

Enrolled
House Bill 3021

Sponsored by Representative BARKER (at the request of Department of Justice)

CHAPTER

AN ACT

Relating to crime victims' compensation; creating new provisions; amending ORS 147.005, 147.015, 147.025 and 147.035; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 147.035 is amended to read:

147.035. *[(1) Losses compensable under ORS 135.905 and 147.005 to 147.367 resulting from death or injury to a victim include:]*

[(a) In the case of injury:]

[(A) Reasonable medical and hospital expenses, including psychiatric, psychological or counseling expenses and further including, in cases of:]

[(i) Child sexual abuse, rape of a child and exploitation described in ORS 419B.005 (1)(a)(C), (D) or (E), counseling expenses of the victim's family up to a maximum amount of \$20,000;]

[(ii) Domestic violence, as defined in ORS 135.230, counseling expenses of children who witnessed the domestic violence up to a maximum amount of \$10,000; or]

[(iii) International terrorism, counseling expenses of a relative of the victim up to a maximum amount of \$1,000;]

[(B) Loss of earnings, not exceeding \$400 per week up to a maximum amount of \$20,000;]

[(C) Rehabilitation up to a maximum amount of \$4,000; and]

[(D) Transportation for medical care and mental health counseling when the treatment is compensable under this section, the treatment is provided more than 30 miles away from the victim's residence and adequate treatment is not available closer to the victim's residence. Payment will be made at a rate set by the Department of Justice up to a maximum amount of \$3,000.]

[(b) In the case of death:]

[(A) Reasonable funeral expenses up to a maximum amount of \$5,000;]

[(B) Reasonable medical and hospital expenses up to a maximum amount of \$20,000;]

[(C) Loss of support to the dependents of the victim not exceeding \$400 per week up to a maximum amount of \$20,000, less any amounts paid for loss of earnings;]

[(D) Reasonable counseling expenses for the survivors of a deceased victim up to a maximum amount of \$20,000 for each deceased victim; and]

[(E) Transportation for mental health counseling when the treatment is compensable under this section, the treatment is provided more than 30 miles away from the survivor's or dependent's residence and adequate treatment is not available closer to the survivor's or dependent's residence. Payment will be made at a rate set by the Department of Justice up to a maximum amount of \$3,000.]

[(2) Compensable losses do not include:]

[(a) Pain and suffering or property damage; or]

[(b) Aggregate damages to the victim and to the dependents of a victim exceeding \$47,000.]

[(3) Notwithstanding subsections (1) and (2) of this section, in the case of abuse of corpse in any degree, losses compensable under ORS 135.905 and 147.005 to 147.367 resulting from the abuse of the corpse may include:]

(1)(a) Except as otherwise provided in ORS 147.025 and 147.390, compensation may be awarded under ORS 147.005 to 147.367 only for losses described in this section.

(b) The maximum amount of compensation that may be awarded, in aggregate, to the victim and the survivors and dependents of a deceased victim is \$47,000.

(c) When a compensable crime results in:

(A) Injury to a victim, the losses described in subsections (2), (4), (7) and (8) of this section are compensable.

(B) Death to a victim, the losses described in subsections (3), (4), (6), (7) and (8) of this section are compensable.

(2) When a claim for compensation is filed in a case of injury, compensation may be awarded for:

(a) The victim's reasonable medical and hospital expenses, including counseling expenses, up to a maximum amount of \$20,000;

(b) Loss of the victim's earnings, at a maximum rate of \$400 per week, up to a maximum amount of \$20,000;

(c) The victim's rehabilitation expenses, up to a maximum amount of \$4,000; and

(d) Expenses related to transportation for the victim's medical care or counseling, at a rate determined by the Department of Justice, up to a maximum amount of \$3,000, when:

(A) The medical care or counseling is compensable under this section;

(B) The medical care or counseling is provided more than 30 miles away from the victim's residence; and

(C) Adequate medical care or counseling is not available in closer proximity to the victim's residence.

(3) When a claim for compensation is filed in a case of death, compensation may be awarded for:

(a) Reasonable funeral expenses, up to a maximum amount of \$5,000;

(b) The victim's reasonable medical and hospital expenses, up to a maximum amount of \$20,000;

(c) Loss of support to the dependents of the victim, at a maximum rate of \$400 per week, up to a maximum amount of \$20,000, less any amounts awarded for loss of earnings under subsection (2)(b) of this section;

(d) Reasonable counseling expenses for the survivors of a deceased victim, up to a maximum amount of \$20,000 for each deceased victim; and

(e) Expenses related to transportation for a survivor's or a dependent's counseling, at a rate determined by the department, up to a maximum amount of \$3,000, when:

(A) The counseling is compensable under this section;

(B) The counseling is provided more than 30 miles away from the survivor's or dependent's residence; and

(C) Adequate counseling is not available in closer proximity to the survivor's or dependent's residence.

(4) When a claim for compensation is filed in a case of:

(a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim's family are compensable up to a maximum amount of \$20,000, less any amounts awarded for the victim's medical or hospital expenses under subsection (2)(a) of this section.

(b) Domestic violence as defined in ORS 135.230, the counseling expenses of children who witnessed the domestic violence are compensable up to a maximum amount of \$10,000.

(c) **International terrorism, the counseling expenses of a relative of the victim are compensable up to a maximum amount of \$1,000.**

(5) **Compensation may not be awarded under ORS 147.005 to 147.367 for pain and suffering or property damage.**

(6) **Notwithstanding subsections (2) to (5) of this section, when a claim for compensation is filed in a case of abuse of corpse in the first degree as defined in ORS 166.087 or abuse of corpse in the second degree as defined in ORS 166.085, compensation may be awarded for one or both of the following:**

(a) Reasonable funeral expenses, up to a maximum amount of \$5,000[; or].

(b) Reasonable counseling expenses for emotional distress, up to a maximum amount of \$5,000 for each incident.

[4] (7) If the case against the assailant of the victim is under direct or collateral review[, *compensable losses may include:*] **and the victim, survivor or dependent is involved in the hearing or oral argument, compensation may be awarded for:**

(a) [*Crime-related*] **The victim's, survivor's or dependent's** counseling expenses up to a maximum **amount** of \$5,000; [or] **and**

(b) Other expenses related to the review, including transportation and lodging necessary for the victim, **survivor or dependent** to [attend] **be involved in** hearings and oral arguments, up to a maximum **amount** of \$3,000.

[5] (8) If the assailant of the victim has a [parole] hearing scheduled before the State Board of Parole and Post-Prison Supervision[, *compensable losses may include:*] **or the Psychiatric Security Review Board and the victim, survivor or dependent is involved in the hearing, compensation may be awarded for:**

(a) [*Crime-related*] **The victim's, survivor's or dependent's** counseling expenses up to a maximum **amount** of \$5,000; [or] **and**

(b) Other expenses related to the hearing, including transportation and lodging necessary for the victim, **survivor or dependent** to [attend] **be involved in** the hearing, up to a maximum **amount** of \$3,000.

[6] (9) [*Except as provided in subsections (7) to (10) of this section,*] A claim for [benefits] **compensation** expires and no further payments may be made with regard to the claim:

(a) When three years have elapsed [since] **from** the entry of a determination order under ORS 147.135; or

(b) **If the victim, survivor or dependent attains 21 years of age after the date described in paragraph (a) of this subsection,** when the victim, survivor or dependent attains 21 years of age[, *whichever comes later. The extension of benefits and payments until the victim, survivor or dependent attains 21 years of age applies to claims filed on or after August 4, 1991.*]

[7] *If the victim has suffered catastrophic injuries, a claim for benefits and payments may continue beyond the period described in subsection (6) of this section. The Department of Justice shall adopt rules defining catastrophic injuries and establishing the length of time that a claim for benefits and payments may continue.*

(10) Notwithstanding subsection (9) of this section:

[8] (a) In cases of homicide, a claim for reasonable counseling expenses for [surviving family members] **survivors** may continue until five years have elapsed from the date of the determination order.

[9] *Claims described in subsection (4) of this section:*

[a] *May be submitted each time an assailant's case is under direct or collateral review; and*

[b] *Do not expire until six months after the completion of the direct or collateral review.*

[10] *Claims described in subsection (5) of this section do not expire until the earlier of six months after the parole hearing for which the application was submitted or the assailant's release.*

[11] *The department shall adopt rules for medical fee schedules. The schedules shall represent at least the 75th percentile of the usual and customary fees charged to the public as determined by the*

department. An applicant or victim may not be charged for the percentile amount reduced by the department.]

(b) Claims described in subsection (7) of this section may be filed each time an assailant's case is under direct or collateral review and expire:

(A) If the assailant is released as a result of the direct or collateral review, when six months have elapsed from the date the assailant is released; or

(B) If the assailant is not released as a result of the direct or collateral review, when six months have elapsed from the completion of the review.

(c) Claims described in subsection (8) of this section may be filed each time an assailant has a hearing before the State Board of Parole and Post-Prison Supervision or the Psychiatric Security Review Board and expire:

(A) If the assailant is denied parole, conditional release or discharge, when six months have elapsed from the date of the hearing.

(B) If the assailant is paroled, conditionally released or discharged, when six months have elapsed from the date the assailant is paroled, conditionally released or discharged.

(11) Notwithstanding subsections (2) and (9) of this section, if a victim suffers catastrophic injuries:

(a) A claim for compensation and payments may continue beyond the period described in subsection (9) of this section; and

(b) The department may award compensation for losses in excess of the individual limitations described in subsection (2) of this section, provided that the aggregate award does not exceed the amount described in subsection (1)(b) of this section.

(12) The department shall adopt rules:

(a) Defining catastrophic injuries and establishing the length of time that a claim for compensation and payments may continue under subsection (11)(a) of this section.

(b) For medical fee schedules. The schedules shall represent at least the 75th percentile of the usual and customary fees charged to the public as determined by the department. An applicant or victim may not be charged for the percentile amount reduced by the department.

SECTION 2. ORS 147.035 (9) applies only to claims filed on or after August 4, 1991.

SECTION 3. ORS 147.015 is amended to read:

147.015. A person is eligible for an award of compensation under ORS [135.905 and] 147.005 to 147.367 if:

(1) The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable crime that has resulted in or may result in a compensable loss;

(2) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim within 72 hours after its perpetration, unless the Department of Justice finds good cause exists for the failure of notification;

(3) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the department has found that the applicant's failure to cooperate was for good cause;

(4) The application for compensation is not the result of collusion between the applicant and the assailant of the victim;

(5) The death or injury to the victim was not substantially attributable to the wrongful act of the victim or substantial provocation of the assailant of the victim; and

(6) The application for an award of compensation under ORS [135.905 and] 147.005 to 147.367 is filed with the department:

(a) Within [six months] **one year** of the date of the injury to the victim; or

(b) Within such further extension of time as the department for good cause shown, allows.

SECTION 4. ORS 147.025 is amended to read:

147.025. (1) Notwithstanding that a person is not a victim or a dependent of a deceased victim under ORS 147.015 (1), the person is eligible for compensation for reasonable medical expenses for the victim and for reasonable funeral expenses of the deceased victim if the person:

(a) Paid or incurred such expenses; and
(b) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (2) to (6) are met.

(2) Notwithstanding that a person is not a survivor or dependent of a deceased victim under ORS 147.015 (1), the person is eligible for compensation for reasonable counseling expenses up to a maximum amount of \$500 if the person:

(a) Paid or incurred such expenses;
(b) Was a friend or acquaintance of the victim;
(c) Was the first person to discover the corpse of the victim; and
(d) Files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (2) to (6) are met.

(3) Notwithstanding that a person is not a victim or a survivor or dependent of a deceased victim under ORS 147.015 (1), the person is eligible for the compensation described in ORS 147.035 (7) and (8) if:

(a) The person is the personal representative, as defined by the Department of Justice by rule, of a victim or of a survivor or dependent of a deceased victim;

(b) The person is involved in the hearing or oral argument in lieu of the victim, survivor or dependent; and

(c) The person files a claim in the manner provided in ORS 147.105 and the conditions in ORS 147.015 (2) to (6) are met.

[3] (4) The Department of Justice may pay directly to the provider of the services compensation for medical, funeral or counseling expenses incurred by the person.

SECTION 5. ORS 147.005 is amended to read:

147.005. As used in ORS [135.905 and] 147.005 to 147.367 unless the context requires otherwise:

(1) "Applicant" means:

(a) Any victim of a compensable crime who applies to the Department of Justice for compensation under ORS [135.905 and] 147.005 to 147.367;

(b) Any person who was a dependent of a deceased victim at the time of the death of that victim;

(c) Any person who is a survivor of a deceased victim; or

(d) Any person eligible for compensation under ORS 147.025.

(2) "Board" means the Workers' Compensation Board.

(3) "Child" means an unmarried person who is under 18 years of age and includes a posthumous child, stepchild or an adopted child.

(4) "Compensable crime" means abuse of corpse in any degree or an intentional, knowing, [or] reckless **or criminally negligent** act that results in serious bodily injury or death of another person and [which] **that**, if committed by a person of full legal capacity, would be punishable as a crime in this state.

(5) "Counseling" has the meaning given that term by the department by rule.

[5] (6) "Dependent" means such relatives of a deceased victim who wholly or partially were dependent upon the victim's income at the time of death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.

[6] (7) "Department" means the Department of Justice.

[7] (8) "Funeral expenses" means expenses of the funeral, burial, cremation or other chosen method of interment, including plot or tomb and other necessary incidents to the disposition of the remains and also including, in the case of abuse of corpse in any degree, reinterment.

[8] (9) "Injury" means abuse of a corpse or actual bodily harm and, with respect to a victim, includes pregnancy and mental or nervous shock.

[9] (10) "International terrorism" means activities that:

(a) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state or that would be a criminal violation if committed within the jurisdiction of the United States or of any state;

(b) Appear to be intended to:

(A) Intimidate or coerce a civilian population;

(B) Influence the policy of a government by intimidation or coercion; or

(C) Affect the conduct of a government by assassination or kidnapping; and

(c) Occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

(11) "Involved in the hearing" and "involved in the oral argument" have the meaning given those terms by the department by rule.

[(10)] **(12)** "Law enforcement official" means a sheriff, constable, marshal, municipal police officer or member of the Oregon State Police and such other persons as may be designated by law as a peace officer.

[(11)] **(13)** "Relative" means a person related to the victim within the third degree as determined by the common law, a spouse, or an individual related to the spouse within the third degree as so determined and includes an individual in an adoptive relationship.

[(12)] **(14)** "Survivor" means any spouse, parent, grandparent, guardian, sibling, child or other immediate family member or household member of a deceased victim.

[(13)] **(15)** "Victim" means:

(a) A person:

(A) Killed or injured in this state as a result of a compensable crime perpetrated or attempted against that person;

(B) Killed or injured in this state while attempting to assist a person against whom a compensable crime is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable person under the circumstances;

(C) Killed or injured in this state while assisting a law enforcement official to apprehend a person who has perpetrated a crime or to prevent the perpetration of any such crime, if that assistance was in response to the express request of the law enforcement official;

(D) Killed or injured in another state as a result of a criminal episode that began in this state;

(E) Who is an Oregon resident killed or injured as a result of a compensable crime perpetrated or attempted against the person in a state, within the United States, without a reciprocal crime victims' compensation program; or

(F) Who is an Oregon resident killed or injured by an act of international terrorism committed outside the United States; or

(b) In the case of abuse of corpse in any degree, the corpse or a relative of the corpse.

SECTION 6. The amendments to ORS 147.005, 147.015, 147.025 and 147.035 by sections 1, 3, 4 and 5 of this 2011 Act apply to applications for compensation filed on or after the effective date of this 2011 Act.

SECTION 7. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 28, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 10, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State