STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 616 By: Douglass

AS INTRODUCED

An Act relating to criminal procedure; amending 21 O.S. 1991, Section 142.3, as last amended by Section 2, Chapter 410, O.S.L. 1998, Section 142.5, as amended by Section 6, Chapter 325, O.S.L. 1993, 142.6, 142.7, 142.13, as last amended by Section 3, Chapter 292, O.S.L. 1996, and 142.14 (21 O.S. Supp. 1998, Sections 142.3, 142.5, and 142.13), which relate to the Oklahoma Crime Victims Compensation Fund; changing certain payment amounts for certain compensation; clarifying language; defining and clarifying certain terms; deleting certain language; changing certain requirements for collateral source of funds; providing for certain compensation to certain caregivers; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 142.3, as last amended by Section 2, Chapter 410, O.S.L. 1998 (21 O.S. Supp. 1998, Section 142.3), is amended to read as follows:

Section 143.2 As used in the Oklahoma Crime Victims Compensation Act, Section 142.1 et seq. of this title:

1. "Allowable expense" means;

a. charges incurred for needed products, services and accommodations, including, but not limited to, medical care, wage loss, rehabilitation, rehabilitative occupational training and other remedial treatment and care~~. It also includes~~,

b. a total charge not in excess ~~of Four Thousand Dollars ($4,000.00)~~ Five Thousand Dollars ($5,000.00) for any

reasonable expenses related to the funeral, cremation or burial~~. Allowable~~,

c. allowable expenses also includes a total charge not in excess of ~~One Thousand Dollars ($1,000.00)~~ Three Thousand Dollars ($3,000.00) for counseling family members of a homicide victim, or

d. outpatient counseling expenses for minor children under the age of eighteen (18) years who witness domestic violence in the home against any family member living in the home may be considered by the Board, provided the counselor is a qualified mental health care provider. A total not to exceed One Thousand Dollars ($1,000.00) may be awarded for each minor child, provided an award would not benefit the offender,

e. costs associated with homicide crime scene cleanup not to exceed Five Hundred Dollars ($500.00);

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. a contract providing prepaid hospital and other health care services or benefits for disability,

g. a contract providing prepaid burial expenses or benefits,

h. 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 or uninsured motorist 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 and proceeds from personal uninsured motorist coverage 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:

a. the vehicle was operated or driven by the offender while under the influence of alcohol or any other intoxicating substance ~~or~~, ~~unless~~

b. 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~~ or

c. the Board believes that the driver of the vehicle that injured the claimant left the scene because blood alcohol content was in excess of the legal limit or because the driver was operating the vehicle under the influence of any intoxicating substance.

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)~~ the legal limit;

13. "Work loss for victim" means:

a. 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, or

b. loss of income from work the victim's caregiver would have performed if the victim's injuries sustained as a result of criminally injurious conduct had not created the need for the caretaker to miss work to care for the injured victim; 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; and

15. "Minor" means a child under eighteen (18) years of age.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 142.5, as amended by Section 6, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1998, 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. The Administrator of the Crime Victims Compensation Board shall determine initial victims' claims and any victim's claim under Two Thousand Five Hundred Dollars ($2,500.00). The Board may delegate any other victim's claim to the Administrator of the Crime Victims

Compensation Board at their discretion. The claimant shall have a right of appeal to the Board for any claim in dispute.

B. The Board shall hear and determine all matters relating to claims for compensation~~, and~~ of Two Thousand Five Hundred Dollars ($2,500.00) or more, and may hear claims under Two Thousand Five Hundred Dollars ($2,500.00). The Board 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 3. AMENDATORY 21 O.S. 1991, Section 142.6, is amended to read as follows:

Section 142.6 In addition to any other powers and duties specified elsewhere in this act, the Board may:

1. Regulate its own procedures except as otherwise provided in this act;

2. Adopt rules ~~and regulations~~ to implement the provisions of this act;

3. Define any term not defined in this act;

4. Prescribe forms necessary to carry out the purposes of this act;

5. ~~Request~~ Have access to any reports of investigations from all law enforcment agencies, or other data necessary to assist the Board in making a determination of eligibility for compensation under the provisions of this act;

6. Take judicial notice of general, technical and scientific facts within their specialized knowledge; and

7. Publicize the availability of compensation and information regarding the filing of claims therefor.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 142.7, is amended to read as follows:

Section 142.7 The Board ~~shall not~~ may require any claimant to seek or accept any collateral source contribution~~, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim under the provisions of this act~~.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 142.13, as last amended by Section 3, Chapter 292, O.S.L. 1996 (21 O.S. Supp. 1998, Section 142.13), is amended to read as follows:

Section 142.13 A. ~~Compensation~~ The Board may compensate for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss ~~may not exceed Two Hundred Twenty-five Dollars ($225.00) per week~~. Compensation for a caregiver who has out-of-pocket wage loss as a result of caring for the victim who was injured as a result of criminally injurious conduct may not exceed Two Thousand Dollars ($2,000.00).

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)~~ Twenty Thousand Dollars ($20,000.00) 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.

D. An award payable in a lump sum or installments for loss of support for a dependent of the deceased victim may be computed through a formula which calculates the net loss of support for dependents based upon an estimated date of retirement or an estimated date of adulthood for dependent children, beginning with the date of death of the victim and ending with the least of one of the following time periods for each dependent filing loss of support:

1. The amount of time from the date of death of the victim to the date the victim would have been expected to reach sixty-two (62) years of age; or

2. The amount of time from the date of death of the victim to the date the spouse of the victim is expected to reach sixty-two (62) years of age; or

3. The amount of time from the date of death of the victim to the date a dependent child is expected to reach eighteen (18) years of age or twenty-three (23) years of age if the dependent child is enrolled as a full-time student.

An award payable in installments for future loss of support may be modified by the Board in the event a dependent child receiving loss of support is between the ages of eighteen (18) and twenty-three (23) years of age and is no longer enrolled as a full-time student, the dependent dies before all installments are paid or the dependent receiving installments moves and leaves no forwarding address with the Board office.

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.

G. The Board may, in its discretion, approve payment of immediate crisis counseling, occurring within four (4) months of the crime, in an amount not to exceed Five Hundred Dollars ($500.00) for each family member of a homicide victim, with a maximum of ~~One Thousand Dollars ($1,000.00)~~ Three Thousand Dollars ($3,000.00) per family, provided the counselor is a qualified mental health care provider. Medical and pharmaceutical treatment is not compensable for any family member of a deceased victim.

H. Outpatient counseling expenses for a victim of criminally injurious conduct may be considered by the Board provided the counseling is focused on the crime and the counselor is a qualified mental health care provider. A total not to exceed Three Thousand Dollars ($3,000.00) may be awarded for individual counseling sessions for victims of criminally injurious conduct. Sessions between the mental health care provider and nonoffending parents of a victimized child under eighteen (18) years of age may also be included in the award provided the combined total for the counseling and parental sessions do not exceed Three Thousand Dollars ($3,000.00) and the parental sessions relate to the victimization. In extreme cases, the Board may, in its discretion, waive the three-thousand-dollar limit. Inpatient mental health treatment will be

reviewed on a case-by-case basis and may be compensated, at the discretion of the Board, in an amount not to exceed ~~the maximum award of~~ Ten Thousand Dollars ($10,000.00).

SECTION 6. AMENDATORY 21 O.S. 1991, Section 142.14, is amended to read as follows:

Section 142.14 If the Board <u>or administrator</u> determines that the claimant will suffer financial hardship unless an advance award is made, an amount may be paid to the claimant and shall be deducted from the final award, or shall be repaid by and recoverable from the claimant to the extent that it exceeds the final award.

SECTION 7. This act shall become effective July 1, 1999.

SECTION 8. 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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