

## LEGISLATIVE BILL 910

Approved by the Governor April 26, 1978

Introduced by Schmit, 23

AN ACT to adopt the Nebraska Crime Victim's Reparations Act; and to provide an operative date.  
Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Board shall mean the Crime Victim's Reparations Board;

(2) Dependent shall mean a relative of a deceased victim, who was dependent upon the victim's income at the time of death, including children of a victim born after a victim's death;

(3) Personal injury shall mean actual bodily harm;

(4) Relative shall mean spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parents; and

(5) Victim shall mean a person who is injured or killed as a result of conduct specified in section 18 of this act.

Sec. 2. A Crime Victim's Reparations Board is hereby created. The board shall consist of three members to be appointed by the Governor subject to approval by the Legislature. At least one member of the board shall be a person licensed to practice law in Nebraska.

Sec. 3. Within thirty days after the operative date of this act, the Governor shall appoint the initial members to the board. Members shall serve for terms of six years, except that of the members first appointed one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years.

Sec. 4. When a vacancy occurs on the board, appointment to fill the vacancy shall be made for the balance of the term. As the terms of the initial appointees to the board expire, succeeding appointees shall be appointed to six-year terms. Members whose

terms have expired shall continue to serve until their successors have been appointed.

Sec. 5. The members of the board shall be paid a per diem of one hundred dollars for each day actually and necessarily engaged in the performance of their duties as members of such board. In addition, members of the board shall receive reimbursement for actual and necessary expenses on the same basis and subject to the same conditions as full-time state employees.

Sec. 6. The board shall appoint one or more hearing officers, who shall be licensed to practice law in the state, to conduct hearings, take testimony in proceedings under this act, and make determinations of any matter subject to this act. Each hearing officer shall report his findings of fact and conclusions of law to the board, together with the reasons for the findings and conclusions. The board shall act only after consideration of the report and such other evidence as it considers appropriate. The board may overrule any determination made by a hearing officer and may decrease or increase any compensation awarded by such hearing officer pursuant to this act.

The board may appoint and fix the duties of personnel necessary to carry out its functions under this act.

Sec. 7. Any person who may be eligible for compensation under this act may make application to the board on forms provided by the board. If the person entitled to make application is a minor or mentally incompetent, the application may be made on his behalf by his parent, guardian, or any other individual authorized to administer his estate.

Sec. 8. In order to be eligible for compensation the applicant shall, prior to any hearing on an application, submit available reports from any physician or surgeon who has treated or examined the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the hearing officer or the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the hearing officer or the board shall order the reports and examination.

Sec. 9. The board shall consider and rule upon any application made under the provisions of this act.

The board may upon its own motion order a hearing, specifying the time and place it shall be held. If a hearing is ordered, the board shall give written notice to the applicant. If, after consideration without a hearing, the decision is unfavorable to the applicant, in whole or in part, the board shall furnish him a written statement of the reason of the ruling. The applicant may request a hearing on his application within thirty days after receipt of the statement and the board shall specify a time and place for a hearing and shall give written notice to the applicant. If no request for a hearing is made within the specified time, the decision of the board shall be final.

Sec. 10. (1) The board or its hearing officer may hold hearings, sit and act at the times and places and take the testimony that the board or the hearing officers consider advisable, and administer oaths or affirmations to witnesses. The hearing officer or the board shall have full powers by subpoena to compel the appearance of witnesses and the production of any relevant evidence, but no subpoena shall be issued unless signed by a member of the board. Application to a court for aid in enforcing the subpoena may be made in the name of the board by any board member.

(2) The applicant and any other person having a substantial interest in the proceeding may appear and be heard, produce evidence, and cross-examine witnesses in person or by his attorney. The board or its hearing officer may hear other persons who in its or his or her judgment may have relevant evidence to submit.

Sec. 11. If a person has been convicted of an offense on which a claim under this act is based, proof of that conviction shall be taken as conclusive evidence that the offense occurred and that such person committed the offense, unless an appeal or a proceeding with regard to it is pending.

Sec. 12. The hearing officer or the board may, as part of an order entered under this act, determine and allow reasonable attorney's fees not to exceed five per cent of any compensation awarded. If the decision of a hearing officer or the board is appealed, the court shall determine reasonable attorney's fees.

Sec. 13. The board may make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and proceedings under this act, and any other matters the board considers appropriate, including special circumstances under which an award under this act may exceed ten thousand dollars.

The board shall make available all forms and educational materials necessary to promote the existence of the programs to persons throughout the state.

Sec. 14. For the purpose of determining the amount of compensation payable under this act, the board shall formulate standards for uniform application of this act and take into consideration rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States and the availability of funds appropriated for the purposes of this act.

Sec. 15. In a case in which a person is injured or killed as a result of conduct specified in this act, or by any act of any other person which is within the description of offenses listed in this act, the board or a hearing officer may order the payment of compensation:

(1) To or for the benefit of the injured person;

(2) In the case of personal injury or death of the victim, to a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury; or

(3) In the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim.

Sec. 16. (1) In determining whether to make an order under this act, the board or hearing officer shall consider all circumstances determined to be relevant, including, but not limited to, provocation, consent, or any other behavior of the victim which directly or indirectly contributed to his injury or death, the prior social history of the victim, if any, and the need for financial aid.

(2) An order may be made under this act, whether or not any person is prosecuted for or convicted of an offense arising out of the act which caused the injury or death involved in the application. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this act for such period as it considers appropriate on the ground that a prosecution for an offense arising out of the act which caused the injury or death involved in the application has been commenced or is imminent.

Sec. 17. (1) The board or a hearing officer may award compensation for losses and expenses allowable under this act for which the applicant is not compensated

by the offender or a person on behalf of the offender, by the United States, by a state or any of its subdivisions or agencies, or by a private source of emergency awards under section 20 of this act, for injury or death compensable under this act. Life insurance proceeds and social security payments shall not be treated as forms of such collateral compensation.

(2) If compensation is awarded under this act and the person receiving it also receives a collateral sum under this act which has not been deducted from it, he or she shall refund to the board either the amount of the collateral sum or the amount of compensation paid to him or her under this act, whichever is less.

Sec. 18. The board or hearing officer may order the payment of compensation for personal injury or death which resulted from:

(1) An attempt on the part of the applicant to prevent the commission of crime, to apprehend a suspected criminal, to aid or attempt to aid a police officer in the performance of his duties, or to aid a victim of a crime; or

(2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act.

Sec. 19. The board or hearing officer may order the payment of compensation for:

(1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) Loss of earning power as a result of total or partial incapacity of the victim and reasonable expenses of job retraining or similar employment-oriented rehabilitative services for the victim;

(3) Pecuniary loss to the dependents of the deceased victim; and

(4) Any other loss resulting from the personal injury or death of the victim which the board determines to be reasonable.

Sec. 20. If it appears to the board that, prior to taking action on an application, the claim is one for which compensation is probable, and undue hardship will result to the applicant if immediate payment is not made, the board may make an emergency award of compensation to the applicant pending a final decision in the case, except that:

(1) The amount of the emergency compensation shall not exceed five hundred dollars;

(2) The amount of the emergency compensation shall be deducted from the final compensation made to the applicant; and

(3) The excess amount of the emergency compensation over the final amount shall be repaid by the applicant to the board.

Sec. 21. No order for the payment of compensation shall be entered under this act unless the application has been submitted to the board within two years after the date of the personal injury or death and the personal injury or death was the result of an incident or offense which had been reported to the police within three days of its occurrence or if the incident or offense could not reasonably have been reported within that period, within three days of the time when a report could reasonably have been made.

Sec. 22. No compensation shall be awarded if the victim:

(1) Is a relative of the offender and aided or abetted the offender in the commission of the unlawful act;

(2) Is at the time of the injury, which results in the death of the victim, living with the offender as a member of the same family or household or maintaining a sexual relationship with the offender or with a member of the offender's family and aided or abetted the offender in the commission of the unlawful act;

(3) Violated a penal law of the state, which violation caused or contributed to his injuries or death; or

(4) Is injured as a result of the operation of a motor vehicle, boat, or airplane unless the vehicle was used in a deliberate attempt to injure or kill the victim.

Sec. 23. Except as provided in section 13 of this act, no compensation shall be awarded under this act in an amount in excess of ten thousand dollars for each applicant per incident. Each award shall be paid in installments unless the board decides otherwise.

Sec. 24. No order for payment of compensation under this act shall be made for injuries or death

resulting from incidents or offenses occurring prior to January 1, 1979.

Sec. 25. When an order for the payment of compensation for personal injury or death is made, the board shall be subrogated to the cause of action of the applicant against the person responsible for the injury or death and shall be entitled to bring an action against such person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the board shall pay the balance to the applicant.

Sec. 26. The Department of Correctional Services shall provide for the employment of confined persons by private businesses. The employment may be provided under section 83-183, Reissue Revised Statutes of Nebraska, 1943, or under section 27 of this act.

Sec. 27. The Department of Correctional Services may permit private business, commercial, industrial, and agricultural enterprise to operate on the grounds of the Penal and Correctional Complex.

Sec. 28. (1) An inmate employed under this act who has dependents shall pay one-third of his or her wages as restitution to the state for the amount of compensation awarded a victim of a crime for which the inmate is sentenced and shall pay two-thirds of his or her wages to his or her legal dependents.

(2) An inmate employed under this act who does not have dependents shall pay his or her wages as restitution to the state for the amount of compensation awarded a victim of a crime for which the inmate is sentenced until paid in full, and then shall pay the Department of Correctional Services for room, board, and other maintenance costs.

(3) Any additional income shall be held until the inmate is released.

Sec. 29. The Department of Correctional Services shall establish and maintain farms to provide food for the institutions under the jurisdiction of the department.

Sec. 30. Any person who knowingly makes a false claim under this act shall be guilty of a Class I misdemeanor and shall forfeit any benefit received and shall repay the state for any payment of compensation made under this act.

Sec. 31. The rights to compensation created under this act are personal and shall not survive the death of a victim or dependent entitled to them, except that if the death occurs after an application for compensation has been filed with the board the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

Sec. 32. All determinations, decisions, and awards made by the board or any hearing officer may be appealed pursuant to the provisions of Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 33. The board shall prepare and submit to the Governor and Legislature an annual report of its activities under this act including the name of each applicant, a brief description of the facts in each case, and the amount of compensation awarded.

Sec. 34. Any award to a claimant and any judgment in favor of a claimant under this act shall be certified by the board to the Director of Administrative Services, who shall promptly issue his warrant for payment of such award of judgment out of the Victim's Compensation Fund if sufficient money is available in such fund.

Sec. 35. There is hereby established in the state treasury a Victim's Compensation Fund from which all awards or judgments under this act shall be paid. This fund shall be in such amount as the Legislature shall determine to be reasonably sufficient to meet anticipated claims. When the amount of money in the Victim's Compensation Fund is not sufficient to pay any awards or judgments under this act, the Director of Administrative Services shall immediately advise the Legislature, and request an emergency appropriation to satisfy such awards and judgments. Any money in the Victim's Compensation Fund available for investment shall be invested by the state investment officer pursuant to applicable provisions of law.

Sec. 36. Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, accused of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio, or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the board any money which would otherwise, by terms of such

contract, be owing to the person so convicted or his representatives. The board shall deposit such money in the Victim's Compensation Fund.

Sec. 37. Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five years have elapsed from the deposit of money into the Victim's Compensation Fund by the accused and further that no actions are pending against such person pursuant to this act, the board shall immediately pay the money deposited by the accused to such person.

Sec. 38. Notwithstanding any other provision of law with respect to the timely bringing of an action, the five-year period provided for in section 37 of this act shall not begin to run until the accused has deposited money into the Victim's Compensation Fund.

Sec. 39. Notwithstanding the provisions of sections 36 to 38 of this act, the board shall make payments from the fund to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such money shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

Sec. 40. Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

Sec. 41. This act shall be known and may be cited as the Nebraska Crime Victim's Reparations Act.

Sec. 42. This act shall become operative on January 1, 1979.

LEGISLATIVE BILL 910A

Approved by the Governor April 26, 1978

Introduced by Schmit, 23

AN ACT to appropriate funds to aid in carrying out the provisions of Legislative Bill 910, Eighty-fifth Legislature, Second Session, 1978.

Be it enacted by the people of the State of Nebraska,

Section 1. There is hereby appropriated twenty-two thousand two hundred sixty-one dollars from the General Fund for the period July 1, 1978, to June 30, 1979, to the Crime Victims Reparations Board, Agency No. 61 for Program No. 368, to aid in carrying out the provisions of Legislative Bill 910, Eighty-fifth Legislature, Second Session, 1978.

Sec. 2. There is hereby appropriated twenty-five thousand dollars from the General Fund for the period July 1, 1978, to June 30, 1979, to the Department of Correctional Services, Agency No. 46 for Program 391, to aid in carrying out the provisions of Legislative Bill 910, Eighty-fifth Legislature, Second Session, 1978.