

LEGISLATIVE BILL 186

Approved by the Governor June 5, 1991

Introduced by Lindsay, 9; Schimek, 27; Will, 8;
Rasmussen, 20; Abboud, 12; Pirsch, 10

AN ACT relating to crime victims and witnesses; to amend sections 81-1801 and 81-1806, Reissue Revised Statutes of Nebraska, 1943, and section 81-1848, Revised Statutes Supplement, 1990; to define a term; to authorize service as a hearing officer by an executive director; to provide certain information to victims and witnesses of crime as prescribed; to provide for certain information in the file of a convicted person; to provide duties for the Board of Parole, county attorneys, and the Department of Correctional Services; to require certain convicted persons to submit to testing as prescribed; and to repeal the original sections.

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

Section 1. That section 81-1801, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1801. As used in For purposes of the Nebraska Crime Victim's Reparations Act, unless the context otherwise requires:

(1) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice;

~~(2)~~ Committee shall mean the Crime Victim's Reparations Committee;

~~(2)~~ (3) Dependent shall mean a relative of a deceased victim, who was dependent upon the victim's income at the time of death, including children a child of a victim born after a victim's death;

~~(4)~~ Executive director shall mean the executive director of the commission;

~~(3)~~ (5) Personal injury shall mean actual bodily harm;

~~(4)~~ (6) Relative shall mean spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parente parent; and

~~(5)~~ (7) Victim shall mean a person who is injured or killed as a result of conduct specified in

section 81-1818, and

(6) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

Sec. 2. That section 81-1806, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1806. The executive director may serve as a hearing officer pursuant to this section and in addition the committee, with the approval of the commission, shall appoint one or more additional hearing officers, who shall be licensed to practice law in the state, to conduct hearings, take testimony in proceedings under the Nebraska Crime Victim's Reparations Act, and make determinations of any matter subject to such act.

Sec. 3. That section 81-1848, Revised Statutes Supplement, 1990, 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;

(e) Within ninety days of conviction of an offender, to be notified of the tentative date of release and the earliest parole eligibility date of such offender; and

(f) To be notified of any parole hearings, to

testify before the Board of Parole or submit a written statement for consideration by the board, and to be notified of the decision of and any action taken by the board.

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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

(j) To be informed by the county attorney of

the final disposition of a felony case in which they were involved and to be notified pursuant to section 4 of this act whenever the defendant in such case is released from custody; and

(k) To have the family members of all homicide victims afforded all of the rights under subsection (2) of this section and services analogous to those provided under section 81-1847.

Sec. 4. (1) Upon request of the victim and at the time of conviction of the offender, the county attorney of the jurisdiction in which a person is convicted of a felony shall forward to the Board of Parole the name and address of any victim as defined in section 29-119 of the convicted person. The board shall include the name in the file of the convicted person, but the name shall not be part of the public record of any parole hearings of the convicted person. Any victim, including a victim who has waived his or her right to notification at the time of conviction, may request the notification prescribed in this section by sending a written request to the board any time after the convicted person is incarcerated and until the convicted person is no longer under the jurisdiction of the board or the Department of Correctional Services.

(2) A victim whose name appears in the file of the convicted person shall be notified by the Board of Parole:

(a) When a convicted person who is on parole is returned to custody because of parole violations; and

(b) If the convicted person has been adjudged a mentally disordered sex offender, when such person is released from custody or treatment.

Such notification shall be given in person, by telecommunication, or by certified or registered mail.

(3) A victim whose name appears in the file of the convicted person shall be notified by the Department of Correctional Services:

(a) When a convicted person is granted a furlough or release from incarceration for twenty-four hours or longer;

(b) When a convicted person is released into community-based programs, including educational release, work release, and extended-leave programs. Such notification shall occur at the beginning and termination of any such program;

(c) When a convicted person escapes or does not return from a granted furlough or release and again when the convicted person is returned into custody; and

(d) When a convicted person is discharged from

custody upon completion of his or her sentence.

(4) The Board of Parole and the Department of Correctional Services shall adopt and promulgate rules and regulations to carry out this section.

Sec. 5. Notwithstanding any other provision of law, when a person has been convicted of sexual assault pursuant to sections 28-317 to 28-320 or sexual assault of a child pursuant to section 28-320.01, the presiding judge shall, at the request of the victim as part of the sentence of the convicted person, order the convicted person to submit to a human immunodeficiency virus antibody or antigen test. Such test shall be conducted under the jurisdiction of the Department of Correctional Services. The results of the test shall be reported to the victim of the sexual assault or to the parents or guardian of the victim if the victim is a minor or is mentally incompetent.

The department shall adopt and promulgate rules and regulations to carry out this section.

Sec. 6. That original sections 81-1801 and 81-1806, Reissue Revised Statutes of Nebraska, 1943, and section 81-1848, Revised Statutes Supplement, 1990, are repealed.