

LEGISLATIVE BILL 270

Approved by the Governor March 2, 2004

Introduced by Brashear, 4; Chambers, 11

AN ACT relating to crimes and offenses; to amend sections 81-1841, 81-1844, 81-1845, 81-1848, and 81-1850, Reissue Revised Statutes of Nebraska, sections 28-112, 29-119, and 81-1849, Revised Statutes Supplement, 2002, and section 81-1423, Revised Statutes Supplement, 2003; to change provisions for allegations set forth in the indictment or information; to change provisions relating to victim's rights; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-112, Revised Statutes Supplement, 2002, is amended to read:

28-112. The allegations stating that the underlying offense was committed because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be set forth in the indictment or information. ~~but the allegations shall not be disclosed to the jury trying the case.~~ It is the burden of the ~~county~~ prosecuting attorney to prove such allegations beyond a reasonable doubt to the judge or jury after a guilty verdict on the underlying offense and prior to sentencing. If the case is tried to the judge without a jury, all allegations may be proved in the state's case in chief.

Sec. 2. Any victim as defined in section 29-119 may pursue a civil action to seek an injunction to enforce the Nebraska Crime Victim's Reparations Act and sections 81-1843 to 81-1850 and sections 9, 12 to 14, and 17 of this act.

Sec. 3. Section 29-119, Revised Statutes Supplement, 2002, is amended to read:

29-119. For purposes of this section and sections 23-1201, ~~29-119,~~ 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement ~~shall mean~~ means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2) Victim ~~shall mean~~ means a person who, as a result of a homicide as defined in sections 28-302 to 28-306, a first degree sexual assault as defined in section 28-319, a first degree assault as defined in section 28-308, a sexual assault of a child as defined in section 28-320.01, a second degree assault as defined in section 28-309, a first degree false imprisonment as defined in section 28-314, a second degree sexual assault as defined in section 28-320, or a robbery as defined in section 28-324, has had a personal confrontation with the offender and ~~shall also include~~ includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either ~~of such sections~~ section. In the case of a homicide, victim ~~shall mean at least one family representative~~ means the nearest surviving relative under the law as provided by section 30-2303 but ~~shall~~ does not include the alleged perpetrator of the homicide. In the case of a sexual assault of a child, victim ~~shall mean~~ means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but ~~shall~~ does not include the alleged perpetrator of the sexual assault.

Sec. 4. Section 81-1423, Revised Statutes Supplement, 2003, is amended to read:

81-1423. The commission shall have authority to:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the Governor's Policy Research Office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;

(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and other sources, public and private, for carrying out any of its functions, except that no communications equipment shall be acquired and no approval for acquisition of communications equipment shall be granted without receiving the written approval of the ~~director of the division of communications~~ Director of Communications of the Department of Administrative Services;

(11) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426 with agencies of state or local government, corporations, or persons;

(12) Acquire, hold, and dispose of personal property in the exercise of its powers;

(13) Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

(14) Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426, except that no activities or transfers or expenditures of funds available to the ~~agency commission~~ shall be inconsistent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation;

(15) Exercise budgetary and administrative control over the Crime Victim's Reparations Committee, the Jail Standards Board, and the Community Corrections Council;

(16) Appoint and remove for cause the director of the Nebraska Law Enforcement Training Center; and

(17) Do all things necessary to carry out sections 81-1843 to ~~81-1848~~ 81-1850 and sections 9, 12 to 14, and 17 of this act.

Sec. 5. It is the intent of the Legislature that the Nebraska Crime Victim's Reparations Act be construed as enabling the rights set forth in Article I, section 28, of the Constitution of Nebraska.

Sec. 6. Section 81-1841, Reissue Revised Statutes of Nebraska, is amended to read:

81-1841. Sections 81-1801 to ~~81-1841~~ 81-1842 and sections 5 and 7 of this act shall be known and may be cited as the Nebraska Crime Victim's Reparations Act.

Sec. 7. Nothing in the Nebraska Crime Victim's Reparations Act or sections 81-1843 to 81-1850 and sections 9, 12 to 14, and 17 of this act requiring an act by the state or a political subdivision is deemed to create any liability if the state or political subdivision fails to act as required under the Nebraska Crime Victim's Reparations Act or such sections. Such failure to act also shall not invalidate any legal process or proceeding.

Sec. 8. Section 81-1844, Reissue Revised Statutes of Nebraska, is amended to read:

81-1844. There is hereby created a fund to be known as the Crime Victim and Witness Assistance Fund. Such fund shall contain such amounts as may be appropriated by the Legislature and shall be used only for the purposes set forth in sections 81-1843 to ~~81-1848~~ 81-1850 and sections 9, 12 to 14, and 17 of this act. Such fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice.

Sec. 9. (1) The Nebraska Commission on Law Enforcement and Criminal Justice shall create a pamphlet or document that contains the following information:

(a) A brief statement of the procedural steps of a criminal case;

(b) The rights and procedures under sections 81-1843 to 81-1850 and

sections 9, 12 to 14, and 17 of this act;

(c) Suggested procedures if the victim or the victim's immediate family is subjected to acts or threats of physical violence or intimidation by the defendant or at the direction of the defendant; and

(d) The availability of victim's compensation awards and the address of the Crime Victim's Reparations Committee.

(2) Not later than seventy-two hours after arraignment of the defendant for the crime, the county attorney shall distribute to the victim, as defined in section 29-119, the pamphlet or document of victim's rights created by the commission pursuant to this section.

Sec. 10. Section 81-1845, Reissue Revised Statutes of Nebraska, is amended to read:

81-1845. (1) Any public or private nonprofit agency may apply to the Nebraska Commission on Law Enforcement and Criminal Justice for selection and funding as a victim and witness assistance center pursuant to sections 81-1843 to ~~81-1848~~ 81-1850 and sections 9, 12 to 14, and 17 of this act.

(2) The commission shall consider the following factors, together with any other factors it deems appropriate, in selecting applicants to receive funds and be designated as a victim and witness assistance center:

(a) The number of volunteers that the proposed center will utilize;

(b) The stated goals of the applicant;

(c) The potential number of people that may be served by the proposed center and the needs of the community for such a center;

(d) Evidence of community support for the establishment of the proposed center; and

(e) The organizational structure of the agency which will operate the proposed center and provide services to victims and witnesses of crimes.

(3) Upon evaluation of all applicants, the Nebraska Commission on Law Enforcement and Criminal Justice shall select a number of public or private nonprofit agencies which the commission deems qualified for designation to receive funding for the establishment and operation of such centers.

(4) The commission shall, upon the establishment of such centers, conduct appraisals of their performance to determine which of the centers shall receive continuation grants. The commission shall report its finding to the Governor and the Clerk of the Legislature.

Sec. 11. Section 81-1848, Reissue Revised Statutes of Nebraska, is amended to read:

81-1848. (1) Victims as defined in section 29-119 shall have the following rights:

(a) To examine information which is a matter of public record and collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges. Such information shall include any disposition arising from such arrests, charges, sentencing, correctional supervision, and release, but shall not include intelligence or investigative information;

(b) To receive from the county attorney advance reasonable notice of any scheduled court proceedings and notice of any changes in that schedule;

(c) To be present throughout the entire trial of the defendant, unless the victim is to be called as a witness or the court finds sequestration of the victim necessary for a fair trial. If the victim is to be called as a witness, the court may order the victim to be sequestered;

(d) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the time and place of the sentencing proceeding and to be notified by the county attorney in writing of the final disposition of the case within thirty days of the final disposition of the case following:

(i) The crimes for which the defendant is charged, the defendant's bond, and the time and place of any scheduled court proceedings;

(ii) The final disposition of the case;

(iii) The crimes for which the defendant was convicted;

(iv) The victim's right to make a written or oral impact statement to be used in the probation officer's preparation of a presentence investigation report concerning the defendant;

(v) The address and telephone number of the probation office which is to prepare the presentence investigation report;

(vi) That a presentence investigation report and any statement by the victim included in such report will be made available to the defendant unless exempted from disclosure by order of the court; and

(vii) The victim's right to submit a written impact statement at the sentencing proceeding or to read his or her impact statement submitted

pursuant to subdivision (1)(d)(iv) of this section at the sentencing proceeding;

~~(d)~~ (e) To be notified by the county attorney by any means reasonably calculated to give prompt actual notice of the time and place of any subsequent judicial proceedings if the defendant was acquitted on grounds of insanity;

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

(f) To be notified ~~of any parole hearings~~ as provided in section 81-1850, to testify before the Board of Parole or submit a written statement for consideration by the board, and to be notified of the decision of and any action taken by the board; and

(g) To submit a written statement for consideration at any conditional release proceedings, Board of Parole proceedings, pardon proceedings, or commutation proceedings. Conditional release proceeding means a proceeding convened pursuant to a Department of Correctional Services' decision to grant a furlough from incarceration for twenty-four hours or longer or a release into community-based programs, including educational release and work release.

(2) Victims and witnesses of crimes shall have the following rights:

(a) To be informed on all writs of subpoena or notices to appear that they are entitled to apply for and may receive a witness fee;

(b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled in order to save the person an unnecessary trip to court;

(c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts and to be provided with information as to the level of protection available;

(d) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;

(e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;

(f) To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

(g) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days ~~of~~ after being taken;

(h) To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;

(i) To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter;

(j) To be informed by the county attorney of the final disposition of a felony case in which they were involved and to be notified pursuant to section 81-1850 whenever the defendant in such case is released from custody; and

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

Sec. 12. (1) Upon the filing of an appeal by the defendant, the county attorney upon whom notice of appeal was served shall notify the Attorney General in writing of the name and last-known address of any victim as defined in section 29-119.

(2) The Attorney General shall notify the victim of the following:

(a) That the defendant has filed an appeal of the conviction;

(b) A brief explanation of the appeal process, including possible dispositions;

(c) Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal;

(d) The time and place of any appellate proceedings and any changes in the time or place of those proceedings;

(e) The result of the appeal; and

(f) The final disposition of the case within thirty days after the

final disposition.

(3) In the event the defendant's conviction is reversed and the case is remanded to the trial court for further proceedings, the victim has the same rights as he or she had during the previous proceedings which led to the appeal.

Sec. 13. (1) As provided in subsections (2) and (3) of this section, the victim, as defined in section 29-119, and the prosecuting attorney shall be immediately notified of an escape by a prisoner confined and accused of, convicted of, or sentenced for committing a crime against the victim. The notice shall be given by any means reasonably calculated to give prompt actual notice to the victim and the prosecuting attorney.

(2) If the escape occurs before the sentence is executed or before the prisoner is delivered to the custody of the Department of Correctional Services or the county corrections agency, the chief law enforcement officer of the agency in charge of the prisoner's detention shall notify the victim and the prosecuting attorney of the escape.

(3) If the prisoner is confined pursuant to a sentence, the chief administrator of the facility where the prisoner was confined shall notify the victim and the prosecuting attorney.

Sec. 14. Victim's rights under sections 81-1843 to 81-1850 and sections 9, 12 to 14, and 17 of this act may be waived by the victim at any time by (1) written consent, in person or by attorney, filed with the clerk of the court or (2) oral consent in open court entered on the journal.

Sec. 15. Section 81-1849, Revised Statutes Supplement, 2002, is amended to read:

81-1849. To receive the notices provided for in section 81-1848 and sections 12 and 13 of this act, a victim shall keep the county attorney informed of his or her current address and telephone number. ~~until sentence has been imposed or the final disposition reached in the case in which the victim is involved, whichever is earlier.~~

Sec. 16. Section 81-1850, Reissue Revised Statutes of Nebraska, is amended to read:

81-1850. (1) Upon request of the victim and at the time of conviction of the offender, the county attorney of the jurisdiction in which a person is convicted of a felony shall forward to the Board of Parole, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services the name and address of any victim, as defined in section 29-119, of the convicted person. The board, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services shall include the name in the file of the convicted person, but the name shall not be part of the public record of any parole hearings of the convicted person. Any victim, including a victim who has waived his or her right to notification at the time of conviction, may request the notification prescribed in this section, as applicable, by sending a written request to the board, the Department of Correctional Services, the county corrections agency, or the Department of Health and Human Services any time after the convicted person is incarcerated and until the convicted person is no longer under the jurisdiction of the board, the county corrections agency, or the Department of Correctional Services or, if the person is under the jurisdiction of the Department of Health and Human Services, within the three-year period after the convicted person is no longer under the jurisdiction of the board, the county corrections agency, or the Department of Correctional Services.

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

(a) Within ninety days after conviction of an offender, of the tentative date of release and the earliest parole eligibility date of such offender;

(b) Of any parole hearings or proceedings;

(c) Of any decision of the Board of Parole;

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

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

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

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

(a) When a convicted person is granted a furlough or release from incarceration for twenty-four hours or longer or any transfer of the convicted

person to community status;

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

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

(d) When a convicted person is discharged from custody upon completion of his or her sentence. Such notice shall be given at least thirty days before discharge, when practicable;

(e) Of the (i) department's calculation of the earliest parole eligibility date of the prisoner with all potential good time or disciplinary credits considered if the sentence exceeds ninety days or (ii) county corrections agency's calculation of the earliest release date of the prisoner. The victim may request one notice of the calculation described in this subdivision. Such information shall be mailed not later than thirty days after receipt of the request;

(f) Of any reduction in the prisoner's minimum sentence; and

(g) Of the victim's right to submit a statement as provided in section 81-1848.

(4) A victim whose name appears in the file of a convicted person shall be notified by the Department of Health and Human Services:

(a) When a person convicted of an offense listed in subsection (5) of this section becomes the subject of a mental health petition pursuant to the Nebraska Mental Health Commitment Act prior to his or her discharge from custody upon the completion of his or her sentence or within thirty days after such discharge. The county attorney who filed the mental health petition shall notify the Department of Correctional Services of such petition. The Department of Correctional Services shall forward the names and addresses of victims appearing in the file of the convicted person to the Department of Health and Human Services;

(b) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection escapes from an inpatient facility providing board-ordered treatment and again when the person is returned to an inpatient facility;

(c) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is discharged or has a change in disposition from inpatient board-ordered treatment;

(d) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is granted a furlough or release for twenty-four hours or longer; and

(e) When a person under a mental health board commitment pursuant to subdivision (a) of this subsection is released into educational release programs, or work release programs. ~~or extended-leave programs.~~ Such notification shall occur at the beginning and termination of any such program.

(5) Subsection (4) of this section applies to persons convicted of at least one of the following offenses which is also alleged to be the recent act or threat underlying the commitment of such persons as mentally ill dangerous persons:

(a) Murder in the first degree pursuant to section 28-303;

(b) Murder in the second degree pursuant to section 28-304;

(c) Kidnapping pursuant to section 28-313;

(d) Assault in the first degree pursuant to section 28-308;

(e) Assault in the second degree pursuant to section 28-309;

(f) Sexual assault in the first degree pursuant to section 28-319;

(g) Sexual assault in the second degree pursuant to section 28-320;

(h) Sexual assault of a child pursuant to section 28-320.01;

(i) Stalking pursuant to section 28-311.03; or

(j) An attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (a) through (i) of this subsection.

(6) A victim whose name appears in the file of a convicted person shall be notified by the Board of Pardons:

(a) Of any pardon or commutation proceedings; and

(b) If a pardon or commutation has been granted.

(7) The Board of Parole, the Department of Correctional Services, and the Department of Health and Human Services, and the Board of Pardons shall adopt and promulgate rules and regulations as needed to carry out this section.

(8) The victim's address and telephone number maintained by the Department of Correctional Services, the Department of Health and Human Services, the county corrections agency, or the Board of Parole pursuant to

subsection (1) of this section shall be exempt from disclosure under public records laws and federal freedom of information laws, as such laws existed on January 1, 2004.

Sec. 17. It is the intent of the Legislature that sections 81-1843 to 81-1850 and sections 9, 12 to 14, and 17 of this act shall be construed as enabling the rights set forth in Article I, section 28, of the Constitution of Nebraska.

Sec. 18. Original sections 81-1841, 81-1844, 81-1845, 81-1848, and 81-1850, Reissue Revised Statutes of Nebraska, sections 28-112, 29-119, and 81-1849, Revised Statutes Supplement, 2002, and section 81-1423, Revised Statutes Supplement, 2003, are repealed.