

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2290

By Committee on Judiciary

2-13

1 AN ACT concerning the attorney general; relating to the crime victims
2 compensation board; creating the crime victims—~~compensating~~
3 **compensation** division within the office of the attorney general;
4 amending K.S.A. 74-7304, 74-7305, 74-7308 and 74-7317 and
5 repealing the existing sections; also repealing K.S.A. 74-7306.

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

8 New Section 1. (a) There is hereby established within the office of the
9 attorney general a crime victims compensation division to administer and
10 support the operations of the crime victims compensation board
11 established pursuant to K.S.A. 74-7301 et seq., and amendments thereto.
12 The division shall receive applications for compensation and all supporting
13 papers and shall, if requested by the board, investigate the claim, appear in
14 proceedings related to the claim and present evidence in opposition to or
15 support of an award.

16 (b) The attorney general shall establish and maintain a principal
17 office for the division and other necessary offices within the state, appoint
18 employees and agents, as necessary, and prescribe the duties and
19 compensation for each employee and agent subject to appropriations. The
20 crime victims compensation division shall be headed by a director
21 appointed by the attorney general in consultation with the crime victims
22 compensation board.

23 (c) The crime victims compensation division shall:

24 (1) Prescribe forms on which applications for compensation shall be
25 made;

26 (2) request investigations and data from county and district attorneys,
27 law enforcement officers and other sources to enable the crime victims
28 compensation board to determine whether, and to what extent a claimant
29 qualifies for compensation;

30 (3) make available for public inspection, as provided by the Kansas
31 open records act, K.S.A. 45-215 et seq., and amendments thereto, all rules
32 and regulations, written statements of policy, interpretations formulated,
33 adopted or used by the crime victims compensation board and decisions
34 and opinions of the crime victims compensation board;

35 (4) publicize the availability of compensation and information
36 regarding the filing of claims; and

1 (5) perform any other duty assigned by the attorney general to carry
2 out the provisions of this section.

3 (d) Confidentiality provided by law covering a claimant's or victim's
4 juvenile court records shall not be applicable in proceedings pursuant to
5 K.S.A. 74-7301 et seq., and amendments thereto.

6 Sec. 2. K.S.A. 74-7304 is hereby amended to read as follows: 74-
7 7304. In addition to the powers and duties specified elsewhere in this act,
8 the board shall have the following powers and duties:

9 ~~(a) The duty to establish and maintain a principal office and other~~
10 ~~necessary offices within this state, to appoint employees and agents as~~
11 ~~necessary and to prescribe their duties and compensation, all within the~~
12 ~~limitations and conditions of appropriations made therefor;~~

13 ~~(b) The duty power to adopt by rule and regulation a description of~~
14 ~~the organization of the board, stating the general method and course of~~
15 ~~operation of the board;~~

16 ~~(e)(b) the duty power to adopt rules and regulations to carry out the~~
17 ~~provisions of this act, and the property crime restitution and compensation~~
18 ~~act, including rules for the allowance of attorney fees for representation of~~
19 ~~claimants; and to adopt rules and regulations providing for discovery~~
20 ~~proceedings, including medical examination, consistent with the~~
21 ~~provisions of this act relating thereto. Rules and regulations adopted by the~~
22 ~~board shall be statements of general applicability which implement,~~
23 ~~interpret or prescribe policy, or describe the procedure or practice~~
24 ~~requirements of the board;~~

25 ~~(d) the duty to prescribe forms on which applications for~~
26 ~~compensation shall be made;~~

27 ~~(e)(c) the duty to hear and determine all matters relating to claims for~~
28 ~~compensation, and the power to reinvestigate or reopen claims without~~
29 ~~regard to statutes of limitation or periods of prescription;~~

30 ~~(f) the power to request investigations and data from county and~~
31 ~~district attorneys and law enforcement officers to enable the board to~~
32 ~~determine whether and the extent to which a claimant qualifies for~~
33 ~~compensation. Confidentiality provided by law covering claimant's or~~
34 ~~victim's juvenile court records shall not be applicable in proceedings under~~
35 ~~this act;~~

36 ~~(g)(d) the duty, if it would contribute to the function of the board, to~~
37 ~~subpoena witnesses and other prospective evidence, administer oaths or~~
38 ~~affirmations, conduct hearings and receive relevant, nonprivileged~~
39 ~~evidence; and~~

40 ~~(h)(e) the power to take notice of judicially recognizable facts and~~
41 ~~general, technical and scientific facts within their specialized knowledge;~~

42 ~~(i) the duty to make available for public inspection all rules and~~
43 ~~regulations, written statements of policy, interpretations formulated,~~

1 adopted or used by the board in discharging its functions, and decisions
2 and opinions of the board;

3 ~~(j) the duty to publicize the availability of compensation and~~
4 ~~information regarding the filing of claims therefor.~~

5 Sec. 3. K.S.A. 74-7305 is hereby amended to read as follows: 74-
6 7305. (a) An application for compensation shall be made in the manner
7 and form prescribed by the ~~board~~ *crime victims compensation division*
8 *created by section 1, and amendments thereto.*

9 (b) Compensation may not be awarded unless an application has been
10 filed with the ~~board~~ *division* within two years of the reporting of the
11 incident to law enforcement officials if the victim was less than 16 years of
12 age and the injury or death is the result of any of the following crimes: (1)
13 Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its
14 repeal, or K.S.A. 2018 Supp. 21-5506(a), and amendments thereto; (2)
15 aggravated indecent liberties with a child as defined in K.S.A. 21-3504,
16 prior to its repeal, or K.S.A. 2018 Supp. 21-5506(b), and amendments
17 thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506,
18 prior to its repeal, or K.S.A. 2018 Supp. 21-5504(b), and amendments
19 thereto; (4) enticement of a child as defined in K.S.A. 21-3509, prior to its
20 repeal; (5) indecent solicitation of a child as defined in K.S.A. 21-3510,
21 prior to its repeal, or K.S.A. 2018 Supp. 21-5508(a), and amendments
22 thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A.
23 21-3511, prior to its repeal, or K.S.A. 2018 Supp. 21-5508(b), and
24 amendments thereto; (7) sexual exploitation of a child as defined in K.S.A.
25 21-3516, prior to its repeal, or K.S.A. 2018 Supp. 21-5510, and
26 amendments thereto; (8) aggravated incest as defined in K.S.A. 21-3603,
27 prior to its repeal, or K.S.A. 2018 Supp. 21-5604(b), and amendments
28 thereto; (9) human trafficking as defined in K.S.A. 21-3446, prior to its
29 repeal, or K.S.A. 2018 Supp. 21-5426(a), and amendments thereto; (10)
30 aggravated human trafficking as defined in K.S.A. 21-3447, prior to its
31 repeal, or K.S.A. 2018 Supp. 21-5426(b), and amendments thereto; or (11)
32 commercial sexual exploitation of a child as defined in K.S.A. 2018 Supp.
33 21-6422, and amendments thereto. Compensation for mental health
34 counseling may be awarded if a claim is filed within two years of: (1)
35 Testimony, to a claimant who is, or will be, required to testify in a sexually
36 violent predator commitment, pursuant to article 29a of chapter 59 of the
37 Kansas Statutes Annotated, and amendments thereto, of an offender who
38 victimized the claimant or the victim on whose behalf the claim is made;
39 or (2) notification, to a claimant who is notified that DNA testing of a
40 sexual assault kit or other evidence has revealed a DNA profile of a
41 suspected offender who victimized the claimant or the victim on whose
42 behalf the claim is made, or is notified of the identification of a suspected
43 offender who victimized the claimant or the victim on whose behalf the

1 claim is made, whichever occurs later. For all other incidents of criminally
2 injurious conduct, compensation may not be awarded unless the claim has
3 been filed with the ~~board~~ *division* within two years after the injury or death
4 upon which the claim is based. Compensation may not be awarded to a
5 claimant who was the offender or an accomplice of the offender and may
6 not be awarded to another person if the award would unjustly benefit the
7 offender or accomplice.

8 (c) Compensation otherwise payable to a claimant shall be reduced or
9 denied, to the extent, if any that the:

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

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

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

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

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

27 (2) the usual living expenses of the claimant and the claimant's
28 family;

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

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

31 (5) the claimant's resources.

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

36 (f) The board, upon finding that the claimant or victim has not fully
37 cooperated with appropriate law enforcement agencies, may deny,
38 withdraw or reduce an award of compensation.

39 (g) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or
40 K.S.A. 2018 Supp. 21-5604, and amendments thereto, or cases of sex
41 offenses established in article 35 of chapter 21, of the Kansas Statutes
42 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
43 Statutes Annotated, and amendments thereto, K.S.A. 2018 Supp. 21-6419

1 through 21-6422, and amendments thereto, or human trafficking or
2 aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447,
3 prior to their repeal, or K.S.A. 2018 Supp. 21-5426, and amendments
4 thereto, compensation may not be awarded if the economic loss is less than
5 \$100.

6 (h) Compensation for work loss, replacement services loss,
7 dependent's economic loss and dependent's replacement service loss may
8 not exceed \$400 per week or actual loss, whichever is less.

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

12 (j) Nothing in subsections (c)(2), (c)(3), (e) and (f) shall be construed
13 to reduce or deny compensation to a victim of human trafficking or
14 aggravated human trafficking, as defined in K.S.A. 2018 Supp. 21-5426,
15 and amendments thereto, or commercial sexual exploitation of a child, as
16 defined in K.S.A. 2018 Supp. 21-6422, and amendments thereto, who was
17 18 years of age or younger at the time the crime was committed and is
18 otherwise qualified for compensation.

19 Sec. 4. K.S.A. 74-7308 is hereby amended to read as follows: 74-
20 7308. (a) There shall be no privilege, except privileges arising from the
21 attorney-client relationship, as to communications or records relevant to an
22 issue of the physical, mental or emotional conditions of the claimant or
23 victim in a proceeding under this act in which such condition is an
24 element.

25 (b) If the mental, physical or emotional condition of a victim or
26 claimant is material to a claim, the board may order the victim or claimant
27 to submit to a mental or physical examination by a physician or
28 psychologist, and may order an autopsy of a deceased victim. The order
29 may be made for good cause shown upon notice to the person to be
30 examined and to all persons who have appeared. The order shall specify
31 the time, place, manner, conditions and scope of the examination or
32 autopsy and the person by whom it is to be made; and the order shall
33 require the person to file with the board a detailed written report of the
34 examination or autopsy. The report shall set out the findings of the person
35 making the report, including results of all tests made, diagnoses, prognosis
36 and other conclusions and reports of earlier examinations of the same
37 conditions.

38 (c) On request of the person examined, the board shall furnish a copy
39 of the report to such person. If the victim is deceased, the board, on
40 request, shall furnish to the claimant a copy of the report.

41 (d) The board may require the claimant to supplement the application
42 with any reasonably available medical or psychological reports relating to
43 the injury for which compensation is claimed.

1 (e) All records and information given to the board *and the crime*
2 *victims compensation division created by section 1, and amendments*
3 *thereto*, to process a claim on behalf of a crime victim shall be
4 confidential. Such exhibits, medical records, psychological records,
5 counseling records, work records, criminal investigation records, criminal
6 court case records, witness statements, telephone records, and other
7 records of any type or nature whatsoever gathered for the purpose of
8 evaluating whether to compensate a victim shall not be obtainable by any
9 party to any action, civil or criminal, through any discovery process
10 except:

11 (1) In the event of an appeal under the Kansas administrative
12 procedure act from a decision of the board and then only to the extent
13 narrowly and necessarily to obtain court review;

14 (2) upon a strict showing to the court in a separate civil or criminal
15 action that particular information or documents are not obtainable after
16 diligent effort from any independent source, and are known to exist
17 otherwise only in board records, the court may inspect in camera such
18 records to determine whether the specific requested information exists. If
19 the court determines the specific information sought exists in the board
20 records, the documents may then be released only by court order if the
21 court finds as part of its order that the documents will not pose any threat
22 to the safety of the victim or any other person whose identity may appear
23 in board records; or

24 (3) by any board order granting or denying compensation to a crime
25 victim.

26 Sec. 5. K.S.A. 74-7317 is hereby amended to read as follows: 74-
27 7317. (a) There is hereby established in the state treasury the crime victims
28 compensation fund.

29 (b) Moneys in the crime victims compensation fund shall be used
30 only for the payment of compensation pursuant to K.S.A. 74-7301 et seq.,
31 and amendments thereto, and for state operations of the board *and the*
32 *crime victims compensation division of the office of the attorney general*
33 *created pursuant to section 1, and amendments thereto*. Payments from the
34 fund shall be made upon warrants of the director of accounts and reports
35 issued pursuant to vouchers approved by the chairperson of the board and
36 the attorney general or by a person or persons designated by the
37 chairperson and the attorney general.

38 (c) The crime victims compensation board may apply for, receive and
39 accept money from any source, including financial contributions from
40 inmates as provided by subsection (b) of K.S.A. 75-5211, and amendments
41 thereto, for the purposes for which money in the crime victims
42 compensation fund may be expended. Upon receipt of any such money, the
43 chairperson of the board shall remit the entire amount to the state treasurer

1 in accordance with the provisions of K.S.A. 75-4215, and amendments
2 thereto. Upon receipt of each such remittance, the state treasurer shall
3 deposit the entire amount in the state treasury to the credit of the crime
4 victims compensation fund.

5 Sec. 6. K.S.A. 74-7304, 74-7305, 74-7306, 74-7308 and 74-7317 are
6 hereby repealed.

7 Sec. 7. This act shall take effect and be in force from and after its
8 publication in the Kansas register.