

AN ACT

To amend sections 2743.51, 2743.56, and 2743.62 of the Revised Code to increase the amount of recoverable funeral expenses under the Crime Victims Reparations Law, to revise the information an applicant must submit in an application for a reparations award under that Law, and to provide that confidential information obtained by the Court of Claims or Attorney General under that Law remains confidential while in the Court's or Attorney General's possession.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2743.51, 2743.56, and 2743.62 of the Revised Code be amended to read as follows:

Sec. 2743.51. As used in sections 2743.51 to 2743.72 of the Revised Code:

(A) "Claimant" means both of the following categories of persons:

(1) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who was one of the following at the time of the criminally injurious conduct:

(i) A resident of the United States;

(ii) A resident of a foreign country the laws of which permit residents of this state to recover compensation as victims of offenses committed in that country.

(b) A dependent of a deceased victim who is described in division (A)(1)(a) of this section;

(c) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, who is described in division (A)(1)(a) of this section, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim and may include, but are not limited to, medical or burial expenses;

(d) A person who is authorized to act on behalf of any person who is described in division (A)(1)(a), (b), or (c) of this section.

(2) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who had a permanent place of residence within this state at the time of the criminally injurious conduct and who, at the time of the criminally injurious conduct, complied with any one of the following:

(i) Had a permanent place of employment in this state;

(ii) Was a member of the regular armed forces of the United States or of the United States coast guard or was a full-time member of the Ohio organized militia or of the United States army reserve, naval reserve, or air force reserve;

(iii) Was retired and receiving social security or any other retirement income;

(iv) Was sixty years of age or older;

(v) Was temporarily in another state for the purpose of receiving medical treatment;

(vi) Was temporarily in another state for the purpose of performing employment-related duties required by an employer located within this state as an express condition of employment or employee benefits;

(vii) Was temporarily in another state for the purpose of receiving occupational, vocational, or other job-related training or instruction required by an employer located within this state as an express condition of employment or employee benefits;

(viii) Was a full-time student at an academic institution, college, or university located in another state;

(ix) Had not departed the geographical boundaries of this state for a period exceeding thirty days or with the intention of becoming a citizen of another state or establishing a permanent place of residence in another state.

(b) A dependent of a deceased victim who is described in division (A)(2)(a) of this section;

(c) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, who is described in division (A)(2)(a) of this section, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim and may include, but are not limited to, medical or burial expenses;

(d) A person who is authorized to act on behalf of any person who is described in division (A)(2)(a), (b), or (c) of this section.

(B) "Collateral source" means a source of benefits or advantages for

conomic loss otherwise reparable that the victim or claimant has received, or that is readily available to the victim or claimant, from any of the following sources:

- (1) The offender;
- (2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under sections 2743.51 to 2743.72 of the Revised Code;
- (3) Social security, medicare, and medicaid;
- (4) State-required, temporary, nonoccupational disability insurance;
- (5) Workers' compensation;
- (6) Wage continuation programs of any employer;
- (7) Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct;
- (8) A contract providing prepaid hospital and other health care services, or benefits for disability;
- (9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim that exceeds fifty thousand dollars;
- (10) Any compensation recovered or recoverable under the laws of another state, district, territory, or foreign country because the victim was the victim of an offense committed in that state, district, territory, or country.

"Collateral source" does not include any money, or the monetary value of any property, that is subject to sections 2969.01 to 2969.06 of the Revised Code.

(C) "Criminally injurious conduct" means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(a) The person engaging in the conduct intended to cause personal injury or death;

(b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a

felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;

(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OMVI violation;

(d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code.

(2) For the purposes of any person described in division (A)(2) of this section, any conduct that occurs or is attempted in another state, district, territory, or foreign country; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(a) The person engaging in the conduct intended to cause personal injury or death;

(b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted;

(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OMVI violation;

(d) The conduct occurred on or after July 25, 1990, the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of any law of the state, district, territory, or foreign country in which the conduct occurred, and that law is substantially similar to a violation of section 2903.08 of the Revised Code.

(3) For the purposes of any person described in division (A)(1) or (2) of this section, terrorism that occurs within or outside the territorial jurisdiction of the United States.

(D) "Dependent" means an individual wholly or partially dependent upon the victim for care and support, and includes a child of the victim born after the victim's death.

(E) "Economic loss" means economic detriment consisting only of allowable expense, work loss, funeral expense, unemployment benefits loss, and replacement services loss. If criminally injurious conduct causes death,

economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(F) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for eyeglasses and other corrective lenses. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(G) "Work loss" means loss of income from work that the injured person would have performed if the person had not been injured and expenses reasonably incurred by the person to obtain services in lieu of those the person would have performed for income, reduced by any income from substitute work actually performed by the person, or by income the person would have earned in available appropriate substitute work that the person was capable of performing but unreasonably failed to undertake.

(H) "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of the person's self or family, if the person had not been injured.

(I) "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to the victim's dependents, not including services they would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death. If a minor child of a victim is adopted after the victim's death, the minor child continues after the adoption to incur a dependent's economic loss as a result of the victim's death. If the surviving spouse of a victim remarries, the surviving spouse continues after the remarriage to incur a dependent's economic loss as a result of the victim's death.

(J) "Dependent's replacement services loss" means loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if the victim had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in

calculating the dependent's economic loss. If a minor child of a victim is adopted after the victim's death, the minor child continues after the adoption to incur a dependent's replacement services loss as a result of the victim's death. If the surviving spouse of a victim remarries, the surviving spouse continues after the remarriage to incur a dependent's replacement services loss as a result of the victim's death.

(K) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.

(L) "Victim" means a person who suffers personal injury or death as a result of any of the following:

(1) Criminally injurious conduct;

(2) The good faith effort of any person to prevent criminally injurious conduct;

(3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

(M) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.

(N) "Funeral expense" means any reasonable charges that are not in excess of ~~two~~ five thousand ~~five hundred~~ dollars per funeral and that are incurred for expenses directly related to ~~the~~ a victim's funeral, cremation, or burial.

(O) "Unemployment benefits loss" means a loss of unemployment benefits pursuant to Chapter 4141. of the Revised Code when the loss arises solely from the inability of a victim to meet the able to work, available for suitable work, or the actively seeking suitable work requirements of division (A)(4)(a) of section 4141.29 of the Revised Code.

(P) "OMVI violation" means any of the following:

(1) A violation of section 4511.19 of the Revised Code, of any municipal ordinance prohibiting the operation of a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of any municipal ordinance prohibiting the operation of a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine;

(2) A violation of section 2903.06 of the Revised Code, if the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, at the time of the commission of the offense;

(3) A violation of section 2903.07 of the Revised Code or of a municipal ordinance substantially similar to that section, if the offender was

under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, at the time of the commission of the offense;

(4) For purposes of any person described in division (A)(2) of this section, a violation of any law of the state, district, territory, or foreign country in which the criminally injurious conduct occurred, if that law is substantially similar to a violation described in division (P)(1) of this section or if that law is substantially similar to a violation described in division (P)(2) or (3) of this section and the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, at the time of the commission of the offense.

(Q) "Pendency of the claim" for an original reparations application or supplemental reparations application means the period of time from the date the criminally injurious conduct upon which the application is based occurred until the date a final order from the court of claims concerning that original reparations application or supplemental reparations application is issued.

(R) "Terrorism" means any activity to which all of the following apply:

(1) The activity involves a violent act or an act that is dangerous to human life.

(2) The act described in division (R)(1) of this section is committed within the territorial jurisdiction of the United States and is a violation of the criminal laws of the United States, this state, or any other state or the act described in division (R)(1) of this section is committed outside the territorial jurisdiction of the United States and would be a violation of the criminal laws of the United States, this state, or any other state if committed within the territorial jurisdiction of the United States.

(3) The activity appears to be intended to do any of the following:

(a) ~~Intimidate~~ Intimidate or coerce a civilian population;

(b) Influence the policy of any government by intimidation or coercion;

(c) Affect the conduct of any government by assassination or kidnapping.

(4) The activity occurs primarily outside the territorial jurisdiction of the United States or transcends the national boundaries of the United States in terms of the means by which the activity is accomplished, the person or persons that the activity appears intended to intimidate or coerce, or the area or locale in which the perpetrator or perpetrators of the activity operate or seek asylum.

(S) "Transcends the national boundaries of the United States" means occurring outside the territorial jurisdiction of the United States in addition to occurring within the territorial jurisdiction of the United States.

Sec. 2743.56. (A) A claim for an award of reparations shall be commenced by filing an application for an award of reparations with the clerk of the court of claims or in the court of common pleas pursuant to division (B) of this section.

(B) A claimant who files for an award of reparations in a court of common pleas shall file in the court of common pleas of the county of ~~his~~ the claimant's residence or, if ~~he~~ the claimant is not a resident of this state, in the court of common pleas of the county in which the criminally injurious conduct that is the basis of the application took place. Each application shall be accompanied by a filing fee of seven dollars and fifty cents unless waived pursuant to division (B) of section 2743.57 of the Revised Code. The application shall be in a form prescribed by the clerk of the court of claims, and shall contain the following information:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim;

~~(2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;~~

~~(3)~~ (3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

~~(4)~~(3) The law enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

~~(5)~~(4) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct, ~~the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;~~

~~(6)~~(5) The type of economic loss that the victim, a dependent, or the claimant sustained as a result of the criminally injurious conduct;

~~(7) The amount of benefits or advantages that the victim, a dependent, or the claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct and the name of each collateral source;~~

~~(8)~~(6) A release authorizing the court of claims, the court of claims commissioners, and the staff of the attorney general to obtain any report, document, or information that relates to the determination of the claim for an award of reparations that is requested in the application;

~~(9)~~(7) Any information that the clerk of the court of claims requires and

that is reasonably related to an application for an award of reparations. The clerk of the court of claims may require the claimant to submit with the application materials to substantiate the facts that are stated in the application.

(C) All applications for an award of reparations shall be filed as follows:

(1) If the victim of the criminally injurious conduct was a minor, within two years from the date a complaint, indictment, or information is filed against the alleged offender. This division does not require that a complaint, indictment, or information be filed against an alleged offender in order for an application for an award of reparations to be filed pertaining to a victim who was a minor, and does not affect the provisions of section 2743.64 of the Revised Code. This division applies to all applications for an award of reparations filed on or after March 11, 1987, and to any application for an award of reparations filed before March 11, 1987, for which an award or denial of the claim is not final within the meaning of division (B) of section 2743.61 of the Revised Code.

(2) If the victim of the criminally injurious conduct was an adult, within two years after the occurrence of the criminally injurious conduct.

Sec. 2743.62. (A) ~~There~~ (1) Subject to division (A)(2) of this section, there is no privilege, except the privileges arising from the attorney-client relationship, as to communications or records that are relevant to the physical, mental, or emotional condition of the claimant or victim in a proceeding under sections 2743.51 to 2743.72 of the Revised Code in which that condition is an element.

(2)(a) Except as specified in division (A)(2)(b) of this section, any record or report that the court of claims or attorney general has obtained prior to, or obtains on or after, the effective date of this amendment under the provisions of sections 2743.51 to 2743.72 of the Revised Code and that is confidential or otherwise exempt from public disclosure under section 149.43 of the Revised Code while in the possession of the creator of the record or report shall remain confidential or exempt from public disclosure under section 149.43 of the Revised Code while in the possession of the court of claims or the attorney general.

(b) Notwithstanding division (A)(2)(a) of this section, the court of claims, claimant, claimant's attorney, or attorney general may disclose or refer to records or reports described in that division in any hearing conducted under sections 2743.51 to 2743.72 Of the Revised Code or in the court's, claimant's, or attorney general's written pleadings, findings, recommendations, and decisions.

(B) If the mental, physical, or emotional condition of a victim or

claimant is material to a claim for an award of reparations, a single commissioner or a panel of commissioners may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant and the attorney general. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person who performs the examination or autopsy to file with the clerk of the court of claims a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(C) On request of the person examined, the clerk of the court of claims shall furnish the person a copy of the report. If the victim is deceased, the clerk of the court of claims, on request, shall furnish the claimant a copy of the report.

(D) A single commissioner or a panel of commissioners may require the claimant to supplement the application for an award of reparations with any reasonably available medical or psychological reports relating to the injury for which the award of reparations is claimed.

(E) The court, a single commissioner, a panel of commissioners, or the attorney general, in a claim arising out of a violation of any provision of sections 2907.02 to 2907.07 of the Revised Code, shall not request the victim or the claimant to supply, or permit any person to supply, any evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, or reputation evidence of the victim's sexual activity unless it involves evidence of the origin of semen, pregnancy, or disease or evidence of the victim's past sexual activity with the offender and only to the extent that the court, the commissioners, or the attorney general finds that the evidence is relevant to a fact at issue in the claim.

SECTION 2. That existing sections 2743.51, 2743.56, and 2743.62 of the Revised Code are hereby repealed.

SECTION 3. Section 2743.51 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 378 and H.B. 471 of the 122nd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____