

HB0228S02 compared with HB0228S01

~~deleted text~~ shows text that was in HB0228S01 but was deleted in HB0228S02.

inserted text shows text that was not in HB0228S01 but was inserted into HB0228S02.

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Representative Ken Ivory proposes the following substitute bill:

CRIME VICTIM REPARATIONS AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Jani Iwamoto

LONG TITLE

General Description:

This bill amends provisions related to reparations for crime victims.

Highlighted Provisions:

This bill:

- ▶ amends and enacts definitions;
- ▶ amends the requirements for a victim to be eligible for reparations; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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AMENDS:

63M-7-502, as last amended by Laws of Utah 2021, Chapter 260

63M-7-509, as last amended by Laws of Utah 2020, Chapter 149

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

Section 1. Section **63M-7-502** is amended to read:

63M-7-502. Definitions.

As used in this part:

(1) "Accomplice" means an individual who has engaged in criminal conduct as described in Section 76-2-202.

(2) "Advocacy services provider" means the same as that term is defined in Section 77-38-403.

~~(2)~~ (3) "Board" means the Crime Victim Reparations and Assistance Board created under Section 63M-7-504.

~~(3)~~ (4) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

~~(4)~~ (5) "Claimant" means any of the following claiming reparations under this part:

- (a) a victim;
- (b) a dependent of a deceased victim; or
- (c) an individual or representative who files a reparations claim on behalf of a victim.

~~(5)~~ (6) "Child" means an unemancipated individual who is under 18 years old.

~~(6)~~ (7) "Collateral source" means any source of benefits or advantages for economic loss otherwise reparable under this part that the victim or claimant has received, or that is readily available to the victim from:

- (a) the offender;
- (b) the insurance of the offender or the victim;
- (c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;
- (d) social security, Medicare, and Medicaid;
- (e) state-required temporary nonoccupational income replacement insurance or

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disability income insurance;

(f) workers' compensation;

(g) wage continuation programs of any employer;

(h) proceeds of a contract of insurance payable to the victim for the loss the victim sustained because of the criminally injurious conduct;

(i) a contract providing prepaid hospital and other health care services or benefits for disability; or

(j) veteran's benefits, including veteran's hospitalization benefits.

(8) "Criminal justice system victim advocate" means the same as that term is defined in Section 77-38-403.

~~[(7)]~~ (9) (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:

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

(ii) occurs or is attempted;

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

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

(v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is:

(A) intended to cause bodily injury or death~~[-or is conduct which is or would be];~~

(B) punishable under Title 76, Chapter 5, Offenses Against the Person~~[-or as any offense];~~ or

(C) chargeable as an offense for driving under the influence of alcohol or drugs.

~~[(b)]~~ "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. Sec. 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. Sec. 2331.~~

~~[(c)]~~ (b) "Criminally injurious conduct" includes a felony violation of Section 76-7-101 and other conduct leading to the psychological injury of an individual resulting from living in a setting that involves a bigamous relationship.

~~[(8)]~~ (10) (a) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support.

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(b) "Dependent" includes a child of the victim born after the victim's death.

~~[(9)]~~ (11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.

~~[(10)]~~ (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 the victim's benefit if the victim 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.

~~[(11)]~~ (13) "Director" means the director of the office.

~~[(12)]~~ (14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon an individual:

- (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.

~~[(13)]~~ (15) (a) "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.

(b) "Economic loss" includes economic detriment even if caused by pain and suffering or physical impairment.

(c) "Economic loss" does not include noneconomic detriment.

~~[(14)]~~ (16) "Elderly victim" means an individual who is 60 years old or older and who is a victim.

~~[(15)]~~ (17) "Fraudulent claim" means a filed reparations 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.

~~[(16)]~~ (18) "Fund" means the Crime Victim Reparations Fund created in Section 63M-7-526.

(19) (a) "Interpersonal violence" means an act involving violence, physical harm, or a

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threat of violence or physical harm, that is committed by an individual who is or has been in a domestic, dating, sexual, or intimate relationship with the victim.

(b) "Interpersonal violence" includes any attempt, conspiracy, or solicitation of an act described in Subsection (19)(a).

~~[(17)]~~ (20) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

~~[(18)]~~ (21) (a) "Medical examination" means a physical examination necessary to document criminally injurious conduct.

(b) "Medical examination" does not include mental health evaluations for the prosecution and investigation of a crime.

~~[(19)]~~ (22) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct, is subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(20)]~~ (23) "Misconduct" means conduct by the victim that was attributable to the injury or death of the victim as provided by rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(21)]~~ (24) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this part.

(25) "Nongovernment organization victim advocate" means the same as that term is defined in Section 77-38-403.

~~[(22)]~~ (26) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this part.

~~[(23)]~~ (27) "Offender" means an individual who has violated Title 76, Utah Criminal Code, through criminally injurious conduct regardless of whether the individual is arrested, prosecuted, or convicted.

~~[(24)]~~ (28) "Offense" means a violation of Title 76, Utah Criminal Code.

~~[(25)]~~ (29) "Office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this part.

~~[(26)]~~ (30) "Perpetrator" means the individual who actually participated in the criminally injurious conduct.

~~[(27)]~~ (31) "Reparations award" means money or other benefits provided to a claimant

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or to another on behalf of a claimant after the day on which a reparations claim is approved by the office.

~~[(28)]~~ (32) "Reparations claim" means a claimant's request or application made to the office for a reparations award.

~~[(29)]~~ (33) (a) "Reparations officer" means an individual employed by the office to investigate claims of victims and award reparations under this part.

(b) "Reparations officer" includes the director when the director is acting as a reparations officer.

~~[(30)]~~ (34) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but the benefit of the injured individual or the injured individual's dependents if the injured individual had not been injured.

~~[(31)]~~ (35) (a) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of an individual.

(b) "Representative" does not include a service provider or collateral source.

~~[(32)]~~ (36) "Restitution" means the same as that term is defined in Section 77-38b-102.

~~[(33)]~~ (37) "Secondary victim" means an individual who is traumatically affected by the criminally injurious conduct subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(34)]~~ (38) "Service provider" means an individual or agency who provides a service to a victim for a monetary fee, except attorneys as provided in Section 63M-7-524.

~~[(35)]~~ (39) "Serious bodily injury" means the same as that term is defined in Section 76-1-601.

(40) "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(41) "Strangulation" means any act involving the use of unlawful force or violence that:

(a) impedes breathing or the circulation of blood; and

(b) is likely to produce a loss of consciousness by:

(i) applying pressure to the neck or throat of an individual; or

(ii) obstructing the nose, mouth, or airway of an individual.

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~~[(36)]~~ (42) "Substantial bodily injury" means the same as that term is defined in Section 76-1-601.

~~[(37)]~~ (43) (a) "Victim" means an individual who suffers bodily or psychological injury or death as a direct result of:

(i) criminally injurious conduct; or

(ii) the production of pornography in violation of Section 76-5b-201 if the individual is a minor.

(b) "Victim" does not include an individual who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(c)]~~ "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. Sec. 2331, committed outside of the United States.

~~[(38)]~~ (44) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.

Section 2. Section **63M-7-509** is amended to read:

63M-7-509. Grounds for eligibility.

(1) A victim is eligible for a reparations award under this part if:

(a) the claimant is:

(i) a victim of criminally injurious conduct;

(ii) a dependent of a deceased victim of criminally injurious conduct; or

(iii) a representative acting on behalf of one of the above;

(b) (i) the criminally injurious conduct occurred in Utah; or

(ii) the victim is a Utah resident who suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country that does not provide a crime victims' compensation program;

(c) the application is made in writing in a form that conforms substantially to that prescribed by the board;

(d) the criminally injurious conduct is reported to a law enforcement officer, in the law

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enforcement officer's capacity as a law enforcement officer, or another federal or state investigative agency;

(e) the claimant or victim cooperates with the appropriate law enforcement agencies and prosecuting attorneys in efforts to apprehend or convict the perpetrator of the alleged offense; and

(f) the criminally injurious conduct occurred after December 31, 1986.

(2) A reparations award may be made to a victim regardless of whether any individual is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to a reparations claim.

(3) (a) Notwithstanding the requirements of Subsections (1)(d) and (e), a victim of sexual assault is not required to report the sexual assault to a law enforcement officer or another federal or state investigative agency or cooperate with the appropriate law enforcement agencies and prosecuting attorneys to be eligible for a reparations award under this section if:

(i) the victim seeks assistance from an advocacy services provider, a criminal justice system victim advocate, or a nongovernment organization victim advocate; and

(ii) the advocacy services provider, the criminal justice system victim advocate, or the nongovernment organization victim advocate completes a questionnaire, provided by the office, regarding the sexual assault.

(b) Notwithstanding the requirement of Subsection (1)(e), a victim who has suffered strangulation in the course of interpersonal violence is not required to cooperate with the appropriate law enforcement agencies and prosecuting attorneys to be eligible for a reparations award under this section if the victim:

(i) reports the strangulation to a law enforcement officer or another federal or state investigative agency after the strangulation occurs; ~~and~~ or

(ii) seeks medical care for the strangulation immediately after the strangulation occurs.