

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 3/18/87

HOUSE BILL 1770

By: Representative Fairchild

"AN ACT RELATING TO CRIMES AND PUNISHMENTS; PROVIDING FOR THE ARKANSAS CRIME VICTIMS REPARATIONS ACT; CREATING A CRIME VICTIMS REPARATIONS BOARD, PROCEDURES RELATING TO THEIR APPOINTMENT, TERMS, COMPENSATION, POWERS AND DUTIES; REQUIRING PROVISION FOR OFFICE, SUPPORT, STAFF AND SECRETARIAL SERVICES; AUTHORIZING AWARDS FOR REPARATIONS FOR ECONOMIC LOSS UNDER CERTAIN CIRCUMSTANCES TO QUALIFIED APPLICANTS; PROVIDING PROCEDURES FOR SUBROGATION RIGHTS; PROHIBITING FILING OF FALSE CLAIM WITH PENALTY THEREFOR; CREATING THE CRIME VICTIMS REPARATIONS REVOLVING FUND AND PROCEDURES FOR EXPENDITURES; PROVIDING SCHEDULE OF PAYMENTS TO THE FUND BY CERTAIN PERSONS AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It is the intent of the Arkansas 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 \$10,000.

SECTION 2. Short title. This act shall be known and may be cited as the "Arkansas Crime Victims Reparations Act".

SECTION 3. Definitions. As used in this act:

(1) "Board" means the Crime Victims Reparations Board created by Section 4 of this act;

(2) "Victim" means a person who suffers personal injury or death as a

result of criminally injurious conduct committed within the State of Arkansas.

(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) "Claimant" means any of the following persons applying for reparations under this act:

(a) a victim,

(b) a dependent of a victim who has died because of criminally injurious conduct, or

(c) a person authorized to act on behalf of any of the persons enumerated in subparagraphs (a) and (b) of this paragraph.

(5) "Criminally injurious conduct" means an act which occurs or is attempted in this state that results in personal injury or death to a victim, and which is punishable by fine, imprisonment or death. Such 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 committed were in violation of the Omnibus DWI Act, specifically Act 549 of 1983, as amended. For the purposes of this Act, 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 only of allowable expense, work loss, replacement services loss and, if injury causes death, replacement services loss of a dependent, but shall not include non-economic detriment;

(7) "Allowance expense" means charges incurred for needed products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care. 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 would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake; and

(9) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of self or family, if the victim had not been injured or died;

(10) "Replacement services loss of dependent" means the loss reasonably incurred by dependents after death of the victim in obtaining ordinary and necessary services in lieu of those the deceased victim would have performed for their benefit had the deceased victim not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim;

(11) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage;

(12) "Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive reparations under this Act which the claimant has received, or which is readily available to the claimant, from any one or more of the following:

(a) the offender,

(b) the government of the United States or any agency thereof, in the form of benefits, such as social security, medicare and medicaid, a state or any of its political subdivisions or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act,

(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.

SECTION 4. Crime Victims Reparations Board - Membership - Qualifications - Term - Vacancies - Officers - Expenses.

(A) There is hereby created a Crime Victims Compensation Board, consisting of five (5) members appointed by the Governor with the advice and consent of the Senate to serve four (4) year terms and until the successor is appointed and qualified. At least three (3) members of the Board shall be a

person admitted to practice law in this state. Of the first members appointed, two shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and one shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner as a regular appointment.

(B) Each year the Board shall elect the chairman from its membership. Members of the Board shall receive no pay for their services, but, each member shall be entitled to reimbursement for reasonable and necessary expenses incurred in carrying out the official duties of the office, including meals, lodging, mileage and other travel expenses but such reimbursement for expenses shall not exceed the maximums prescribed in state travel regulations for other state employees. All reasonable and necessary expenses of the Board shall be paid from the Crime Victims Compensation Revolving Fund.

SECTION 5. Powers of Board relating to claims for reparations - Office and staff support.

(A) 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.

(B) 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 or more members, and such panel may exercise the powers granted to the Board.

(C) 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.

(D) The Board shall be provided such office, support, staff and secretarial services as necessary by the Office of the Attorney General.

SECTION 6. Additional powers of Board. In addition to any other powers and duties specified elsewhere in this Act, the Board may:

(1) Regulate its own procedure except as otherwise provided in this Act;

(2) Adopt rules and regulations to implement the provisions of this Act;

(3) Define any term not defined in this Act;

(4) Prescribe forms necessary to carry out the purposes of this Act;

(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 Act;

(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 therefor.

SECTION 7. Forms to be maintained by law enforcement agencies.

(1) 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.

(2) 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.

SECTION 8. Collateral source contributions not required of claimant. The Board shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim under the provisions of this Act.

SECTION 9. Parties - Right to appear - Hearing - Notice - Settlement of claim.

(A) Every party to the claim shall be afforded an opportunity to appear and be heard and 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) The Board may, without a hearing, settle a claim by stipulation,

agreed settlement, consent order or default.

SECTION 10. Waiver of privilege - Mental or physical examination - Autopsy - Report.

(A) Any person filing a claim under the provisions of this Act 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, the Board upon good cause shown may order te 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 with the Board a detailed written report of the examination or autopsy. 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.

SECTION 11. 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.

SECTION 12. Award of reparations - Criteria - Amount - Denial, withdrawal or reduction - Reconsideration.

(A) Reparations shall not be awarded:

(1) Unless the claim has been filed wit the 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 a law enforcement officer 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) If there are insufficient funds in the Crime Victims Compensation Revolving Fund. Provided, however, that 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. Any award hereunder 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) The Board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of reparations.

(D) The Board, on its own motion or on request of the claimant, may reconsider a decision granting or denying an award or determining its amount. An order on reconsideration of an award shall not require a refund of amounts previously paid, unless the award was obtained by fraud. Reconsideration does not affect the finality of a Board decision for the purpose of judicial review.

SECTION 13. Prosecution or conviction not required - Proof of conviction - 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 Section 16 of this Act.

SECTION 14. Recovery from collateral source - Subrogation of state - Retention of funds in trust - Notice to Board.

(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 Act, 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 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 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 to 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.

SECTION 15. Recovery from the criminal.

(A) Whenever any person is convicted of a crime and an order for the payment of reparations is or has been made under this Act for a personal injury or death resulting from the crime 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 such person resides or is found, or in Pulaski County. The court shall have jurisdiction to hear, determine, and render judgment in any such 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 any such 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.

SECTION 16. Payment of Award - Exemption from process - Assignment.

(A) 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 (\$10,000.00) in the aggregate.

(B) The Board may provide for the payment to a claimant in a lump sum or in installments. 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:

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

(2) That the present value of all future economic loss, other than allowable expense, does not exceed One Thousand Dollars (\$1,000.00).

(C) 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. 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.

(D) 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 such creditor has provided products, services or accommodations, the costs of which are included in the award.

(E) An assignment by the claimant to any future award under the provisions of this Act 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 pro-

vided or to be provided by the assignee.

SECTION 17. Advancement on award. 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.

SECTION 18. Reports to be made by Board. The Board shall prepare and transmit annually to the Governor, a report of its activities, including the amount of reparations awarded and a statistical summary of claims and awards made and denied.

SECTION 19. False claims. The filing of a false claim for reparations pursuant to this Act shall constitute a Class D felony.

SECTION 20. Crime Victims Reparations Revolving Fund. There is hereby 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 monies received by the Crime Victims Reparations Board from any source excluding appropriated funds. All interest earned as a result of investing monies in the Crime Victims Reparations Revolving Fund shall be paid into the Fund and not into the general revenues of this state. All monies accruing to the credit of said Fund are hereby appropriated and may be budgeted and expended by the Board for the purpose of implementing the provisions of the Arkansas Crime Victims Reparations Act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of Finance and Administration for approval and payment.

SECTION 21. Victims reparations assessments.

(A) In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted, pleading nolo contendere, or pleading guilty to a felony involving criminally injurious conduct or to a violation of any provision of the Omnibus DWI Act (Act 549 of 1983), shall be

ordered to pay a victim reparations assessment of at least Twenty-Five (\$25.00), but not to exceed Ten Thousand Dollars (\$10,000.00), for each crime for which he was convicted. In imposing this assessment, the court shall consider factors such as the severity of the crime, the prior criminal record, and the ability of the defendant to pay, as well as the economic impact of the victim reparations assessment on the dependents of the defendant.

(B) In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted or pleading guilty in a felony or misdemeanor offense, not including traffic offenses, which are not described in subsection A of this section, the court shall levy a victim reparations assessment of Twenty Dollars (\$20.00) for each felony and Five Dollars (\$5.00) for each misdemeanor upon every fine, penalty, and forfeiture imposed and collected. When a cash bond is posted for any offense included in this subsection, the bond shall also include a sufficient amount to cover the victim reparations assessment.

(C) All monies collected pursuant to this Section shall be forwarded at least quarterly by the court clerk to the Director of Finance and Administration to be deposited in the Crime Victims Reparations Revolving Fund.

SECTION 22. Effective dates. Sections 20 and 21 of this Act, which provide for the establishment of the Crime Victims Reparations Revolving Fund and for victim's reparations assessments, shall be effective in accordance with established law. The remaining sections of this Act shall be effective for criminally injurious conduct occurring on or after July 1, 1988.

SECTION 23. Severability Clause. Each of the sections and provisions of this Act are severable, and in the event that any one or more of such sections or provisions are subsequently declared unconstitutional or invalid, the remaining sections and provisions of this Act shall be valid and shall remain in full force and effect.

/s/ B. Fairchild

