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February 10, 2020

By: Matthews

An Act relating to the Oklahoma Crime Victims Compensation Act; amending 21 O.S. 2011, Section 142.3, which relates to definitions; providing definition; amending 21 O.S. 2011, Section 142.9, as amended by Section 1, Chapter 18, O.S.L. 2019 (21 O.S. Supp. 2019, Section 142.9), which relates to limiting compensation; stating certain factors for consideration; amending 21 O.S. 2011, Section 142.10, as amended by Section 1, Chapter 58, O.S.L. 2016 (21 O.S. Supp. 2019, Section 142.10), which relates to award of compensation; modifying language; updating statutory references; and providing an 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, rehabilitation, rehabilitative

- 1 occupational training and other remedial treatment and
2 care,
- 3 b. any reasonable expenses related to the funeral,
4 cremation or burial,
- 5 c. reasonable costs for counseling family members of a
6 homicide victim,
- 7 d. reasonable costs associated with homicide crime scene
8 cleanup, and
- 9 e. reasonable cost of vehicle impound fees associated
10 with the collection and security of crime scene
11 evidence;

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

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

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

22 4. "Collateral source" means a source of benefits or advantages
23 for economic loss for which the claimant would otherwise be eligible
24 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
24

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:
24

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.

20 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
21 February 10, 2020 - DO PASS
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