

ENGROSSED SENATE
BILL NO. 816

BY: DOUGLASS, HELTON, HENDRICK,
MICKLE, DICKERSON, HERBERT
and WILKERSON of the SENATE

and

BRYANT of the HOUSE

AN ACT RELATING TO VICTIM'S RIGHTS; AMENDING 21 O.S.
1991, SECTION 142.3, WHICH RELATES TO DEFINITIONS,
22 O.S. 1991, SECTION 991a, WHICH RELATES TO
SENTENCING POWERS OF THE COURT AND 57 O.S. 1991,
SECTION 332.8, WHICH RELATES TO CONDITIONS FOR
PAROLE; MODIFYING LANGUAGE; INCREASING AMOUNT FOR
FUNERAL EXPENSES; AUTHORIZING THE COURT TO CONSIDER
VICTIM IMPACT STATEMENT; REQUIRING THE PARDON AND
PAROLE BOARD TO CONSIDER VICTIM IMPACT STATEMENT;
DEFINING TERMS; AUTHORIZING PRESENTATION OF VICTIM
IMPACT STATEMENT AT SENTENCING; PROVIDING FOR
CONSULTATION WITH VICTIM FOR PRESENTENCE
INVESTIGATION REPORT; PROHIBITING CERTAIN
DISCLOSURE OF INFORMATION; PROVIDING EXCEPTION;
DIRECTING SPEEDY PROSECUTION OF DEFENDANT;
REQUIRING THE VICTIM'S WITNESS COORDINATOR TO
INFORM VICTIM OF DELAYS AND PRESENT CERTAIN
OBJECTIONS; AUTHORIZING THE COURT TO MAKE CERTAIN
FINDINGS ON THE RECORD; PROVIDING FOR CODIFICATION;
PROVIDING AN EFFECTIVE DATE; AND DECLARING AN
EMERGENCY.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 142.3, is amended to read as follows:

Section 142.3 As used in the Oklahoma Crime Victims Compensation Act:

1. "Allowance expense" means charges incurred for needed products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care. It also includes a total charge not in excess of ~~One Thousand Five Hundred Dollars (\$1,500.00)~~ Two Thousand Five Hundred Dollars (\$2,500.00) for expenses related to funeral, cremation or burial;

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 this 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 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,

- c. state-required temporary nonoccupational disability insurance,
- d. workers' compensation,
- e. wage continuation programs of any employer,
- f. proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or
- g. a contract providing prepaid hospital and other health care services or benefits for disability;

5. "Criminally injurious conduct" means an act 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 personal injury or death to a victim which:

- a. is punishable by fine, imprisonment or death, or
- b. if the act is committed by a child, results in such child being adjudicated a delinquent child.

Such term shall not include acts arising out of the negligent maintenance or use of a motor vehicle unless the vehicle was operated or driven by the offender while under the influence of alcohol or any other intoxicating substance or, unless 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;

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, less expenses of the dependent avoided by reason of death of the victim;

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 ~~.10~~ ten-hundredths (0.10);

13. "Work loss" 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 he or she was capable of performing but unreasonably failed to undertake; and

14. "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 991a, is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, Section 991a-5 et seq. of this title, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. ~~suspend~~ Suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

a. ~~To~~ to provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of

the damage to the victim is determinable with reasonable certainty, ~~or~~

- b. ~~To~~ to reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum, ~~or~~
- c. ~~To~~ to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted, ~~or~~
- d. ~~To~~ to pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss, ~~or~~
- e. ~~To~~ to confinement in the county jail for a period not to exceed six (6) months, ~~or~~
- f. ~~To~~ to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced, or
- g. ~~To~~ to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the

defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes-;

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; ~~or~~

2. ~~impose~~ Impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section;

3. ~~commit~~ Commit such person for confinement provided for by law with or without restitution as provided for in this section;

4. ~~in~~ In the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title; ~~or~~

5. ~~in~~ In addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor

vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

- a. ~~Te~~ to participate in an alcohol and drug substance abuse course, pursuant to Sections ~~11-902.2 and 11-902.3 of Title 47~~ 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,
- b. ~~Te~~ to attend a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,
- c. ~~Te~~ to both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph;
or

6. ~~in~~ In addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not

apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony.

C. When sentencing a person convicted of a crime, the court shall consider any victim impact statement if submitted to the court.

D. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years. However, such supervision may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

~~D.~~ E. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

~~E.~~ F. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs~~;~~;

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections~~;~~;

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division-;

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this subsection. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act-; and

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 332.8, is amended to read as follows:

Section 332.8 No recommendations to the Governor for parole shall be made in relation to any inmate in a penal institution in the State of Oklahoma unless, ~~in every appropriate case,~~ the Pardon and Parole Board considers the victim impact statement if presented to the court at the time of sentencing and, in every appropriate case, as a condition of parole, monetary restitution of economic loss as defined by Section 991f of Title 22 of the Oklahoma Statutes, incurred by a victim of the crime for which the inmate was imprisoned. In every case, the Pardon and Parole Board shall first consider the number of previous felony convictions and the type of criminal violations leading to any such felony convictions, and then

shall consider either suitable employment or a suitable residence as a condition for release on parole. The probation and parole officer shall render every reasonable assistance to any person making application for parole, in helping to obtain suitable employment or a suitable residence.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 984 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Victim impact statement" means information about the financial, emotional, psychological, and physical effects of the crime on a victim or member of the immediate family, and includes information about the victim, circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion of a recommended sentence; and

2. "Member of the immediate family" means the spouse, a child by birth or adoption, a stepchild, a parent, or a sibling of the victim.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 984.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A victim, or a member of the immediate family of the victim, may present a written victim impact statement or, at the court's option, appear personally at the sentence proceeding and present the statement orally.

B. If a presentence investigation report is prepared, the person preparing the report shall consult with the victim or member of the immediate family if the victim is deceased, incapacitated or incompetent, and include any victim impact statement in the presentence investigation report. If the individual to be consulted cannot be located or declines to cooperate, a notation to that effect shall be included.

C. The court shall make available to the parties copies of any victim impact statement.

D. In determining the appropriate sentence, the court shall consider among other factors any victim impact statement if submitted to the court.

E. The Department of Corrections and the Pardon and Parole Board, in deciding whether to release an individual on the Preparole Conditional Supervision Program or parole, shall consider any victim impact statement submitted to the court.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 984.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Upon the request of the victim, a member of the immediate family of the victim, any law enforcement agency, or the district attorney, the victim's address, telephone number, place of employment, or other personal information shall not be disclosed in any court proceeding, court document, or any other law enforcement record, unless disclosure is determined by the court to be necessary.

B. Every law enforcement or correctional official shall keep confidential the address and telephone number of the victim and of any member of the immediate family of the victim.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 984.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. In any felony case involving a violent crime or a sex offense, the court, the district attorney, and law enforcement officials shall take appropriate action to ensure a speedy prosecution against the defendant. In such cases, the victim's witness coordinator shall inform the victim, as soon as practicable, or an adult member of the immediate family of the victim if the victim is deceased, incapacitated, or incompetent, of any pretrial

motion that would substantially delay the trial date. When the district attorney has knowledge of a victim's objections to a delay, he shall communicate the objection to the court.

B. In any case where a substantial delay may adversely impact the victim or the immediate family of the victim, the court may consider the interests of the victim, including any potential emotional or psychological harm. The special needs and interests of a child, an elderly or physically handicapped victim or a victim of a sexual crime may also be considered. The court may make a finding on the record that these factors were considered in granting any substantial delay.

SECTION 8. This act shall become effective July 1, 1992.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 10th day of March, 1992.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1992.

Speaker of the House of Representatives