

State Gov. 2/25

FILED FEB 24 1975

Senate File 220
State Government
Gluba, Chairman
Redmond
Curtis

SENATE FILE 220

By DODERER

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for reparations to victims of criminally
2 injurious conduct and creating a board to administer the
3 Act.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S-3334

1 Amend Senate File 220 as follows:
2 1. Page 1, by striking lines 32 and 33 and
3 inserting in lieu thereof the following:
4 "threat of personal injury or death, and is
5 punishable by fine or imprisonment, or both,
6 or would be so punishable but for".
7 2. Page 7, line 33, by striking the word "fifty"
8 and inserting in lieu thereof the word "ten".

S-3334 FILED
MARCH 13, 1975

BY MINNETTE F. DODERER

1 Section 1. NEW SECTION. This Act may be cited as the
2 Iowa Crime Victims Reparations Act.

3 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act:

4 1. "Board" means the crime victims reparations board
5 created under section four (4) of this Act.

6 2. "Claimant" means any of the following claiming rep-
7 arations under this Act: a victim, a dependent of a deceased
8 victim, a third person other than a collateral source, or
9 a person authorized to act on behalf of any of them.

10 3. "Collateral source" means a source of benefits or ad-
11 vantages for economic loss otherwise reparable under this
12 Act which the victim or claimant has received, or which is
13 readily available to him, from:

14 a. The offender;

15 b. The government of the United States or any agency
16 thereof, a state or any of its political subdivisions, or
17 an instrumentality of two or more states, unless the law pro-
18 viding for the benefits or advantages makes them excess or
19 secondary to benefits under this Act;

20 c. Social security, medicare, and medicaid;

21 d. State required temporary nonoccupational disability
22 insurance;

23 e. Workmen's compensation;

24 f. Wage continuation programs of any employer;

25 g. Proceeds of a contract of insurance payable to the
26 victim for loss which he sustained because of the criminally
27 injurious conduct; or

28 h. A contract providing prepaid hospital and other health
29 care services, or benefits for disability.

30 4. "Criminally injurious conduct" means conduct that oc-
31 curs or is attempted in this state, and poses a substantial
32 threat of personal injury or death, and is punishable by fine,
33 imprisonment, or death, or would be so punishable but for
34 the fact that the person engaging in the conduct lacked ca-
35 pacity to commit the crime under the laws of this state.

1 Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death.

4 5. "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 his death, if the victim is legally liable for that care and support.

8 6. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. However, economic detriment is loss although caused by pain and suffering or physical impairment.

14 a. "Allowable expense" means reasonable charges incurred for needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of five hundred dollars for expenses in any way related to funeral, cremation, and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

26 b. "Work loss" means loss of income from work the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.

34 c. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu

1 of those the injured person would have performed, not for
2 income but for the benefit of himself or his family, if he
3 had not been injured.

4 d. "Dependent's economic loss" means loss after dece-
5 dent's death of contributions of things of economic value
6 to his dependents, not including services they would have
7 received from the decedent if he had not suffered the fatal
8 injury, less expenses of the dependents avoided by reason
9 of decedent's death.

10 e. "Dependent's replacement services loss" means loss
11 reasonably incurred by dependents after decedent's death in
12 obtaining ordinary and necessary services in lieu of those
13 the decedent would have performed for their benefit if he
14 had not suffered the fatal injury, less expenses of the de-
15 pendents avoided by reason of decedent's death and not sub-
16 tracted in calculating dependent's economic loss.

17 7. "Noneconomic detriment" means pain, suffering, incon-
18 venience, physical impairment, and other nonpecuniary damage.

19 8. "Victim" means a person who suffers personal injury
20 or death as a result of criminally injurious conduct, the
21 good faith effort of any person to prevent criminally injuri-
22 ous conduct, or the good faith effort of any person to ap-
23 prehend a person suspected of engaging in criminally injuri-
24 ous conduct.

25 Sec. 3. NEW SECTION. AWARD OF REPARATIONS. The board
26 shall award reparations for economic loss arising from crim-
27 inally injurious conduct if satisfied by a preponderance of
28 the evidence that requirements for reparations have been met.

29 Sec. 4. NEW SECTION. CRIME VICTIMS REPARATIONS BOARD.

30 1. A crime victims reparations board is created, con-
31 sisting of three members appointed by the governor subject
32 to the consent of two-thirds of the members of the senate.
33 At least one member shall be a practicing attorney of this
34 state.

35 2. The term of office of each member shall be six years

1 and until his successor is appointed and qualified, except
2 that of the members first appointed one each shall be ap-
3 pointed to serve for a term of two, four, and six years.
4 A person appointed to fill a vacancy shall be appointed for
5 the remainder of the unexpired term.

6 3. The governor shall designate a member of the board
7 who is admitted to the bar of this state to serve as chair-
8 man at the pleasure of the governor.

9 4. Members shall serve part time, and receive forty dol-
10 lars per diem and be reimbursed for necessary expenditures
11 incurred in the performance of their duties in the same man-
12 ner as state officials generally.

13 Sec. 5. NEW SECTION. POWERS AND DUTIES OF THE BOARD.

14 1. In addition to the powers and duties specified else-
15 where in this Act, the board has the powers and duties spec-
16 ified in this section.

17 2. The duty to establish and maintain, subject to the
18 approval of the department of general services, a principal
19 office and other necessary offices within this state, and
20 appoint employees and agents as necessary, and prescribe their
21 duties and compensation.

22 3. The duty to adopt by rule a description of the or-
23 ganization of the board stating the general method and course
24 of operation of the board.

25 4. The duty to adopt rules, pursuant to chapter seven-
26 teen A (17A) of the Code, to implement this Act, including
27 rules for the allowance of attorney's fees for representa-
28 tion of claimants; and to adopt rules providing for discovery
29 proceedings, including medical examination consistent with
30 sections ten (10) and eleven (11) of this Act.

31 5. The duty to prescribe forms for applications for
32 reparations.

33 6. The duty to hear and determine all matters relating
34 to claims for reparations, and the power to reinvestigate
35 or reopen claims without regard to statutes of limitations

1 or periods of prescription.

2 7. The power to request from prosecuting attorneys and
3 law enforcement officers investigations and data to enable
4 the board to determine whether and the extent to which a
5 claimant qualifies for reparations. A statute providing for
6 confidentiality of court or law enforcement agency records
7 does not apply to requests of the board for the purpose of
8 proceedings under this Act.

9 8. The power to subpoena witnesses, books, records, and
10 other prospective evidence, administer oaths or affirmations,
11 conduct hearings, and receive relevant, nonprivileged evi-
12 dence.

13 9. The power to take notice of judicially cognizable facts
14 and general, technical, and scientific facts within their
15 specialized knowledge.

16 10. The duty to make available for public inspection all
17 board decisions and opinions, rules, written statements of
18 policy, and interpretations formulated, adopted, or used by
19 the board in discharging its functions.

20 11. The duty to publicize widely the availability of
21 reparations and information regarding the filing of claims
22 therefor.

23 Sec. 6. NEW SECTION. CLAIMS FOR REPARATIONS; AWARDS;
24 LIMITATIONS ON AWARDS.

25 1. An applicant for an award of reparations shall file
26 a claim in writing in a manner prescribed by the board.

27 2. Reparations may not be awarded unless the claim is
28 filed with the board within one year after the injury or death
29 upon which the claim is based.

30 3. Reparations may not be awarded to a claimant who is
31 the offender or an accomplice of the offender, nor to any
32 claimant if the award would unjustly benefit the offender
33 or accomplice. Unless the board determines that the interests
34 of justice otherwise require in a particular case, reparations
35 may not be awarded to a dependent of the offender or of his

1 accomplice.

2 4. Reparations may not be awarded unless the criminally
3 injurious conduct resulting in injury or death was reported
4 to a law enforcement officer within seventy-two hours after
5 its occurrence or unless the board finds there was good cause
6 for the failure to report within that time.

7 5. The board, upon a specific written finding that the
8 claimant or victim has not fully cooperated with appropriate
9 law enforcement agencies, may deny, reconsider, or reduce
10 an award of reparations.

11 6. Reparations otherwise payable to a claimant shall be
12 reduced or denied:

13 a. To the extent the economic loss upon which the claim
14 is based is recouped from other persons, including collateral
15 sources.

16 b. To the extent the board deems reasonable because of
17 the contributory misconduct of the claimant or of a victim
18 through whom he claims.

19 7. a. Reparations may be awarded only if the board finds
20 that unless the claimant is awarded reparations he will suf-
21 fer financial stress as the result of economic loss otherwise
22 reparable. A claimant suffers financial stress only if he
23 cannot maintain his customary level of health, safety, and
24 education for himself and his dependents without undue fi-
25 nancial hardship. In making its finding the board shall
26 consider all relevant factors, including, but not limited
27 to, the following:

28 (1) The number of claimant's dependents.

29 (2) The usual living expenses of the claimant and his
30 family.

31 (3) The special needs of the claimant and his dependents.

32 (4) The claimant's income and potential earning capacity.

33 (5) The claimant's resources.

34 b. Reparations may not be awarded if the claimant's econ-
35 omic loss does not exceed ten percent of his net financial

1 resources. A claimant's net financial resources do not in-
2 clude the present value of future earnings and shall be de-
3 termined by the board by deducting from his total financial
4 resources all of the following:

- 5 (1) One year's earnings.
- 6 (2) The claimant's equity, up to thirty thousand dol-
7 lars, in his home.
- 8 (3) One motor vehicle.
- 9 (4) Any other property exempt from execution under the
10 laws of this state.

11 c. (1) The board may award reparations to a claimant
12 otherwise ineligible under paragraph b of this subsection
13 if, considering the claimant's age, life expectancy, physi-
14 cal or mental condition, and expectancy of income including
15 future earning power, the board finds that the claimant's
16 financial resources will become exhausted during his life-
17 time.

18 (2) Notwithstanding this subsection, the board may reject
19 the claim finally, or reject the claim and reserve to the
20 claimant the right to reopen his claim, if it appears that
21 the exhaustion of claimant's financial resources is probable,
22 in which event the board may reopen pursuant to an application
23 to reopen if it finds that the resources available to the
24 claimant from the time of denial of an award were prudently
25 expended for personal or family needs.

26 8. Reparations may not be awarded if the economic loss
27 is less than one hundred dollars.

28 9. Reparations for work loss, replacement services loss,
29 dependent's economic loss, and dependent's replacement ser-
30 vices loss may not exceed two hundred dollars per week.

31 10. Reparations payable to a victim and to all other
32 claimants sustaining economic loss because of injury to or
33 death of that victim may not exceed fifty thousand dollars
34 in the aggregate.

35 Sec. 7. NEW SECTION. NOTICE TO ATTORNEY GENERAL; FUNC-

1 TION OF ATTORNEY GENERAL. Promptly upon receipt of a claim
2 for reparations, the board shall forward a copy of the claim
3 and all supporting papers to the attorney general, who in
4 appropriate cases may investigate the claim, appear in hear-
5 ings on the claim, and present evidence in opposition to or
6 support of an award.

7 Sec. 8. NEW SECTION. INFORMAL DISPOSITION; CONTESTED
8 CASE. Unless precluded by law, informal disposition may be
9 made of a claim by stipulation, agreed settlement, consent
10 order, or default. A claim not so disposed of is a contested
11 case.

12 Sec. 9. NEW SECTION. CONTESTED CASES; NOTICE; HEARING;
13 RECORDS.

14 1. In a contested case, all parties shall be afforded
15 an opportunity for hearing after reasonable notice.

16 2. The notice of hearing shall include:

17 a. A statement of the time, place, and nature of the
18 hearing.

19 b. A statement of the legal authority and jurisdiction
20 under which the hearing is to be held.

21 c. A reference to the particular sections of the statutes
22 and rules involved.

23 d. A short and plain statement of the matters asserted.
24 To the extent that the board is unable to state the matters
25 at the time the notice is served, the initial notice may be
26 limited to a statement of the issues involved. Thereafter
27 upon application a more definite statement shall be furnished.

28 3. Every interested person shall be afforded an oppor-
29 tunity to appear and be heard and to offer evidence and argu-
30 ment on any issue relevant to his interest, and examine wit-
31 nesses and offer evidence in reply to any matter of an evi-
32 dentiary nature in the record relevant to his interest.

33 4. A record of the proceedings shall be made and shall
34 include:

35 a. The application and supporting documents.

- 1 b. All pleadings, motions, and intermediate rulings.
- 2 c. Evidence offered, received, or considered.
- 3 d. A statement of matters officially noticed.
- 4 e. All staff memoranda or data submitted to the board
- 5 in connection with its consideration of the case.
- 6 f. Offers of proof, objections, and rulings.
- 7 5. Oral proceedings or any part thereof shall be trans-
- 8 cribed on request of any party, who shall pay transcription
- 9 costs unless otherwise ordered by the board.
- 10 6. Determinations of the board shall be made in writing,
- 11 supported by findings of fact and conclusions of law based
- 12 exclusively on the record, and mailed promptly to all parties.
- 13 Sec. 10. NEW SECTION. EVIDENCE OF PHYSICAL CONDITION.
- 14 1. There is no privilege, except privileges arising from
- 15 the attorney-client relationship, as to communications or
- 16 records relevant to an issue of the physical, mental, or
- 17 emotional condition of the claimant or victim in a proceed-
- 18 ing under this Act in which that condition is an element.
- 19 2. If the mental, physical, or emotional condition of
- 20 a victim or claimant is material to a claim, the board may
- 21 order the victim or claimant to submit to a mental or phys-
- 22 ical examination by a physician or psychologist, and may order
- 23 an autopsy of a deceased victim. The order may be made for
- 24 good cause shown upon notice to the person to be examined
- 25 and to all persons who have appeared. The order shall specify
- 26 the time, place, manner, conditions, and scope of the examina-
- 27 tion or autopsy and the person by whom it is to be made; and
- 28 the order shall require the person to file with the board
- 29 a detailed written report of the examination or autopsy.
- 30 The report shall set out his findings, including results of
- 31 all tests made, diagnoses, prognoses, other conclusions, and
- 32 reports of earlier examinations of the same conditions.
- 33 3. On request of the person examined, the board shall
- 34 furnish him a copy of the report. If the victim is deceased,
- 35 the board, on request, shall furnish the claimant a copy of

1 the report.

2 4. The board may require the claimant to supplement the
3 application with any reasonably available medical or psycho-
4 logical reports relating to the injury for which reparations
5 are claimed.

6 Sec. 11. NEW SECTION. ENFORCEMENT OF BOARD'S ORDERS.

7 If a person refuses to comply with an order under this Act
8 or asserts a privilege, except privileges arising from the
9 attorney-client relationship, to withhold or suppress evi-
10 dence relevant to a claim, the board may make any just or-
11 der including denial of the claim, but may not find the per-
12 son in contempt. If necessary to carry out any of its powers
13 and duties, the board may petition the district court of Polk
14 county for an appropriate order, but the court may not find
15 a person in contempt for refusal to submit to a medical or
16 physical examination.

17 Sec. 12. NEW SECTION. AWARD AND PAYMENT OF REPARATIONS.

18 1. An award may be made whether or not any person is
19 prosecuted or convicted. Proof of conviction of a person
20 whose acts give rise to a claim is conclusive evidence that
21 the crime was committed, unless an application for rehear-
22 ing, an appeal of the conviction, or certiorari is pending,
23 or a rehearing or new trial has been ordered.

24 2. The board may suspend the proceedings pending dis-
25 position of a criminal prosecution that has been commenced
26 or is imminent, but may make a tentative award under section
27 fifteen (15) of this Act.

28 Sec. 13. NEW SECTION. ATTORNEY'S FEES. As part of an
29 order, the board shall determine and award reasonable attor-
30 ney's fees, commensurate with services rendered, to be paid
31 by the state to the attorney representing the claimant. Ad-
32 ditional attorney's fees may be awarded by a court in the
33 event of review. Attorney's fees may be denied on a find-
34 ing that the claim or appeal is frivolous. Awards of at-
35 torney's fees shall be in addition to awards of reparations

1 and may be made whether or not reparations are awarded. It
2 is unlawful for an attorney to contract for or receive any
3 larger sum than the amount allowed.

4 Sec. 14. NEW SECTION. SUBROGATION; ACTIONS; ALLOCATION
5 OF EXPENSES.

6 1. If reparations are awarded, the state is subrogated
7 to all the claimant's rights to receive or recover benefits
8 or advantages, for economic loss for which and to the extent
9 only that reparations are awarded, from a source which is
10 or, if readily available to the victim or claimant would be,
11 a collateral source.

12 2. As a prerequisite to bringing an action to recover
13 damages related to criminally injurious conduct for which
14 reparations have been claimed or awarded, the claimant shall
15 give the board prior written notice of the proposed action.
16 After receiving the notice, the board shall join in the ac-
17 tion as a party plaintiff to recover reparations awarded,
18 require the claimant to bring the action in his individual
19 name, as a trustee in behalf of the state, to recover repara-
20 tions awarded, or reserve its rights and do neither in the
21 proposed action. If, as requested by the board, the claim-
22 ant brings the action as trustee and recovers reparations
23 awarded by the board, he may deduct from the reparations re-
24 covered in behalf of the state the reasonable expenses, in-
25 cluding attorney's fees, allocable by the court for that
26 recovery.

27 3. If a judgment or verdict separately indicates eco-
28 nomic loss and noneconomic detriment, payments on the judg-
29 ment shall be allocated between them in proportion to the
30 amounts indicated. In an action in a court of this state
31 arising out of criminally injurious conduct, the judge, on
32 timely motion, shall direct the jury to return a special
33 verdict, separately indicating the awards for noneconomic
34 detriment, punitive damages, and economic loss.

35 Sec. 15. NEW SECTION. MANNER OF PAYMENT; NONASSIGNA-

1 BILITY AND EXEMPTIONS.

2 1. The board may provide for the payment of an award in
3 a lump sum or in installments. A reparation award is not
4 subject to assignment except an assignment of a right to
5 reparations for work loss to secure payment of alimony, main-
6 tenance, or child support; or an assignment of a right to
7 reparations for allowable expense to the extent that the bene-
8 fits are for the cost of products, services, or accommoda-
9 tions necessitated by the injury or death on which the claim
10 is based and are provided or to be provided by the assignee.

11 Sec. 16. NEW SECTION. TENTATIVE AWARDS. If the board
12 determines that the claimant will suffer financial hardship
13 unless a tentative award is made, and it appears likely that
14 a final award will be made, an amount may be paid to the
15 claimant, to be deducted from the final award or repaid by
16 and recoverable from the claimant to the extent that it ex-
17 ceeds the final award.

18 Sec. 17. NEW SECTION. RECONSIDERATION AND REVIEW OF BOARD
19 DECISIONS.

20 1. The board, on its own motion or on request of the
21 claimant, may reconsider a decision making or denying an award
22 or determining its amount. The board shall reconsider at
23 least annually every award being paid in installments. An
24 order on reconsideration of an award shall not require refund
25 of amounts previously paid unless the award was obtained
26 by fraud.

27 2. The right of reconsideration does not affect the fi-
28 nality of a board decision for the purpose of judicial re-
29 view.

30 3. A final decision of the board is subject to judicial
31 review in the district court of Polk county on appeal by the
32 claimant, the attorney general, or the offender in the same
33 manner and to the same extent as the decision of a state
34 trial court of general jurisdiction.

35 Sec. 18. NEW SECTION. REPORTS. The board annually shall

1 prepare and transmit to the governor and the general assembly
2 a report of its activities, including categorical summaries
3 of all claims paid, classifications of amounts paid per type
4 of criminal conduct, and the numbers of claims paid, denied
5 and reconsidered. The board also shall prepare information
6 required by the governor.

7 EXPLANATION

8 This bill is based upon the uniform Act and provides for
9 reparations to victims of crimes for economic loss except
10 property damage otherwise not compensated for by insurance
11 or other sources. The bill creates a board within the execu-
12 tive branch to administer the program. Reparations are based
13 upon the needs of the victim or his dependents and are limited
14 to a maximum of \$200 per week and \$50,000 total.

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