

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 p. m., on February 13, 1978.

All members were present except:

Representatives Gastl, Augustine, Baker, Hoagland, Hurley Stites and Milles, who were excused.

The next meeting of the Committee will be held at 3:30 p. m., on February 14, 1978.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

- Mr. Bud Cornish
- Mr. Homer Cowan
- Mr. Jack Brier, Assistant Secretary of State

The meeting was called to order by the Chairman, Representative Richard Brewster. Representative Roth asked that House Bill 2859 be considered forthwith. Representative Neil Whitaker asked that House Bill 3204 receive consideration at an early date.

The Chairman noted that Senate bills are not usually considered this early in the session but called attention to the fact that Senate Bill 811 dealing with insurance reporting is a very vital bill because it appears that the legislature at the last session had set a date certain for insurance companies to report on their product liability business, and it had become apparent there is no way they could gear up to take care of the reporting as requested. Mr. Bud Cornish testified Senate Bill 811 contained much of House Bill 2410 from the previous session, but explained that the mandate from last session asked reports be made as of March 1, 1978. He further explained it was necessary and important that an extension of time be granted because as hard as they had tried they had not been able to provide the information which the legislature had requested. He explained that the companies very much wanted to comply but for large companies it had been impossible and he would appreciate legislative consideration for an extension of time. This is what Senate Bill 811 requests.

Mr. Homer Cowan of Western Insurance, Ft. Scott, Kansas displayed two or three booklets of computer print-outs and told the Committee that this is only a part of the claims insofar as liability is concerned as regards his Insurance Company. He explained in his Company, which is relatively small, they were willing and able to comply with the mandate passed at the last session of the legislature although it would take executive time to pull out the information.

He further explained they have now fed into the computers a sophisticated program which will give the legislature and the Insurance Commissioner the information they desire, especially if they have the extension of time. If this bill does not pass they are prepared to use executives who will pull out the information from the books which he displayed, and which books number about fifty and are voluminous. Nevertheless, he explained the information will still be fragmented unless there is the extension of time. Mr. Cowan stated his Company is small as compared to Aetna, Equitable and other companies. He urged members to consider the fact that those companies would have a much greater problem than would Western.

The Chairman inquired if this legislation would only delay the date or if it would change the information requested. Mr. Cowan stated that it would only delay the date and would have nothing at all to do with the information requested which they are perfectly willing to provide. The Chairman noted he had met with Mr. Cowan along with Senator Pomeroy, Senator Allegrucci, Senator Berman and Senator Garr, and they are satisfied with the proposition as presented by Mr. Cowan. Representative Martin inquired if he were a manufacturer and his premiums had increased, could he come and inquire why this had occurred, and could Western give him information in that regard. Mr. Cowan replied that he could offer something concerning all cases but that the figures would be on a nationwide basis. He explained that one loss could distort the entire figure. On the other hand, he explained as he had previously, stated, the material fed into the computer within the next year would offer something concrete so far as localities are concerned as versus nationwide figures. Representative Foster inquired about testimony to the effect that product liability coverage had increased from as much as \$1500 in one year to \$488,000 in the next year, and Mr. Cowan replied that whenever one speaks about premium adjustments he must ask about the sales. He stated that the premium is based on gross sales and the companies are finding they had not kept such figures. Further he explained that companies were finding they had probably quoted the wrong figures in the first place. He agreed there were cases where product liability insurance had increased at a large percentage. Mr. Cowan further stated that he belongs to a national organization and he feels a responsibility to manufactures and has made every effort to pass the risk around. Further, he stated his own Company probably takes more risks than they should for Kansas people because he feels that responsibility.

It was moved by Representative Heinemann and seconded by Representative Roth that Senate Bill 811 be amended by striking sub-section (a) which does not belong in this bill. Motion carried.

The Chairman called attention to House Bill 3266 and introduced Mr. Jack Brier, Assistant Secretary of State. Mr. Brier explained this is a bill which was recommended by the Secretary of State and that it dealt with names of corporations. He further explained there seemed to be no really good reason why there was a limitation about certain words in names of corporations and suggested the bill would allow associations to use terms as allowed under Section 17-6002. Mr. Brier further explained that Sections 2, 3 and 5 give foreign corporations approximately the same privileges. In addition, Section 6 provides a penalty for failure to file annual reports as required in the statutes.

Representative Foster noted he is Resident Agent for a Coproration and that he had moved his law office to a different room in the same building, but the law required he must pay a fee for the change of address; and he moved conceptually that this bill contain an amendment to not require the payment of the fee when the address is substantially the same. The motion was seconded by Representative Frey and carried by a majority.

After further discussion it was moved by Representative Lorentz and seconded by Representative Foster that the bill as amended be recommended for passage. Motion carried.

The Chairman asked Mr. Brier to discuss House Bill 3208, and Mr. Brier explained that the 1977 legislature had established a wholesale water supply district statute which provided a district with filing procedures. It was moved by Representative Ferguson and seconded by Representative Ferguson and seconded by Representative Roth that the bill be recommended for passage. After discussion, upon vote the motion carried.

The Chairman asked Mr. Art Griggs to discuss House Bill 3207 which deals with selection of district judges. Mr. Griggs explained there is a Judicial Nominating Commission which is supposed to make an appointment within thirty days after a vacancy occurs. In one judicial district they could not get a nomination because there were no attorneys willing to accept the nomination. This particular bill would allow, in this one case, for the nominating committee to go outside the judicial district for a candidate. It was moved by Representative Lorentz and seconded by Representative Hayes that the bill be recommended for passage. Upon vote motion carried.

The Chairman called for discussion on House Bill 3203, which bill the Judiciary Committee had been requested to introduce, and which deals with continuing garnishments particularly, in cases involving the military, and it resulted in a great deal of paper work. It was moved by Representative Hayes in a conceptual motion that the bill be amended on line 20 to say the order would be issued

after a determination that such order is necessary. Motion was seconded by Representative Lorentz and carried. It was then moved by Representative Ferguson and Seconded by Representative Lorentz that the bill as amended be recommended favorably. Motion carried.

The Chairman noted the Sub-committee had offered a report on House Bill 2708 which recommended the bill be reported adversely. It was moved by Representative Hayes and Seconded by Representative Gillmore that the sub-committee report be adopted. Motion carried.

The Chairman urged members to look at House Bill 3176 which places certain crimes into Chapter 34. He appointed a sub-committee to study this subject with Representative Ferguson as Chairman, and members; Representatives Matlack, Roth, Lorentz and Gillmore. The meeting was adjourned.

PHIL MARTIN
REPRESENTATIVE 114TH DISTRICT
PORTIONS OF EDWARDS, PAWNEE AND
STAFFORD COUNTIES
P. O. BOX 275, R. R. 2
LARNED, KANSAS 67550



TOPEKA

HOUSE OF
REPRESENTATIVES

February 13, 1978

COMMITTEE ASSIGNMENTS
CHAIRMAN: RULES AND JOURNALS
MEMBER: WAYS AND MEANS
JUDICIARY

2-14
2-13

The Hon. E. Richard Brewster
Chairman, House Judiciary Committee
Room 402, Statehouse
Topeka, Kansas 66612

RE: Subcommittee report, HB 2708

Dear Chairman Brewster:

House Bill 2708 provides that a guardian ad litem shall be appointed to represent a child in detention or custody hearings pursuant to Chapter 38. A guardian ad litem would be required to serve even though private counsel had been retained to represent the child.

Your subcommittee recommends House Bill 2708 be reported adversely.

Yours truly,

Phil Martin

PHIL MARTIN, Chairman
Subcommittee

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"Give light and the people will find their own way."

Rocky Mountain News

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Child snatching

WITH ONE MARRIAGE in three ending in divorce, it's more essential than ever that states cooperate rather than ignore each other in handling child custody cases.

Otherwise, we're likely to see an even sharper increase in child snatching by divorced parents, which already numbers in the tens of thousands each year.

The basic problem is that states have been operating as though they were separate countries in resolving child custody disputes. A judge in one state awards custody to the mother. A judge in another state awards custody to the father. In effect, possession becomes nine-tenths of the law.

In one celebrated case, Seward Mellon, an heir to the Pittsburgh banking fortune, had his two young daughters abducted from Brooklyn, where they'd been living with his former wife. He'd been awarded custody of the children in Pennsylvania. She'd been awarded custody in New York.

The situation is so chaotic that we now have "custodial vigilantes" who hire themselves out as child snatchers at a fixed fee. One of these hirelings, Eugene "Mean Gene" Austin, of Foley, Mo., has written a mimeographed manual on the subject.

What's needed, obviously, are some uniform rules for deciding which state has jurisdiction and where the child's (not the parent's) best interests lie.

Fortunately, there now are at least 20 states in which jurisdiction in child custody cases is being (or will be) decided on a uniform basis.

In all of these states, a judge must consider a child's "home" state or state of "closest connection" in issuing a decree. A parent who abducts a child in violation of such a decree can be ordered to surrender custody and pay all expenses of the return trip.

In the past year, Pennsylvania, New York, Ohio, Indiana, Florida, Iowa, Montana, Alaska and Idaho have enacted the uniform child custody code proposed back in 1968 by the National Conference of Commissioners on Uniform State Laws.

The code was enacted earlier by California, Colorado, Wyoming, Delaware, Ha-

wai, Maryland, Michigan, Minnesota, North Dakota, Oregon and Wisconsin.

What's important in custody cases is that the courts consider the welfare of the child rather than the whims of two warring parents.

That's why states without a uniform code should be taking a look at their own custody practices to make sure the rights of children are fully protected under the law.

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TO: Members of House Judiciary
FROM: Reps. Matlack and Baker
RE: HB 2163

Attached hereto is a copy of HB 2163, which provides for reparations to crime victims for economic loss. The bill passed out of Federal & State Affairs without dissent. Your perusal for technical errors is appreciated. Discussion of the bill will be Friday, February 10th.

Respectfully,

Ardena

Ardena Matlack, Chairman

Doug - sl

Doug Baker, V-Chairman
Federal & State Affairs Comm.

As Further Amended by House Committee

As Further Amended by House Committee

As Amended by House Committee

Session of 1977

HOUSE BILL No. 2163

By Committee on Federal and State Affairs

1-26

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2-13

0022 AN ACT providing for reparations for certain economic losses
0023 resulting from certain criminal conduct.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. As used in this act, the following words and
0026 phrases shall have the meanings respectively ascribed to them
0027 herein:

0028 (a) "Allowance expense" means reasonable charges incurred
0029 for reasonably needed products, services and accommodations,
0030 including those for medical care, rehabilitation, rehabilitative
0031 occupational training and other remedial treatment and care.
0032 Such term includes a total charge not in excess of ~~five hundred~~
0033 ~~dollars (\$500)~~ **seven hundred fifty dollars (\$750)** for expenses in
0034 any way related to funeral, cremation or burial; but such term
0035 shall not include that portion of a charge for a room in a hospital,
0036 clinic, convalescent or nursing home or any other institution
0037 engaged in providing nursing care and related services, in excess
0038 of a reasonable and customary charge for semi-private accom-
0039 modations, unless other accommodations are medically required.

0040 (b) "Board" means the crime victims reparations board estab-
0041 lished under section 3 of this act.

0042 (c) "Claimant" means any of the following persons claiming
0043 reparations under this act: A victim; a dependent of a deceased
0044 victim; a third person other than a collateral source; or an autho-
0045 rized person acting on behalf of any of them.

0046 (d) "Collateral source" means a source of benefits or advan-
0047 tages for economic loss otherwise reparable under this act which

0048 the victim or claimant has received, or which is readily available
0049 to the victim or claimant, from:

0050 (1) The offender;
0051 (2) the government of the United States or any agency thereof,
0052 a state or any of its political subdivisions or an instrumentality or
0053 two (2) or more states, unless the law providing for the benefits or
0054 advantages makes them excess or secondary to benefits under this
0055 act;

0056 (3) social security, medicare and medicaid;

0057 (4) state-required temporary non-occupational disability in-
0058 surance;

0059 (5) workmen's compensation;

0060 (6) wage continuation programs of any employer;

0061 (7) proceeds of a contract of insurance payable to the victim for
0062 loss which the victim sustained because of the criminally injuri-
0063 ous conduct; or

0064 (8) a contract providing prepaid hospital and other health care
0065 services or benefits for disability.

0066 (e) "Criminally injurious conduct" means conduct that (1)
0067 occurs or is attempted in this state, (2) poses a substantial threat or
0068 personal injury or death and (3) either is punishable by fine,
0069 imprisonment or death or would be so punishable but for the fact
0070 that the person engaging in the conduct lacked capacity to com-
0071 mit the crime under the laws of this state; but such term shall not
0072 include conduct arising out of the ownership, maintenance or use
0073 of a motor vehicle, except when such conduct was intended to
0074 cause personal injury or death.

0075 (f) "Dependent" means a natural person wholly or partially
0076 dependent upon the victim for care or support, and includes a
0077 child of the victim born after the victim's death.

0078 (g) "Dependent's economic loss" means loss after decedent's
0079 death of contributions of things of economic value to the de-
0080 cedent's dependents, not including services they would have
0081 received from the decedent if he or she had not suffered the fatal
0082 injury, less expenses of the dependents avoided by reason of
0083 decedent's death.

0084 (h) "Dependent's replacement services loss" means loss rea-

0085 sonably incurred by dependents after decedent's death in ob-
0086 taining ordinary and necessary services in lieu of those the
0087 decedent would have performed for their benefit if the decedent
0088 had not suffered the fatal injury, less expenses of the dependents
0089 avoided by reason of decedent's death and not subtracted in
0090 calculating dependent's economic loss.

0091 (i) "Economic loss" means economic detriment consisting
0092 only of allowable expense, work loss, replacement services loss
0093 and, if injury causes death, dependent's economic loss and de-
0094 pendent's replacement service loss. Noneconomic detriment is
0095 not loss, but economic detriment is loss although caused by pain
0096 and suffering or physical impairment.

0097 (j) "Noneconomic detriment" means pain, suffering, incon-
0098 venience, physical impairment and non-pecuniary damage.

0099 (k) "Replacement services loss" means expenses reasonably
0100 incurred in obtaining ordinary and necessary services in lieu of
0101 those the injured person would have performed, not for income,
0102 but for the benefit of self or family, if such person had not been
0103 injured.

0104 (l) "Work loss" means loss of income from work the injured
0105 person would have performed if such person had not been in-
0106 jured, and expenses reasonably incurred by such person in ob-
0107 taining services in lieu of those he or she would have performed
0108 for income, reduced by any income from substitute work actually
0109 performed by such person or by income such person would have
0110 earned in available appropriate substitute work that he or she was
0111 capable of performing but unreasonably failed to undertake.

0112 (m) "Victim" means a person who suffers personal injury or
0113 death as a result of (1) criminally injurious conduct, (2) the good
0114 faith effort of any person to prevent criminally injurious conduct
0115 or (3) the good faith effort of any person to apprehend a person
0116 suspected of engaging in criminally injurious conduct.

0117 Sec. 2. The board shall award reparations for economic loss
0118 arising from criminally injurious conduct if satisfied by a pre-
0119 ponderance of the evidence that the requirements for reparations
0120 have been met.

0121 Sec. 3. (a) There is hereby established in the executive de-

0122 partment a crime victims reparations board, consisting of three (3)
0123 members appointed by the governor with the advice and consent
0124 of the senate. At least one (1) member of the board shall be a
0125 person regularly admitted to practice law in this state. Each
0126 member of the board shall be appointed for a term of four (4)
0127 years and until his or her successor is appointed and qualified,
0128 except that of the members first appointed, one shall be ap-
0129 pointed for a term of two (2) years; one shall be for a term of three
0130 (3) years; and one shall be appointed for a term of four (4) years.
0131 Upon the expiration of any term of office, the governor shall
0132 appoint a successor of like qualifications for a term of four (4)
0133 years, and in case of a vacancy on the board, the governor shall
0134 appoint a successor of like qualifications to fill the unexpired
0135 term.

0136 (b) The governor shall designate a member of the board ~~who is~~
0137 ~~regularly admitted to practice law in this state to~~ serve as chair-
0138 person at the pleasure of the governor. Members of the board
0139 shall receive such compensation, subsistence allowances, mile-
0140 age and expenses as are provided by K.S.A. 1976 Supp. 75-3223
0141 and amendments thereto.

0142 Sec. 4. In addition to the powers and duties specified else-
0143 where in this act, the board shall have the following powers and
0144 duties:

0145 (a) The duty to establish and maintain a principal office and
0146 other necessary offices within this state, to appoint employees
0147 and agents as necessary and to prescribe their duties and com-
0148 pensation, all within the limitations and conditions of appropri-
0149 ations made therefor;

0150 (b) the duty to adopt by rule or regulation a description of the
0151 organization of the board, stating the general method and course
0152 of operation of the board;

0153 (c) the duty to adopt rules and regulations to carry out the
0154 provisions of this act, including rules for the allowance of attor-
0155 neys' fees for representation of claimants; and to adopt rules and
0156 regulations providing for discovery proceedings, including med-
0157 ical examination, consistent with the provisions of this act relat-
0158 ing thereto. Rules and regulations adopted by the board shall be

0159 statements of general applicability which implement, interpret or
0160 prescribe policy, or describe the procedure or practice require-
0161 ments of the board;

0162 (d) the duty to prescribe forms on which applications for
0163 reparations shall be made;

0164 (e) the duty to hear and determine all matters relating to claims
0165 for reparations, and the power to reinvestigate or reopen claims
0166 without regard to statutes of limitation or periods of prescription;

0167 (f) the power to request **investigations and data** from ~~prese-~~
0168 ~~cuting county and district attorneys~~ and law enforcement officers
0169 ~~investigations and data~~ to enable the board to determine whether
0170 and the extent to which a claimant qualifies for reparations.
0171 Confidentiality provided by law covering claimant's or victim's
0172 juvenile court records shall not be applicable in proceedings
0173 under this act;

0174 (g) the duty, if it would contribute to the function of the board,
0175 to subpoena witnesses and other prospective evidence, admin-
0176 ister oaths or affirmations, conduct hearings and receive relevant,
0177 non-privileged evidence;

0178 (h) the power to take notice of judicially recognizable facts and
0179 general, technical and scientific facts within their specialized
0180 knowledge;

0181 (i) the duty to make available for public inspection all rules
0182 and regulations, written statements of policy, interpretations for-
0183 mulated, adopted or used by the board in discharging its func-
0184 tions, and decisions and opinions of the board;

0185 (j) the duty to publicize ~~widely~~ the availability of reparations
0186 and information regarding the filing of claims therefor.

0187 Sec. 5. (a) An application for reparations shall be made in the
0188 manner and form prescribed by the board.

0189 (b) Reparations may not be awarded unless the claim has been
0190 filed with the board within ~~one (1)~~ two (2) year after the injury or
0191 death upon which the claim is based. Reparations may not be
0192 awarded to a claimant who was the offender, or an accomplice of
0193 the offender and may not be awarded to another person if the
0194 award would unjustly benefit the offender or accomplice. Unless
0195 the board determines that the interests of justice otherwise re-

0196 quire in a particular case, reparations may not be awarded to the
0197 spouse of or a person living in the same household with the
0198 offender or the offender's accomplice or to the parent, child,
0199 brother or sister of the offender or the offender's accomplice.

0200 (c) Reparations otherwise payable to a claimant shall be di-
0201 minished:

0202 (1) To the extent, if any, that the economic loss upon which the
0203 claimant's claim is based is recouped from other persons, in-
0204 cluding collateral sources; and

0205 (2) to the extent, if any, that the board deems reasonable
0206 because of the contributory misconduct of the claimant or of a
0207 victim through whom the claimant claims.

0208 (d) (1) Reparations may be awarded only if the board finds that
0209 unless the claimant is awarded reparations he or she will suffer
0210 financial stress as the result of economic loss otherwise reparable.
0211 A claimant suffers financial stress only if the claimant cannot
0212 maintain his or her customary level of health, safety and educa-
0213 tion for self and dependents without undue financial hardship. In
0214 making its determination of financial stress, the board shall
0215 consider all relevant factors, including:

0216 (i) The number of claimant's dependents;

0217 (ii) the usual living expenses of the claimant and the claimant's
0218 family;

0219 (iii) the special needs of the claimant and the claimant's de-
0220 pendents;

0221 (iv) the claimant's income and potential earning capacity; and

0222 (v) the claimant's resources.

0223 (2) Reparations may not be awarded if the claimant's economic
0224 loss does not exceed ten percent (10%) of the claimant's net
0225 financial resources. A claimant's net financial resources do not
0226 include the present value of future earnings and shall be deter-
0227 mined by the board by deducting from the claimant's total fi-
0228 nancial resources:

0229 (i) One (1) year's earnings;

0230 (ii) the claimant's equity in his or her home, not exceeding
0231 thirty thousand dollars (\$30,000);

0232 (iii) one (1) motor vehicle; and

0233 (iv) any other property which would be exempt from execution
0234 under the code of civil procedure.

0235 (3) Notwithstanding paragraph (2) of this subsection:

0236 (i) The board may award reparations to a claimant who pos-
0237 sesses net financial resources in excess of those allowable under
0238 paragraph (2) of this subsection if, considering the claimant's age,
0239 life expectancy, physical or mental condition and expectancy of
0240 income, including future earning power, it determines that the
0241 claimant's financial resources will become exhausted during the
0242 claimant's lifetime; or

0243 (ii) the board may reject the claim finally or reject the claim
0244 and reserve to the claimant the right to reopen the claim, when-
0245 ever it appears that the exhaustion of claimant's financial re-
0246 sources is probable, in which event the board may reopen pursu-
0247 ant to an application therefor if it is satisfied that the resources
0248 available to the claimant from the time of denial of an award had
0249 been prudently expended for personal or family needs.

0250 (e) Reparations may not be awarded unless the criminally
0251 injurious conduct resulting in injury or death was reported to a
0252 law enforcement officer within seventy-two (72) hours after its
0253 occurrence or the board finds there was good cause for the failure
0254 to report within that time.

0255 (f) The board, upon finding that the claimant or victim has not
0256 fully cooperated with appropriate law enforcement agencies, may
0257 deny, withdraw or reduce an award of reparations.

0258 (g) Reparations may not be awarded if the economic loss is less
0259 than one hundred dollars (\$100).

0260 (h) Reparations for work loss, replacement services loss, de-
0261 pendent's economic loss and dependent's replacement service
0262 loss may not exceed two hundred dollars (\$200) per week.

0263 (i) Reparations payable to a victim and to all other claimants
0264 sustaining economic loss because of injury to or death of that
0265 victim may not exceed ten thousand dollars (\$10,000) in the
0266 aggregate.

0267 Sec. 6. Promptly upon receipt of an application for repara-
0268 tions, the board shall may forward a copy of the application and
0269 all supporting papers to the attorney general who, in appropriate

0270 ~~eases if requested by the board~~, may investigate the claim, ~~appeal~~
0271 ~~appear~~ in hearings on the claim and present evidence in opposi-
0272 tion to or support of an award.

0273 Sec. 7. (a) Unless otherwise precluded by law, informal dis-
0274 position may be made of a claim by stipulation, agreed settle-
0275 ment, consent order or default. A claim not so disposed of is a
0276 contested case. In a contested case, all parties shall be afforded an
0277 opportunity for hearing after reasonable notice. The notice of
0278 hearing shall include:

0279 (1) A statement of the time, place and nature of the hearing;

0280 (2) a statement of the legal authority and jurisdiction under
0281 which the hearing is to be held;

0282 (3) a reference to the particular sections of the statutes and
0283 rules involved; and

0284 (4) a short and plain statement of the matters asserted, except
0285 that to the extent that the board is unable to state the matters at the
0286 time the notice is served, the initial notice may be limited to a
0287 statement of the issues involved; thereafter, upon application, a
0288 more definitive statement shall be furnished.

0289 (b) Every interested person shall be afforded an opportunity to
0290 appear and be heard and to offer evidence and argument on any
0291 issue relevant to such person's interest, and to examine witnesses
0292 and offer evidence in reply to any matter of an evidentiary nature
0293 in the record relevant to such person's interest.

0294 (c) A record of the proceedings shall be made and shall in-
0295 clude:

0296 (1) The application and supporting documents;

0297 (2) all pleadings, motions and intermediate rulings;

0298 (3) evidence offered, received or considered;

0299 (4) a statement of matters officially noticed;

0300 (5) all staff memoranda or data submitted to the board in
0301 connection with its consideration of the case; and

0302 (6) offers of proof, objections and rulings.

0303 (d) Oral proceedings or any part thereof shall be transcribed on
0304 request of any party, who shall pay transcription costs unless
0305 otherwise ordered by the board.

0306 (e) Determinations of the board shall be made in writing,

0307 supported by findings of fact and conclusions of law based
0308 exclusively on the record, and mailed promptly to all parties.

0309 Sec. 8. (a) There shall be no privilege, except privileges aris-
0310 ing from the attorney-client relationship, as to communications or
0311 records relevant to an issue of the physical, mental or emotional
0312 conditions of the claimant or victim in a proceeding under this act
0313 in which such condition is an element.

0314 (b) If the mental, physical or emotional condition of a victim or
0315 claimant is material to a claim, the board may order the victim or
0316 claimant to submit to a mental or physical examination by a
0317 physician or psychologist, and may order an autopsy of a de-
0318 ceased victim. The order may be made for good cause shown
0319 upon notice to the person to be examined and to all persons who
0320 have appeared. The order shall specify the time, place, manner,
0321 conditions and scope of the examination or autopsy and the
0322 person by whom it is to be made; and the order shall require the
0323 person to file with the board a detailed written report of the
0324 examination or autopsy. The report shall set out the findings of
0325 the person making the report, including results of all tests made,
0326 diagnoses, prognoses and other conclusions and reports of earlier
0327 examinations of the same conditions.

0328 (c) On request of the person examined, the board shall furnish
0329 a copy of the report to such person. If the victim is deceased, the
0330 board, on request, shall furnish to the claimant a copy of the
0331 report.

0332 (d) The board may require the claimant to supplement the
0333 application with any reasonably available medical or psycholog-
0334 ical reports relating to the injury for which reparations are
0335 claimed.

0336 Sec. 9. If a person refuses to comply with an order under this
0337 act or asserts a privilege other than one arising from the attor-
0338 ney-client relationship to withhold or suppress evidence relevant
0339 to a claim, the board may make any just order, including denial of
0340 the claim, but may not find the person in contempt. If necessary
0341 to carry out any of its powers and duties, the board may petition
0342 the district court for an appropriate order, but the court may not
0343 find a person in contempt for refusal to submit to a medical or

0344 physical examination.

0345 Sec. 10. An award may be made whether or not any person is
0346 prosecuted or convicted. Proof of conviction of a person whose
0347 acts give rise to a claim is conclusive evidence that the crime was
0348 committed, unless an application for rehearing, an appeal of the
0349 conviction or certiorari is pending, or a rehearing or new trial has
0350 been ordered. The board may suspend the proceedings pending
0351 disposition of a criminal prosecution that has been commenced or
0352 is imminent, but may make a tentative award under section 14.

0353 Sec. 11. As part of any order, the board shall determine and
0354 award a reasonable attorney's fee, commensurate with services
0355 rendered, to be paid by the state to the attorney representing the
0356 claimant. Additional attorneys' fees may be awarded by a court in
0357 the event of review, and attorneys' fees may be denied on a
0358 finding that the claim or appeal is frivolous. Awards of attorneys'
0359 fees shall be in addition to awards of reparations and may be
0360 made whether or not reparations are awarded. It shall be unlaw-
0361 ful for an attorney to contract for or receive any larger sum than
0362 the amount allowed pursuant to this section.

0363 Sec. 12. (a) If reparations are awarded, the state shall be
0364 subrogated to all the claimant's rights to receive or recover ben-
0365 efits or advantages for economic loss for which, and only to the
0366 extent that, reparations are awarded, from a source which is or, if
0367 readily available to the victim or claimant would be, a collateral
0368 source.

0369 (b) As a prerequisite to bringing an action to recover damages
0370 related to criminally injurious conduct upon which reparations
0371 are claimed or awarded, the claimant must give the board prior
0372 written notice of the proposed action. After receiving the notice,
0373 the board shall promptly (1) join in the action as a party plaintiff
0374 to recover reparations awarded, (2) require the claimant to bring
0375 the action in the claimant's individual name, as a trustee in behalf
0376 of the state, to recover reparations awarded or (3) reserve its rights
0377 and do neither in the proposed action. If, as requested by the
0378 board, the action is brought by the claimant as trustee and the
0379 claimant recovers reparations awarded by the board, the claimant
0380 may deduct from the reparations recovered in behalf of the state

0381 the reasonable expenses, including attorneys' fees, allocable by
0382 the court for that recovery.

0383 (c) If a judgment or verdict indicates separately economic loss
0384 and noneconomic detriment, payments on the judgment shall be
0385 allocated between them in proportion to the amounts indicated.
0386 In an action in a court of this state arising out of criminally
0387 injurious conduct, the judge, on timely motion, shall direct the
0388 jury to return a special verdict, indicating separately the award for
0389 noneconomic detriment, punitive damages, if any, and the award
0390 for economic loss.

0391 (d) Any moneys received or recovered by or on behalf of the
0392 state pursuant to the provisions of this section, less any deduc-
0393 tions allowable hereunder, shall be deposited in the state treasury
0394 and credited to the state general fund.

0395 Sec. 13. (a) The board may provide for the payment of an
0396 award in a lump sum or in installments. So much of an award as
0397 equals the amount of economic loss accrued to the date as of
0398 which the award is made shall be paid in a lump sum. An award
0399 for allowable expense that would accrue after the date as of which
0400 the award is made shall not be paid in a lump sum. Except as
0401 otherwise provided in subsection (b), so much of an award as may
0402 not be paid in a lump sum shall be paid in installments.

0403 (b) At the instance of the claimant, the board may commute
0404 future economic loss, other than allowable expense, to a lump
0405 sum, but only a finding by the board of either of the following:

0406 (1) That the award in a lump sum will promote the interests of
0407 the claimant; or

0408 (2) that the present value of all future economic loss, other than
0409 allowable expense, does not exceed one thousand dollars
0410 (\$1,000).

0411 (c) An award payable in installments for future economic loss
0412 may be made only for a period as to which the board can
0413 reasonably determine future economic loss. An award payable in
0414 installments for future economic loss may be modified by the
0415 board upon its findings that a material and substantial change of
0416 circumstances has occurred.

0417 (d) An award shall not be subject to execution, attachment,

0418 garnishment or other process, except that an award for allowable
0419 expense shall not be exempt from a claim of a creditor to the
0420 extent that such creditor has provided products, services or ac-
0421 commodated the costs of which are included in the award.

0422 (e) An assignment or agreement to assign any right to reparations
0423 for loss accruing in the future is unenforceable, except (1) an
0424 assignment of any right to reparations for work loss to secure
0425 payment of alimony, maintenance or child support; or (2) an
0426 assignment of any right to reparations for allowable expense to
0427 the extent that the benefits are for the cost of products, services or
0428 accommodations necessitated by the injury or death on which the
0429 claim is based and are provided or to be provided by the assignee.

0430 Sec. 14. If the board determines that the claimant will suffer
0431 financial hardship unless a tentative award is made, and it ap-
0432 pears likely that a final award will be made, an amount may be
0433 paid to the claimant and shall be deducted from the final award,
0434 or shall be repaid by and recoverable from the claimant to the
0435 extent that it exceeds the final award.

0436 Sec. 15. (a) The board, on its own motion or on request of the
0437 claimant, may reconsider a decision making or denying an award
0438 or determining its amount. The board shall reconsider, at least
0439 annually, every award upon which periodic payments are being
0440 made. An order on reconsideration of an award shall not require a
0441 refund of amounts previously paid, unless the award was ob-
0442 tained by fraud. The right of reconsideration does not affect the
0443 finality of a board decision for the purpose of judicial review.

0444 (b) A final decision of the board shall be subject to judicial
0445 review on appeal by the claimant, the attorney general or the
0446 offender in the manner prescribed by K.S.A. 1977 Supp. 60-2101.

0447 Sec. 16. The board shall prepare and transmit annually to the
0448 governor and the legislature a report of its activities, including
0449 the name of each claimant, a brief description of the facts in each
0450 case, the amount of any reparations awarded and a statistical
0451 summary of claims and awards made and denied.

0452 Sec. 17. Payment of any reparations awarded pursuant to the
0453 provisions of this act shall be made from the state general fund
0454 upon warrants of the director of accounts and reports issued

0455 pursuant to vouchers approved by the chairperson of the board or
0456 by a person or persons designated by such chairperson.

0457 Sec. 18. In addition to the docket fee prescribed by K.S.A.
0458 **60-2001**, the district court shall assess, in each **civil and criminal**
0459 case filed in such court, a fee of ~~five dollars (\$5)~~ *fifty cents (50¢)*
0460 **twenty-five cents (25¢)**, to be taxed as an additional cost of the
0461 case. The clerk of the district court shall remit all such fees
0462 received by or for such clerk to the state treasurer at least
0463 monthly. Upon receipt thereof, the state treasurer shall deposit
0464 the entire remittance in the state treasury and credit the same to
0465 the state general fund.

0466 Sec. 19. This act shall be so applied and construed as to
0467 effectuate its general purpose to make uniform the law with
0468 respect to the subject of this act among those states which enact it.

0469 Sec. 20. This act shall take effect and be in force from and
0470 after its publication in the statute book.

Supplemental Information on HOUSE BILL 2163

AS FURTHER AMENDED BY HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

*Brief of Bill **

H.B. 2163 would establish a state-financed program of reparations to crime victims or their dependents who suffer personal injury or death as a result of criminal acts. A specially constituted board determines, independent of any court adjudication, the existence of a crime, the damages caused, and the other requisites for reparations. Reparations could be awarded for economic loss, loss of earnings, medical expenses, and replacement services loss. The maximum award allowable would be \$10,000.

A Crime Victims Reparations Board would be established consisting of three members appointed by the Governor and confirmed by the Senate. The members would serve terms of four years and at least one member would be required to be a person admitted to practice law in this state. The board would administer the act and determine all matters relating to victim's claims for reparations. Reparations would not be awarded unless the claim was filed within two years after the injury or death of the victim. Reparations could be awarded only if the board finds that the claimant will suffer financial stress if the award is not granted. Property damage claims would be excluded and awards granted would be reduced by any benefit the victim has received from collateral sources such as hospital insurance, workmen's compensation, or social security.

An additional fee of \$0.25 would be assessed in each case filed in the district courts to offset the expenditures involved in administering the crime victims reparations program.

Committee Amendments. Amendments by the House Committee (a) raise the allowable burial expense from \$500 to \$750; (b) lower the district court fee from \$5.00 to \$0.25; (c) provide that the chairman of the board need not necessarily be an attorney; (d) extend the time limit for filing claims from one year to two years; and (e) make other technical amendments. Further amendments provide that the Attorney General may investigate claims at the request of the board.

Background

At least 20 states have enacted some type of program of governmental compensation for victims of crime. Testimony indicated that this bill is designed to assist the innocent victims of crime who suffer economic loss, personal injury, or death as a result of criminal conduct.

* Bill briefs do not express legislative intent. They give general information about the bill, not details or expected effects. They are prepared by the Legislative Research Department. The sponsors have not reviewed the briefs.