

SHORT TITLE: Victims rights; expanding victim's rights; providing for codification, repealer; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 453

By: Douglass of the Senate

and

Bryant (John) of the House

AS INTRODUCED

An Act relating to victims rights; amending 19 O.S. 1991, Section 215.33, as amended by Section 1, Chapter 136, O.S.L. 1992 (19 O.S. Supp. 1992, Section 215.33), which relates to victims and witness services; amending 21 O.S. 1991, Sections 142.1, 142.3, as amended by Section 3, Chapter 136, O.S.L. 1992, 142.5, 142.9, 142.10, 142.13, 142.18 and 142.20, as amended by Section 1, Chapter 348, O.S.L. 1992 (21 O.S. Supp. 1992, Sections 142.3 and 142.20), which relate to intent of Legislature concerning victims, definitions, power of Crime Victim's Compensation Board, mental and physical examinations, criteria for awards, payment of awards, and assessments; removing requirement for court to consent to district attorney disseminating certain information to victims; conforming statutory references; creating the Victim's Rights Act; requiring certain order to protect witnesses; authorizing certain civil proceeding for violation of certain order; authorizing certain limit on certain judgments; modifying language; adding certain modifications to definition; making certain failure to stop at scene of accident criminally injurious conduct; authorizing certain awards be

handled administratively; granting right of appeal in certain cases; authorizing certain destruction of records; providing exception; authorizing use of mental health advisory panel; setting certain compensation limits; reducing the time for reconsideration of decision; removing certain criteria for lump sum awards; authorizing garnishment for child support; requiring municipal courts to assess certain victim compensation assessment in certain cases; providing for codification, repealing 21 O.S. 1991, Section 142.14, which relates to advancement on awards; 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, as amended by Section 1, Chapter 136, O.S.L 1992 (19 O.S. Supp. 1992, 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 7 984 of ~~this act~~ Title 22 of the Oklahoma Statutes, and members of the immediate family of such

victims of their rights under Sections ~~8~~ 984.1 and ~~9~~ 984.2 of ~~this act~~ Title 22 of the Oklahoma Statutes 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A of Title 21, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 4 of this act shall be known and may be cited as the "Victim's Rights Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142B of Title 21, unless there is created a duplication in numbering, reads as follows:

A. The court shall enter orders as are necessary to protect witnesses of crimes from abusive and intimidating examination by counsel for the defendant. The witness shall have a right of civil action against any attorney who violates these orders.

B. In any civil action for damages by a victim of a crime against the offender in which said crime involves violence, the threat of violence, or sexual assault, the court shall award a victim who prevails in said action attorney's fees and other costs of litigation. The court granting judgment in such a civil action may reduce or limit the exemptions from execution of judgment

provided in Section 1 of Title 31 of the Oklahoma Statutes, and the hardship exemption from garnishment provided in Section 1.1 of Title 31 of the Oklahoma Statutes, when such action would be in the interests of justice.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142C of Title 21, unless there is created a duplication in numbering, reads as follows:

For five (5) years after a conviction for an offense involving violence, the threat of violence, or sexual assault, it shall be unlawful for any convicted offender to contact a victim of the offense. Violations of this section shall constitute a misdemeanor. Nothing herein shall prohibit the court, the Department of Corrections, or any agency of this state, from providing more stringent prohibitions on the conduct of an offender than stated in this section.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 142.1, is amended to read as follows:

Section 142.1 It is the intent of the Legislature to provide a method of compensating and assisting those persons who become victims of criminal acts and who suffer ~~bodily~~ physical injury or death who are either within this state or who are residents of this state who become victims, as defined in Section 142.3 of this title, in states that have no crime victims compensation program. To this end, it is the further intent of the Legislature to provide compensation in the amount of expenses actually incurred as a direct result of the criminal acts of other persons.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 142.3, as amended by Section 3, Chapter 136, O.S.L. 1992 (21 O.S. Supp. 1992, Section 142.3), is amended to read as follows:

Section 142.3 As used in the Oklahoma Crime Victims Compensation Act, Section 142.1 et seq., of this title:

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 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.

Should life insurance proceeds paid to the claimant be less than Twenty Thousand Dollars (\$20,000.00), such proceeds shall not be considered a collateral source when determining net loss for burial expenses. Burial insurance proceeds, however, shall be considered a collateral source;

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~~ physical 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. The act of failing to stop at the scene of an accident resulting in physical injury or death shall be considered criminally injurious conduct for the purposes of this act, provided the offense is punishable by fine or imprisonment;

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 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 7. AMENDATORY 21 O.S. 1991, Section 142.5, is amended to read as follows:

Section 142.5 A. The Crime Victims Compensation Board shall award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met. For claims under Two Thousand Five Hundred Dollars (\$2,500.00) the Board may delegate this determination to the Administrator of the Crime Victims Compensation Board. For claims of any amount, the Board may delegate the initial determination of the claim to the Administrator of the Crime Victims Compensation Board, provided that the claimant shall have a right of appeal to the Board for all claims in excess of Two Thousand Five Hundred Dollars (\$2,500.00).

B. The Board shall hear and determine all matters relating to claims for compensation, and shall be able to reinvestigate or reopen claims without regard to statutes of limitation. However, claims that have been inactive for a period of more than three (3) years from the date of the last action by the Board shall be deemed

closed and any further action forever barred. Claim files may be destroyed after a claim is closed. Destruction of such files may begin immediately after November 1, 1990, for claims that have remained inactive for more than three (3) years from the date of the last action by the Board. Claims which have been declined may be destroyed after nine (9) months, following the last Board action, provided the claimant has not notified the Board of any intentions to request reconsideration of the claim. Destruction of such files may begin on or after July 1, 1993.

C. The Board shall have the power to subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence.

D. The Board shall be provided such office, support, staff and secretarial services as necessary by the District Attorneys Council.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 142.9, is amended to read as follows:

Section 142.9 A. Any person filing a claim under the provisions of this act shall be deemed to have waived any physician-patient privilege as to communications or records relevant to an issue of the physical, mental or emotional conditions of the claimant.

B. If the mental, physical or emotional condition of a claimant is material to a claim, the Board upon good cause shown may order the claimant to submit to a mental or physical examination and may order an autopsy of a deceased victim. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made. The order shall also require the person to file with the Board a detailed written report of the examination or autopsy. The report shall set out the findings of the person making the report, including results of all

tests made, diagnoses, prognoses and other conclusions and reports of earlier examinations of the same conditions.

C. The Board shall furnish a copy of the report examined. If the victim is deceased, the Board, on request, shall furnish a copy of the report to the claimant.

D. The Board may require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

E. In certain cases wherein mental health expenses are being claimed, the Board and Administrator may request assistance from a panel of professionals in the mental health field. The panel of professionals may only act in an advisory capacity to the Board.

F. The Board shall have the authority to set limits of compensation on any medical or mental health treatment, and require that providers of medical or mental health treatments be licensed prior to compensating for said treatment.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 142.10, is amended to read as follows:

Section 142.10 A. Compensation shall not be awarded:

1. Unless the claim has been filed with the Board within one (1) year after the injury or death upon which the claim is based. The Board may, at its discretion, waive this requirement, if the Board finds there was good cause for failure to file the claim within one (1) year, but in no event shall the filing of a claim be permitted after two (2) years from the date of the injury or death upon which the claim is based. The good cause exception shall be permitted only for injury or death occurring on or after November 1, 1989. If the victim is mentally handicapped or is a child under eighteen (18) years of age, the Board may use the date the criminal incident was disclosed to a responsible adult, when establishing whether or not the claim was timely filed;

2. To a claimant who was the offender, or an accomplice of the offender;

3. To another person if the award would unjustly benefit the offender or accomplice; or

4. Unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or the Board finds there was good cause for the failure to report within that time.

B. Compensation otherwise payable to a claimant shall be diminished to the extent:

1. That the economic loss is recouped from collateral sources; or

2. Of the degree of responsibility for the cause of the injury or death attributable to the victim as determined by the Board.

C. The Board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of compensation.

D. The Board, on its own motion or on request of the claimant, may reconsider a decision granting or denying an award or determining its amount. The motion or request to reconsider a decision shall be made within ~~three (3) years~~ six (6) months from the date of the last action by the Board on the claim at issue. An order on reconsideration of an award shall not require a refund of amounts previously paid, unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a Board decision for the purpose of judicial review. On claims which are denied by the Board, reconsideration may only be granted within six (6) months of the last Board action.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 142.13, is amended to read as follows:

Section 142.13 A. Compensation for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss may not exceed Two Hundred Dollars (\$200.00) per week.

B. 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 Ten Thousand Dollars (\$10,000.00) in the aggregate.

C. The Board may provide for the payment to a claimant in a lump sum or in installments. At the request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum, ~~but only upon a finding by the Board of either of the following:~~

~~1. That the award in a lump sum will promote the interests of the claimant; or~~

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

D. An award payable in a lump sum or installments for ~~future economic loss~~ of support may be made only for a period as to which the Board can reasonably determine ~~future economic loss~~ of support. An award payable in installments for future economic loss may be modified by the Board upon its findings that a material and substantial change of circumstances has occurred.

E. An award shall not be subject to execution, attachment, garnishment or other process, except for child support and except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.

F. An assignment by the claimant to any future award under the provisions of this act is unenforceable, except:

1. An assignment of any award for work loss to assure payment of court ordered alimony, maintenance or child support; or

2. An assignment of any award for allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

SECTION 11. AMENDATORY 21 O.S. 1991, Section 142.18, is amended to read as follows:

Section 142.18 A. In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted of, pleading guilty to or agreeing to a deferred judgment procedure under the provisions of Section 991c of Title 22 of the Oklahoma Statutes for a felony involving criminally injurious conduct shall be ordered to pay a victim compensation assessment of at least Thirty Dollars (\$30.00), but not to exceed Ten Thousand Dollars (\$10,000.00), for each crime for which he was convicted or for which he agreed to a deferred judgment procedure. In imposing this penalty, the court shall consider factors such as the severity of the crime, the prior criminal record, and the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant.

B. In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted of, pleading guilty to or agreeing to a deferred judgment procedure under the provisions of Section 991c of Title 22 of the Oklahoma Statutes for a felony or misdemeanor offense, not including traffic offenses and not including misdemeanor offenses of the Oklahoma Wildlife Conservation Code or statutes relating to water safety, not described in subsection A of this section, the court shall levy a victim compensation assessment of at least Twenty-five Dollars (\$25.00), but not to exceed One Thousand Dollars (\$1,000.00) for each felony and at least Ten Dollars (\$10.00), but not to exceed

Three Hundred Dollars (\$300.00) for each misdemeanor upon every fine, penalty, and forfeiture imposed and collected. When a cash bond is posted for any offense included in this subsection, the bond shall also include a sufficient amount to cover the minimum amount for victim compensation assessment.

C. The victim compensation assessment levied by the court pursuant to Section 1116 of Title 10 of the Oklahoma Statutes shall not exceed Two Thousand Dollars (\$2,000.00) for each criminally injurious act committed on a victim by the delinquent child.

D. All monies collected pursuant to this section shall be forwarded monthly by the court clerk to the Victims Compensation Revolving Fund.

E. In any municipal court in which the defendant is convicted of a crime involving violence, the threat of violence, or sexual assault, the court shall levy a victims compensation assessment of Twenty-five Dollars (\$25.00).

SECTION 12. AMENDATORY 21 O.S. 1991, Section 142.20, as amended by Section 1, Chapter 348, O.S.L. 1992 (21 O.S. Supp. 1992, Section 142.20), is amended to read as follows:

Section 142.20 A. A Sexual Assault Examination Fund shall be established for the purpose of providing to a victim of a sexual assault a medical examination by a qualified licensed health care professional for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense and to provide to the victim medications as directed by said health care professional. Pursuant to this subsection, medications provided to the victim by said health care professional shall only be provided to said victim on a one-time basis for the immediate trauma and medical examination of the victim.

B. As used in this section:

1. "Sexual assault" means:

- a. Rape, or rape by instrumentation, as defined in Sections 1111, 1111.1 and 1114 of this title, or
- b. Forcible sodomy, as defined in Section 888 of this title; and

2. "Qualified licensed health care professional" means a physician, registered nurse, or other licensed health care professional qualified by training and experience, as determined by the ~~Crime Victims Compensation Board~~ Department of Mental Health and Substances Abuse Services, to perform sexual assault examinations.

C. The Crime Victims Compensation Board is authorized to pay for this examination and the medications directed by the qualified licensed health care professional upon application submitted by the victim of a sexual assault and approved by the district attorney who has jurisdiction over the prosecution of the sexual assault offense.

D. The Crime Victims Compensation Board shall establish the procedures for disbursement of the Sexual Assault Examination Fund, but in no event shall the Crime Victims Compensation Board pay an amount to exceed:

1. One Hundred Fifty Dollars (\$150.00) for a sexual assault examination; and

2. Twenty-five Dollars (\$25.00) for medications which are related to the sexual assault and directed and deemed necessary by said health care professional.

Such payments shall not exceed the amounts specified by this subsection regardless of the amount of any individual bills comprising the claim. Payments shall be made only upon claims submitted by the victim and approved by the district attorney.

SECTION 13. REPEALER 21 O.S. 1991, Section 142.14, is hereby repealed.

SECTION 14. This act shall become effective July 1, 1993.

SECTION 15. 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.

44-1-0484

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