

1 **SENATE FLOOR VERSION**

2 February 20, 2012

3 As Amended

4 SENATE BILL NO. 1068

5 By: Barrington of the Senate

6 and

7 Nelson of the House

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

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

11 SECTION 1. AMENDATORY 21 O.S. 2011, Section 142.3, is
12 amended to read as follows:

13 Section 142.3. As used in the Oklahoma Crime Victims
14 Compensation Act, ~~Section 142.1 et seq. of this title:~~

15 1. "Allowable expense" means:

- 16 a. charges incurred for needed products, services and
17 accommodations, including, but not limited to, medical
18 care, wage loss, counseling, rehabilitation,
19 rehabilitative occupational training and other
20 remedial treatment and care for the victim,
- 21 b. any reasonable expenses related to the funeral,
22 cremation or burial,
- 23 c. reasonable costs for counseling family members of a
24 homicide victim,

1 d. uncompensated bereavement wage loss for the next of
2 kin in the closest degree of relationship to the
3 homicide victim, as defined by Section 213 et seq. of
4 Title 84 of the Oklahoma Statutes,

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

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

12 ~~e.~~

13 g. 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~~

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, or

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

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

12 a. the offender,

13 b. the government of the United States or any agency
14 thereof, in the form of benefits, such as social
15 security, Medicare and Medicaid, a state or any of its
16 political subdivisions or an instrumentality or two or
17 more states, unless the law providing for the benefits
18 or advantages makes them excessive or secondary to
19 benefits under ~~this act~~ the Oklahoma Crime Victims
20 Compensation Act,

21 c. state-required temporary nonoccupational disability
22 insurance,

23 d. workers' compensation,
24

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

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

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

8 h. proceeds of any contract of insurance payable to the
9 claimant for loss which the victim sustained because
10 of the criminally injurious conduct, except:

11 (1) life insurance proceeds or uninsured motorist
12 proceeds in an amount of Fifty Thousand Dollars
13 (\$50,000.00) or less shall not be considered a
14 collateral source when computing loss of support,
15 and

16 (2) life insurance proceeds and proceeds from
17 personal uninsured motorist coverage of any
18 amount shall not be considered a collateral
19 source for computing burial expenses;

20 5. a. "Criminally injurious conduct" means a misdemeanor or
21 felony which occurs or is attempted in this state, or
22 against a resident of this state in a state that does
23 not have an eligible crime victims compensation
24 program as such term is defined in the federal Victims

1 of Crime Act of 1984, Public Law 98-473, that results
2 in bodily injury, threat of bodily injury or death to
3 a victim which:

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

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

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

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

17 (2) the vehicle was operated or driven by the
18 offender with the intent to injure or kill the
19 victim or in a manner imminently dangerous to
20 another person and evincing a depraved mind,
21 although without any premeditated design to
22 injure or effect the death of any particular
23 person,
24

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

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

19 c. "Criminally injurious conduct" shall include an act of
20 terrorism, as defined in Section 2331 of Title 18,
21 United States Code, committed outside the United
22 States;

23 6. "Dependent" means a natural person wholly or partially
24 dependent upon the victim for care or support, and includes a child

1 of the victim born after the death of the victim where the death
2 occurred as a result of criminally injurious conduct;

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

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

14 9. "Economic loss" means monetary detriment consisting only of
15 allowable expense, work loss, replacement services loss and, if
16 injury causes death, economic loss and replacement services loss of
17 a dependent, but shall not include noneconomic loss;

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

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

1 12. "Traffic offense" means violation of a law relating to the
2 operation of vehicles, but shall not mean negligent homicide due to
3 operation of a motor vehicle, reckless driving, tampering with or
4 damaging a motor vehicle, failure of a driver of a motor vehicle
5 involved in an accident resulting in death or personal injury to
6 stop at the scene of the accident, leaving the scene of an accident
7 resulting in death or personal injury, operating or being in actual
8 physical control of a motor vehicle while intoxicated or impaired
9 due to alcohol or other intoxicating substance, or combination
10 thereof, or operating a motor vehicle with a blood alcohol content
11 in excess of the legal limit;

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

22 14. "Victim" means a person who suffers personal injury or
23 death as a result of criminally injurious conduct and shall include
24

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

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

5 Section 142.13. A. The Crime Victims Compensation Board may
6 compensate for work loss, replacement services loss, dependent's
7 economic loss and dependent's replacement service loss.

8 Compensation for a caregiver who has out-of-pocket wage loss as a
9 result of caring for the victim who was injured as a result of
10 criminally injurious conduct may not exceed Three Thousand Dollars
11 (\$3,000.00).

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

24

1 C. The Board may provide for the payment to a claimant in a
2 lump sum or in installments. At the request of the claimant, the
3 Board may convert future economic loss, other than allowable
4 expense, to a lump sum.

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

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

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

19 3. The amount of time from the date of death of the victim to
20 the date a dependent child is expected to reach eighteen (18) years
21 of age or twenty-three (23) years of age if the dependent child is
22 enrolled as a full-time student. An award payable in installments
23 for future loss of support may be modified by the Board in the event
24 a dependent child receiving loss of support is between the ages of

1 | eighteen (18) and twenty-three (23) years of age and is no longer
2 | enrolled as a full-time student, the dependent dies before all
3 | installments are paid or the dependent receiving installments moves
4 | and leaves no forwarding address with the Board office.

5 | E. An award shall not be subject to execution, attachment,
6 | garnishment or other process, except for child support and except
7 | that an award for allowable expense shall not be exempt from a claim
8 | of a creditor to the extent that such creditor has provided
9 | products, services or accommodations, the costs of which are
10 | included in the award.

11 | F. An assignment by the claimant to any future award under the
12 | provisions of ~~this act~~ the Oklahoma Crime Victims Compensation Act
13 | is unenforceable, except:

14 | 1. An assignment of any award for work loss to assure payment
15 | of court ordered alimony, maintenance or child support; or

16 | 2. An assignment of any award for allowable expense to the
17 | extent that the benefits are for the cost of products, services or
18 | accommodations necessitated by the injury or death on which the
19 | claim is based and are provided or to be provided by the assignee.

20 | G. The Board may, in its discretion, approve payment of crisis
21 | counseling, occurring within three (3) years of the crime, in an
22 | amount not to exceed Three Thousand Dollars (\$3,000.00) for each
23 | family member of a homicide victim; provided, the counselor is a
24 | qualified mental health care provider. Medical and pharmaceutical

1 treatment is not compensable for any family member of a deceased
2 victim.

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

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

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

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

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

7 M. Reasonable costs associated with unreimbursed bereavement
8 wage loss for the next of kin in the closest degree of relationship
9 to the homicide victim, as defined by Section 213 et seq. of Title
10 84 of the Oklahoma Statutes, shall not exceed One Thousand Dollars
11 (\$1,000.00) per eligible next of kin. Wage loss must occur within
12 thirty (30) days following the death or burial upon which the claim
13 is based in order to be considered. Unreimbursed wage loss shall be
14 verified by the employer.

15 N. Reasonable costs for reimbursement of travel and lodging
16 expenses for the next of kin in the closest degree of relationship
17 to the homicide victim, as defined by Section 213 et seq. of Title
18 84 of the Oklahoma Statutes, to attend the criminal trial shall not
19 exceed Two Thousand Dollars (\$2,000.00) in the aggregate. Persons
20 eligible to make claim for travel and lodging reimbursement must
21 live more than three hundred (300) miles from the trial location in
22 order to be eligible. If more than one person is eligible for
23 travel and lodging reimbursement, the maximum award of Two Thousand

1 Dollars (\$2,000.00) will be prorated based on actual out-of-pocket
2 loss.

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

4 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-15-12 - DO
5 PASS, As Amended and Coauthored.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24