime.

(20) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct. The definition of mental health counseling is subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(21) "Misconduct" as provided in Subsection 63-25a-412(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(22) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this chapter.

(23) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this chapter.

(24) "Offender" means a person who has violated the criminal code through criminally injurious conduct regardless of whether he is arrested, prosecuted, or convicted.

(25) "Offense" means a violation of the criminal code.

(26) "Perpetrator" means the person who actually participated in the criminally injurious conduct.

(27) "Personal property" has the same definition as provided in Section 68-3-12.

(28) "Reparations Office" means the office of the reparations staff for the purpose of carrying out this chapter.

(29) "Reparations officer" means a person employed by the Reparations Office to investigate

claims of victims and award reparations under this chapter, and includes the director when he is acting as a reparations officer.

(30) "Reparations staff" means the director, the reparations officers, and any other staff employed to administer the Crime Victims' Reparations Act.

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

(32) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of a person but does not include service providers.

(33) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

(34) "Secondary victim" means a person who ~~[witnesses or]~~ is traumatically affected by the criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(35) "Service provider" means a person or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 63-25a-424.

(36) "Trust fund" means the Crime Victim Reparation Trust Fund under Title 63, Chapter 63a.

(37) (a) "Victim" means a person who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Sections 76-5a-1 through 76-5a-4 if the person is a minor.

(b) "Victim" does not include a person who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule.

(c) "Victim" includes ~~[(i) a person who suffers bodily injury or psychological injury as a direct result of being within the zone of danger of the criminally injurious conduct, and (ii)]~~ a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.

(38) "Work loss" means loss of income from work the injured victim would have performed

if he had not been injured and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work he was capable of performing but unreasonably failed to undertake.

~~[(39) "Zone of danger" means:]~~

~~[(a) the person was located near the scene of the criminally injurious conduct;]~~

~~[(b) the bodily injury, emotional trauma, or psychological injury to the person was caused by actually witnessing the criminally injurious conduct, or its results immediately after; and]~~

~~[(c) the person was an immediate relative to a victim of the criminally injurious conduct suffering bodily injury in their presence.]~~

Section 2. Section **63-25a-403** is amended to read:

63-25a-403. Restitution -- Reparations not to supplant restitution.

(1) A reparations award shall not supplant restitution as established under Section 76-3-201 or as established by any other provisions.

(2) The court shall not consider a reparations award when determining the order of restitution nor when enforcing restitution.

(3) If, due to reparation payments to a victim, the Reparations Office is assigned under Section 63-25a-419 a claim for the victim's judgment for restitution or a portion of the restitution, the Reparations Office may file with the sentencing court a notice of the assignment. The notice of assignment shall be signed by the victim and a Reparations Officer and shall state the amount of the claim assigned.

(4) Upon conviction and sentencing of the defendant, the court shall enter a civil judgment for complete restitution as provided in Section 76-3-201 and identify the Reparations Office as the assignee of the assigned portion of the judgment.

(5) If the notice of assignment is filed after sentencing, the court shall modify the civil judgment for restitution to identify the Reparations Office as the assignee of the assigned portion of the judgment.

Section 3. Section **63-25a-404** is amended to read:

63-25a-404. Crime Victims' Reparations Board -- Members.

(1) (a) A Crime Victims' Reparations Board is created, consisting of seven members appointed by the governor with the advice and consent of the Senate.

(b) The membership of the board shall consist of:

- (i) a member of the bar of this state;
- (ii) a victim of criminally injurious conduct;
- (iii) a licensed physician;
- (iv) a representative of law enforcement;
- (v) a mental health care provider; and
- (vi) two other private citizens.

(c) The governor may appoint a chair of the board who shall serve for a period of time prescribed by the governor, not to exceed the length of the chair's term. The board may elect a vice chair to serve in the absence of the chair.

(d) The board may hear appeals from administrative decisions as provided in rules adopted pursuant to Section 63-25a-415.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A member may be reappointed to one successive term.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) A member resigning from the board shall serve until his successor is appointed and qualified.

(4) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(5) The board shall meet at least once quarterly but may meet more frequently as necessary.

Section 4. Section **63-25a-406** is amended to read:

63-25a-406. Functions of board.

(1) The board shall:

(a) adopt a description of the organization and prescribe the general operation of the board;

(b) prescribe policy for the Reparations Office;

(c) adopt rules to implement and administer Sections 63-25a-401 through 63-25a-428 pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees;

(d) prescribe forms for applications for reparations;

(e) review all awards made by the reparations staff, although the board may not reverse or modify awards authorized by the reparations staff;

(f) render an annual report to the governor and the Legislature regarding the staff's and the board's activities;

(g) cooperate with the director and his staff in formulating standards for the uniform application of Section 63-25a-409, taking into consideration the rates and amounts of reparation payable for injuries and death under other laws of this state and the United States;

(h) advocate the adoption, repeal, or modification of laws or proposed legislation in the interest of victims of crime; ~~and~~

(i) ~~oversee the program to assist~~ allocate monies available in the Crime Victims' Reparation

Trust Fund to victims of criminally injurious conduct [and to allocate monies available in the Crime Victims' Reparations Trust Fund.] for reparations claims; and

(j) allocate monies available to other victim services as provided by administrative rule once a sufficient reserve has been established for reparation claims.

(2) All rules, or other statements of policy, along with application forms specified by the board, are binding upon the director, the reparations officers, and other staff.

Section 5. Section **63-25a-409** is amended to read:

63-25a-409. Grounds for eligibility.

In order to be eligible for a reparations award under this chapter:

(1) The claimant shall be:

- (a) a victim of criminally injurious conduct;
- (b) a dependent of a deceased victim of criminally injurious conduct; or
- (c) a representative acting on behalf of one of the above.

(2) The victim shall be either a resident of Utah or the criminally injurious conduct shall have occurred in Utah.

(3) The application shall be made in writing in a form that conforms substantially to that prescribed by the board.

~~[(4) The claim shall be filed with the reparations staff within one year after the injury or death upon which the claim is based. An extension of time to file up to one year after the victim's 18th birthday may be given to child victims. Homicide claims may be filed up to one year after the date the body or remains of the homicide victim is discovered, or the death has been officially declared a homicide, whichever is later.]~~

~~[(5)]~~ (4) The criminally injurious conduct shall be reported to a law enforcement officer, in his capacity as a law enforcement officer, ~~[within seven days after the occurrence. A reasonable extension of time may be given in circumstances in which the victim, because of injury or age, was unable to report the criminally injurious conduct within that time period]~~ or other federal or state investigative agencies.

~~[(6)]~~ (5) (a) The claimant or victim shall cooperate with the appropriate law enforcement

agencies in their efforts to apprehend or convict the perpetrator of the alleged offense.

(b) An award to a victim may be made whether any person is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to the claim.

~~[(7)]~~ (6) The criminally injurious conduct shall have occurred after December 31, 1986.

Section 6. Section **63-25a-410** is amended to read:

63-25a-410. Ineligible persons -- Fraudulent claims -- Penalties.

(1) The following individuals shall not be eligible to receive an award of reparations:

- (a) persons who do not meet all of the provisions set forth in Section 63-25a-409;
- (b) the offender;
- (c) an accomplice of the offender;
- (d) any person whose receipt of an award would unjustly benefit the offender, accomplice, or other person reasonably suspected of participating in the offense;
- (e) the victim of a motor vehicle injury who was the owner or operator of the motor vehicle and was not at the time of the injury in compliance with the state motor vehicle insurance laws;
- (f) any convicted offender serving a sentence of imprisonment for that conviction or residing in any other institution which provides for the maintenance of convicted persons; and
- (g) residents of halfway houses or any other correctional facilities and all persons who are on probation or parole if the circumstances surrounding the offense of which they are victims constitute a violation of their parole or probation.

(2) A person who knowingly submits a fraudulent claim for reparations or who knowingly misrepresents material facts in making a claim, and who receives an award based on that claim, is guilty of an offense, based on the following award amounts:

- (a) for value under ~~[\$200]~~ \$300, a class B misdemeanor;
- (b) for value equal to or greater than ~~[\$200]~~ \$300, but less than ~~[\$500]~~ \$1,000, a class A misdemeanor;
- (c) for value equal to or greater than ~~[\$500]~~ \$1,000, but less than ~~[\$1000]~~ \$5,000, a third degree felony; and
- (d) for value equal to or greater than ~~[\$1000]~~ \$5,000, a second degree felony.

(3) A person who submits a claim described in Subsection (2) but receives no award based on that claim is guilty of a class B misdemeanor.

(4) The state attorney general may prosecute violations under this section or may make arrangements with county attorneys for the prosecution of violations under this section when the attorney general cannot conveniently prosecute.

(5) The state may also bring a civil action against a claimant who receives reparation payments that are later found to be unjustified and who does not return to the board the unjustified amount.

Section 7. Section **63-25a-411** is amended to read:

63-25a-411. Compensable losses and amounts.

A reparations award under this chapter [~~shall~~] may be made if:

- (1) the reparations officer finds the claim satisfies the requirements for the award under the provisions of this chapter and the rules of the board;
- (2) funds are available in the trust fund;
- (3) the person for whom the award of reparations is to be paid is otherwise eligible under this act;
- (4) the claim is for an allowable expense incurred by the victim, as follows:
 - (a) reasonable and necessary charges incurred for products, services, and accommodations;
 - (b) inpatient and outpatient medical treatment and physical therapy, subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
 - (c) mental health counseling which:
 - (i) is set forth in a mental health treatment plan which has been approved prior to any payment by a reparations officer; and
 - (ii) qualifies within any further rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;
 - (d) actual loss of past earnings and anticipated loss of future earnings because of a death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the person's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation

statute;

(e) care of minor children enabling a victim or spouse of a victim, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board;

(f) funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(g) loss of support to the dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less;

(h) personal property necessary and essential to the health or safety of the victim as defined by rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(i) medical examinations as defined in Subsection 63-25a-402(19), subject to rules promulgated by the board pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, which may allow for exemptions from Sections 63-25a-409, 63-25a-412, and 63-25a-413.

(5) If a Utah resident suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country that does not provide a reciprocal crime victims' compensation program, the Utah resident has the same rights under this chapter as if the injurious conduct occurred in this state.

(6) An award of reparations shall not exceed \$25,000 in the aggregate unless the victim is entitled to proceeds in excess of that amount as provided in Subsection 76-3-201.2(2). However, reparations for actual medical expenses incurred as a result of homicide, attempted homicide, aggravated assault, or DUI offenses, may be awarded up to \$50,000 in the aggregate.

Section 8. Section **63-25a-412** is amended to read:

63-25a-412. Reparations reduction.

(1) Reparations otherwise payable to a claimant [~~shall~~] may be reduced or denied as follows:

(a) the economic loss upon which the claim is based has been or could be recouped from other persons, including collateral sources, and the victim was not entitled to nor receiving monies prior to the criminally injurious conduct giving rise to the claim under this chapter; [or]

(b) the reparations officer considers the claim unreasonable because of the misconduct of the claimant or of a victim through whom he claims[-]; or

(c) the victim had not used a facility or health care provider that would be covered by a collateral source.

(2) When two or more dependents are entitled to an award as a result of a victim's death, the award shall be apportioned by the reparations officer among the dependents.

Section 9. Section **63-25a-415** is amended to read:

63-25a-415. Rules for contested claims -- Exemption from Administrative Procedures Act.

[Procedures] (1) Rules for procedures for contested determinations by a reparations officer shall be [~~in rule~~] adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(2) Crime Victims' Reparations is exempt from Title 63, Chapter 46b, Administrative Procedures Act.

Section 10. Section **63-25a-419** is amended to read:

63-25a-419. Assignment of recovery -- Reimbursement.

(1) By accepting an award of reparations, the victim automatically assigns to the state, subject to the provisions of Subsection (2), all claims against any third party to the lesser of:

(a) the amount paid by the state; or

(b) the amount recovered from the third party.

(2) The board, with the concurrence of the director, may reduce the state's right of reimbursement if it is determined that the reduction will benefit the trust fund.

[~~(2)~~] (3) The state reserves the right to make a claim for reimbursement on behalf of the victim and the victim shall not impair the state's claim or the state's right of reimbursement.

Section 11. Section **63-25a-428** is amended to read:

63-25a-428. Purpose -- Not entitlement program.

(1) Crime Victims' Reparations is a program with the purpose to assist victims of criminally injurious conduct. Reparation to a victim is limited to the monies available in the Crime Victims' Reparations Trust Fund.

(2) This program is not an entitlement program. Awards may be limited or denied as determined appropriate by the board [~~to insure the viability of the fund~~]. Failure to grant an award does not create a cause of action against Crime Victims' Reparations, the state, or any of its subdivisions. There is no right to judicial review over the decision whether or not to grant an award.

(3) A cause of action based on a failure to give or receive the notice required by this chapter does not accrue to any person against the state, any of its agencies or local subdivisions, any of their law enforcement officers or other agents or employees, or any health care or medical provider or its agents or employees. The failure does not affect or alter any requirement for filing or payment of a claim.

Section 12. Repealer.

This act repeals:

Section 63-25a-425, No cause of action for failure to give or receive notice.

Section 63-25a-426, No cause of action for failure to grant an award.

Section 63-25a-427, No criminal defense action for failure to fully comply.