

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 816

BY: DOUGLASS, HELTON,
HENDRICK, MICKLE,
DICKERSON, HERBERT and
WILKERSON of the SENATE

and

BRYANT of the HOUSE

COMMITTEE SUBSTITUTE AN ACT RELATING TO VICTIMS' RIGHTS; AMENDING 19
O.S. 1991, SECTIONS 215.33 AND 215.39, WHICH RELATE TO THE OFFICE OF
DISTRICT ATTORNEY; AMENDING 21 O.S. 1991, SECTION 142.3, WHICH
RELATES TO DEFINITIONS, 22 O.S. 1991, SECTION 991a, WHICH RELATES TO
SENTENCING POWERS OF THE COURT AND 57 O.S. 1991, SECTION 332.2 AND
332.8, WHICH RELATE TO THE PARDON AND PAROLE BOARD; MODIFYING DUTIES
OF THE VICTIM WITNESS COORDINATOR; REQUIRING VICTIM IMPACT
STATEMENTS TO BE PROVIDED WITH CERTAIN REPORTS; MODIFYING LANGUAGE;
INCREASING AMOUNT FOR FUNERAL EXPENSES; AUTHORIZING THE COURT TO
CONSIDER VICTIM IMPACT STATEMENT; REQUIRING THE PARDON AND PAROLE
BOARD TO AUTHORIZE CERTAIN TESTIMONY AND TO CONSIDER VICTIM IMPACT
STATEMENT; DEFINING TERMS; AUTHORIZING PRESENTATION OF VICTIM IMPACT
STATEMENT AT SENTENCING; PROVIDING FOR CONSULTATION WITH VICTIM FOR
PRESENTENCE INVESTIGATION REPORT; AUTHORIZING THE COURT TO PROHIBIT
CERTAIN DISCLOSURE OF INFORMATION; PROVIDING FOR CODIFICATION;
PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 19 O.S. 1991, Section 215.33, is amended to read as follows:

Section 215.33 A. The district attorney's office shall inform as far as practical that victims and witnesses of crimes have the following services subject to the discretion of the district attorney with the consent in writing of the presiding judge of the judicial district:

1. 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;

2. 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;

3. 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;

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

5. 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;

6. 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;

7. To be provided with appropriate employer intercession services to ensure 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; and

8. To have the family members of all homicide victims afforded all of the services under this section, whether or not they are witnesses in any criminal proceedings.

B. Victim-witness coordinators may inform the victim of a crime committed by a juvenile of the name and address of the juvenile found to have committed the crime.

C. Victim-witness coordinators shall inform victims of violent crimes, as defined in Section 7 of this act, and members of the immediate family of such victims of their rights under Sections 8 and 9 of this act and Section 332.2 of Title 57 of the Oklahoma Statutes.

D. In any felony case involving a violent crime or a sex offense, the victim-witness coordinator shall inform the victim, as soon as practicable, or an adult member of the immediate family of the victim if the victim is deceased, incapacitated, or incompetent, of the progress of pretrial proceedings which could substantially delay the prosecution of the case.

E. All victim-witness coordinators appointed to perform the services specified in subsection A of this section shall complete a minimum of fifteen (15) hours in-service training annually. Said training shall be conducted pursuant to the direction of the District Attorneys Council and the Crime Victims Compensation Board.

SECTION 2. AMENDATORY 19 O.S. 1991, Section 215.39, is amended to read as follows:

Section 215.39 A. Upon the arrest, conviction and sentencing of any defendant to a term of incarceration in the custody of the Department of Corrections, the district attorney of the county in which the crime was committed shall prepare a written narrative report describing the commission of the offense and any factors

which might enhance or diminish the gravity of the offender's conduct.

B. The report shall be provided to the Department of Corrections and the Pardon and Parole Board, together with the judgment and sentence in the case and any victim impact statement presented to the court in the case.

C. The form to be used for this report shall be developed and distributed by the District Attorneys Council.

D. The provisions of this section shall not apply to offenders sentenced to terms of incarceration of two (2) years or less.

E. No allegations or recitations of alleged facts contained in any narrative submitted pursuant to the requirements of this section shall give rise to any cause of action by the defendant against the submitting agency unless the defendant shall first object to such allegation or recitation in writing, with notice to the submitting agency. The submitting agency shall be given thirty (30) days following such notice to withdraw or amend any such allegation or recitation objected to. Nothing contained herein shall be construed as creating a cause of action.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 142.3, is amended to read as follows:

Section 142.3 As used in the Oklahoma Crime Victims Compensation Act:

1. "Allowance expense" means charges incurred for needed products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care. It also includes a total charge not in excess of ~~One Thousand Five Hundred Dollars (\$1,500.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00) for expenses related to funeral, cremation or burial;

2. "Board" means the Crime Victims Compensation Board created by Section 142.4 of this title;

3. "Claimant" means any of the following persons applying for compensation under this act:

- a. a victim,
- b. a dependent of a victim who has died because of criminally injurious conduct, or
- c. a person authorized to act on behalf of any of the persons enumerated in subparagraphs a and b of this paragraph;

4. "Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this act which the claimant has received, or which is readily available to the claimant, from any one or more of the following:

- a. the offender,
- b. the government of the United States or any agency thereof, in the form of benefits, such as social security, medicare and medicaid, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excessive or secondary to benefits under this act,
- c. state-required temporary nonoccupational disability insurance,
- d. workers' compensation,
- e. wage continuation programs of any employer,
- f. proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or
- g. a contract providing prepaid hospital and other health care services or benefits for disability;

5. "Criminally injurious conduct" means an act which occurs or is attempted in this state, or against a resident of this state in a

state that does not have an eligible crime victims compensation program as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, that results in personal injury or death to a victim which:

- a. is punishable by fine, imprisonment or death, or
- b. if the act is committed by a child, results in such child being adjudicated a delinquent child.

Such term shall not include acts arising out of the negligent maintenance or use of a motor vehicle unless the vehicle was operated or driven by the offender while under the influence of alcohol or any other intoxicating substance or, unless the vehicle was operated or driven by the offender with the intent to injure or kill the victim or in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person;

6. "Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of the victim born after the death of the victim where the death occurred as a result of criminally injurious conduct;

7. "Economic loss of a dependent" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim;

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

9. "Economic loss" means monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include noneconomic loss;

10. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage;

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

12. "Traffic offense" means violation of a law relating to the operation of vehicles, but shall not mean negligent homicide due to operation of a motor vehicle, reckless driving, tampering with or damaging a motor vehicle, failure of a driver of a motor vehicle involved in an accident resulting in death or personal injury to stop at the scene of the accident, leaving the scene of an accident resulting in death or personal injury, operating or being in actual physical control of a motor vehicle while intoxicated or impaired due to alcohol or other intoxicating substance, or combination thereof, or operating a motor vehicle with a blood alcohol content in excess of ~~10~~ ten-hundredths (0.10);

13. "Work loss" means loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake; and

14. "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 991a, is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, Section 991a-5 et seq. of this title, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. ~~suspend~~ Suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

- a. ~~To~~ to provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty, ~~or~~
- b. ~~To~~ to reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum, ~~or~~
- c. ~~To~~ to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted, ~~or~~
- d. ~~To~~ to pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes,

and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss, ~~or~~

e. ~~The~~ to confinement in the county jail for a period not to exceed six (6) months, ~~or~~

f. ~~The~~ to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced, or

g. ~~The~~ to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes-;

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the

Oklahoma Reward System, or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; ~~or~~

2. ~~impose~~ Impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section;

3. ~~commit~~ Commit such person for confinement provided for by law with or without restitution as provided for in this section;

4. ~~in~~ In the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title; ~~or~~

5. ~~in~~ In addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

- a. ~~To~~ to participate in an alcohol and drug substance abuse course, pursuant to Sections ~~11-902.2 and 11-902.3 of Title 47~~ 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,
- b. ~~To~~ to attend a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,
- c. ~~To~~ to both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of

this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph; or

6. ~~in~~ In addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony.

C. When sentencing a person convicted of a crime, the court shall consider any victim impact statement if submitted to the court.

D. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years. However, such supervision may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

~~D.~~ E. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

~~E.~~ F. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs~~;~~;

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections~~;~~;

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division~~;~~;

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this subsection. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act~~;~~ and

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House

on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 332.2, is amended to read as follows:

Section 332.2 The Pardon and Parole Board, which shall meet only on the call of the Chairman, is authorized, if and when an application made to the Governor for a reprieve, commutation, parole, pardon, or other act of clemency is certified thereto by the Governor, to examine into the merits of said application and make recommendations to the Governor in relation thereto, said recommendation being advisory to the Governor and not binding thereon.

The Pardon and Parole Board shall provide a copy of their regular docket to each district attorney in this state at least twenty (20) days before such docket is considered by the board, or in the case of a supplemental, addendum or special docket, at least ten (10) days before such docket is considered by the board, and shall notify the district attorney of any recommendations for commutations or paroles no later than twenty (20) days after the docket is considered by the board.

The Pardon and Parole Board shall notify the victim or victim's representative in writing at least twenty (20) days before an inmate is considered by the board provided the board has received a request from the victim or victim's representative for notice. The board shall provide the victim or victim's representative with the date, time and place of the scheduled meeting and rules for attendance and providing information or input to the board regarding the inmate or the crime. If requested by the victim or victim's representative, the board shall allow the victim or victim's representative to testify at the parole hearing of the inmate for an amount of time at least equal to that provided for the inmate's testimony.

The Pardon and Parole Board shall notify the victim or victim's representative in writing of the board's decision no later than twenty (20) days after the inmate is considered by the board.

Any notice required to be provided to the victim or the victim's representative shall be mailed to the last-known address of the victim or victim's representative. It is the responsibility of the victim or victim's representative to provide the Pardon and Parole Board a current mailing address. The district attorney's victim-witness coordinator shall assist the victim or victim's representative with supplying their address to the board if they wish to be notified.

For purposes of this section, "victim" shall mean a person who has suffered direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of criminally injurious conduct, and "victim's representative" shall mean a person who is a member of the victim's immediate family.

All meetings of the Pardon and Parole Board shall comply with Section 301 et seq. of Title 25 of the Oklahoma Statutes; provided that the board shall have the authority to limit the number of persons attending in support of, or in opposition to, any inmate being considered for parole and shall have the authority to exclude persons from attendance in accordance with prison security regulations and the capacity of the meeting room. Persons excluded from attending the meeting under this provision shall be informed of their right to be informed of the board's vote in accordance with Section 312 of Title 25 of the Oklahoma Statutes. Provided further, nothing in this section shall be construed to prevent any member of the press or any public official from attending any meeting of the Pardon and Parole Board, except as provided by the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 332.8, is amended to read as follows:

Section 332.8 No recommendations to the Governor for parole shall be made in relation to any inmate in a penal institution in the State of Oklahoma unless, ~~in every appropriate case,~~ the Pardon and Parole Board considers the victim impact statement if presented to the court at the time of sentencing and, in every appropriate case, as a condition of parole, monetary restitution of economic loss as defined by Section 991f of Title 22 of the Oklahoma Statutes, incurred by a victim of the crime for which the inmate was imprisoned. In every case, the Pardon and Parole Board shall first consider the number of previous felony convictions and the type of criminal violations leading to any such felony convictions, and then shall consider either suitable employment or a suitable residence as a condition for release on parole. The probation and parole officer shall render every reasonable assistance to any person making application for parole, in helping to obtain suitable employment or a suitable residence.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 984 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Victim impact statement" means information about the financial, emotional, psychological, and physical effects of a violent crime on a victim or member of the immediate family, and includes information about the victim, circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion of a recommended sentence; and

2. "Member of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, or a sibling of the victim.

3. "Violent crime" means any crime listed in paragraph 5 of Section 571 of Title 57 of the Oklahoma Statutes or any attempt, conspiracy or solicitation to commit any such crime.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 984.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A victim, or a member of the immediate family of the victim, may present a written victim impact statement or, at the court's option, appear personally at the sentence proceeding and present the statement orally.

B. If a presentence investigation report is prepared, the person preparing the report shall consult with the victim or member of the immediate family if the victim is deceased, incapacitated or incompetent, and include any victim impact statement in the presentence investigation report. If the individual to be consulted cannot be located or declines to cooperate, a notation to that effect shall be included.

C. The court shall make available to the parties copies of any victim impact statement.

D. In determining the appropriate sentence, the court shall consider among other factors any victim impact statement if submitted to the court.

E. The Department of Corrections and the Pardon and Parole Board, in deciding whether to release an individual on the Preparole Conditional Supervision Program or parole, shall consider any victim impact statement submitted to the court.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 984.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

The court, upon the request of a victim or the district attorney, may order that the victim's address, telephone number, place of employment, or personal information shall not be disclosed

in any law enforcement record or any court document, other than the transcript of a court proceeding, if it is determined by the court to be necessary to protect the victim or immediate family of the victim from harassment or physical harm and if the court determines that the information is immaterial to the defense.

SECTION 10. This act shall become effective July 1, 1992.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-8748

SD