

1 ENGROSSED SENATE  
2 BILL NO. 1256

By: Matthews of the Senate

3 and

4 Nichols of the House  
5

6 An Act relating to the Oklahoma Crime Victims  
7 Compensation Act; amending 21 O.S. 2011, Section  
8 142.3, which relates to definitions; providing  
9 definition; amending 21 O.S. 2011, Section 142.9, as  
10 amended by Section 1, Chapter 18, O.S.L. 2019 (21  
11 O.S. Supp. 2019, Section 142.9), which relates to  
12 limiting compensation; stating certain factors for  
13 consideration; amending 21 O.S. 2011, Section 142.10,  
14 as amended by Section 1, Chapter 58, O.S.L. 2016 (21  
15 O.S. Supp. 2019, Section 142.10), which relates to  
16 award of compensation; modifying language; updating  
17 statutory references; and providing an effective  
18 date.

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

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

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

24 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,
- b. any reasonable expenses related to the funeral, cremation or burial,
- c. reasonable costs for counseling family members of a homicide victim,
- d. reasonable costs associated with homicide crime scene cleanup, and
- e. 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;

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

1 Compensation Act, and which the claimant has received, or which is  
2 readily available to the claimant, from any one or more of the  
3 following:

- 4 a. the offender,
- 5 b. the government of the United States or any agency  
6 thereof, in the form of benefits, such as social  
7 security, Medicare and Medicaid, a state or any of its  
8 political subdivisions or an instrumentality or two or  
9 more states, unless the law providing for the benefits  
10 or advantages makes them excessive or secondary to  
11 benefits under ~~this act~~ the Oklahoma Crime Victims  
12 Compensation Act,
- 13 c. state-required temporary nonoccupational disability  
14 insurance,
- 15 d. workers' compensation,
- 16 e. wage continuation programs of any employer,
- 17 f. a contract providing prepaid hospital and other health  
18 care services or benefits for disability,
- 19 g. a contract providing prepaid burial expenses or  
20 benefits, or
- 21 h. proceeds of any contract of insurance payable to the  
22 claimant for loss which the victim sustained because  
23 of the criminally injurious conduct, except:

1 (1) life insurance proceeds or uninsured motorist  
2 proceeds in an amount of Fifty Thousand Dollars  
3 (\$50,000.00) or less shall not be considered a  
4 collateral source when computing loss of support,  
5 and

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

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

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

20 (2) if the act is committed by a child, could result  
21 in such child being adjudicated a delinquent  
22 child.  
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1           b.   Such term shall not include acts arising out of the  
2               negligent maintenance or use of a motor vehicle  
3               unless:

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

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

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

23               (4)   the offense involving one or more vehicles  
24                   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

1 deceased victim would have performed for their benefit had the  
2 deceased victim not suffered the fatal injury, less expenses of the  
3 dependent avoided by reason of death of the victim and not  
4 subtracted in calculating the economic loss of the dependent;

5 9. "Economic loss" means monetary detriment consisting only of  
6 allowable expense, work loss, replacement services loss and, if  
7 injury causes death, economic loss and replacement services loss of  
8 a dependent, but shall not include noneconomic loss;

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

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

16 12. "Traffic offense" means violation of a law relating to the  
17 operation of vehicles, but shall not mean negligent homicide due to  
18 operation of a motor vehicle, reckless driving, tampering with or  
19 damaging a motor vehicle, failure of a driver of a motor vehicle  
20 involved in an accident resulting in death or personal injury to  
21 stop at the scene of the accident, leaving the scene of an accident  
22 resulting in death or personal injury, operating or being in actual  
23 physical control of a motor vehicle while intoxicated or impaired  
24 due to alcohol or other intoxicating substance, or combination

1 thereof, or operating a motor vehicle with a blood alcohol content  
2 in excess of the legal limit;

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

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

17 15. "Contributory conduct" means criminal or illegal  
18 provocation, consent or any other behavior of the victim which  
19 directly or indirectly contributed to his or her injury or death.

20 SECTION 2. AMENDATORY 21 O.S. 2011, Section 142.9, as  
21 amended by Section 1, Chapter 18, O.S.L. 2019 (21 O.S. Supp. 2019,  
22 Section 142.9), is amended to read as follows:

23 Section 142.9. A. Any person filing a claim under the  
24 provisions of Section 142.1 et seq. of this title shall be deemed to

1 have waived any physician-patient privilege as to communications or  
2 records relevant to an issue of the physical, mental or emotional  
3 conditions of the claimant.

4 B. If the mental, physical or emotional condition of a claimant  
5 is material to a claim, the Crime Victims Compensation Board upon  
6 good cause shown may order the claimant to submit to a mental or  
7 physical examination. The examination report shall set out the  
8 findings of the person making the report, including results of all  
9 tests made, diagnoses, prognoses and other conclusions and reports  
10 of earlier examinations of the same conditions.

11 C. The Board shall furnish a copy of the examination report.  
12 If the victim is deceased, the Board, on request, shall furnish a  
13 copy of the report to the claimant.

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

17 E. In certain cases wherein mental health expenses are being  
18 claimed, the Board and Administrator of the Crime Victims  
19 Compensation Board may request assistance from a panel of  
20 professionals in the mental health field. The panel of  
21 professionals may only act in an advisory capacity to the Board.

22 F. The Board shall have the authority to set limits of  
23 compensation on any medical or mental health treatment, and require  
24 that providers of medical or mental health treatment be licensed

1 prior to compensating for ~~said~~ the treatment. Awards for all  
2 medical services shall not exceed eighty percent (80%) of the total  
3 cost of the service less any other reduction for contributory  
4 conduct, as defined in Section 142.3 of this title, as determined by  
5 the Board. Any medical provider that receives payment from the  
6 Crime Victims Compensation Revolving Fund for medical, dental or  
7 psychological services, or any provider that supplies equipment  
8 pursuant to an award under the Oklahoma Crime Victims Compensation  
9 Act shall, as a condition of the receipt of such payment, accept  
10 such payment as discharging in full any and all obligations of the  
11 claimant to pay, reimburse or compensate the provider for medical  
12 services, supplies or equipment that have been reimbursed pursuant  
13 to the Oklahoma Crime Victims Compensation Act. In the event the  
14 claimant has paid for a medical service, the claimant will be  
15 reimbursed for the out-of-pocket loss, less any reductions for  
16 contributory conduct, as determined by the Board.

17 G. All records and information given to the Board to process a  
18 claim on behalf of a crime victim shall be confidential. Such  
19 exhibits, medical records, psychological records, counseling  
20 records, work records, criminal investigation records, criminal  
21 court case records, witness statements, telephone records, and other  
22 records of any type or nature whatsoever gathered for the purpose of  
23 evaluating whether to compensate a victim shall not be obtainable by  
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1 any party to any civil or criminal action through any discovery  
2 process except:

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

6 2. Upon a strict showing to the court in a separate civil or  
7 criminal action that particular information or documents are not  
8 obtainable after diligent effort from any independent source, and  
9 are known to exist otherwise only in Board records, the court may  
10 inspect in camera such records to determine whether the specific  
11 requested information exists. If the court determines the specific  
12 information sought exists in the Board's records, the documents may  
13 then be released only by court order if the court finds as part of  
14 its order that the documents will not pose any threat to the safety  
15 of the victim or any other person whose identity may appear in the  
16 Board's records.

17 H. When a person files a claim, all providers that have been  
18 given notice of a pending claim shall refrain from all debt  
19 collection activities relating to medical treatment or other  
20 services received by the person in connection with such claim until  
21 an award is made on the claim or until a claim is determined to be  
22 noncompensable pursuant to the provisions of ~~this act~~ the Oklahoma  
23 Crime Victims Compensation Act. The statute of limitations for  
24 collection of such debt shall be tolled during the period in which

1 the applicable health care provider or other service provider is  
2 required to refrain from debt collection activities under this  
3 subsection. For the purposes of this subsection, "debt collection  
4 activities" means repeatedly calling or writing to the claimant and  
5 threatening either to turn the matter over to a debt collection  
6 agency or to an attorney for collection, enforcement, or filing of  
7 other process. The term shall not include routine billing about the  
8 status of the claim.

9 I. The following factors shall be considered when there is a  
10 consideration of contributory conduct by the Board:

11 1. The victim suffered an injury that was significantly more  
12 serious than reasonably could have been expected as a result of his  
13 or her involvement in the events leading up to the qualifying crime;

14 2. Another person involved in the events leading up to the  
15 qualifying crime escalated his or her conduct in a manner not  
16 reasonably foreseeable by the victim;

17 3. A third party interfered in a manner not reasonably  
18 foreseeable by the victim; and

19 4. Whether the victim acted in lawful self-defense.

20 SECTION 3. AMENDATORY 21 O.S. 2011, Section 142.10, as  
21 amended by Section 1, Chapter 58, O.S.L. 2016 (21 O.S. Supp. 2019,  
22 Section 142.10), is amended to read as follows:

23 Section 142.10. A. Compensation shall not be awarded:  
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1 1. Unless the claim has been filed with the Board within one  
2 (1) year after the injury or death upon which the claim is based.  
3 If the victim is under a mental or cognitive disability or is a  
4 child under eighteen (18) years of age, the Board may use the date  
5 the criminal incident was disclosed to a responsible adult when  
6 establishing whether or not the claim was timely filed. The Board  
7 may, at its discretion, extend the filing period beyond one (1) year  
8 upon a showing of good cause or in all cases of child sexual  
9 assault;

10 2. To a claimant who was the offender, or an accomplice of the  
11 offender;

12 3. To another person if the award would unjustly benefit the  
13 offender or accomplice; or

14 4. Unless the criminally injurious conduct resulting in injury  
15 or death was reported to a law enforcement officer within seventy-  
16 two (72) hours after its occurrence or the Board finds there was  
17 good cause for the failure to report within that time.

18 B. Compensation otherwise payable to a claimant shall be  
19 diminished to the extent:

20 1. That the economic loss is recouped from collateral sources;  
21 or

22 2. Of the degree of ~~responsibility~~ contributory conduct for the  
23 cause of the injury or death attributable to the victim as  
24 determined by the Board.

1 C. The Board, upon finding that the claimant or victim has not  
2 fully cooperated with appropriate law enforcement agencies, may  
3 deny, withdraw or reduce an award of compensation.

4 D. The Board, on its own motion or on request of the claimant,  
5 may reconsider a decision granting or denying an award or  
6 determining its amount. The motion or request to reconsider a  
7 decision shall be made within six (6) months from the date of the  
8 last action by the Board on the claim at issue. An order on  
9 reconsideration of an award shall not require a refund of amounts  
10 previously paid, unless the award was obtained by fraud. The right  
11 of reconsideration does not affect the finality of a Board decision  
12 for the purpose of judicial review. On claims which are denied by  
13 the Board, reconsideration may only be granted within six (6) months  
14 of the last Board action.

15 E. The provisions of subsections A and B of this section shall  
16 not apply to claimants eligible for compensation pursuant to the  
17 Murrah Crime Victims Compensation Act who make claims under the  
18 Oklahoma Crime Victims Compensation Act.

19 SECTION 4. This act shall become effective November 1, 2020.  
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1 Passed the Senate the 5th day of March, 2020.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2020.

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9 Presiding Officer of the House  
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