

HOUSE BILL No. 2077

AN ACT concerning crime-related task forces, commissions and boards; relating to the Kansas closed case task force; extending the task force and providing for staff assistance; renaming the task force the Alvin Sykes cold case DNA task force; relating to the Kansas criminal justice reform commission; extending the commission and limiting the scope of study; relating to the crime victims compensation board; applications for compensation and mental health counseling; adding certain children to the definition of victim; amending K.S.A. 74-7301 and K.S.A. 2020 Supp. 21-6901, 21-6902 and 74-7305 and repealing the existing sections.

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

Section 1. K.S.A. 2020 Supp. 21-6901 is hereby amended to read as follows: 21-6901. (a) There is hereby established the ~~Kansas closed case~~ *Alvin Sykes cold case DNA* task force. The task force shall be composed of 15 voting members, as follows:

- (1) The chairperson of the standing senate committee on judiciary;
- (2) the ranking minority member of the standing senate committee on judiciary;
- (3) the chairperson of the standing house committee on judiciary;
- (4) the ranking minority member of the standing house committee on judiciary;
- (5) the governor or the governor's designee;
- (6) the attorney general or the attorney general's designee;
- (7) the director of the Kansas bureau of investigation or the director's designee;
- (8) the state combined DNA index system (CODIS) administrator ~~as designated by~~ *or other designee of* the director of the Kansas bureau of investigation forensic science laboratory;
- (9) a sheriff as designated by the Kansas sheriff's association;
- (10) a chief of police as designated by the Kansas association of chiefs of police;
- (11) a prosecutor as designated by the Kansas county and district attorneys association;
- (12) the executive director of the state board of indigents' defense services or the executive director's designee;
- (13) the president of the Kansas bar association or the president's designee;
- (14) the director of victim services of the department of corrections or the director's designee; and
- (15) one member designated by the governor who represents an organization that litigates claims of innocence.

~~(b) (1) Members shall be appointed to the task force on or before September 1, 2019. The initial meeting of the task force shall be convened on or before October 1, 2019.~~

~~(2)~~—The chairperson of the standing senate committee on judiciary and the chairperson of the standing house committee on judiciary shall serve as ~~co-chairs~~ *co-chairpersons* of the task force.

~~(3)~~(2) The task force shall meet in an open meeting at any time and at any place within the state of Kansas upon the call of either co-chairperson of the task force. A majority of the voting members of the task force constitutes a quorum. Any action by the task force shall be by motion adopted by a majority of the voting members present when there is a quorum.

(c) The task force, in consultation with practitioners and experts, shall develop a plan to ensure uniform statewide policies and procedures that address, at a minimum:

- (1) Timely receipt of the data relating to hits to the combined DNA index system (CODIS) from the forensic laboratory;
- (2) directly connecting the data relating to hits to the combined DNA index system (CODIS) to the relevant case file;
- (3) proper policies and procedures to ensure all hits are accounted for and followed up;
- (4) procedures to address how the key parties can conduct a reasonable and timely investigation into the significance of the hit; and
- (5) sharing the hits in data from both solved and unsolved cases with other key parties, including the relevant prosecutors' offices, the

original defense attorney and the last known attorney of record, crime victims and surviving relatives, and a local organization that litigates claims of innocence.

(d) The task force shall complete a plan for implementation of a protocol relating to hits to closed cases by October 1, ~~2020~~ 2021. The plan shall include a mechanism to ensure uniform compliance at the local law enforcement agency level.

(e) On or before December 1, ~~2020~~ 2021, the task force shall submit a report containing a plan for uniform implementation of the protocol throughout the state, including articulated benchmarks to facilitate and measure adoption. This report shall be posted on a public website maintained by the Kansas bureau of investigation and presented to the governor, the speaker of the house of representatives and the president of the senate.

(f) Legislative members of the task force attending meetings authorized by the task force shall be paid amounts provided in K.S.A. 75-3223(e), and amendments thereto. Non-legislative members of the task force may be reimbursed by their appointing authority.

(g) *Staff of the office of revisor of statutes, the legislative research department and the division of legislative administrative services shall provide assistance to the task force as may be requested by the co-chairs of the task force.*

(h) *The Alvin Sykes cold case DNA task force shall be a continuation of the Kansas closed case task force as it existed on December 29, 2020, and, except as provided in subsection (a)(8), members appointed prior to such date shall continue as members of the task force.*

(i) The provisions of this section shall expire on December 30, ~~2020~~ 2021.

Sec. 2. K.S.A. 2020 Supp. 21-6902 is hereby amended to read as follows: 21-6902. (a) There is hereby created the Kansas criminal justice reform commission.

(b) The commission shall:

(1) Analyze the sentencing guidelines grids for drug and nondrug crimes and make recommendations for legislation that would ensure sentences are appropriate;

(2) review the sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses;

(3) analyze diversion programs utilized throughout the state and make recommendations ~~with respect to expanding diversion options and implementation of a state-wide diversion standards for legislation that:~~

(A) *Requires pre-filing and post-filing diversion be an option in all counties;*

(B) *establishes minimum statewide standards for diversion; and*

(C) *provides a method for sealing or otherwise removing diversion records from criminal records;*

(4) review ~~the supervision levels and programming available~~ practices for offenders who serve sentences for felony offenses on community supervision, *including supervision by court services, community corrections and parole;*

(5) *discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:*

(A) *Provide for incentives for compliant offenders to earn early discharge from supervision;*

(B) *create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;*

(C) *create standardized effective responses to behavior through a system of incentives and graduated sanctions; and*

(D) *provide for a means to consolidate concurrent supervision*

into one supervision agency; and

~~(5) study specialty courts and make recommendations for the use of specialty courts throughout the state;~~

~~(6) survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming;~~

~~(7) study the policies of the department of corrections for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare and substance abuse facilities;~~

~~(8) evaluate existing information management data systems and make recommendations for improvements to data systems that will enhance the ability of criminal justice agencies to evaluate and monitor the efficacy of the criminal justice system at all points in the criminal justice process; and~~

~~(9) study other matters, that, as the commission determines, are appropriate and necessary to complete a thorough review of the criminal justice system~~

(6) monitor the implementation of previously endorsed commission recommendations, including those developed through justice reinvestment, and receive updates, review data and identify opportunities for coordination, collaboration or legislation as needed.

(c) The commission shall be made of the following members:

(1) One member of the Kansas senate appointed by the president of the senate;

(2) one member of the Kansas senate appointed by the minority leader of the senate;

(3) one member of the Kansas house of representatives appointed by the speaker of the Kansas house of representatives;

(4) one member of the Kansas house of representatives appointed by the minority leader of the Kansas house of representatives;

(5) one member of the judicial branch court services appointed by the chief justice of the supreme court;

(6) one criminal defense attorney or public defender appointed by the governor;

(7) one public defender appointed by the executive director of the board of indigents' defense services;

(8) one county or district attorney from an urban area and one county attorney from a rural area appointed by the Kansas county and district attorneys association;

~~(8)~~(9) one sheriff and one chief of police appointed by the attorney general;

~~(9)~~(10) one professor of law from the university of Kansas school of law and one professor of law from Washburn university school of law, appointed by the deans of such schools;

~~(10)~~(11) one drug and alcohol addiction treatment provider who provides services pursuant to the certified drug abuse treatment program appointed by the Kansas sentencing commission;

~~(11)~~(12) one district judge appointed by the Kansas district judges association;

~~(12)~~(13) one district magistrate judge appointed by the Kansas district magistrate judges association;

~~(13)~~(14) one member representative of the faith-based community appointed by the governor;

~~(14)~~(15) one member of a criminal justice reform advocacy organization appointed by the legislative coordinating council;

~~(15)~~(16) one mental health professional appointed by the Kansas community mental health association;

~~(16)~~(17) one member representative of community corrections appointed by the secretary of corrections; and

~~(17)~~(18) the attorney general, the secretary of corrections and the executive director of the Kansas sentencing commission, or such persons' designees, shall serve as ex officio, nonvoting members of the commission.

(d) ~~Members of the commission shall be appointed before August 1, 2019.~~ The appointing authorities shall provide notice of such appointments to the office of revisor of statutes and the legislative research department.

(e) The members of the commission shall elect officers from among its members necessary to discharge its duties. The commission shall receive testimony from interested parties at public hearings to be conducted in the various geographic areas of the state.

(f) If approved by the legislative coordinating council, legislative members of the commission attending meetings authorized by the commission shall be paid amounts for expenses, mileage and subsistence as provided in K.S.A. 75-3223(e), and amendments thereto.

(g) The commission shall have the authority to organize and appoint such task forces or subcommittees as may be deemed necessary to discharge such commission's duties, including adding ex officio, nonvoting members to such task forces or subcommittees.

(h) The commission shall work with the Kansas judicial council, the department of corrections, the office of judicial administration and the Kansas sentencing commission and review studies and findings of the Kansas sentencing commission concerning proportionality of sentencing.

(i) The commission shall prepare and submit its interim report to the legislature on or before December 1, 2019. A final report and recommendations shall be submitted to the legislature on or before December 1, ~~2020~~ 2021.

(j) The staff of the office of revisor of statutes and the legislative research department shall provide such assistance as may be requested by the commission as authorized by the legislative coordinating council.

(k) The governor shall appoint a facilitator to assist the commission in developing a project plan and who shall assist the commission in carrying out the duties of the commission in an orderly manner. The facilitator shall work in collaboration with the commission chairperson and staff of the office of revisor of statutes and the legislative research department. The facilitator shall not be a member of the commission. ~~The facilitator, in coordination with the office of revisor of statutes and the legislative research department, shall call the first meeting of the commission, which shall take place during August 2019.~~

Sec. 3. K.S.A. 74-7301 is hereby amended to read as follows: 74-7301. As used in this act:

(a) "Allowance expense" means reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care and for the replacement of items of clothing or bedding which were seized for evidence. ~~Such term~~ "Allowance expense" includes a total charge not in excess of \$5,000 for expenses in any way related to funeral, cremation or burial; but ~~such term~~ "allowance expense" shall not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semi-private accommodations, unless other accommodations are medically required. ~~Such term~~ "Allowance expense" includes a total charge not in excess of \$1,000 for expenses in any way related to crime scene cleanup.

(b) "Board" means the crime victims compensation board established under K.S.A. 74-7303, and amendments thereto.

(c) "Claimant" means any of the following persons claiming compensation under this act:

- (1) A victim;
- (2) a dependent of a deceased victim;
- (3) a third person other than a collateral source; or
- (4) an authorized person acting on behalf of any of them.

(d) "Collateral source" means the net financial benefit, after deduction of taxes, legal fees, costs, expenses of litigation, liens, offsets, credits or other deductions, from a source of benefits or advantages for economic loss otherwise reparable under this act which the victim or claimant has received, or which is readily available to the victim or claimant, from:

- (1) The offender;
- (2) the government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this act;
- (3) social security, medicare and medicaid;
- (4) state-required temporary nonoccupational disability insurance;
- (5) workers' compensation;
- (6) wage continuation programs of any employer;
- (7) proceeds of a contract of insurance payable to the victim for loss which the victim sustained because of the criminally injurious conduct;
- (8) a contract providing prepaid hospital and other health care services or benefits for disability; or
- (9) damages awarded in a tort action.

(e) "Criminally injurious conduct" means conduct that: (1) (A) Occurs or is attempted in this state or occurs to a person whose domicile is in Kansas who is the victim of a violent crime which occurs in another state, possession, or territory of the United States of America may make an application for compensation if:

(i) The crimes would be compensable had it occurred in the state of Kansas; and

(ii) the places the crimes occurred are states, possessions or territories of the United States of America not having eligible crime victim compensation programs;

(B) poses a substantial threat or personal injury or death; and

(C) either is punishable by fine, imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; or

(2) is an act of terrorism, as defined in 18 U.S.C. § 2331, or a violent crime that posed a substantial threat or caused personal injury or death, committed outside of the United States against a person whose domicile is in Kansas, except that criminally injurious conduct does not include any conduct resulting in injury or death sustained as a member of the United States armed forces while serving on active duty.

~~Such term shall~~ "*Criminally injurious conduct*" does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except for violations of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or violations of municipal ordinances or county resolutions prohibiting the acts prohibited by those statutes, or violations of K.S.A. 8-1602, and amendments thereto, K.S.A. 21-3404, 21-3405 ~~and or~~ 21-3414, prior to their repeal, or K.S.A. 2020 Supp. 21-5405, 21-5406 ~~and K.S.A. 2020 Supp.~~ or 21-5413(b), and amendments thereto, or when such conduct was intended to cause personal injury or death.

(f) "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 victim's death.

(g) "Dependent's economic loss" means loss after decedent's death of contributions of things of economic value to the decedent's dependents, not including services they would have received from the decedent if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death.

(h) "Dependent's replacement services loss" means loss reasonably incurred by dependents after decedent's death in obtaining ordinary and necessary services in lieu of those the decedent would have performed for their benefit if the decedent had not suffered the fatal injury, less expenses of the dependents avoided by reason of decedent's death and

not subtracted in calculating dependent's economic loss.

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

(j) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

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

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

(m) "Victim" means a person who suffers personal injury or death as a result of:

(1) Criminally injurious conduct;

(2) the good faith effort of any person to prevent criminally injurious conduct; ~~or~~

(3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct; *or*

(4) *witnessing a violent crime when the person was 16 years of age or younger at the time the crime was committed.*

(n) "Crime scene cleanup" means removal of blood, stains, odors or other debris caused by the crime or the processing of the crime scene.

Sec. 4. K.S.A. 2020 Supp. 74-7305 is hereby amended to read as follows: 74-7305. (a) An application for compensation shall be made in the manner and form prescribed by the crime victims compensation division created by K.S.A. 75-773, and amendments thereto.

(b) (1) *Except as otherwise provided in this subsection,* compensation may not be awarded unless an application has been filed with the division within two years of the reporting of the incident to law enforcement officials if the victim was less than 16 years of age and the injury or death is the result of any of the following crimes:

~~(1) Indecent liberties with a child as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2020 Supp. 21-5506(a), and amendments thereto; (2) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2020 Supp. 21-5506(b), and amendments thereto; (3) aggravated criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2020 Supp. 21-5504(b), and amendments thereto; (4)~~

~~(A) Enticement of a child as defined in K.S.A. 21-3509, prior to its repeal; (5) indecent solicitation of a child as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(a), and amendments thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(b), and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto; (8) aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2020 Supp. 21-5604(b), and amendments thereto; (9)~~

~~(B) human trafficking as defined in K.S.A. 21-3446, prior to its repeal, or K.S.A. 2020 Supp. 21-5426(a), and amendments thereto; (10)~~

~~(C) aggravated human trafficking as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2020 Supp. 21-5426(b), and amendments thereto; or (11) commercial sexual exploitation of a child as defined in~~

~~K.S.A. 2020 Supp. 21-6422, and amendments thereto~~

~~(D) a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto.~~

~~(2) Compensation for mental health counseling may be awarded if a claim is filed within two years of: (1) Testimony, to a claimant who is, or will be, required to testify in a sexually violent predator commitment, pursuant to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, of an offender who victimized the claimant or the victim on whose behalf the claim is made; or (2) notification, to a claimant who is notified that DNA testing of a sexual assault kit or other evidence has revealed a DNA profile of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, or is notified of the identification of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, whichever occurs later to a:~~

~~(A) Victim, as defined in K.S.A. 74-7301(m)(4), and amendments thereto, if the board finds there was good cause for the failure to file within the time specified in this subsection and the claim is filed before the victim turns 19 years of age; or~~

~~(B) victim of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, if the board finds there was good cause for the failure to file within the time specified in this subsection and:~~

~~(i) The claim is filed with the division within 10 years of the date such crime was committed; or~~

~~(ii) if the victim was less than 18 years of age at the time such crime was committed, the claim is filed within 10 years of the date the victim turns 18 years of age.~~

~~(3) For all other incidents of criminally injurious conduct, compensation may not be awarded unless the claim has been filed with the division within two years after the injury or death upon which the claim is based.~~

~~(c) Compensation may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person if the award would unjustly benefit the offender or accomplice.~~

~~(d) Compensation otherwise payable to a claimant shall be reduced or denied, to the extent, if any that the:~~

~~(1) Economic loss upon which the claimant's claim is based is recouped from other persons, including collateral sources;~~

~~(2) board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims; or~~

~~(3) board deems reasonable, because the victim was likely engaging in, or attempting to engage in, unlawful activity at the time of the crime upon which the claim for compensation is based. This subsection shall not be construed to reduce or deny compensation to a victim of domestic abuse or sexual assault.~~

~~(e) Compensation may be awarded only if the board finds that unless the claimant is awarded compensation the claimant will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if the claimant cannot maintain the claimant's customary level of health, safety and education for self and dependents without undue financial hardship. In making its determination of financial stress, the board shall consider all relevant factors, including:~~

~~(1) The number of the claimant's dependents;~~

~~(2) the usual living expenses of the claimant and the claimant's family;~~

~~(3) the special needs of the claimant and the claimant's dependents;~~

~~(4) the claimant's income and potential earning capacity; and~~

~~(5) the claimant's resources.~~

~~(f) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law~~

enforcement officer within 72 hours after its occurrence or the board finds there was good cause for the failure to report within that time.

~~(f)~~(g) 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 compensation.

~~(g)~~(h) Except in K.S.A. 21-3602 or 21-3603, prior to their repeal, or K.S.A. 2020 Supp. 21-5604, and amendments thereto, or cases of sex offenses established in article 35 of chapter 21, of the Kansas Statutes Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2020 Supp. 21-6419 through 21-6422, and amendments thereto, or human trafficking or aggravated human trafficking, as defined in K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2020 Supp. 21-5426, and amendments thereto, compensation may not be awarded if the economic loss is less than \$100.

~~(h)~~(i) Compensation for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss may not exceed \$400 per week or actual loss, whichever is less.

~~(i)~~(j) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed \$25,000 in the aggregate.

~~(j)~~(k) Nothing in subsections ~~(e)(2)~~, ~~(e)(3)~~, ~~(e)~~ and ~~(f)~~ (d)(2), (d)(3), (f) and (g) shall be construed to reduce or deny compensation to a victim of human trafficking or aggravated human trafficking, as defined in K.S.A. 2020 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined in K.S.A. 2020 Supp. 21-6422, and amendments thereto, who was 18 years of age or younger at the time the crime was committed and is otherwise qualified for compensation.

Sec. 5. K.S.A. 74-7301 and K.S.A. 2020 Supp. 21-6901, 21-6902 and 74-7305 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.