

SENATE BILL NO. 113

INTRODUCED BY L. NELSON

BY REQUEST OF THE DEPARTMENT OF JUSTICE

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT FUNDING FOR CRIME VICTIMS COMPENSATION AND ASSISTANCE IS DEPENDENT UPON GENERAL FUND APPROPRIATIONS; AMENDING SECTIONS 44-13-103, 46-18-236, 46-18-242, 46-18-248, 46-18-250, 46-18-251, 53-1-107, 53-9-104, AND 53-30-132, MCA; REPEALING SECTION 53-9-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the 1995 Legislature in Senate Bill No. 83 changed funding for the crime victims compensation and assistance program from an earmarked special revenue account to the general fund; and

WHEREAS, the crime victims compensation and assistance program has been supported entirely by general fund money since fiscal year 1996; and

WHEREAS, repealing section 53-9-109 is necessary in order to clarify the conflict that currently exists between actual appropriation practices and the law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-13-103, MCA, is amended to read:

"44-13-103. Limitations on use of special law enforcement assistance account. (1) After property is credited to the account, the attorney general may:

- (a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;
- (b) sell the property by public sale;
- (c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;
- (d) compromise and pay claims against the property; and
- (e) make any other disposition of the property authorized by law.

1 (2) Money and proceeds from property credited to the account may be used by the attorney
2 general for:

3 (a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard,
4 maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for
5 contract services and reimbursement to a federal, state, or local agency for its expenses;

6 (b) the payment of awards for information or assistance leading to a criminal proceeding or a civil
7 forfeiture proceeding;

8 (c) the compromise and payment of claims against property;

9 (d) the payment of sums for criminal investigation purposes, including but not limited to:

10 (i) payment of informants;

11 (ii) use by undercover agents to purchase unlawful substances, including, without limitation,
12 counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

13 (iii) use by undercover agents as gambling front money; and

14 (iv) payment of overtime to state or local law enforcement officers when engaged in special
15 criminal investigations;

16 (e) the payment of funds into the account created by ~~53-9-109~~ for services for victims of crimes
17 as provided in Title 53, chapter 9, part 1; and

18 (f) matching federal grants for criminal investigation purposes."
19

20 **Section 2.** Section 46-18-236, MCA, is amended to read:

21 **"46-18-236. (Temporary) Imposition of charge upon conviction or forfeiture -- administration.** (1)

22 Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a
23 person upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail
24 a charge that is in addition to other taxable court costs, fees, or fines, as follows:

25 (a) \$15 for each misdemeanor charge;

26 (b) the greater of \$20 or 10% of the fine levied for each felony charge; and

27 (c) an additional \$10 for each misdemeanor and felony charge under Title 45, 61-8-401, or
28 61-8-406.

29 (2) If a convicting court determines under 46-18-231 and 46-18-232 that the person is not able
30 to pay the fine and costs or that the person is unable to pay within a reasonable time, the court shall waive

1 payment of the charge imposed by this section.

2 (3) The charges imposed by this section are not fines and must be imposed in addition to any fine
3 and may not be used in determining the jurisdiction of any court.

4 (4) When the payment of a fine is to be made in installments over a period of time, the charges
5 imposed by this section must be collected from the first payment made and each subsequent payment as
6 necessary if the first payment is not sufficient to cover the charges.

7 (5) The charges collected under subsection (1), except those collected by a justice's court, must
8 be deposited with the appropriate local government finance officer or treasurer. If a city municipal court
9 or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must
10 be deposited with the city or town finance officer or treasurer. If a district court is the court of original
11 jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer
12 or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government
13 within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited
14 with the finance officer or treasurer of the consolidated government.

15 (6) (a) A city or town finance officer or treasurer may retain the charges collected under
16 subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for
17 the payment of salaries of the city or town attorney and deputies.

18 (b) Each county finance officer or treasurer may retain the charges collected under subsections
19 (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that
20 county. The county finance officer or treasurer shall use the money for the payment of salaries of its
21 county attorney and deputy county attorneys and for the payment of other salaries in the office of the
22 county attorney, and any funds not needed for those salaries may be used for the payment of any other
23 county salaries.

24 (7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or
25 treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim
26 and witness advocate program that provides the services specified in Title 40, chapter 15, and Title 46,
27 chapter 24, and that is operated or used by the county, city, or town.

28 (b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each \$10
29 charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs
30 incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are

1 not subject to allocation under 46-18-251.

2 (c) ~~¶ Except as provided in subsection (7)(b), if the county, city, or town does not operate or use~~
 3 a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the
 4 crime victims compensation and assistance program in the department of justice for deposit in the state
 5 general fund for use in providing services for crime victims compensation and assistance account
 6 ~~established in 53-9-109, except as provided in subsection (7)(b) as provided in Title 53, chapter 9, part~~
 7 1. (Terminates July 1, 2001--sec. 4, Ch. 411, L. 1999.)

8 **46-18-236. (Effective July 1, 2001) Imposition of charge upon conviction or forfeiture --**
 9 **administration.** (1) Except as provided in subsection (2), there must be imposed by all courts of original
 10 jurisdiction on a defendant upon conviction for any conduct made criminal by state statute or upon
 11 forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

12 (a) \$15 for each misdemeanor charge;

13 (b) the greater of \$20 or 10% of the fine levied for each felony charge; and

14 (c) an additional \$10 for each misdemeanor and felony charge under Title 45, 61-8-401, or
 15 61-8-406.

16 (2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not
 17 able to pay the fine and costs or that the defendant is unable to pay within a reasonable time, the court
 18 shall waive payment of the charge imposed by this section.

19 (3) The charges imposed by this section are not fines and must be imposed in addition to any fine
 20 and may not be used in determining the jurisdiction of any court.

21 (4) When the payment of a fine is to be made in installments over a period of time, the charges
 22 imposed by this section must be collected from the first payment made and each subsequent payment as
 23 necessary if the first payment is not sufficient to cover the charges.

24 (5) The charges collected under subsection (1), except those collected by a justice's court, must
 25 be deposited with the appropriate local government finance officer or treasurer. If a city municipal court
 26 or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must
 27 be deposited with the city or town finance officer or treasurer. If a district court is the court of original
 28 jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer
 29 or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government
 30 within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited

1 with the finance officer or treasurer of the consolidated government.

2 (6) (a) A city or town finance officer or treasurer may retain the charges collected under
3 subsections (1)(a) and (1)(b) by a city municipal court or a city or town court and may use that money for
4 the payment of salaries of the city or town attorney and deputies.

5 (b) Each county finance officer or treasurer may retain the charges collected under subsections
6 (1)(a) and (1)(b) by district courts for crimes committed or alleged to have been committed within that
7 county. The county finance officer or treasurer shall use the money for the payment of salaries of its
8 deputy county attorneys and for the payment of other salaries in the office of the county attorney, and
9 any funds not needed for those salaries may be used for the payment of any other county salaries.

10 (7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or
11 treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim
12 and witness advocate program that provides the services specified in Title 40, chapter 15, and Title 46,
13 chapter 24, and that is operated or used by the county, city, or town.

14 (b) The appropriate county, city, or town finance officer or treasurer shall deposit \$1 of each \$10
15 charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs
16 incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are
17 not subject to allocation under 46-18-251.

18 (c) ~~Except as provided in subsection (7)(b), if the county, city, or town does not operate or use~~
19 ~~a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the~~
20 ~~crime victims compensation and assistance program in the department of justice for deposit in the state~~
21 ~~general fund to be used to provide services to crime victims compensation and assistance account~~
22 ~~established in 53-9-109, except as provided in subsection (7)(b) as provided in Title 53, chapter 9, part~~
23 1."

24

25 **Section 3.** Section 46-18-242, MCA, is amended to read:

26 **"46-18-242. Investigation and report of victim's loss.** (1) Whenever the court believes that a
27 victim of the offense may have sustained a pecuniary loss as a result of the offense or whenever the
28 prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other
29 designated person to include in the presentence investigation and report:

30 (a) documentation of the offender's financial resources and future ability to pay restitution; and

1 (b) documentation of the victim's pecuniary loss, submitted by the victim or by the board of crime
 2 control if compensation for the victim's loss has been reimbursed by the ~~crime victims compensation and~~
 3 ~~assistance account~~ state.

4 (2) When a presentence report is not authorized or requested, the court may receive evidence of
 5 the offender's ability to pay and the victim's loss at the time of sentencing."
 6

7 **Section 4.** Section 46-18-248, MCA, is amended to read:

8 **"46-18-248. Rights of state for crime victims compensation and assistance ~~account~~.** (1) Whenever
 9 a victim is paid from the state crime victims compensation and assistance ~~account~~ ~~established in 53-9-109~~
 10 program as provided in Title 53, chapter 9, part 1, for loss arising out of a criminal act, the ~~account~~ state
 11 is subrogated, to the extent of the ~~account's~~ payment to the victim, to the rights of the victim to any
 12 restitution ordered by the court.

13 (2) The rights of the ~~crime victims compensation and assistance account~~ state are subordinate
 14 to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same
 15 offender or arising from any transaction that is part of the same continuous scheme of criminal activity
 16 of an offender."
 17

18 **Section 5.** Section 46-18-250, MCA, is amended to read:

19 **"46-18-250. Victim's location unknown -- payments to restitution fund -- use of restitution fund.**
 20 (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order
 21 that restitution payments made on that victim's behalf be deposited in a fund known as the county
 22 restitution fund. Subject to the availability of money in the fund, if the ~~whereabouts~~ location of a victim
 23 whose restitution payments were deposited in the county restitution fund ~~become~~ becomes known, the
 24 county shall refund to the victim payments that were deposited in the fund.

25 (2) Money in the restitution fund may be used to provide payments on behalf of offenders who
 26 are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain
 27 employment or are unable to obtain employment sufficient to make restitution payments and sustain
 28 themselves and their dependents. The offender may perform community service, and for each hour of
 29 community service performed, the victim shall receive an amount equal to the minimum hourly wage from
 30 the county restitution fund. A judge may order an offender to perform community service work for

1 restitution payments upon a finding that the offender would not otherwise be able to make restitution
2 payments and that there are funds available in the county restitution fund for payments to the victim.

3 (3) Money in the county restitution fund that is due to a victim under this part must be paid to the
4 crime victims compensation and assistance program in the department of justice for deposit in the state
5 general fund ~~crime victims compensation and assistance account, established in 53-9-109~~, if payments
6 have been made to or on behalf of the victim from the ~~account~~ state. Payment from the county restitution
7 fund to the crime victims compensation and assistance ~~account~~ program in the department of justice for
8 deposit in the state general fund may be made only from money paid by the offender who caused the
9 injury or death that resulted in the payment from the account."

10

11 **Section 6.** Section 46-18-251, MCA, is amended to read:

12 **"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) Except as provided in
13 46-18-236(7)(b), if an offender is subjected to any combination of fines, costs, restitution, charges, or
14 other payments arising out of the same criminal proceeding, money collected from the offender must be
15 allocated as provided in this section.

16 (2) Except as otherwise provided in 46-18-236(7)(b) and this section, if a defendant is subject to
17 payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236,
18 or other payments, 50% of all money collected from the defendant must be applied to payment of
19 restitution and the balance must be applied to other payments in the following order:

- 20 (a) payment of charges imposed pursuant to 46-18-236;
21 (b) payment of supervisory fees imposed pursuant to 46-23-1031;
22 (c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
23 (d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
24 (e) any other payments ordered by the court.

25 (3) The money applied under subsection (2) to the payment of restitution must be paid in the
26 following order:

- 27 (a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;
28 (b) to the crime victims compensation and assistance ~~account provided for in 53-9-109~~ program
29 in the department of justice for deposit in the state general fund until the ~~account~~ state is fully reimbursed
30 for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

1 (c) to any other government agency that has compensated the victim for the victim's pecuniary
2 loss; and

3 (d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

4 (4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
5 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
6 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
7 have been paid, any additional money collected must be applied toward payment of the restitution."
8

9 **Section 7.** Section 53-1-107, MCA, is amended to read:

10 **"53-1-107. Limits on inmate financial transactions.** (1) An inmate of the Montana state prison in
11 Deer Lodge or the women's prison in Billings shall use the prison inmate trust account system administered
12 by the department of corrections to send money out of or receive money in the facility unless the
13 department grants the inmate an exception. If an inmate accumulates a balance in excess of \$200 in the
14 inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for
15 the payment of restitution or costs of incarceration. The department may charge an inmate a minimum fee,
16 not to exceed \$1.60 each month, to administer the inmate's account.

17 (2) (a) Money forfeited under subsection (1) to the payment of restitution must be paid in the
18 following order:

19 (i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

20 (ii) to the crime victims compensation and assistance ~~account provided for in 53-9-109 program~~
21 in the department of justice for deposit in the state general fund until the account state is fully reimbursed
22 for compensation to the victim provided pursuant to Title 53, chapter 9, part 1;

23 (iii) to any other government agency that has compensated the victim for the victim's pecuniary
24 loss; and

25 (iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

26 (b) If the inmate's sentence did not provide for the payment of restitution or if there is a balance
27 of money after restitution has been paid under subsection (2)(a), money forfeited under subsection (1)
28 must be applied to the inmate's costs of incarceration.

29 (3) The department shall adopt rules establishing criteria for forfeiture of funds under subsection
30 (1). The rules must contain clear guidelines regarding forfeiture that ensure restitution under subsection

1 (2) but that:

2 (a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other
3 items to further the education of the inmate for purposes of rehabilitation or seeking employment after
4 release from the correctional facility; and

5 (b) do inhibit any inmate's ability to deal in contraband or illegal acts within or outside the
6 correctional facility."

7

8 **Section 8.** Section 53-9-104, MCA, is amended to read:

9 **"53-9-104. Powers and duties of division.** (1) The division shall:

10 (a) adopt rules to implement this part;

11 (b) prescribe forms for applications for compensation;

12 (c) determine all matters relating to claims for compensation; and

13 (d) require any person contracting directly or indirectly with an individual formally charged with
14 or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie,
15 television production, play, or article relating to such crime to deposit any proceeds paid or owed to the
16 individual under the terms of the contract into an escrow fund for the benefit of any victims of the
17 qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to
18 be held for ~~such a~~ period of time ~~as that~~ the division may determine is reasonably necessary to perfect the
19 claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney
20 fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim
21 is entitled to his actual and unreimbursed damages of all kinds or \$5,000, whichever is greater. Proceeds
22 remaining after payments to victims, dependents of deceased victims, and the county as reimbursement
23 for any public defender or any attorney appointed for the charged person must be deposited in the ~~account~~
24 ~~established in 53-9-109~~ state general fund.

25 (2) The division may:

26 (a) request and obtain from prosecuting attorneys and law enforcement officers investigations and
27 data to enable the division to determine whether and the extent to which a claimant qualifies for
28 compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply
29 to proceedings under this part.

30 (b) request and obtain from a health care provider medical reports that are relevant to the physical

1 condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment
2 information that is relevant to expenses claimed by a claimant, provided that the division has made
3 reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal
4 liability arises from the release of information requested under this subsection (2)(b).

5 (c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct
6 hearings, and receive relevant, nonprivileged evidence;

7 (d) take notice of judicially cognizable facts and general, technical, and scientific facts within its
8 specialized knowledge;

9 (e) require that law enforcement agencies and officials take reasonable care that victims be
10 informed about the existence of this part and the procedure for applying for compensation under this part;
11 and

12 (f) establish a victims' assistance coordinating and planning program."
13

14 **Section 9.** Section 53-30-132, MCA, is amended to read:

15 **"53-30-132. Inmate participation and status in prison work programs -- prison industries and**
16 **vocational training program -- wages and benefits.** (1) The department of corrections may:

17 (a) establish prison industries that will result in the production or manufacture of products and the
18 rendering of services that may be needed by any department or agency of the state or any political
19 subdivision of the state, by any agency of the federal government, by any other states or their political
20 subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in
21 institutions;

22 (b) obtain federal certification of specific prison industries programs in order to gain access to
23 interstate markets for prison industries products;

24 (c) contract with private industry for the sale of goods or components manufactured or produced
25 in shops under its jurisdiction and for the employment of inmates in federally certified prison industries
26 programs;

27 (d) print catalogs describing goods manufactured or produced by prison industries and distribute
28 the catalogs;

29 (e) fix the sale price for goods produced or manufactured by prison industries. Prices may not
30 exceed prices existing in the open market for goods of comparable quality.

- 1 (f) require a correctional facility to purchase needed goods from other correctional facilities;
- 2 (g) provide for the repair and maintenance of property and equipment of institutions by inmates;
- 3 (h) provide for the removal of graffiti from property and equipment of institutions and the removal
4 of litter from the property of institutions, public roads, and public parks by inmates;
- 5 (i) provide for construction projects, up to the aggregate sum of \$200,000 for each project,
6 performed by inmates. The department of administration may:
- 7 (i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2,
8 relating to construction, public bidding, bonding, or contracts; and
- 9 (ii) exempt inmates who provide labor for those projects from the labor and wage requirements of
10 Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate
11 of pay as provided in subsection (5).
- 12 (j) provide for the repair and maintenance by prison industries of furniture and equipment of any
13 state agency;
- 14 (k) provide for the manufacture by prison industries of motor vehicle license plates and other
15 related articles;
- 16 (l) sell manufactured or agricultural products and livestock on the open market;
- 17 (m) provide for the manufacture by prison industries of highway, road, and street marking signs
18 for the use of the state or any of its political subdivisions, except when the manufacture of the signs is
19 in violation of a collective bargaining contract;
- 20 (n) pay an inmate from receipts from the sale of products produced or manufactured or services
21 rendered in a program in which the inmate is working;
- 22 (o) collect 15% of the net wages paid to an inmate employed in a federally certified prison
23 industries program for ~~deposit in transfer to the Montana~~ crime victims compensation and assistance
24 ~~account established under 53-9-109~~ program in the department of justice for deposit in the state general
25 fund as provided in Title 53, chapter 9, part 1; and
- 26 (p) collect from an inmate employed in a federally certified prison industries program charges for
27 room and board consistent with charges established by the director for inmates assigned to prerelease
28 centers.
- 29 (2) Except as provided in subsection (3), furniture made in the prison may be purchased by state
30 agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made

1 furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for
2 sale to international markets.

3 (3) Any state institution, facility, or program operated by the department of corrections may
4 purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter
5 4.

6 (4) While engaged in on-the-job training and production, inmates not employed in a federally
7 certified prison industries program may be paid a wage in accordance with subsection (5). Inmates
8 employed in a federally certified prison industries program must be paid as provided in subsection (5).

9 (5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be
10 based on the following criteria:

11 (i) knowledge and skill;

12 (ii) attitude toward authority;

13 (iii) physical effort;

14 (iv) responsibility for equipment and materials; and

15 (v) regard for safety of others.

16 (b) The maximum rate of pay must be determined by the appropriation established for the
17 program, except that an inmate employed in a federally certified prison industries program must be paid
18 at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

19 (6) Premiums for workers' compensation and occupational disease coverage for federally certified
20 prison industries programs must be paid by the prison industries program or by the department of
21 corrections. If the department of corrections pays the premium, reimbursement for premium payments for
22 workers' compensation and occupational disease coverage must be made to the department of corrections
23 by the private company contracting with the federally certified prison industries program for services and
24 products.

25 (7) Inmates not working in a federally certified prison industries training program are not
26 employees, either public or private, and employment rights accorded other classes of workers do not apply
27 to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage
28 and benefits as provided in 39-71-744.

29 (8) Able-bodied persons committed to a state prison as adult offenders must be required to
30 perform work as provided for by the department of corrections, including the manufacture of products or

1 the rendering of services. In order to ensure the public safety, the department may secure inmates
2 performing work."

3

4 NEW SECTION. **Section 10. Repealer.** Section 53-9-109, MCA, is repealed.

5

6 NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

7

- END -