ENGROSSED SENATE
BILL NO. 1068 By: Barrington of the Senate

and

Nelson of the House

[Crime Victims Compensation Act - definitions and payment - effective date]

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

SECTION 1. AMENDATORY 21 O.S. 2011, 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:

a. charges incurred for needed products, services and accommodations, including, but not limited to, medical care, wage loss, counseling, rehabilitation, rehabilitative occupational training and other remedial treatment and care for the victim,

b. any reasonable expenses related to the funeral, cremation or burial,

c. reasonable costs for counseling family members of a homicide victim,

d. uncompensated bereavement wage loss for the next of kin in the closest degree of relationship to the

homicide victim, as defined by Section 213 et seq. of Title 84 of the Oklahoma Statutes,

e. reasonable travel and lodging expenses for the next of kin in the closest degree of relationship to the homicide victim, as defined by Section 213 et seq. of Title 84 of the Oklahoma Statutes, to attend the criminal trial,

f. reasonable costs associated with homicide crime scene cleanup, and

~~e.~~

g. reasonable cost of vehicle impound fees associated with the collection and security of crime scene evidence;

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, or

d a person otherwise entitled to compensation pursuant to the Oklahoma Crime Victims Compensation Act;

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~~ the Oklahoma Crime Victims Compensation 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~~ the Oklahoma Crime Victims Compensation Act,

c. state-required temporary nonoccupational disability insurance,

d. workers' compensation,

e. wage continuation programs of any employer including sick leave, personal time off leave, vacation leave or bonuses,

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

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

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;

5. a. "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:

(1) may be punishable by fine, imprisonment or death, or

(2) if the act is committed by a child, could result in such child being adjudicated a delinquent child.

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

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

(2) 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,

(3) the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident

was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact, or

(4) the offense involving one or more vehicles results in the death of the victim due to the reckless disregard for the safety of others by the offender. As used in this division, “reckless disregard for the safety of others” is defined as the omission to do something which a reasonably careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

c. “Criminally injurious conduct” 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 the legal limit;

13. "Work loss for victim" 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 the victim was capable of performing but unreasonably failed to undertake, or loss of income from work the victim's caregiver would have performed if the injuries of the victim sustained as a result of the criminally injurious conduct had not created the need for the caregiver 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.

SECTION 2. AMENDATORY 21 O.S. 2011, Section 142.13, is amended to read as follows:

Section 142.13. A. The Crime Victims Compensation Board may compensate for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss. 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 Three Thousand Dollars ($3,000.00).

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 Twenty Thousand Dollars ($20,000.00) in the aggregate. The Board may, after approval of an initial award of Twenty Thousand Dollars ($20,000.00), grant an additional sum not to exceed Twenty Thousand Dollars ($20,000.00), specifically for loss of wages for the victim or loss of support for dependents of a deceased victim provided, there is verifiable economic loss after deducting payments from other sources. In no event shall compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim exceed Forty Thousand Dollars ($40,000.00) 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;

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~~ the Oklahoma Crime Victims Compensation 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 crisis counseling, occurring within three (3) years of the crime, in an amount not to exceed Three Thousand Dollars ($3,000.00) for each family member of a homicide victim; 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 Twenty Thousand Dollars ($20,000.00).

I. Reasonable funeral, cremation or burial expenses shall not exceed Seven Thousand Five Hundred Dollars ($7,500.00).

J. Reasonable costs associated with crime scene cleanup shall not exceed Two Thousand Dollars ($2,000.00).

K. Loss of income of a caregiver shall not exceed Three Thousand Dollars ($3,000.00).

L. Reasonable costs for vehicle impound fees are limited to violent crimes occurring in a vehicle owned by the victim of the violent crime or an eligible claimant, provided such fee is associated with the collection and security of crime scene evidence.

Reimbursement for vehicle impound fees shall not exceed Seven Hundred Fifty Dollars ($750.00).

M. Reasonable costs associated with unreimbursed bereavement wage loss for the next of kin in the closest degree of relationship to the homicide victim, as defined by Section 213 et seq. of Title 84 of the Oklahoma Statutes, shall not exceed One Thousand Dollars ($1,000.00) per eligible next of kin. Wage loss must occur within thirty (30) days following the death or burial upon which the claim is based in order to be considered. Unreimbursed wage loss shall be verified by the employer.

N. Reasonable costs for reimbursement of travel and lodging expenses for the next of kin in the closest degree of relationship to the homicide victim, as defined by Section 213 et seq. of Title 84 of the Oklahoma Statutes, to attend the criminal trial shall not exceed Two Thousand Dollars ($2,000.00) in the aggregate. Persons eligible to make claim for travel and lodging reimbursement must live more than three hundred (300) miles from the trial location in order to be eligible. If more than one person is eligible for travel and lodging reimbursement, the maximum award of Two Thousand Dollars ($2,000.00) will be prorated based on actual out-of-pocket loss.

SECTION 3. This act shall become effective November 1, 2012.

Passed the Senate the 27th day of February, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House of Representatives