

HOUSE BILL No. 2082

By Committee on Judiciary

1-20

1 AN ACT concerning the crime victims compensation board; relating to
2 applications for compensation; mental health counseling; adding certain
3 children to the definition of victim; amending K.S.A. 74-7301 and
4 K.S.A. 2020 Supp. 74-7305 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 74-7301 is hereby amended to read as follows: 74-
8 7301. As used in this act:

9 (a) "Allowance expense" means reasonable charges incurred for
10 reasonably needed products, services and accommodations, including
11 those for medical care, rehabilitation, rehabilitative occupational training
12 and other remedial treatment and care and for the replacement of items of
13 clothing or bedding which were seized for evidence. ~~Such term~~
14 "Allowance expense" includes a total charge not in excess of \$5,000 for
15 expenses in any way related to funeral, cremation or burial; but ~~such term~~
16 "allowance expense" shall not include that portion of a charge for a room
17 in a hospital, clinic, convalescent or nursing home or any other institution
18 engaged in providing nursing care and related services, in excess of a
19 reasonable and customary charge for semi-private accommodations, unless
20 other accommodations are medically required. ~~Such term~~ "Allowance
21 expense" includes a total charge not in excess of \$1,000 for expenses in
22 any way related to crime scene cleanup.

23 (b) "Board" means the crime victims compensation board established
24 under K.S.A. 74-7303, and amendments thereto.

25 (c) "Claimant" means any of the following persons claiming
26 compensation under this act:

27 (1) A victim;

28 (2) a dependent of a deceased victim;

29 (3) a third person other than a collateral source; or

30 (4) an authorized person acting on behalf of any of them.

31 (d) "Collateral source" means the net financial benefit, after
32 deduction of taxes, legal fees, costs, expenses of litigation, liens, offsets,
33 credits or other deductions, from a source of benefits or advantages for
34 economic loss otherwise reparable under this act which the victim or
35 claimant has received, or which is readily available to the victim or
36 claimant, from:

- 1 (1) The offender;
- 2 (2) the government of the United States or any agency thereof, a state
3 or any of its political subdivisions or an instrumentality or two or more
4 states, unless the law providing for the benefits or advantages makes them
5 excess or secondary to benefits under this act;
- 6 (3) social security, medicare and medicaid;
- 7 (4) state-required temporary nonoccupational disability insurance;
- 8 (5) workers' compensation;
- 9 (6) wage continuation programs of any employer;
- 10 (7) proceeds of a contract of insurance payable to the victim for loss
11 which the victim sustained because of the criminally injurious conduct;
- 12 (8) a contract providing prepaid hospital and other health care
13 services or benefits for disability; or
- 14 (9) damages awarded in a tort action.
- 15 (e) "Criminally injurious conduct" means conduct that: (1) (A)
16 Occurs or is attempted in this state or occurs to a person whose domicile is
17 in Kansas who is the victim of a violent crime which occurs in another
18 state, possession, or territory of the United States of America may make an
19 application for compensation if:
- 20 (i) The crimes would be compensable had it occurred in the state of
21 Kansas; and
- 22 (ii) the places the crimes occurred are states, possessions or territories
23 of the United States of America not having eligible crime victim
24 compensation programs;
- 25 (B) poses a substantial threat or personal injury or death; and
- 26 (C) either is punishable by fine, imprisonment or death or would be
27 so punishable but for the fact that the person engaging in the conduct
28 lacked capacity to commit the crime under the laws of this state; or
- 29 (2) is an act of terrorism, as defined in 18 U.S.C. § 2331, or a violent
30 crime that posed a substantial threat or caused personal injury or death,
31 committed outside of the United States against a person whose domicile is
32 in Kansas, except that criminally injurious conduct does not include any
33 conduct resulting in injury or death sustained as a member of the United
34 States armed forces while serving on active duty.
- 35 ~~Such term shall~~ "*Criminally injurious conduct* does not include conduct
36 arising out of the ownership, maintenance or use of a motor vehicle,
37 except for violations of K.S.A. 8-2,144 or 8-1567, and amendments
38 thereto, or violations of municipal ordinances or county resolutions
39 prohibiting the acts prohibited by those statutes, or violations of K.S.A. 8-
40 1602, and amendments thereto, K.S.A. 21-3404, 21-3405 ~~and or~~ 21-3414,
41 prior to their repeal, or K.S.A. 2020 Supp. 21-5405, 21-5406 ~~and K.S.A.~~
42 ~~2020 Supp.~~ or 21-5413(b), and amendments thereto, or when such conduct
43 was intended to cause personal injury or death.

1 (f) "Dependent" means a natural person wholly or partially dependent
2 upon the victim for care or support, and includes a child of the victim born
3 after the victim's death.

4 (g) "Dependent's economic loss" means loss after decedent's death of
5 contributions of things of economic value to the decedent's dependents, not
6 including services they would have received from the decedent if the
7 decedent had not suffered the fatal injury, less expenses of the dependents
8 avoided by reason of decedent's death.

9 (h) "Dependent's replacement services loss" means loss reasonably
10 incurred by dependents after decedent's death in obtaining ordinary and
11 necessary services in lieu of those the decedent would have performed for
12 their benefit if the decedent had not suffered the fatal injury, less expenses
13 of the dependents avoided by reason of decedent's death and not subtracted
14 in calculating dependent's economic loss.

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

20 (j) "Noneconomic detriment" means pain, suffering, inconvenience,
21 physical impairment and nonpecuniary damage.

22 (k) "Replacement services loss" means expenses reasonably incurred
23 in obtaining ordinary and necessary services in lieu of those the injured
24 person would have performed, not for income, but for the benefit of self or
25 family, if such person had not been injured.

26 (l) "Work loss" means loss of income from work the injured person
27 would have performed if such person had not been injured, and expenses
28 reasonably incurred by such person in obtaining services in lieu of those
29 the person would have performed for income, reduced by any income from
30 substitute work actually performed by such person or by income such
31 person would have earned in available appropriate substitute work that the
32 person was capable of performing but unreasonably failed to undertake.

33 (m) "Victim" means a person who suffers personal injury or death as
34 a result of:

35 (1) Criminally injurious conduct;

36 (2) the good faith effort of any person to prevent criminally injurious
37 conduct;~~or~~

38 (3) the good faith effort of any person to apprehend a person
39 suspected of engaging in criminally injurious conduct; *or*

40 (4) *witnessing a violent crime when the person was 16 years of age*
41 *or younger at the time the crime was committed.*

42 (n) "Crime scene cleanup" means removal of blood, stains, odors or
43 other debris caused by the crime or the processing of the crime scene.

1 Sec. 2. K.S.A. 2020 Supp. 74-7305 is hereby amended to read as
2 follows: 74-7305. (a) An application for compensation shall be made in the
3 manner and form prescribed by the crime victims compensation division
4 created by K.S.A. 75-773, and amendments thereto.

5 (b) (1) *Except as otherwise provided in this subsection*, compensation
6 may not be awarded unless an application has been filed with the division
7 within two years of the reporting of the incident to law enforcement
8 officials if the victim was less than 16 years of age and the injury or death
9 is the result of any of the following crimes:

10 (1) ~~Indecent liberties with a child as defined in K.S.A. 21-3503, prior to~~
11 ~~its repeal, or K.S.A. 2020 Supp. 21-5506(a), and amendments thereto; (2)~~
12 ~~aggravated indecent liberties with a child as defined in K.S.A. 21-3504,~~
13 ~~prior to its repeal, or K.S.A. 2020 Supp. 21-5506(b), and amendments~~
14 ~~thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506,~~
15 ~~prior to its repeal, or K.S.A. 2020 Supp. 21-5504(b), and amendments~~
16 ~~thereto; (4) (A) Enticement of a child as defined in K.S.A. 21-3509, prior~~
17 ~~to its repeal; (5) indecent solicitation of a child as defined in K.S.A. 21-~~
18 ~~3510, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(a), and~~
19 ~~amendments thereto; (6) aggravated indecent solicitation of a child as~~
20 ~~defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2020 Supp. 21-~~
21 ~~5508(b), and amendments thereto; (7) sexual exploitation of a child as~~
22 ~~defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2020 Supp. 21-~~
23 ~~5510, and amendments thereto; (8) aggravated incest as defined in K.S.A.~~
24 ~~21-3603, prior to its repeal, or K.S.A. 2020 Supp. 21-5604(b), and~~
25 ~~amendments thereto; (9)~~

26 (B) human trafficking as defined in K.S.A. 21-3446, prior to its
27 repeal, or K.S.A. 2020 Supp. 21-5426(a), and amendments thereto;~~(10)~~

28 (C) aggravated human trafficking as defined in K.S.A. 21-3447, prior
29 to its repeal, or K.S.A. 2020 Supp. 21-5426(b), and amendments thereto;
30 ~~or (11) commercial sexual exploitation of a child as defined in K.S.A.~~
31 ~~2020 Supp. 21-6422, and amendments thereto~~

32 (D) *a sexually violent crime, as defined in K.S.A. 22-3717, and*
33 *amendments thereto.*

34 (2) Compensation for mental health counseling may be awarded ~~if a~~
35 ~~claim is filed within two years of:~~ (1) ~~Testimony, to a claimant who is, or~~
36 ~~will be, required to testify in a sexually violent predator commitment,~~
37 ~~pursuant to article 29a of chapter 59 of the Kansas Statutes Annotated, and~~
38 ~~amendments thereto, of an offender who victimized the claimant or the~~
39 ~~victim on whose behalf the claim is made; or (2) notification, to a claimant~~
40 ~~who is notified that DNA testing of a sexual assault kit or other evidence~~
41 ~~has revealed a DNA profile of a suspected offender who victimized the~~
42 ~~claimant or the victim on whose behalf the claim is made, or is notified of~~
43 ~~the identification of a suspected offender who victimized the claimant or~~

1 ~~the victim on whose behalf the claim is made, whichever occurs later~~ to a
2 *victim of a sexually violent crime, as defined in K.S.A. 22-3717, and*
3 *amendments thereto, if the board finds there was good cause for the failure*
4 *to file within the time specified in this subsection.* For all other incidents of
5 criminally injurious conduct, compensation may not be awarded unless the
6 claim has been filed with the division within two years after the injury or
7 death upon which the claim is based.

8 (c) Compensation may not be awarded to a claimant who was the
9 offender or an accomplice of the offender and may not be awarded to
10 another person if the award would unjustly benefit the offender or
11 accomplice.

12 ~~(e)~~(d) Compensation otherwise payable to a claimant shall be reduced
13 or denied, to the extent, if any that the:

14 (1) Economic loss upon which the claimant's claim is based is
15 recouped from other persons, including collateral sources;

16 (2) board deems reasonable because of the contributory misconduct
17 of the claimant or of a victim through whom the claimant claims; or

18 (3) board deems reasonable, because the victim was likely engaging
19 in, or attempting to engage in, unlawful activity at the time of the crime
20 upon which the claim for compensation is based. This subsection shall not
21 be construed to reduce or deny compensation to a victim of domestic
22 abuse or sexual assault.

23 ~~(d)~~(e) Compensation may be awarded only if the board finds that
24 unless the claimant is awarded compensation the claimant will suffer
25 financial stress as the result of economic loss otherwise reparable. A
26 claimant suffers financial stress only if the claimant cannot maintain the
27 claimant's customary level of health, safety and education for self and
28 dependents without undue financial hardship. In making its determination
29 of financial stress, the board shall consider all relevant factors, including:

30 (1) The number of the claimant's dependents;

31 (2) the usual living expenses of the claimant and the claimant's
32 family;

33 (3) the special needs of the claimant and the claimant's dependents;

34 (4) the claimant's income and potential earning capacity; and

35 (5) the claimant's resources.

36 ~~(e)~~(f) Compensation may not be awarded unless the criminally
37 injurious conduct resulting in injury or death was reported to a law
38 enforcement officer within 72 hours after its occurrence or the board finds
39 there was good cause for the failure to report within that time.

40 ~~(f)~~(g) The board, upon finding that the claimant or victim has not
41 fully cooperated with appropriate law enforcement agencies, may deny,
42 withdraw or reduce an award of compensation.

43 ~~(g)~~(h) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or

1 K.S.A. 2020 Supp. 21-5604, and amendments thereto, or cases of sex
2 offenses established in article 35 of chapter 21, of the Kansas Statutes
3 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
4 Statutes Annotated, and amendments thereto, K.S.A. 2020 Supp. 21-6419
5 through 21-6422, and amendments thereto, or human trafficking or
6 aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447,
7 prior to their repeal, or K.S.A. 2020 Supp. 21-5426, and amendments
8 thereto, compensation may not be awarded if the economic loss is less than
9 \$100.

10 ~~(h)~~(i) Compensation for work loss, replacement services loss,
11 dependent's economic loss and dependent's replacement service loss may
12 not exceed \$400 per week or actual loss, whichever is less.

13 ~~(i)~~(j) Compensation payable to a victim and to all other claimants
14 sustaining economic loss because of injury to or death of that victim may
15 not exceed \$25,000 in the aggregate.

16 ~~(j)~~(k) Nothing in subsections ~~(e)(2), (e)(3), (e) and (f)~~ (d)(2), (d)(3),
17 (f) and (g) shall be construed to reduce or deny compensation to a victim
18 of human trafficking or aggravated human trafficking, as defined in K.S.A.
19 2020 Supp. 21-5426, and amendments thereto, or commercial sexual
20 exploitation of a child, as defined in K.S.A. 2020 Supp. 21-6422, and
21 amendments thereto, who was 18 years of age or younger at the time the
22 crime was committed and is otherwise qualified for compensation.

23 Sec. 3. K.S.A. 74-7301 and K.S.A. 2020 Supp. 74-7305 are hereby
24 repealed.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the statute book.