

Chapter 147

1977 REPLACEMENT PART (1981 reprint)

Compensation of Crime Victims

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GENERAL PROVISIONS

147.005 Definitions. As used in ORS 147.005 to 147.365 unless the context requires otherwise:

(1) "Applicant" means any victim of a compensable crime who applies to the department for compensation under ORS 147.005 to 147.365. "Applicant" includes any person who was a dependent of a deceased victim at the time of the death of that victim.

(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 an intentional, knowing or reckless act that results in serious bodily injury or death of another person and which, if committed by a person of full legal capacity, would be punishable as a crime in this state.

(5) "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) "Department" means the Department of Justice.

(7) "Injury" means actual bodily harm and, with respect to a victim, includes pregnancy and mental or nervous shock.

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

(9) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister or spouse's parents.

(10) "Victim" means a person:

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

(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 man 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; or

(d) Killed or injured in another state as a result of a criminal episode that began in this state. [1977 c 376 §1]

147.010 [Amended by 1973 c 32 §1, renumbered 133 743]

147.015 Eligibility for compensation; generally. A person is entitled to an award of compensation under ORS 147.005 to 147.365 if:

(1) He is a victim, or is a dependent of a deceased victim of a compensable crime that resulted in a compensable loss of more than \$250;

(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 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 victim and his assailant were not related or sharing the same household;

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

(6) His application for an award of compensation under ORS 147.005 to 147.365 is filed with the department:

(a) Within six months 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. [1977 c 376 §3]

147.020 [Renumbered 133.747]

147.025 Eligibility of relative not dependent of victim. Notwithstanding ORS 147.015 (1), a relative of a victim even though he was not a dependent of the victim, is eligible for compensation for reasonable medical expenses for the victim, if:

(1) Such expenses were paid by him; and

(2) He files a claim in the manner provided in ORS 147.015 (2) to (6). [1977 c 376 §4]

147.030 [Renumbered 133 753]

147.035 Amounts and types of losses compensable. (1) Losses compensable under ORS 147.005 to 147.365 resulting from death or injury to a victim include:

(a) In the case of injury:

(A) Reasonable medical and hospital expenses, including psychiatric or psychological expenses of \$1,000 or less, up to a maximum amount of \$10,000;

(B) Loss of earnings, not exceeding \$200 per week up to a maximum amount of \$10,000; and

(C) Rehabilitation up to a maximum amount of \$3,000.

(b) In the case of death:

(A) Burial expenses up to a maximum amount of \$1,000;

(B) Reasonable medical and hospital expenses up to a maximum amount of \$10,000; and

(C) Loss of support to the dependents of the victim not exceeding \$200 per week up to a maximum amount of \$10,000, less any amounts paid for loss of earnings.

(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 \$23,000. [1977 c 376 §5]

147.040 [Renumbered 133.757]

147.045 Notification of district attorney upon filing of compensation claim; deferral of compensation proceedings; emergency awards. (1) Upon filing of a claim pursuant to ORS 147.005 to 147.365, the department shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within 10 days after such notification, the district attorney advises the department that a criminal prosecution is pending upon the same alleged crime and requests that action by the department be deferred, the department shall defer all proceedings under ORS 147.005 to 147.365 until such time as such criminal prosecution has been concluded and shall so notify the district attorney and the applicant. When such criminal prosecution has been concluded, the dis-

trict attorney shall promptly so notify the department.

(2) Nothing in this section shall limit the authority of the department to grant emergency awards pursuant to ORS 147.055. [1977 c 376 §6]

147.050 [Renumbered 133 763]

147.055 Emergency awards; amount; effect on final award. (1) Notwithstanding the provisions of ORS 147.045 (1), the department may make an emergency award to the applicant pending a final decision in the claim, if it appears to the department, prior to taking action upon the claim that:

(a) The claim is one with respect to which an award probably will be made; and

(b) Undue hardship will result to the applicant if immediate payment is not made.

(2) (a) The amount of such emergency award shall not exceed \$1,000.

(b) The amount of such emergency award shall be deducted from any final award made as a result of the claim.

(c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the recipient to the department.

[1977 c 376 §7]

147.060 [Renumbered 133 767]

147.070 [Renumbered 133 773]

147.080 [Renumbered 133 777]

147.090 [Renumbered 133.783]

147.100 [Renumbered 133 787]

COMPENSATION PROCEDURE

147.105 Application for compensation; contents; additional information; amended applications. (1) An applicant for compensation under ORS 147.005 to 147.365 must file an application under oath on a form furnished by the department. The application shall include:

(a) The name and address of the victim;

(b) If the victim is deceased, the name and address of the applicant and his relationship to the victim, the names and addresses of the victim's dependents and the extent to which each is so dependent;

(c) The date and nature of the crime or attempted crime on which the application for compensation is based;

(d) The date and place where, and the law enforcement officials to whom, notification of the crime was given;

(e) The nature and extent of the injuries sustained by the victim, the names and addresses of those giving medical and hospital treatment to the victim and whether death resulted;

(f) The loss to the applicant and to such other persons as are specified under paragraph (b) of this subsection, resulting from the injury or death;

(g) The amount of benefits, payments or awards, if any, payable from any source, which the applicant or other person, listed under paragraph (b) of this subsection, has received or to which he is entitled as a result of the injury or death;

(h) Releases authorizing the surrender to the department of reports, documents and other information relating to the matters specified under this subsection; and

(i) Such other information as the department determines is necessary.

(2) The department may require that the applicants submit with the application materials substantiating the facts stated in the application.

(3) If the department finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the applicant in writing of the specific additional items of information or materials required and that the applicant has 30 days from the date of mailing in which to furnish those items to the department. Unless an applicant requests and is granted an extension of time by the department, the department shall reject with prejudice the claim of the applicant for failure to file the additional information or materials within the specified time.

(4) An applicant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the department has completed its consideration of the original application.

(5) The filing of additional information or the amendment of the application pursuant to subsection (3) or (4) of this section shall be considered for the purposes of ORS 147.005 to

147.365 to have been filed at the same time as the original application. [1977 c 376 §8]

147.110 [Amended by 1973 c 836 §123, renumbered 133 793]

147.115 Confidentiality of application information; board proceedings; use of record; witnesses before board. (1) All information submitted to the department by an applicant and all hearings of the board under ORS 147.005 to 147.365 shall be open to the public unless the department or board determines that the information shall be kept confidential or that a closed hearing shall be held because:

(a) The alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either his apprehension or his trial;

(b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;

(c) The victim or alleged assailant is a minor; or

(d) The interests of justice would be frustrated rather than furthered, if the information were disclosed or if the hearing were open to the public.

(2) (a) A record shall be kept of the proceedings held before the board and shall include the board's findings of fact and conclusions concerning the amount of compensation, if any, to which the applicant and the dependents of a deceased victim are entitled.

(b) No part of the record of any proceedings before the board may be used for any purpose in a criminal proceeding except in the prosecution of a person alleged to have perjured himself in his testimony before the board.

(c) Where the interests of justice require, the board may refuse to disclose to the public the names of victims or other material in the record by which the identity of the victim could be discovered.

(3) Notwithstanding paragraphs (b) and (c) of subsection (2) of this section, the record of the proceedings held before the board is a public record. However, any record or report obtained by the board, the confidentiality of which is protected by any other law, shall remain confidential subject to such law.

(4) Witnesses required to appear at any proceeding before the board shall receive such fees and mileage allowance as are provided for witnesses in civil actions. [1977 c 376 §9]

147.120 [Renumbered 133 797]

147.125 Considerations in determining amount of compensation; deduction of other benefits. In determining the amount of compensation to which an applicant is entitled, the department shall consider the facts stated on the application filed pursuant to ORS 147.105, and:

(1) Need not consider whether or not the alleged assailant has been apprehended or brought to trial or the result of any criminal proceedings against that person;

(2) Shall determine the amount of the loss to the applicant and, in the case of a deceased victim, of the victim's dependents as determined under ORS 147.035;

(3) Shall determine the degree or extent to which the victim's acts or conduct provoked or contributed to his injuries or death, and shall reduce or deny the award of compensation accordingly. However, the department may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence or to apprehend a person who had committed a crime in his presence;

(4) Shall deduct the sum of \$250, unless the department finds that the deduction will result in an extreme hardship to the applicant;

(5) Shall deduct the amount of benefits, payments or awards, payable under the Workers' Compensation Law, from local governmental, state or federal funds or from any source, and which he or his dependents have received or to which he or his dependents are entitled as a result of the death or injury of the victim; and

(6) Shall award the resultant amount to the applicant as provided in ORS 147.165. [1977 c 376 §10]

147.130 [Renumbered 133 803]

147.135 Processing compensation application by department; order; contents. After processing the application filed under ORS 147.105 the department shall enter an order stating:

(1) Its findings of fact;

(2) Its decision as to whether or not compensation is due under ORS 147.005 to 147.365;

(3) The amount of compensation, if any, which is due under ORS 147.005 to 147.365, as determined pursuant to ORS 147.125;

(4) The person or persons to whom the compensation should be paid;

(5) The percentage share of the total compensation award and the dollar amount each person is to receive; and

(6) Whether disbursement of the compensation awarded is to be made in a lump sum or in periodic payments or to a trustee as provided in ORS 147.165. [1977 c 376 §14]

147.140 [Renumbered 133 805]

147.145 Review of order; reconsideration; notice to applicant. If the applicant disagrees with the order entered under ORS 147.135, he may request review by the department. The department shall reconsider any order for which a request for review is received. The department shall notify the applicant of its decision on review within 30 days of the department's receipt of the request for review. [1977 c 376 §15]

147.150 [Amended by 1963 c 550 §1, 1973 c 836 §124; renumbered 133 807]

147.155 Appeal to Workers' Compensation Board; hearing; record; evidence considered; board determination not subject to further review. (1) Any applicant who requests review by the department under ORS 147.145 and who disagrees with the decision of the department on review may appeal to the board.

(2) The request for hearing shall be in writing. The request shall include the applicant's address, shall be signed by the applicant and shall be mailed to the board.

(3) The board shall conduct a hearing upon at least 10 days' notice by mail to all interested persons.

(4) A record of all proceedings at the hearing shall be kept but need not be transcribed.

(5) The board is not bound by rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice. However, no evidence is admissible at a hearing that has not previously been considered by the department. The decision by the board shall be final and shall not be subject to

further administrative or judicial review.

[1977 c 376 §15a]

147.160 [Amended by 1973 c 836 §125, renumbered 133 809]

147.165 Payment of awards; awards to minors and incompetents. (1) The award made under ORS 147.005 to 147.365 shall be paid in a manner determined by the department.

(2) Where a person entitled to receive an award under ORS 147.005 to 147.365 is a person under the age of 18 years or an incompetent, the award may be paid to a relative, guardian or attorney of such person on behalf of and for the benefit of such person. In such case the payee shall:

(a) File an annual accounting of the award with the department; and

(b) Take such other action as the department shall determine is necessary and appropriate for the benefit of the beneficiary of the award. [1977 c 376 §16]

147.170 [Amended by 1973 c 836 §126; renumbered 133 813]

147.180 [Amended by 1973 c 836 §127; renumbered 133 815]

147.190 [Renumbered 133 817]

147.200 [Renumbered 133 823]

ADMINISTRATIVE PROVISIONS

147.205 Authority of Department of Justice; assistance from other agencies; rules; examination of victims; reports to Governor and Legislative Assembly. To carry out the provisions and purposes of ORS 147.005 to 147.365, the department shall have the power and duty to:

(1) Appoint a secretary, clerks and such other employes and agents as it determines are necessary, fix their compensation within the limitations provided by law, and prescribe their duties. Such employes shall be subject to the provisions of ORS 656.754.

(2) Request from law enforcement officials and from any other agency of the state or local governmental unit such assistance and information as will enable the department to carry out its functions and duties.

(3) Adopt rules pursuant to ORS 183.310 to 183.550.

(4) Direct medical examination of victims.

(5) Determine all claims for awards filed with the department pursuant to ORS 147.005 to 147.365, and to reinvestigate or reopen cases as the department deems necessary.

(6) Report annually to the Governor and biennially to the Legislative Assembly on its activities. [1977 c 376 §12]

147.210 [Renumbered 133 825]

147.215 Attorney General as legal adviser to department; assistance by governmental agencies. (1) The Attorney General shall serve as legal adviser to the department for all matters arising under ORS 147.005 to 147.365.

(2) Law enforcement officials and other agencies of the state or local governmental units are authorized to give and shall provide any assistance or information requested by the department under ORS 147.205 (2). [1977 c 376 §13]

147.220 [Amended by 1961 c 389 §4, renumbered 133 827]

147.225 Criminal Injuries Compensation Account. There is established the Criminal Injuries Compensation Account. All moneys in the account are continuously appropriated for and may be used by the department for the purposes authorized in ORS 147.005 to 147.365. [1977 c 376 §22]

147.230 [Amended by 1973 c 836 §128; renumbered 133 833]

147.235 [1961 c 389 §3, renumbered 133 837]

147.240 Department of Justice to submit claims to account for payment of awards. After the entry of an award under ORS 147.005 to 147.365, the department shall submit the claim for payment from the Criminal Injuries Compensation Account pursuant to ORS 293.295 to 293.460 and 293.465 to 293.510. [1977 c 376 §23]

147.245 Disposition of moneys recovered from assailant; disposition of gifts or grants. (1) Any moneys recovered by the department under ORS 147.345 and 147.355 shall be credited to the Criminal Injuries Compensation Account.

(2) Any gifts, contributions, grants or federal funds specifically given to the department for the benefit of victims of crimes shall be credited to the Criminal Injuries Compensation Account. [1977 c.376 §24]

147.250 [Renumbered 133 839]

147.253 [Renumbered 133 843]

147.255 Recovery of moneys paid on fraudulent claims; recovery of fees. The department may institute suit:

(1) To recover any awards made because of fraudulent claims.

(2) On behalf of the applicant or recipients, to recover all fees paid to a counsel or agent in violation of ORS 147.315. [1977 c 376 §25]

147.256 [Renumbered 133 845]

147.260 [Renumbered 133 847]

147.270 [Renumbered 133 853]

147.280 [Renumbered 133 855]

147.290 [Amended by 1961 c 389 §1, renumbered 133 857]

MISCELLANEOUS PROVISIONS

147.305 Effect of criminal conviction on compensation proceedings. If any person is convicted of a crime based on a compensable crime for which application for compensation is made, proof of the conviction shall be conclusive evidence that the crime was committed. [1977 c 376 §11]

147.315 Charging fees to applicants prohibited. No fee may be charged to the applicant in any proceeding under ORS 147.005 to 147.365. [1977 c.376 §17]

147.325 Compensation not subject to assignment or legal process prior to receipt by beneficiary. No compensation payable under ORS 147.005 to 147.365 shall, prior to actual receipt thereof by the person or beneficiary entitled thereto, or their legal representatives, be assignable or subject to execution, garnishment, attachment or any other process, including process to satisfy an order or judgment for support or alimony. [1977 c 376 §18]

147.335 Compensation rights not to survive beneficiary; death of beneficiary after filing of application. The rights to compensation created by ORS 147.005 to 147.365 are personal and shall not survive the death of the person or beneficiary entitled thereto. However, if such death occurs after an application for compensation has been filed with the department, the proceeding shall not abate, but may be continued by the legal

representative of the decedent's estate. [1977 c 376 §19]

147.345 State subrogated to rights accruing to beneficiary; suit by state against assailant; disposition of proceeds. (1) The acceptance of an award made pursuant to ORS 147.005 to 147.365 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant or recipient.

(2) (a) On behalf of the state, the department may bring suit against an assailant for money damages, but must first notify the applicant or recipient of an award and give him an opportunity to participate in the prosecution of the suit.

(b) The excess of the amount recovered in any such suit over the amount of the award under ORS 147.005 to 147.365 plus costs of suit and attorney fees actually incurred shall be paid to the applicant or recipient of the award. [1977 c 376 §20]

147.355 Claim by state against recoveries from assailant; notice of award; Marion County Circuit Court to adjudicate rights. (1) The state has a claim for the amount of compensation paid under ORS 147.005 to 147.365 upon all claims, demand or causes of action against an assailant to recover for the injuries or death of a victim which were the basis for an award.

(2) At the time an award is paid under ORS 147.005 to 147.365 the department shall give written notice of this claim to the applicant and all other recipients of the award. The claim attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the claim, demand, cause of action or suit against the assailant after notice is given.

(3) On petition filed by the department on behalf of the state or by the applicant or other recipient of an award, the Circuit Court for Marion County, on written notice to all interested parties, shall adjudicate the rights of the parties and enforce the claim. [1977 c.376 §21]

147.365 Law enforcement agencies to inform crime victims of compensation procedure; agencies not civilly liable for failure to comply. (1) All law enforcement agencies in this state shall deliver cards to victims of crime stating the procedure to be followed in applying for compensation under ORS 147.005 to 147.365.

(2) No law enforcement agency shall be civilly liable for a failure to comply with subsection (1) of this section. [1977 c 376 §27]
