

LEGISLATIVE BILL 87

Approved by the Governor February 1, 1990

Introduced by Pirsch, 10

AN ACT relating to crime victims and witnesses; to amend sections 23-1201, 29-119, 29-1901, 81-1807, 81-1809, 81-1816, 81-1822, 81-1837, and 81-1848, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to consultations regarding plea agreements; to redefine a term; to change provisions relating to writs of subpoena and notices to appear; to change provisions relating to compensation under the Nebraska Crime Victim's Reparations Act; to provide additional rights for victims and witnesses as prescribed; and to repeal the original sections.

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

Section 1. That section 23-1201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1201. (1) Except as provided in section 29-3602, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement. The county attorney shall record such consultation or effort in his or her office file.

(2) It shall be the duty of the county attorney to prosecute or defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested. The county attorney ; ~~PROVIDED~~; ~~he or she~~ may be directed by the Attorney General to represent the state in any action or matter in which the state is interested or a party. When such services require the performance of duties which are in addition to the ordinary duties

of the county attorney, he or she shall receive such fee for his or her services, in addition to the salary as county attorney, as (a) the court shall order in any action involving court appearance, or (b) the Attorney General shall authorize in other matters, with the amount of such additional fee to be paid by the state. It shall also be the duty of the county attorney to appear and prosecute or defend on behalf of the state and county all such suits, applications, or motions which may have been transferred by change of venue from his or her county to any other county in the state. ~~Any~~ ~~;~~ ~~PROVIDED,~~ any counsel who may have been assisting the county attorney in any such suits, applications, or motions in his or her county may be allowed to assist in any other county to which such ~~said~~ cause has been removed. The county attorney shall file the annual inventory statement with the county board of county personal property in his or her possession, as provided in sections 23-346 to 23-350. It shall be the further duty of the county attorney of each county, within three days from the calling to his or her attention of any violation of the requirements of the law concerning annual inventory statements from county officers, to institute proceedings against such offending officer and in addition thereto to prosecute the appropriate action to remove such ~~said~~ county officer from office. When it is ~~;~~ ~~PROVIDED,~~ that in all cases where it shall be the county attorney who is charged with failure to comply with the provisions of this section, the Attorney General of Nebraska may bring the said action. It shall be the duty of the county attorney to make a report on the tenth day of each quarter to the county board which shall show final disposition of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter. ~~The~~ ~~;~~ ~~PROVIDED,~~ that the county board in counties having less than two hundred thousand population may waive the this duty to make such report.

Sec. 2. That section 29-119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-119. For purposes of sections 23-1201, 29-119, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement shall mean that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced;

or

(b) A defendant, if he or she pleads guilty to a charge, ~~may shall~~ receive less than the maximum penalty permitted by law; and

(2) Victim shall mean a person who, as a result of a homicide, as defined in sections 28-302 to 28-306, a first degree sexual assault, as defined in section 28-319, a first degree assault, as defined in section 28-308, a sexual assault of a child as defined in section 28-320.01, a second degree assault as defined in section 28-309, a first degree false imprisonment as defined in section 28-314, a second degree sexual assault as defined in section 28-320, or a robbery, as defined in section 28-324, has had a personal confrontation with the offender and shall also include a person who has suffered serious bodily injury as defined in subdivision (20) of section 28-109 as a result of a motor vehicle accident when the driver was charged with a Class W misdemeanor as provided in section 39-669.07 or 39-669.08 or with violation of a city or village ordinance enacted in conformance with either of such sections. In the case of a homicide, victim shall mean at least one family representative but shall not include the alleged perpetrator of the homicide. In the case of a sexual assault of a child, victim shall mean the child victim and the parents, guardians, or duly appointed legal representative of the child victim but shall not include the alleged perpetrator of the sexual assault.

Sec. 3. That section 29-1901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1901. In all criminal cases it shall be the duty of the clerk, upon a praecipe being filed, to issue writs of subpoena for all witnesses named ~~therein~~ in the praecipe, directed to the sheriff of his or county or of any county in the state where the witnesses reside or may be found, which shall be served and returned as in other cases. Such ; and such sheriff, by writing endorsed on such writs, may depute any disinterested person to serve and return the same. The writs of subpoena and all notices to appear shall include the following or substantially similar language: You may be entitled to compensation for witness fees and mileage for each day actually employed in attendance on the court or grand jury.

Sec. 4. That section 81-1807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1807. Any person who may be eligible for

compensation under the Nebraska Crime Victim's Reparations Act may make application to the committee on forms provided by the committee. If the person entitled to make application is a minor or mentally incompetent, the application may be made on his or her behalf by his or her parent, guardian, or any other individual authorized to administer his or her estate. Residents and nonresidents of the State of Nebraska who are victims of crimes committed in Nebraska shall be treated similarly in determining compensation awards under the act. A resident of Nebraska who is the victim of a crime committed in another state shall be eligible for compensation if (1) the crime would be compensable had it occurred in Nebraska and (2) the crime occurred in a state which does not have a crime victim compensation program for which the person is eligible.

Sec. 5. That section 81-1809, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1809. (1) A hearing officer shall consider and rule upon any application made under the Nebraska Crime Victim's Reparations Act within one hundred eighty days after receipt of all required information related to the crime.

(2) If the hearing officer denies an award of compensation or awards an amount less than or equal to the amount requested by the applicant, the hearing officer shall furnish the applicant with a written statement of the reason for the ruling. The applicant may request a hearing on his or her application within thirty days after receipt of the statement. If the applicant requests a hearing, the hearing officer shall furnish the committee with his or her findings of fact and conclusions of law together with the reasons for the findings and conclusions. The committee shall specify a time and place for a hearing and shall give written notice to the applicant. The hearing shall be held within one hundred twenty days after receipt of the request for a hearing. If no request for a hearing is made within the specified time, the decision of the hearing officer shall be final.

(3) If the hearing officer awards an amount to the applicant greater than the amount requested by the applicant, the hearing officer shall furnish the committee with his or her findings of fact and conclusions of law together with the reasons for granting the applicant more than he or she requested. The committee shall review the decision of the hearing officer taking into consideration the availability of

funds appropriated for the purposes of the Nebraska Crime Victim's Reparations Act and other standards formulated pursuant to section 81-1814. The committee may approve the same amount awarded by the hearing officer, may increase or decrease the amount, or may deny an award of compensation.

Sec. 6. That section 81-1816, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1816. (1) In determining whether to make an order under the Nebraska Crime Victim's Reparations Act, the committee 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 or her 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 the Nebraska Crime Victim's Reparations 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 committee may suspend proceedings under the Nebraska Crime Victim's Reparations 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. 7. That section 81-1822, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1822. No compensation shall be awarded, if the victim-

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

(2) If the offender will receive economic benefit or unjust enrichment from the compensation; 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) If the victim violated Violated a criminal law of the state, which violation caused or contributed to his or her injuries or death;

(4) If the victim is injured as a result of the operation of a motor vehicle, boat, or airplane (a) unless the vehicle was used in a deliberate attempt to injure or kill the victim, (b) or unless the operator is convicted or charged with a violation of section 39-669.07 or 39-669.08 or a city or village ordinance enacted in conformance with either of such sections, or (c) unless any chemical test of the operator's breath, blood, or urine indicates an alcohol concentration equal to or in excess of the limits prescribed in section 39-669.07; or

(5) Aided or abetted the offender in the commission of the unlawful act; or

(6) incurs (5) If the victim incurs an economic loss which does not exceed ten percent of the claimant's his or her net financial resources. For purposes of this subdivision, a victim's net financial resources shall not include the present value of future earnings and shall be determined by the committee by deducting from the victim's total financial resources:

(a) One year's earnings;

(b) The victim's equity in his or her home, not exceeding thirty thousand dollars;

(c) One motor vehicle; and

(d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

Nothing in this section shall limit payments to a victim by an offender which are made as full or partial restitution of the victim's actual pecuniary loss.

Sec. 8. That section 81-1837, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1837. 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 pursuant to section 81-1836 and further that no actions are pending against such person pursuant to the Nebraska Crime Victim's Reparations Act, the committee shall immediately pay the money deposited pursuant to such section by the accused to such person.

Sec. 9. That section 81-1848, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1848. (1) Victims as defined in section 29-119 shall have the following rights:

(a) To examine information which is a matter

of public record and collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges. Such information shall include any disposition arising from such arrests, charges, sentencing, correctional supervision, and release, but shall not include intelligence or investigative information;

(b) To receive from the county attorney advance reasonable notice of any scheduled court proceedings and notice of any changes in that schedule;

(c) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the time and place of the sentencing proceeding and to be notified by the county attorney in writing of the final disposition of the case within thirty days of the final disposition of the case; and

(d) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the time and place of any subsequent judicial proceedings if the defendant was acquitted on grounds of insanity.

(2) Victims and witnesses of crimes shall have the following rights:

(a) To be informed on all writs of subpoena or notices to appear that they are entitled to apply for and may receive a witness fee;

{1} To be informed by local law enforcement agencies and the county attorney of the final disposition of the case- if the crime charged is a felony, the victim shall be notified whenever the defendant or perpetrator is released from custody;

{2} (b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court;

{3} (c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts; and to be provided with information as to the level of protection available;

{4} (d) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;

{5} (e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;

~~(6)~~ ~~(f)~~ To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

~~(7)~~ ~~(g)~~ To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days of being taken;

~~(8)~~ ~~(h)~~ To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;

~~(9)~~ ~~(i)~~ To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter; and

~~(10)~~ ~~(j)~~ To have the family members of all homicide victims afforded all of the rights under subsection (2) of this section ~~subsections (1) to (4) and (6) to (9)~~ and services analogous to those provided under section 81-1847.

Sec. 10. To receive the notices provided for in section 81-1848, a victim shall keep the county attorney informed of his or her current address and phone number until sentence has been imposed or the final disposition reached in the case in which the victim is involved, whichever is earlier.

Sec. 11. That original sections 23-1201, 29-119, 29-1901, 81-1807, 81-1809, 81-1816, 81-1822, 81-1837, and 81-1848, Reissue Revised Statutes of Nebraska, 1943, are repealed.