

NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

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ARKANSAS VICTIMS' RIGHTS LAWS¹

Constitution

Arkansas does not have a victims' rights amendment to its constitution.

Statutes

**Title 16, Practice, Procedure, and Courts; Subtitle 6, Criminal Procedure Generally;
Chapter 90, Judgment and Sentence Generally; Subchapter 11, Rights of Victims of Crime**

§ 16-90-1101 – Definitions

In this subchapter:

- (1) "Crime" means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration;
- (2) "Member of the victim's family" means the spouse, a child by birth or adoption, a stepchild, a parent, a stepparent, a sibling, or an individual designated by the victim or by a court in which the crime is being or could be prosecuted, but does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan;
- (3) "Offense against a victim who is a minor" means:
 - (A) Kidnapping pursuant to § 5-11-102(a)(4) when the victim is a minor and the offender is not the parent of the victim;
 - (B) False imprisonment in the first degree pursuant to § 5-11-103 when the victim is a minor and the offender is not the parent of the victim;
 - (C) Permanent detention or restraint pursuant to § 5-11-106 when the victim is a minor and the offender is not the parent of the victim;
 - (D) Any sex offense when the victim is a minor;
 - (E) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (3);
 - (F) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (3); or
 - (G) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (3);

¹ Not intended to be exhaustive.

(4) "Person" means an individual, corporation, estate, trust, partnership, association, joint venture, governmental entity, agency, or instrumentality, or any other legal entity;

(5) "Representative of the victim" means a member of the victim's family or an individual designated by the victim or by a court in which the crime is being or could be prosecuted;

(6) "Sex offense" means:

- (A) Rape, § 5-14-103;
- (B) Sexual indecency with a child, § 5-14-110;
- (C) Sexual assault in the first degree, § 5-14-124;
- (D) Sexual assault in the second degree, § 5-14-125;
- (E) Sexual assault in the third degree, § 5-14-126;
- (F) Sexual assault in the fourth degree, § 5-14-127;
- (G) Incest, § 5-26-202;
- (H) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
- (I) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- (J) Employing or consenting to use of child in sexual performance, § 5-27-402;
- (K) Producing, directing, or promoting a sexual performance, § 5-27-403;
- (L) Promoting prostitution in the first degree, § 5-70-104;
- (M) Stalking, § 5-71-229;
- (N) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (6);
- (O) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (6);
- (P) Computer child pornography, § 5-27-603;
- (Q) Computer exploitation of a child in the first degree, § 5-27-605(a); or
- (R) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (6);

(7) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;

(8) "Victim" means a victim of a sex offense or an offense against a victim who is a minor and a victim of any violent crime, but does not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan and does not include a governmental entity; and

(9) "Violent crime" means any felony which resulted in physical injury to the victim, any felony involving the use of a deadly weapon, terroristic threatening in the first degree, § 5-13-301(a), and stalking, as defined in § 5-7-229.

§ 16-90-1102 -- Compliance with act

Failure to comply with this subchapter does not create a claim for damages against a government employee, official, or entity.

§ 16-90-1103 – Presence at court proceedings

(a) The victim or a representative of the victim may be present whenever the defendant has a right to be present during a court proceeding concerning the crime charged, other than a grand jury proceeding, unless the court determines that exclusion of the victim or the victim's representative is necessary to protect the defendant's right to a fair trial or the confidentiality or fairness of a juvenile proceeding.

(b) If the victim is present, the court, at the victim's request, shall permit the presence of an individual to provide support to the victim, unless the court determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

§ 16-90-1104 – Nondisclosure of information about victim

(a) A court may not compel a victim or a member of the victim's family testifying in a criminal justice proceeding to disclose a residential address or place of employment on the record in open court unless the court finds that disclosure of the information is necessary.

(b) A law enforcement agency shall not disclose to the public information directly or indirectly identifying the victim of a sex crime except to the extent that disclosure is of the site of the crime, is required by law, is necessary for law enforcement purposes, or is permitted by the court for good cause.

§ 16-90-1105 – Limitations on employer

An employer may not discharge or discipline a victim or a representative of the victim for:

- (1) participation at the prosecuting attorney's request in preparation for a criminal justice proceeding; or
- (2) attendance at a criminal justice proceeding if the attendance is reasonably necessary to protect the interests of the victim.

§ 16-90-1106 – Prompt return of property

(a) Any person holding property of a victim shall take reasonable care of the property.

(b) The responsible official shall promptly return the property to the victim when it is no longer needed for evidentiary purposes, unless it is contraband or subject to forfeiture.

§ 16-90-1107 – Information from law enforcement agencies

(a) After initial contact between a victim and a law enforcement agency responsible for investigating a crime, the agency shall promptly give in writing to the victim:

- (1) An explanation of the victim's rights under this subchapter; and
- (2) Information concerning the availability of:
 - (A) Assistance to victims, including medical, housing, counseling, financial, social, legal, and emergency services;
 - (B) Compensation for victims under the Arkansas Crime Victims Reparations Act, § 16-90-701 et seq., and the name, street address, and telephone number of the agency to contact;
 - (C) Protection of the victim, including protective court orders; and
 - (D) Access by the victim and the defendant to public records related to the case.

(b) As soon as practicable, the law enforcement agency shall give to the victim, as relevant, the following:

- (1) information as to the suspect's identity, unless inconsistent with law enforcement purposes;
- (2) information as to whether the suspect has been taken into custody, has escaped, or has been released, and any conditions imposed on the release when such information has been made known to the law enforcement agency;
- (3) the file number of the case and the name, office address, and office telephone number of a law enforcement officer assigned to investigate the case; and
- (4) the prosecuting attorney's name, office address, and office telephone number.

§ 16-90-1108 – Information concerning appeal or post-conviction remedies

If the defendant appeals or pursues a post-conviction remedy, the Attorney General shall, as to cases handled by the Attorney General, promptly inform the victim of that fact, of the date, time, and place of any hearing, and of the decision.

§ 16-90-1109 – Information concerning confinement

(a) Upon request of the victim, the Department of Correction, Arkansas State Hospital, and any other facility to which the defendant is committed by the court shall:

- (1) Promptly inform the victim of the estimated date of the defendant's release from confinement, if reasonably ascertainable;

- (2) Inform the victim at least thirty (30) days before release of the defendant on furlough or to a work-release, halfway house, or other community program; and
- (3) Promptly inform the victim of the occurrence of any of the following events concerning the defendant:
 - (A) An escape from a correctional or mental health facility or community program;
 - (B) A recapture;
 - (C) A decision of the Governor to commute the sentence or to pardon;
 - (D) A release from confinement and any conditions attached to the release; and
 - (E) The defendant's death.

(b) (1) At least thirty (30) days before a Post Prison Transfer Board hearing concerning the defendant, if requested by the victim, the board shall inform the victim of the hearing and of the victim's right to submit to the Post Prison Transfer Board a victim impact statement and shall promptly inform the victim of any decision of the board.

- (2) (A) It is the responsibility of the victim or his next of kin to notify the board of any change in address or telephone number.
- (B) It is the responsibility of the victim or his next of kin to notify the board after the date of commitment of any change in regard to the desire to be notified of any future parole hearings.

§ 16-90-1110 – General requirements for information

(a) (1) Unless otherwise provided by this subchapter, information required to be furnished to the victim or other person authorized to receive notice may be furnished either orally or in writing.

- (2) It is the responsibility of the victim or other person authorized to receive notice to furnish to the proper authorities, and keep current, the victim's mailing address and phone number.

(b) The person responsible for furnishing information shall promptly inform the victim of significant changes in the information to be furnished.

(c) (1) The person responsible for furnishing information may rely upon the most recent name, address, and telephone number furnished by the victim.

- (2) The address and telephone number of the victim or the immediate family member shall be exempt from the Freedom of Information Act of 1967, § 25-19- 101 et seq.

(3) It is the responsibility of the victim or his next of kin to notify the person responsible for providing notice under this subchapter regarding any change in the victim's name, address, or telephone number.

§ 16-90-1111 – Presentence report

In preparing a presentence report, the person preparing the report shall make a reasonable effort to confer with the victim. If the victim is not available or declines to confer, the person preparing the report shall record that information in the report.

§ 16-90-1112 – Victim-impact statement

(a) (1) Before imposing sentence, the court shall permit the victim to present a victim impact statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, and the manner in which the crime was perpetrated.

(2) The victim may present the statement in writing before the sentencing proceeding or orally under oath at the sentencing proceeding.

(b) The court shall give copies of all written victim impact statements to the prosecuting attorney and the defendant.

(c) The sentencing court shall consider the victim impact statement along with other factors, but if the victim impact statement includes new material factual information upon which the court intends to rely, the court shall adjourn the sentencing proceeding or take other appropriate action to allow the defendant adequate opportunity to respond.

§ 16-90-1113 – Consideration of victim-impact statement at parole hearing

(a) (1) (A) Before determining whether to release the defendant on parole, the Post Prison Transfer Board shall permit a victim to present a written victim impact statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the defendant should be released on parole.

(B) At the victim's option, the victim may present the statement orally at the parole hearing.

(2) The Post Prison Transfer Board shall give the defendant a copy of all written victim impact statements.

(b) The Post Prison Transfer Board, in deciding whether to release a prisoner on parole, shall consider among other factors:

(1) Victim impact statements presented under subsection (a) of this section; and

(2) Victim impact statements presented to the sentencing court under § 16-90-1112.

§ 16-90-1114 – Derivative rights of member of victim's family

(a) If a victim is a minor or is incapacitated, incompetent, or deceased, a member of the victim's family may exercise the rights of the victim under this subchapter.

(b) If more than one (1) member of the victim's family attempts to exercise those rights, the court may designate which of them may exercise those rights.

§ 16-90-1115 – Duty to provide information or notices

None of the provisions of this subchapter or §§ 16-21-106 and 16-93- 702(b) shall be deemed to relieve any person of the duty of providing information or notices required by any other law.

Subchapter 3, Restitution to Victims

§ 16-90-301 – Findings

The General Assembly recognizes that many innocent persons suffer injury, death, property damage, and resultant financial hardship because of crimes committed in this state and that there is a genuine need in this state to establish a method whereby the responsible offender, as far as practicable, may be required to make restitution to his victim so as to make that victim whole with respect to the financial injury suffered.

§ 16-90-302 – Amendatory provisions

The provisions of this subchapter are amendatory and supplemental to Act 482 of 1977, as amended.

§ 16-90-307 – Establishment of Restitution Fund

(a) The circuit judges of each judicial district may establish a restitution fund to be administered by the circuit judge, the prosecuting attorney, or probationary agency, whichever the circuit judge shall designate.

(b) The circuit judges shall provide rules and regulations for this fund and shall supervise it.

(c) (1) The circuit judges may levy additional fines against criminal defendants and place the additional fine money in the restitution fund of the judicial district.

(2) The additional fines shall be in an amount not to exceed the amount of the criminal

penalty fine provided by law for the offense.

(3) The additional fine money shall be remitted to the fund, to be deposited in a depository other than the county treasurer or State Treasury.

(d) Application for restitution may be made by victims of crime by written petition to the circuit judge, and the application shall be ruled upon without hearing.

(e) Nothing in this section shall be construed as prohibiting any circuit judge from requiring any specific defendant to make direct restitution to specific victims.

§ 16-90-308 – Contracts for Reenactment; proceeds

(a) (1) Any person, referred to as the defendant in this section, who has been convicted of, or has pled guilty or nolo contendere to, any crime, who contracts to reenact the crime by use of any book, motion picture, magazine article, radio or television presentation, live entertainment, or any live or recorded presentation, or from the expression of his thoughts, opinions, or emotions regarding the crime, shall pay to the circuit court wherein the charges were filed any money or thing of value contracted to be paid to the defendant, his spouse, heirs, assigns, and transferees.

(2) The circuit court shall deposit the moneys in an escrow account for the benefit of, and payable to, any victim, or his legal representative, of crimes committed by the defendant.

(b) Payments from the account shall be made to the defendant upon an order of the judge of the circuit court wherein the charges were filed upon a showing that the money or thing of value shall be used for the exclusive purpose of retaining legal representation for the defendant at any stage of the criminal proceedings arising out of the criminal charge and that the defendant would otherwise be unable to afford adequate representation.

(c) (1) Payments from the account shall be used to satisfy any civil judgment rendered in favor of a victim or his legal representative which arose out of the circumstances upon which the defendant's conviction was based, but only if the victim brings a civil action to recover money against the defendant.

(2) If no victim or legal representative of a victim has filed suit within five (5) years from the filing of the charges, any money remaining shall be paid over to any state-supported victim reparation or assistance program.

(3) Upon the disposition of the criminal charges in favor of the defendant, money in the account shall be paid over to the defendant.

(d) The circuit court wherein the charges were filed once every year for four (4) years from the date the money is deposited with the court, shall publish a notice in at least one (1) newspaper of general circulation in each county of the state, notifying any eligible victim or legal

representative of an eligible victim that moneys are available to satisfy judgments pursuant to this section.

Other Victims' Rights Laws

§ 16-21-106. Notice and services provided victims and witnesses

- (a) (1) The prosecuting attorneys shall, upon request, provide to a victim and the immediate family members of all homicide victims, whether or not they are witnesses in criminal proceedings, notice of critical events in the criminal justice process, which shall include, but not be limited to:
- (A) Notice of motions or hearings to establish or reduce bail or authorize other pretrial release from custody;
 - (B) Notice of proceedings in which any plea agreement may be submitted;
 - (C) Notice of trial;
 - (D) Notice of any motion that may substantially delay the prosecution;
 - (E) Notice that a court proceeding for which the victim had been subpoenaed will not transpire as scheduled;
 - (F) Notice of the date, time, and place of the defendant's appearance before a judicial officer;
 - (G) The function of a presentence report, the name, street address, and telephone number of the agency preparing the report, and the defendant's right of access to the report;
 - (H) Notice of the victim's right under this act to present a victim impact statement and the defendant's right to be present at the sentencing proceeding;
 - (I) Notice of the date, time, and place of any sentencing proceeding;
 - (J) Notice of the date, time, and place of any hearing for reconsideration of a sentence imposed;
 - (K) Notice of any sentence imposed and any modification of that sentence; and
 - (L) Notice of the right to receive information from the Department of Correction, State Hospital and any other facility to which the defendant is committed by the court.
- (2) After a prosecution is commenced, the prosecuting attorney shall promptly inform a victim of:
- (A) Relevant criminal justice procedures;
 - (B) The crime with which the defendant has been charged, including an explanation of the elements of crime, if necessary to an understanding of the nature of the crime; and
 - (C) The file number of the case and the prosecuting attorney's name, office address, and telephone number.
- (3) (A) The notice may be accomplished by providing the victim or immediate family member with a telephone number to a computer notification program.

- (B) Prosecutors remain responsible for providing the notice in instances where no computer notification program exists.
- (4) When an immediate family member has been charged with the homicide, that person shall not be notified in accordance with this section.
- (b) (1) Prosecuting attorneys shall confer with the victim before amending or dismissing a charge or agreeing to a negotiated plea or pretrial diversion.
- (2) Failure of the prosecuting attorney to confer with the victim does not affect the validity of an agreement between the prosecuting attorney and the defendant or of an amendment, dismissal, plea, pretrial diversion, or other disposition.
- (c) (1) The prosecuting attorney of the county from which the inmate was committed shall notify the Post Prison Transfer Board at the time of commitment of the desire of the victim, or member of the victim's family, to be notified of any future parole hearings and to forward to the board the last known address and telephone number of the victim or member of the victim's family.
- (2) It shall be the responsibility of the victim or his next of kin to notify the board after the date of commitment of any change in regard to the desire to be notified of any future parole hearings.
- (d) The prosecuting attorneys and deputy prosecuting attorneys shall provide the following services to victims of crimes and witnesses of crimes and the family members of all homicide victims, whether or not they are witnesses in criminal proceedings:
- (1) Assist such persons in obtaining protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;
 - (2) Assist such persons in applying for financial assistance and other social services available as a result of being a witness or victim of a crime;
 - (3) Assist such persons in applying for any witness fees to which they are entitled;
 - (4) Provide, when possible, a secure waiting area during court proceedings that does not require such persons to be in close proximity to the defendants and families and friends of the defendants and otherwise make a reasonable effort to minimize unwanted contact between the victim, members of the victim's family, or prosecution witnesses and the defendant, members of the defendant's family, or defense witnesses before, during, and immediately after a judicial proceeding; and
 - (5) Intercede with such persons' employers to assure that the employers cooperate with the criminal justice process in order to minimize loss of pay and other benefits resulting from court appearances.
- (e) In order to enable the prosecuting attorney to perform the additional duties provided in this section:
- (1) The prosecutor may request the county judge of the county to designate or provide an appropriate room or area in the county courthouse, reasonably close to the courtroom, to

serve as a waiting area during court proceedings to accommodate the families and friends of the defendants, as provided in subsection (d) of this section; and

- (2) The prosecutor may request the quorum court of the county to provide additional employees for his office to be known as "victim of crimes case coordinators" at such salary as may be determined by the quorum court, to be in addition to any other position available to the prosecutor's office.

Reparations Statutes

§ 16-90-701 – Citation

This subchapter shall be known and may be cited as the "Arkansas Crime Victims Reparations Act".

§ 16-90-702. Legislative intent

It is the intent of the General Assembly to provide a method of compensating and assisting those persons within the state who are victims of criminal acts and who suffer personal injury or death. To this end, it is the further intent of the General Assembly to provide reparations, in the amount of expenses actually incurred as a direct result of the criminal acts of other persons, up to a maximum reparations amount of ten thousand dollars (\$10,000). However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the maximum reparations amount shall not exceed twenty-five thousand dollars (\$25,000).

§ 16-90-703 – Definitions

As used in this subchapter, unless the context otherwise requires:

- (1) "Board" means the Crime Victims Reparations Board created by § 16-90- 705;
- (2) (A) "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct committed either within the State of Arkansas or against any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible, and further includes any Arkansas resident who is injured or killed by an act of terrorism committed outside of the United States, as defined in 18 U.S.C. § 2331.
(B) The term "victim" shall also include a person who:
 - (i) Is the child, whether by blood, adoption, or marriage, of a victim as defined in subdivision (2)(A) of this section;

- (ii) (a) Is an immediate family member of a deceased victim, a victim of sexual assault, or a child victim; or
 - (b) Is not an immediate family member, but who resided at the time of the crime in the same permanent household as a deceased victim; or
 - (iii) Discovered the body of a victim who died as the result of criminally injurious conduct;
- (3) "Dependent" means a natural person wholly or partially dependent upon the victim for care or support and includes a child of the victim born after the death of the victim where the death occurred as a result of criminally injurious conduct;
- (4) (A) "Claimant" means any of the following persons applying for reparations under this subchapter:
 - (i) A victim;
 - (ii) A dependent of a victim who has died because of criminally injurious conduct; or
 - (iii) A person authorized to act on behalf of any of the persons enumerated in subdivisions (4)(A) and (B) of this section.(B) The term shall not include a service provider;
- (5) (A) (i) "Criminally injurious conduct" means an act which occurs or is attempted in this state that results in personal injury or death to a victim, which act is punishable by fine, imprisonment, or death.
 - (ii) This term shall include acts of terrorism committed outside of the United States as defined in 18 U.S.C. § 2331 against any Arkansas resident.
 - (iii) This term shall not include acts arising out of the operation of motor vehicles, boats, or aircraft unless the acts were committed with the intent to inflict injury or death or unless the acts involve any of the following:
 - (a) Injury or death intentionally inflicted through the use of a motor vehicle, boat, or aircraft;
 - (b) A violation of the Omnibus DWI Act, § 5-65-101 et seq.; or
 - (c) A violation of § 27-53-101.(B) For the purposes of this subchapter, a person shall be deemed to have committed criminally injurious conduct, notwithstanding that by reason of age, insanity, drunkenness, or other reason he was legally incapable of committing a crime;
- (6) "Economic loss" means monetary detriment consisting of allowable expense and work loss, but shall not include noneconomic detriment;
- (7) (A) "Allowable expense" means charges incurred for needed products, services, and accommodations, including, but not limited to:
 - (i) Medical care;
 - (ii) Rehabilitation;
 - (iii) Rehabilitative occupational training;
 - (iv) Crime scene cleanup; and
 - (v) Other remedial treatment and care.

(B) It also includes a reasonable and necessary amount for expenses related to funeral, cremation, or burial;

(8) "Work loss" means loss of income from work the victim or claimant would have performed if the victim had not been injured or died, reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake;

(9) "Noneconomic detriment" means:

- (A) Pain;
- (B) Suffering;
- (C) Inconvenience;
- (D) Physical impairment; and
- (E) Nonpecuniary damage;

(10) "Collateral source" means a source of benefits or advantages for economic loss which the claimant has received or which is readily available to the claimant from any one (1) or more of the following:

- (A) The offender;
- (B) (i) The United States Government or any agency thereof in the form of benefits, such as social security, medicare, and medicaid; or
(ii) A state or any of its political subdivisions;
- (C) State-required temporary nonoccupational disability insurance;
- (D) Workers' compensation;
- (E) Wage continuation programs of any employer;
- (F) Proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct; or
- (G) A contract providing prepaid hospital and other health care services or benefits for disability;

(11) "Immediate family" means a person's spouse, children, parents or guardian, siblings, and grandparents, whether related by blood, adoption, or marriage; and

(12) "Personal injury" means actual bodily harm, including pregnancy or mental anguish which is the direct result of a violent criminal act.

§ 16-90-704 – Punishment

The filing of a false claim for reparations pursuant to this subchapter shall constitute a Class D felony.

§ 16-90-705 – Crime Victims Reparations Board

- (a) (1) There is created a Crime Victims Reparations Board consisting of five (5) members appointed by the Governor with the advice and consent of the Senate to serve four-year staggered terms and until a successor is appointed and qualified.
 - (2) At least two (2) members of the board shall be persons admitted to practice law in this state.
 - (3) At least one (1) member of the board shall be:
 - (A) A victim of criminally injurious conduct;
 - (B) The next of kin of a homicide victim; or
 - (C) An individual experienced in providing victim assistance services.
 - (4) Vacancies shall be filled in the same manner as a regular appointment.
- (b) Each year the board shall elect the chairman from its membership.
- (c) (1) Members of the board shall receive no pay for their services, but each member may receive expense reimbursement in accordance with § 25-16-901 et seq.
 - (2) All reasonable and necessary expenses of the board shall be paid from the Crime Victims Reparations Revolving Fund.

§ 16-90-706 – Board; powers and duties

- (a) (1) The board shall have the power to award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met. The board shall have authority to award the reparations either to the claimant or directly to the provider of services.
 - (2) The board shall hear and determine all matters relating to claims for reparations, including the power to reinvestigate or reopen claims without regard to statutes of limitation. The board shall have discretion to act in a panel of three (3) or more members. This panel may exercise the powers granted to the board.
 - (3) The board shall have the power to subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings, and receive relevant evidence.
 - (4) The board shall be provided such office, support staff, and secretarial services as necessary by the office of the Attorney General.
- (b) In addition to any other powers and duties specified elsewhere in this subchapter, the board may:
- (1) Regulate its own procedure except as otherwise provided in this subchapter;
 - (2) Adopt rules and regulations to implement the provisions of this subchapter;
 - (3) Define any term not defined in this subchapter;
 - (4) Prescribe forms necessary to carry out the purposes of this subchapter;

- (5) Request access to any reports of investigations or other data necessary to assist the board in making a determination of eligibility for reparations under the provisions of this subchapter;
- (6) Take judicial notice of general, technical, and scientific facts within their specialized knowledge; and
- (7) Publicize the availability of reparations and information regarding the filing of claims therefore.

§ 16-90-707 – Board activities report

The board shall prepare and transmit annually a report of its activities to the Governor. This report shall include the amount of reparations awarded and a statistical summary of claims and awards made and denied.

§ 16-90-708 – Applications

- (a) Each law enforcement agency in the state shall keep application forms prepared and provided by the board and make them available to any person upon request.
- (b) The board may contact any law enforcement agency to determine if an applicant has cooperated with that agency in the identification, apprehension, and conviction of the perpetrator of the crime.

§ 16-90-709 – Hearing; settlement

- (a) Every party to the claim shall be afforded an opportunity to appear and be heard, to offer evidence and argument on any issues relevant to the claim, and to examine witnesses and offer evidence to reply to any matter of an evidentiary nature in the record relevant to the claim. A record of the proceedings of the hearing in a contested case shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the board.
- (b) Without a hearing, the board may settle a claim by stipulation, agreed settlement, consent order, or default.

§ 16-90-710 – Doctor-patient privilege; waiver

- (a) Any person filing a claim under the provisions of this subchapter shall be deemed to have waived any physician-patient privilege as to communications or records relevant to an issue of the physical, mental, or emotional conditions of the claimant.
- (b) If the mental, physical, or emotional condition of a claimant is material to a claim, upon good

cause shown, the board may order the claimant to submit to a mental or physical examination and may order an autopsy of a deceased victim. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made. The order shall also require the person to file a detailed written report of the examination or autopsy with the board. The report shall set out the findings of the person making the report, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(c) The board shall furnish to the victim a copy of any reports examined. If the victim is deceased, the board, on request, shall furnish a copy of the report to the claimant.

(d) The board may require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which reparations are claimed.

§ 16-90-711 – Certain documents confidential

The following information, when submitted to the board as part of an application, shall be confidential:

- (1) Documents submitted by a claimant which relate to medical treatment;
- (2) Law enforcement investigative reports, if confidential under any other law.

§ 16-90-712 – Conditions for reparations – Changes in awards

(a) Reparations shall not be awarded:

- (1) Unless the claim has been filed with the Crime Victims Reparations Board within one (1) year after the injury or death upon which the claim is based, unless the board shall find good cause for the failure to file a timely claim;
- (2) To a claimant who was the offender or an accomplice of the offender;
- (3) To another person if the award would unjustly benefit the offender or accomplice;
- (4) To a victim who is injured or killed while confined in state, county, or municipal jail, prison, or other correctional facility as a result of conviction of any crime;
- (5) To any claimant who has been convicted of a felony involving criminally injurious conduct;
- (6) Unless the criminally injurious conduct resulting in injury or death was reported to the proper authorities within seventy-two (72) hours after its occurrence, or the board finds there was good cause for the failure to report within that time; or
- (7) (A) (i) If there are insufficient funds in the Crime Victims Reparations Revolving Fund.
(ii) However, when sufficient funds become available, the awards which have not been paid shall be paid in chronological order with the oldest paid first, unless the board shall find that compelling circumstances support a payment out of chronological order.

(B) Any award under this subchapter is specifically not a claim against the state if it cannot be paid due to a lack of funds in the Crime Victims Reparations Revolving Fund.

(b) Reparations otherwise payable to a claimant shall be diminished to the extent:

- (1) That the economic loss is recouped from collateral sources; or
- (2) Of the degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the board.

(c) Upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, the board may deny, withdraw, or reduce an award of reparations.

(d) (1) On its own motion or on request of the claimant, the board may reconsider a decision granting or denying an award or determining its amount.

(2) An order on reconsideration of an award shall not require a refund of amounts previously paid unless the award was obtained by fraud.

(3) Reconsideration does not affect the finality of a board decision for the purpose of judicial review.

§ 16-90-713 – Suspension of proceedings

An award may be made whether or not any person is prosecuted or convicted. The board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under § 16-90-716.

§ 16-90-714 – Subrogation; joinder

(a) If reparations are awarded, the state shall be subrogated to all the rights of a claimant to receive or recover from a collateral source to the extent that reparations were awarded.

(b) In the event the claimant recovers reparations, other than under the provisions of this subchapter for injuries or death resulting from criminally injurious conduct, the claimant shall retain, as trustee, so much of the recovered funds as necessary to reimburse the Crime Victims Reparations Revolving Fund to the extent that reparations were awarded to the claimant from that fund. The funds retained in trust shall be promptly deposited in the Crime Victims Reparations Revolving Fund.

(c) If a claimant brings an action to recover damages related to the criminally injurious conduct upon which reparations are claimed or awarded, the claimant shall give the board written notice of the action. After receiving the notice, the board may join in the action as a party plaintiff to recover the reparations awarded.

(d) The board shall not require any claimant to seek or accept any collateral source contribution

unless the claimant was receiving those benefits prior to the occurrence giving rise to the claim under the provisions of this subchapter.

§ 16-90-715 – Civil action; reparation recovery

(a) Whenever any person is convicted of a crime and an order for the payment of reparations is or has been made under this subchapter for a personal injury or death resulting from the act or omission constituting the crime for which conviction was had, the Attorney General may institute a civil action against the convicted person for the recovery of all or any part of the reparations paid. The suit shall be instituted in the circuit court having jurisdiction in the county in which the person resides or is found or in Pulaski County. The court shall have jurisdiction to hear, determine, and render judgment in the action. Any amount recovered under this subsection shall be credited to the Crime Victims Reparations Revolving Fund. If an amount greater than that paid pursuant to the order for payment of reparations is recovered and collected in the action, the board shall pay the balance to the claimant.

(b) The board shall provide the Attorney General with such information, data, and reports as he may require to institute actions in accordance with this section.

§ 16-90-716 – Limitation on reparations – Manner of payment

(a) (1) Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed ten thousand dollars (\$10,000).

(2) However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the maximum reparations amount shall not exceed twenty-five thousand dollars (\$25,000).

(b) (1) The Crime Victims Reparations Board may provide for the payment to a claimant in a lump sum or in installments.

(2) At the request of the claimant, the board may convert future economic loss other than allowable expense to a lump sum, but only upon a finding by the board of either of the following:

(A) That the award in a lump sum will promote the interests of the claimant; or

(B) That the present value of all future economic loss other than allowable expense does not exceed one thousand dollars (\$1000).

(c) If the board determines that the claimant will suffer financial hardship unless an advance award is made, an amount may be paid to the claimant and shall be deducted from the final award or shall be repaid and recoverable from the claimant to the extent that it exceeds the final award.

(d) (1) An award payable in installments for future economic loss may be made only for a period as to which the board can reasonably determine future economic loss.

(2) An award payable in installments for future economic loss may be modified by the board upon its findings that a material and substantial change of circumstances has occurred.

(e) An award shall not be subject to execution, attachment, garnishment, or other process, except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that the creditor has provided products, services, or accommodations, the costs of which are included in the award.

(f) An assignment by the claimant to any future award under the provisions of this subchapter is unenforceable, except:

(1) An assignment of any award for work loss to assure payment of court-ordered alimony, maintenance, or child support; or

(2) An assignment of any award for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or are to be provided by the assignee.

§ 16-90-717 – Revolving Fund

There is created in the State Treasury a revolving fund for the Crime Victims Reparations Board to be designated the "Crime Victims Reparations Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all moneys received by the Crime Victims Reparations Board from any source including moneys applied for and received from any state, federal, or private source. All interest earned as a result of investing moneys in the Crime Victims Reparations Revolving Fund shall be paid into the fund and not into the general revenues of this state. All moneys accruing to the credit of the fund are appropriated and may be budgeted and expended by the board for the purpose of implementing the provisions of this subchapter and the provisions of the sexual assault statutes, §§ 12-12-401--12-12-404.

§ 16-90-719 – Inmate and probationer labor

(a) (1) Persons who have suffered damage to their primary residence and surrounding real property in an amount in excess of five hundred dollars (\$500) as a result of a criminal act or who have had personal property stolen from their primary residence valued in excess of five hundred dollars (\$500), and who do not have adequate available resources or any collateral source of reimbursement, such as insurance, to cover the costs of repairs to their property may file a claim with the Crime Victims Reparations Board in the manner and form as is presently required by the Crime Victims Reparations Board for crime victims.

(2) The Crime Victims Reparations Board shall have the power to provide labor for repairs and cleanup supplied by eligible offenders serving community punishment and probationers in accordance with rules and regulations promulgated by the Board of Corrections.

(3) By this section, the Department of Community Correction is authorized and directed to promulgate necessary rules and regulations permitting the use of eligible inmates transferred to or sentenced directly to community punishment and probationers to perform the repair and cleanup work contemplated by this section and consistent with guidelines established by the Crime Victims Reparations Board.

(b) Inmates who have been convicted of violent crimes or residential burglary, even if transferred to or sentenced directly to community punishment, and probationers who have been convicted of violent crimes, residential burglary, or theft of property, shall be ineligible to participate in this program, and the regulations governing this program shall reflect this prohibition.

(c) (1) The Crime Victims Reparations Board and the Board of Corrections with the cooperation and assistance of the Department of Community Correction, working in conjunction with each other, shall promulgate the necessary rules and regulations to establish a program whereby eligible inmates released to or sentenced directly to community punishment and probationers may perform labor on the primary residence and surrounding real property of victims whose primary residence has suffered damage as a result of a criminal act or whose personal property has been stolen from their primary residence, and whose owner does not have adequate available resources or any collateral source of reimbursement, such as insurance, to cover the costs of repairs or replacement.

(2) The safety of the victim, the probationer, and the inmate shall be given first priority in promulgating the rules and regulations.

(d) (1) Whenever a dollar amount of property damage or loss is referred to in subsections (a)-(c) of this section, the dollar amount shall refer to the fair market repair or replacement value.

(2) Further, no award shall be made under the provisions of this section for a loss based on the dollar amount of an insurance deductible which is five hundred dollars (\$500) or less.

(e) It is the intent of this section to provide a method of reparations whereby victims whose primary residence is damaged or whose personal property is stolen from their primary residence as a result of criminal acts and who do not have adequate available resources or a collateral source of reimbursement, such as insurance, to cover the cost of repairs to their primary residence or replacement of the personal property may receive assistance in the form of inmate or probationer labor to make repairs to and clean up their primary residence and the surrounding real property.