SHORT TITLE: Victims rights; Victim's Rights Act; authorizing certain rights; codification; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 647 By: Douglass

AS INTRODUCED

An Act relating to victims rights; amending Sections 3 and 4, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1996, Sections 142A and 142B), which relate to the Victim's Rights Act and civil action by victim of felony crime; modifying reference; defining certain terms; amending 19 O.S. 1991, Section 215.33, as last amended by Section 1, Chapter 292, O.S.L. 1996 (19 O.S. Supp. 1996, Section 215.33), which relates to the victim-witness coordinator; modifying language; authorizing victims and witnesses to sit with the prosecution in court proceedings; authorizing victims and witnesses to remain in the court after subpoena as witness under certain conditions; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 3, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1996, Section 142A), is amended to read as follows:

Section 142A. ~~Sections 3 and 4~~ Section 142A et seq. of this ~~act~~ title shall be known and may be cited as the "Victim's Rights Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142A-1 of Title 21, unless there is created a duplication in numbering, reads as follows:

For purposes of the Victim's Rights Act:

1. "Crime victim" or "victim" means any person against whom a crime was committed, except homicide, in which case the victim may be a surviving family member including a stepbrother, stepsister or stepparent, or the estate when there are no surviving family members other than the defendant, and who, as a direct result of the crime, suffers injury, loss of earnings, out-of-pocket expenses, or loss or damage to property, and who is entitled to restitution from an offender pursuant to an order of restitution imposed by a sentencing court under the laws of this state;

2. "Injury" means any physical, mental, or emotional harm caused by the conduct of an offender and includes the expenses incurred for medical, psychiatric, psychological, or generally accepted remedial treatment of the actual bodily or mental harm, including pregnancy and death, directly resulting from a crime and aggravation of existing physical injuries, if additional losses can be attributed to the direct result of the crime;

3. "Loss of earnings" means the deprivation of earned income or of the ability to earn previous levels of income as a direct result of a crime and the loss of the cash equivalent of social security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support, where the payment is the primary source of the victim's income, and where the victim is deprived of the money as a direct result of the crime;

4. "Out-of-pocket loss" means the unreimbursed and nonreimbursable expenses or indebtedness incurred for medical care, nonmedical care, or other services necessary for the treatment of the actual bodily or mental harm, including pregnancy and funeral

expenses, directly resulting from the crime and aggravation of existing physical injuries, if additional losses can be attributed directly to the crime; the unreimbursed and nonreimbursable expenses for damage to real and personal property as a direct result of the crime, and unreimbursed and nonreimbursable economic losses incurred as a consequence of participation in prosecution and proceedings related to the crime;

5. "Property" means any real or personal property; and

6. "Restitution" means the return of property to the crime victim or payments in cash or the equivalent thereof, and payment in cash or the equivalent thereof as reparation for injury, loss of earnings, and out-of-pocket loss ordered by the court in the disposition of a criminal proceeding.

SECTION 3. AMENDATORY Section 4, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1996, Section 142B), is amended to read as follows:

Section 142B. In any civil action against an offender for damages by a victim of a felony crime ~~against~~ committed by the offender, the court may award a victim who prevails in ~~said~~ the civil action reasonable attorney's fees and other costs of litigation~~,~~; provided, there has been a felony conviction of the defendant for the crime which caused the damage and the claim in the civil action was an uninsured claim. The court granting judgment in ~~such~~ a civil action pursuant to the provisions of this section may reduce or limit the hardship exemption from garnishment provided in Section 1.1 of Title 31 of the Oklahoma Statutes, when ~~such action~~ limitation or reduction would be in the interests of justice.

SECTION 4. AMENDATORY 19 O.S. 1991, Section 215.33, as last amended by Section 1, Chapter 292, O.S.L. 1996 (19 O.S. Supp. 1996, Section 215.33), is amended to read as follows:

Section 215.33 A. The district attorney's office shall inform the victims and witnesses of crimes of the following ~~services~~ rights:

1. To be notified that a court proceeding to which ~~they have~~ a victim or witness has been subpoenaed will or 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 and how to access protection;

3. To be informed of financial assistance and other social services available as a result of being a witness or a crime 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~~ the victim or witness is entitled or restitution to which the victim or witness is 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;

8. To have the family members of all homicide victims afforded all of the services under this section, whether or not ~~they are witnesses~~ the person is to be a witness in any criminal proceedings;

9. To be informed of any plea bargain ~~and to~~ negotiations;

10. To have victim impact statements filed with the judgment and sentence; ~~and~~

11. To be informed if a sentence is overturned, remanded for a new trial or otherwise modified by the Oklahoma Court of Criminal Appeals;

12. To be afforded the opportunity to sit with the prosecution in court proceedings;

13. To be informed in writing of all statutory rights; and

14. To remain in the court proceedings when the victim or witness is not likely to be called, even where a subpoena has been issued to the victim or witness, and to have the district attorney object to any motion invoking the rule to remove potential witnesses during the proceedings, if testimony of the victim or witness is not likely to be required.

B. Victim-witness coordinators may inform the crime victim ~~of a crime~~ of an offense committed by a juvenile of the name and address of the juvenile found to have committed the crime, and shall notify the crime victim ~~of a crime~~ of any offense listed in Section ~~1104.2~~ 7306-1.1 of Title 10 of the Oklahoma Statutes of all court hearings involving that particular juvenile act. If the victim is not available, the victim-witness coordinator shall notify an adult relative of the victim of said hearings.

C. Victim-witness coordinators shall inform victims of violent crimes, as defined in Section 984 of Title 22 of the Oklahoma Statutes, and members of the immediate family of such victims of their rights under Sections 984.1 and 984.2 of 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 twelve (12) 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 5. 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.

46-1-0147 NP