

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1367

By: Douglass of the Senate

and

Bryant of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to restitution; amending 22 O.S. 1991, Section 991f, as amended by Section 6, Chapter 357, O.S.L. 1997 (22 O.S. Supp. 1997, Section 991f), which relates to restitution proceedings; providing alternatives for collection of restitution orders; authorizing contempt of court with term of imprisonment and fine for failure to pay restitution; providing for entry and collection of certain judgment; stating nondischargeability of certain judgment in bankruptcy; authorizing community service as credit against restitution; construing certain effects of certain provisions; amending 21 O.S. 1991, Sections 142.3, as last amended by Section 4, Chapter 357, O.S.L. 1997 and 142.9, as amended by Section 7, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1997, Sections 142.3 and 142.9), which relate to the Crime Victim's Compensation Act; increasing funeral expense reimbursement; providing for confidentiality for certain records relating to certain victims; providing certain exceptions to confidentiality of certain records; amending Section 7, Chapter 136, O.S.L. 1992, as amended by Section 17, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1997, Section 984), which relates to victims impact statement; expanding certain definition to include certain alcohol related injuries; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 991f, as amended by Section 6, Chapter 357, O.S.L. 1997 (22 O.S. Supp. 1997, Section 991f), is amended to read as follows:

Section 991f. A. For the purposes of any provision of Title 22 of the Oklahoma Statutes relating to criminal sentencing and restitution orders:

1. "Restitution" shall mean the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for the economic loss suffered as a direct result of the criminal act of the defendant;

2. "Victim" means any person, partnership or corporation that suffers an economic loss as a direct result of the criminal act of another person; and

3. "Economic loss" means actual economic detriment suffered by the victim consisting of medical expenses actually incurred, damage to real and personal property and any other out-of-pocket expenses reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included.

B. In all criminal prosecutions and juvenile proceedings in this state, when the court enters an order directing the offender to pay restitution to any victim for economic loss or to pay to the state any fines, fees or assessments, the order, for purposes of validity and collection, shall not be limited to the maximum term of imprisonment for which the offender could have been sentenced, nor limited to any term of probation, parole, or extension thereof, nor expire until fully satisfied. The court order for restitution, fines, fees or assessments shall remain a continuing obligation of the offender until fully satisfied, and the obligation shall not be considered a debt, nor shall the obligation be dischargeable in any bankruptcy proceeding. The court order shall continue in full force and effect with the supervision of the state until fully satisfied, and the state shall use all methods of collection authorized by law.

C. 1. Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution in addition to the punishments prescribed by law.

2. The court shall order full restitution based upon the following considerations:

- a. the nature and amount of restitution shall be sufficient to restore the crime victim to the equivalent economic status existing prior to the losses sustained as a direct result of the crime, but shall not allow the crime victim to receive payment in excess of the losses sustained, and
- b. the amount of restitution shall be established regardless of the financial resources of the offender.

3. The court:

- a. may direct the return of property to be made as soon as practicable and make an award of restitution in the amount of the loss of value to the property itself as a direct result of the crime, including out-of-pocket expenses incurred for loss of use of the property, the cost to return the property to the victim or to restore the property to its pre-crime condition whichever may be appropriate under the circumstances,
- b. may order restitution in a lump sum or by such schedules as may be established and adjusted by the court clerk consistent with the order of the court,
- c. shall have the authority to amend or alter any order of restitution made pursuant to this section providing that the court of minor judiciary state its reasons and conclusions as a matter of record for any change or amendment to any previous order, and
- d. shall consider any pre-existing orders imposed on the defendant, including, but not limited to, orders imposed under civil and criminal proceedings.

D. If restitution to more than one person, agency or entity is set at the same time, the court shall establish the following priorities of payment:

1. The crime victim or victims; and
2. Any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct.

E. 1. The district attorney's office shall present the crime victim's restitution claim to the court following the conviction of the offender or the restitution provisions shall be included in the written plea agreement presented to the court in which case the restitution claim shall be reviewed by the judge prior to acceptance of the plea agreement.

2. At the initiation of the prosecution of the defendant, the district attorney's office shall provide all identifiable crime victims with written and oral information explaining their rights and responsibilities established under this section.

3. The district attorney's office shall provide all crime victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. This form shall be filed with any victim impact statement to be included in the judgment and sentence. Every crime victim receiving the restitution claim form shall be provided assistance and direction to properly complete the form.

4. The official restitution request form shall be presented in all cases regardless of whether the case is brought to trial. In a plea bargain, the district attorney in every case where the victim has suffered economic loss, shall, as a part of the plea bargain, require that the offender pay restitution to the crime victim.

F. The crime victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.

G. The court shall, upon motion by the crime victim, redact from the submitted documentation all personal information relating to the crime victim that does not directly and necessarily establish the authenticity of any document or substantiate the asserted amount of the restitution claim.

H. The unexcused failure or refusal of the crime victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information. The court shall order the offender to submit either as part of the pre-sentence investigation or assessment and evaluation required for a community sentence or, if no pre-sentence investigation is conducted, in advance of the sentencing proceeding such information as the court may direct and finds necessary to be disclosed for the purpose of ascertaining the type and manner of restitution to be ordered.

I. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court shall not deprive the court of the authority to set restitution or set the schedule of payment. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information. The willful failure or refusal of the offender to provide all or part of the requisite information prior to sentencing, unless disclosure is deferred by the court, shall constitute an act of contempt.

J. The court shall conduct such hearings or proceedings as it deems necessary to set restitution and payment schedules at the time of sentencing or may bifurcate the sentencing and defer the hearing or proceedings relating to the imposition of restitution as justice may require. Amendments or alterations to the

restitution order may be made upon the court's own motion, petition by the crime victim or petition by the offender.

K. An offender who files a meritless or frivolous petition for amendment or alteration to the restitution order shall pay the costs of the proceeding on the petition and shall have added to the existing restitution order the additional loss of earnings and out-of-pocket loss incurred by the crime victim in responding to the petition.

L. The restitution request form shall be promulgated by the District Attorneys Council and provided to all district attorney offices.

M. If a defendant who is financially able refuses or neglects to pay restitution as ordered by this section, payment may be enforced:

1. By contempt of court as provided in subsection A of Section 566 of Title 21 of the Oklahoma Statutes with imprisonment or fine or both;

2. In the same manner as prescribed in subsection N of this section for a defendant who is without means to make such restitution payment; or

3. Revocation of the criminal sentence if the sentence imposed was a suspended or deferred sentence or a community sentence.

N. If the defendant is without means to pay the restitution, the judge may direct the total amount due, or any portion thereof, to be entered upon the court minutes and to be certified in the district court of the county where it shall then be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment in a civil case.

Thereupon the same remedies shall be available for the enforcement of the judgment as are available to enforce other judgments; provided, however, the judgment herein prescribed shall not be considered a debt nor dischargeable in any bankruptcy proceeding.

O. Whenever a person has been ordered to pay restitution as provided in this section or any section of the Oklahoma Statutes for a criminal penalty, the judge may order the defendant to a

term of community service, with or without compensation, to be credited at a rate of Five Dollars (\$5.00) per day against the total amount due for restitution. If the defendant fails to perform the required community service authorized by this subsection or if the conditions of community service are violated, the judge may impose a term of imprisonment not to exceed five (5) days in the county jail for each failure to comply.

P. Nothing in subsections M through O of this section shall be construed to be additions to the original criminal penalty, but shall be used by the court as sanctions and means of collection for criminal restitution orders and restitution orders that have been reduced to judgment.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 142.3, as last amended by Section 4, Chapter 357, O.S.L. 1997 (21 O.S. Supp. 1997, 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. "Allowable 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)~~ Four Thousand Dollars (\$4,000.00) for expenses related to funeral, cremation or burial. Allowable expenses also includes a total charge not in excess of One Thousand Dollars (\$1,000.00) for counseling family members of a homicide victim;

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 the Crime Victims Compensation 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, and 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 any contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, except:
 - (1) life insurance proceeds in an amount of Fifty Thousand Dollars (\$50,000.00) or less shall not be considered a collateral source when computing loss of support, and
 - (2) life insurance proceeds of any amount shall not be considered a collateral source for computing burial expenses,
- g. a contract providing prepaid hospital and other health care services or benefits for disability, or
- h. a contract providing prepaid burial expenses or benefits;

5. "Criminally injurious conduct" means a misdemeanor or felony 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 bodily injury, threat of bodily injury or death to a victim which:

- a. may be punishable by fine, imprisonment or death, or
- b. if the act is committed by a child, could result 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, but such term shall include an act of terrorism, as defined in Section 2331 of Title 18, United States Code, committed outside the United States;

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;

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 and shall include a resident of this state who is injured or killed by an act of terrorism committed outside of the United States.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 142.9, as amended by Section 7, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1997, Section 142.9), is amended to read as follows:

Section 142.9 A. Any person filing a claim under the provisions of Section 142.1 et seq. of this act title 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 Oklahoma Crime Victims Compensation 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.

G. All records and information given to the Board to process a claim on behalf of a crime victim shall be confidential. Such exhibits, medical records, psychological records, counseling records, work records, criminal investigation records, criminal court case records, witness statements, telephone records, and other records of any type or nature whatsoever gathered for the purpose of evaluating whether to compensate a victim shall not be obtainable by any party to any civil or criminal action through any discovery process except:

1. In the event of an appeal under the Administrative Procedures Act from a decision of the Board and then only to the extent narrowly and necessarily to obtain court review;

2. Upon a strict showing to the court in a separate civil or criminal action that particular information or documents are not obtainable after diligent effort from any independent source, and are known to exist otherwise only in Board records, the court may inspect in camera such records to determine whether the specific requested information exists. If the court determines the specific information sought exists in the Board's records, the documents may then be released only by court order if the court finds as part of its order that the documents will not pose any threat to the safety of the victim or any other person whose identity may appear in the Board's records.

SECTION 4. AMENDATORY Section 7, Chapter 136, O.S.L. 1992, as amended by Section 17, Chapter 325, O.S.L. 1993 (22 O.S. Supp. 1997, Section 984), is amended to read as follows:

Section 984. As used in this act:

1. "Victim impact statements" means information about the financial, emotional, psychological, and physical effects of a violent crime on each victim and members of their immediate family, or person designated by the victim or by family members of the victim 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;

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

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 or the crime of negligent homicide pursuant to Section 11-903 of Title 47 of the Oklahoma Statutes or the crime of causing great bodily injury while driving under the influence of intoxicating substance, pursuant to Section 11-904 of Title 47 of the Oklahoma Statutes.

SECTION 5. This act shall become effective July 1, 1998.

SECTION 6. 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.

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