

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1385

By: Ingmire

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5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending
8 21 O.S. 2001, Sections 142.3, 142.5, 142.9, as
9 amended by Section 1, Chapter 174, O.S.L. 2004,
10 142.13, as amended by Section 1, Chapter 154, O.S.L.
11 2005 and 142.20 (21 O.S. Supp. 2006, Sections 142.9
12 and 142.13), which relate to the Oklahoma Crime
13 Victims Compensation Act; modifying scope of certain
14 definitions; increasing certain claim amounts;
15 prohibiting debt collection activities under certain
16 circumstances; defining term; providing for
17 reimbursement of vehicle impound fees under certain
18 circumstances; modifying requirements of certain
19 fund; deleting approval requirement for certain
20 application; increasing sexual assault examination
21 fee; modifying certain claim requirement; amending 22
22 O.S. 2001, Section 40.1, as amended by Section 2,
23 Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2006, Section
24 40.1), which relates to notice of rights for certain
victims; modifying scope of notification; and
providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, 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 1. "Allowable expense" means:

- 2 a. charges incurred for needed products, services and
3 accommodations, including, but not limited to, medical
4 care, wage loss, rehabilitation, rehabilitative
5 occupational training and other remedial treatment and
6 care,
7 b. any reasonable expenses related to the funeral,
8 cremation or burial,
9 c. reasonable costs for counseling family members of a
10 homicide victim, ~~and~~
11 d. reasonable costs associated with homicide crime scene
12 cleanup, and
13 reasonable cost of vehicle impound fees associated
14 with the collection and security of crime scene
15 evidence;

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

18 3. "Claimant" means any of the following persons applying for
19 compensation under the Crime Victims Compensation Act:

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

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

9 a. the offender,

10 b. the government of the United States or any agency
11 thereof, in the form of benefits, such as social
12 security, Medicare and Medicaid, a state or any of its
13 political subdivisions or an instrumentality or two or
14 more states, unless the law providing for the benefits
15 or advantages makes them excessive or secondary to
16 benefits under this act,

17 c. state-required temporary nonoccupational disability
18 insurance,

19 d. workers' compensation,

20 e. wage continuation programs of any employer,

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

23 g. a contract providing prepaid burial expenses or
24 benefits, or

1 h. proceeds of any contract of insurance payable to the
2 claimant for loss which the victim sustained because
3 of the criminally injurious conduct, except:

4 (1) life insurance proceeds or uninsured motorist
5 proceeds in an amount of Fifty Thousand Dollars
6 (\$50,000.00) or less shall not be considered a
7 collateral source when computing loss of support,
8 and

9 (2) life insurance proceeds and proceeds from
10 personal uninsured motorist coverage of any
11 amount shall not be considered a collateral
12 source for computing burial expenses;

13 5. a. "Criminally injurious conduct" means a misdemeanor or
14 felony which occurs or is attempted in this state, or
15 against a resident of this state in a state that does
16 not have an eligible crime victims compensation
17 program as such term is defined in the federal Victims
18 of Crime Act of 1984, Public Law 98-473, that results
19 in bodily injury, threat of bodily injury or death to
20 a victim which:

21 (1) may be punishable by fine, imprisonment or death,
22 or
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1 (2) if the act is committed by a child, could result
2 in such child being adjudicated a delinquent
3 child.

4 b. Such term shall not include acts arising out of the
5 negligent maintenance or use of a motor vehicle
6 unless:

7 (1) the vehicle was operated or driven by the
8 offender while under the influence of alcohol,
9 with a blood alcohol level in excess of the legal
10 limit, or while under the influence of any other
11 intoxicating substance,

12 (2) the vehicle was operated or driven by the
13 offender with the intent to injure or kill the
14 victim or in a manner imminently dangerous to
15 another person and evincing a depraved mind,
16 although without any premeditated design to
17 injure or effect the death of any particular
18 person, ~~or~~

19 (3) the offense involved willful, malicious or
20 felonious failure to stop after being involved in
21 a personal injury accident to avoid detection or
22 prosecution, provided the victim of the accident
23 was a pedestrian or was operating a vehicle moved
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1 solely by human power or a mobility device at the
2 time of contact, or

3 (4) the offense involving one or more vehicles
4 results in the death of the victim due to the
5 reckless disregard for the safety of others by
6 the offender. As used in this subparagraph,
7 "reckless disregard for the safety of others" is
8 defined as the omission to do something which a
9 reasonably careful person would do, or the lack
10 of the usual and ordinary care and caution in the
11 performance of an act usually and ordinarily
12 exercised by a person under similar circumstances
13 and conditions.

14 c. "Criminally injurious conduct" shall include an act of
15 terrorism, as defined in Section 2331 of Title 18,
16 United States Code, committed outside the United
17 States;

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

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

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

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

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

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

21 12. "Traffic offense" means violation of a law relating to the
22 operation of vehicles, but shall not mean negligent homicide due to
23 operation of a motor vehicle, reckless driving, tampering with or
24 damaging a motor vehicle, failure of a driver of a motor vehicle

1 involved in an accident resulting in death or personal injury to
2 stop at the scene of the accident, leaving the scene of an accident
3 resulting in death or personal injury, operating or being in actual
4 physical control of a motor vehicle while intoxicated or impaired
5 due to alcohol or other intoxicating substance, or combination
6 thereof, or operating a motor vehicle with a blood alcohol content
7 in excess of the legal limit;

8 13. "Work loss for victim" means loss of income from work the
9 victim would have performed if such person had not been injured or
10 died, reduced by any income from substitute work actually performed
11 by the victim or by income the victim would have earned in available
12 appropriate substitute work that the victim was capable of
13 performing but unreasonably failed to undertake, or loss of income
14 from work the victim's caregiver would have performed if the
15 injuries of the victim sustained as a result of the criminally
16 injurious conduct had not created the need for the caregiver to miss
17 work to care for the injured victim; and

18 14. "Victim" means a person who suffers personal injury or
19 death as a result of criminally injurious conduct and shall include
20 a resident of this state who is injured or killed by an act of
21 terrorism committed outside of the United States.

22 SECTION 2. AMENDATORY 21 O.S. 2001, Section 142.5, is
23 amended to read as follows:

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1 Section 142.5 A. The Crime Victims Compensation Board shall
2 award compensation for economic loss arising from criminally
3 injurious conduct if satisfied by a preponderance of the evidence
4 that the requirements for compensation have been met. The
5 Administrator of the Crime Victims Compensation Board may determine
6 initial victims' claims and any victim's claim ~~under Two Thousand~~
7 ~~Five Hundred Dollars (\$2,500.00)~~ up to Ten Thousand Dollars
8 (\$10,000.00). The Board may delegate any other victim's claim to
9 the Administrator of the Crime Victims Compensation Board at their
10 discretion. The claimant shall have a right of appeal to the Board
11 for any claim in dispute.

12 B. The Board shall hear and determine all matters relating to
13 claims for compensation of ~~Two Thousand Five Hundred Dollars~~
14 ~~(\$2,500.00)~~ Ten Thousand Dollars (\$10,000.00) or more and may hear
15 claims under ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten
16 Thousand Dollars (\$10,000.00). The Board shall be able to
17 reinvestigate or reopen claims without regard to statutes of
18 limitation. However, claims that have been inactive for a period of
19 more than three (3) years from the date of the last action by the
20 Board shall be deemed closed and any further action forever barred.
21 Claim files may be destroyed after a claim is closed. Claims which
22 have been declined may be destroyed after nine (9) months, following
23 the last Board action, provided the claimant has not notified the
24 Board of any intentions to request reconsideration of the claim.

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

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

8 SECTION 3. AMENDATORY 21 O.S. 2001, Section 142.9, as
9 amended by Section 1, Chapter 174, O.S.L. 2004 (21 O.S. Supp. 2006,
10 Section 142.9), is amended to read as follows:

11 Section 142.9 A. Any person filing a claim under the
12 provisions of Section 142.1 et seq. of this title shall be deemed to
13 have waived any physician-patient privilege as to communications or
14 records relevant to an issue of the physical, mental or emotional
15 conditions of the claimant.

16 B. If the mental, physical or emotional condition of a claimant
17 is material to a claim, the Crime Victims Compensation Board upon
18 good cause shown may order the claimant to submit to a mental or
19 physical examination. The examination report shall set out the
20 findings of the person making the report, including results of all
21 tests made, diagnoses, prognoses and other conclusions and reports
22 of earlier examinations of the same conditions.

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

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

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

11 F. The Board shall have the authority to set limits of
12 compensation on any medical or mental health treatment, and require
13 that providers of medical or mental health treatments be licensed
14 prior to compensating for said treatment. Awards for all medical
15 services shall not exceed eighty percent (80%) of the total cost of
16 the service less any other reduction for contributory conduct, as
17 determined by the Board. Any medical provider that receives payment
18 from the Crime Victims Compensation Revolving Fund for medical,
19 dental or psychological services, or any provider that supplies
20 equipment pursuant to an award under the Oklahoma Crime Victims
21 Compensation Act shall, as a condition of the receipt of such
22 payment, accept such payment as discharging in full any and all
23 obligations of the claimant to pay, reimburse or compensate the
24 provider for medical services, supplies or equipment that have been

1 reimbursed pursuant to the Oklahoma Crime Victims Compensation Act.
2 In the event the claimant has paid for a medical service, the
3 claimant will be reimbursed for the out-of-pocket loss, less any
4 reductions for contributory conduct, as determined by the Board.

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

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

17 2. Upon a strict showing to the court in a separate civil or
18 criminal action that particular information or documents are not
19 obtainable after diligent effort from any independent source, and
20 are known to exist otherwise only in Board records, the court may
21 inspect in camera such records to determine whether the specific
22 requested information exists. If the court determines the specific
23 information sought exists in the Board's records, the documents may
24 then be released only by court order if the court finds as part of

1 its order that the documents will not pose any threat to the safety
2 of the victim or any other person whose identity may appear in the
3 Board's records.

4 H. When a person files a claim, all health care providers that
5 have been given notice of a pending claim shall refrain from all
6 debt collection activities relating to medical treatment received by
7 the person in connection with such claim until an award is made on
8 the claim or until a claim is determined to be noncompensable
9 pursuant to the provisions of this act. The statute of limitations
10 for collection of such debt shall be tolled during the period in
11 which the applicable health care provider is required to refrain
12 from debt collection activities under this subsection. For the
13 purposes of this subsection, "debt collection activities" means
14 repeatedly calling or writing to the claimant and threatening either
15 to turn the matter over to a debt collection agency or to an
16 attorney for collection, enforcement, or filing of other process.
17 The term shall not include routine billing about the status of the
18 claim.

19 SECTION 4. AMENDATORY 21 O.S. 2001, Section 142.13, as
20 amended by Section 1, Chapter 154, O.S.L. 2005 (21 O.S. Supp. 2006,
21 Section 142.13), is amended to read as follows:

22 Section 142.13 A. The Crime Victims Compensation Board may
23 compensate for work loss, replacement services loss, dependent's
24 economic loss and dependent's replacement service loss.

1 Compensation for a caregiver who has out-of-pocket wage loss as a
2 result of caring for the victim who was injured as a result of
3 criminally injurious conduct may not exceed Two Thousand Dollars
4 (\$2,000.00).

5 B. Compensation payable to a victim and to all other claimants
6 sustaining economic loss because of injury to or death of that
7 victim may not exceed Twenty Thousand Dollars (\$20,000.00) in the
8 aggregate.

9 C. The Board may provide for the payment to a claimant in a
10 lump sum or in installments. At the request of the claimant, the
11 Board may convert future economic loss, other than allowable
12 expense, to a lump sum.

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

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

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

4 3. The amount of time from the date of death of the victim to
5 the date a dependent child is expected to reach eighteen (18) years
6 of age or twenty-three (23) years of age if the dependent child is
7 enrolled as a full-time student. An award payable in installments
8 for future loss of support may be modified by the Board in the event
9 a dependent child receiving loss of support is between the ages of
10 eighteen (18) and twenty-three (23) years of age and is no longer
11 enrolled as a full-time student, the dependent dies before all
12 installments are paid or the dependent receiving installments moves
13 and leaves no forwarding address with the Board office.

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

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

22 1. An assignment of any award for work loss to assure payment
23 of court ordered alimony, maintenance or child support; or
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1 2. An assignment of any award for allowable expense to the
2 extent that the benefits are for the cost of products, services or
3 accommodations necessitated by the injury or death on which the
4 claim is based and are provided or to be provided by the assignee.

5 G. The Board may, in its discretion, approve payment of crisis
6 counseling, occurring within three (3) years of the crime, in an
7 amount not to exceed Three Thousand Dollars (\$3,000.00) for each
8 family member of a homicide victim; provided, the counselor is a
9 qualified mental health care provider. Medical and pharmaceutical
10 treatment is not compensable for any family member of a deceased
11 victim.

12 H. Outpatient counseling expenses for a victim of criminally
13 injurious conduct may be considered by the Board provided the
14 counseling is focused on the crime and the counselor is a qualified
15 mental health care provider. A total not to exceed Three Thousand
16 Dollars (\$3,000.00) may be awarded for individual counseling
17 sessions for victims of criminally injurious conduct. Sessions
18 between the mental health care provider and nonoffending parents of
19 a victimized child under eighteen (18) years of age may also be
20 included in the award provided the combined total for the counseling
21 and parental sessions do not exceed Three Thousand Dollars
22 (\$3,000.00) and the parental sessions relate to the victimization.
23 In extreme cases, the Board may, in its discretion, waive the three-
24 thousand-dollar limit. Inpatient mental health treatment will be

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

4 I. Reasonable funeral, cremation or burial expenses shall not
5 exceed Six Thousand Dollars (\$6,000.00).

6 J. Reasonable costs associated with homicide crime scene
7 cleanup shall not exceed Five Hundred Dollars (\$500.00).

8 K. Loss of income of a caregiver shall not exceed Two Thousand
9 Dollars (\$2,000.00).

10 L. Reasonable costs for vehicle impound fees are limited to
11 violent crimes occurring in a vehicle owned by the victim of the
12 violent crime or an eligible claimant, provided such fee is
13 associated with the collection and security of crime scene evidence.
14 Reimbursement for vehicle impound fees shall not exceed Seven
15 Hundred Fifty Dollars (\$750.00).

16 SECTION 5. AMENDATORY 21 O.S. 2001, Section 142.20, is
17 amended to read as follows:

18 Section 142.20 A. A Sexual Assault Examination Fund shall be
19 established for the purpose of providing to a victim of a sexual
20 assault a forensic medical examination by a qualified licensed
21 health care professional ~~for the procurement of evidence to aid in~~
22 ~~the investigation and prosecution of a sexual assault offense~~ and to
23 provide to the victim medications as directed by said health care
24 professional. ~~Pursuant to this subsection, medications provided to~~

1 ~~the victim by said health care professional shall only be provided~~
2 ~~to said victim on a one time basis for the immediate trauma and~~
3 ~~medical examination of the victim.~~

4 B. As used in this section:

5 1. "Sexual assault" means:

6 a. Rape, or rape by instrumentation, as defined in

7 Sections 1111, 1111.1 and 1114 of this title, or

8 b. Forcible sodomy, as defined in Section 888 of this

9 title; and

10 2. "Qualified licensed health care professional" means a
11 physician, registered nurse, or other licensed health care
12 professional qualified by training and experience to perform sexual
13 assault examinations.

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

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

1 1. ~~Two Hundred Fifty Dollars (\$250.00)~~ Four Hundred Fifty
2 Dollars (\$450.00) for a sexual assault examination; and

3 2. Fifty Dollars (\$50.00) for medications which are related to
4 the sexual assault and directed and deemed necessary by said health
5 care professional.

6 Such payments shall not exceed the amounts specified by this
7 subsection regardless of the amount of any individual bills
8 comprising the claim. Payments shall be made only upon claims
9 ~~submitted by the victim and approved by the district attorney or~~
10 ~~assistant district attorney~~ signed by the victim or guardian and
11 health care professional.

12 E. The District Attorneys Council is hereby authorized to
13 transfer up to Two Hundred Seventy-five Thousand Dollars
14 (\$275,000.00) from the Crime Victims Compensation Fund to the Sexual
15 Assault Examination Fund for the payment of sexual assault forensic
16 examinations and medications, pursuant to this section.

17 SECTION 6. AMENDATORY 22 O.S. 2001, Section 40.1, as
18 amended by Section 2, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2006,
19 Section 40.1), is amended to read as follows:

20 Section 40.1 Upon the preliminary investigation of any rape or
21 forcible sodomy, it shall be the duty of the officer who interviews
22 the victim of the rape or forcible sodomy to inform the victim, or a
23 responsible adult if the victim is a minor child or an incompetent
24 person, of the twenty-four-hour statewide telephone communication

1 service established by the ~~Department of Mental Health and Substance~~
2 ~~Abuse Services~~ Office of the Attorney General for victims of sexual
3 assault pursuant to Section ~~3-314~~ 18p-5 of Title ~~43A~~ 74 of the
4 Oklahoma Statutes and to give notice to the victim or such
5 responsible adult of certain rights of the victim. The notice shall
6 consist of handing such victim or responsible adult a written
7 statement in substantially the following form:

8 "As a victim of the crime of rape or forcible sodomy, you have
9 certain rights. These rights are as follows:

10 1. The right to request that charges be pressed against your
11 assailant;

12 2. The right to request protection from any harm or threat of
13 harm arising out of your cooperation with law enforcement and
14 prosecution efforts as far as facilities are available and to be
15 provided with information on the level of protection available;

16 3. The right to be informed of financial assistance and other
17 social services available to victims, including information on how
18 to apply for the assistance and services;

19 4. The right to a free forensic medical examination ~~for the~~
20 ~~procurement of evidence to aid in the prosecution of your assailant;~~
21 and

22 5. The right to be informed by the district attorney of other
23 victim's rights available pursuant to Section 215.33 of Title 19 of
24 the Oklahoma Statutes."

1 The written notice shall also include the telephone number of the
2 twenty-four-hour statewide telephone communication service
3 established by the ~~Department of Mental Health and Substance Abuse~~
4 ~~Services~~ Office of the Attorney General in Section ~~3-314~~ 18p-5 of
5 Title ~~43A~~ 74 of the Oklahoma Statutes. Failure to report the crime
6 to law enforcement may impede the investigation and prosecution of
7 the assailant.

8 SECTION 7. This act shall become effective November 1, 2007.

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