

SENATE BILL NO. 254

INTRODUCED BY M. HALLIGAN

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN OFFICE OF VICTIMS SERVICES IN THE DEPARTMENT OF JUSTICE; TRANSFERRING THE DUTIES AND RESPONSIBILITIES FOR ADMINISTRATION OF THE CRIME VICTIMS COMPENSATION ACT OF MONTANA FROM THE DIVISION OF CRIME CONTROL OF THE DEPARTMENT OF JUSTICE TO THE OFFICE OF VICTIMS SERVICES; AMENDING SECTIONS 50-16-530, 53-9-103, 53-9-104, 53-9-105, 53-9-106, 53-9-107, 53-9-108, 53-9-109, 53-9-110, 53-9-121, 53-9-122, 53-9-123, 53-9-124, 53-9-125, 53-9-126, 53-9-127, 53-9-128, 53-9-130, 53-9-131, 53-9-132, AND 53-9-133, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Office of victims services.** There is an office of victims services in the department of justice. The office shall ensure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system and that they are provided important services and assistance required by Title 46, chapter 24. The office is under the supervision and control of the attorney general.

**Section 2.** Section 50-16-530, MCA, is amended to read:

**"50-16-530. Disclosure without patient's authorization -- other bases.** A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

- (1) directory information, unless the patient has instructed the health care provider not to make the disclosure;
- (2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;
- (3) to federal, state, or local law enforcement authorities to the extent required by law;
- (4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;



1 (5) in response to a request of the ~~division of crime control~~ office of victims services for  
2 information under 53-9-104(2)(b);

3 (6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536; or

4 (7) pursuant to 50-16-712."  
5

6 **Section 3.** Section 53-9-103, MCA, is amended to read:

7 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

8 (1) "Claimant" means any of the following claiming compensation under this part:

9 (a) a victim;

10 (b) a dependent of a deceased victim; or

11 (c) an authorized person acting on behalf of any of them.

12 (2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for  
13 economic loss otherwise compensable under this part that the claimant has received or that is readily  
14 available to the claimant from:

15 (a) the offender;

16 (b) the government of the United States or any agency thereof, a state or any of its political  
17 subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or  
18 advantages makes them excess or secondary to benefits under this part;

19 (c) social security, medicare, and medicaid;

20 (d) workers' compensation;

21 (e) wage continuation programs of any employer;

22 (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because  
23 of the criminally injurious conduct;

24 (g) a contract, including an insurance contract, providing hospital and other health care services  
25 or benefits for disability. A contract in this state may not provide that benefits under this part are a  
26 substitute for benefits under the contract or that the contract is a secondary source of benefits and  
27 benefits under this part are a primary source.

28 (h) a crime victims compensation program operated by the state in which the victim was injured  
29 or killed that compensates residents of this state injured or killed in that state; or

30 (i) any other third party.

1 (3) "Criminally injurious conduct" means conduct that:  
2 (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C.  
3 2331, committed outside of the United States against a resident of this state;  
4 (b) results in bodily injury or death; and  
5 (c) is punishable by fine, imprisonment, or death or would be so punishable except that the person  
6 engaging in the conduct lacked capacity to commit the crime under the laws of this state; however,  
7 criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use  
8 of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined  
9 in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death  
10 was inflicted by the driver of a motor vehicle who is found by the ~~division~~ office, by a preponderance of  
11 the evidence, to have been operating the motor vehicle while under the influence, as that term is defined  
12 in 61-8-401; or

13 (d) is committed in a state without a crime victims compensation program that covers a resident  
14 of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

15 (4) "Dependent" means a natural person who is recognized under the law of this state to be  
16 wholly or partially dependent upon the victim for care or support and includes a child of the victim  
17 conceived before the victim's death but born after the victim's death, including a child that is conceived  
18 as a result of the criminally injurious conduct.

19 ~~(5) "Division" means the division of crime control of the department of justice.~~

20 (5) "Office" means the office of victims services established in [section 1].

21 (6) "Victim" means a person who suffers bodily injury or death as a result of:

22 (a) criminally injurious conduct;

23 (b) the person's good faith effort to prevent criminally injurious conduct; or

24 (c) the person's good faith effort to apprehend a person reasonably suspected of engaging in  
25 criminally injurious conduct."

26

27 **Section 4.** Section 53-9-104, MCA, is amended to read:

28 **"53-9-104. Powers and duties of division office.** (1) The ~~division~~ office shall:

29 (a) adopt rules to implement this part;

30 (b) prescribe forms for applications for compensation;

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

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

14 (2) The ~~division~~ office may:

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

19 (b) request and obtain from a health care provider medical reports that are relevant to the physical  
20 condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment  
21 information that is relevant to expenses claimed by a claimant, provided that the ~~division~~ office has made  
22 reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal  
23 liability arises from the release of information requested under this subsection (2)(b).

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

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

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

30 and

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

2

3 **Section 5.** Section 53-9-105, MCA, is amended to read:

4 **"53-9-105. Rehabilitation of victims.** The ~~division office~~ shall refer to the department of public  
5 health and human services victims who have been permanently disabled through criminally injurious  
6 conduct, who are receiving benefits under this part, and who in the opinion of the ~~division office~~ may be  
7 vocationally rehabilitated. The department of public health and human services shall provide for the  
8 vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available  
9 under the programs."

10

11 **Section 6.** Section 53-9-106, MCA, is amended to read:

12 **"53-9-106. Attorneys' Attorney fees.** (1) The ~~division office~~ may grant ~~attorneys' attorney~~ fees  
13 to attorneys for representing claimants before the ~~division office~~. Any ~~attorney's attorney~~ fee granted by  
14 the ~~division office~~ ~~shall be~~ is in addition to compensation awarded the claimant under this part.

15 (2) The ~~division office~~ may regulate the amount of the ~~attorney's attorney~~ fee in any claim under  
16 this part when an attorney is representing a claimant.

17 (3) In cases under this part that go before a district court, the judge may grant, in addition to  
18 compensation benefits granted, ~~attorneys' attorney~~ fees to attorneys for representing claimants before the  
19 court.

20 (4) ~~In no claim or case may attorney~~ Attorney fees in excess of 5% of the amount paid to a  
21 claimant or on ~~his~~ a claimant's behalf may not be paid directly or indirectly to a claimant's attorney."

22

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

24 **"53-9-107. Public inspection and disclosure of ~~division's office's~~ records.** (1) Except as provided  
25 in subsections (2) and (3), the records the ~~division office~~ maintains in its possession in the administration  
26 of this part are open to public inspection and disclosure.

27 (2) Confidential criminal justice information obtained by the ~~division office~~ is subject to the  
28 confidentiality provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

29 (3) In assuring that the right of individual privacy so essential to the well-being of a free society  
30 may not be infringed without the showing of a compelling state interest, the following public records of

1 the division office are exempt from disclosure:

2 (a) information of a personal nature, such as personal, medical, or similar information, if the public  
3 disclosure ~~thereof~~ of the information would constitute an unreasonable invasion of privacy, unless the  
4 public interest by clear and convincing evidence requires disclosure in the particular instance. The party  
5 seeking disclosure has the burden of showing that public disclosure would not constitute an unreasonable  
6 invasion of privacy.

7 (b) any public records or information, the disclosure of which is prohibited by federal law or  
8 regulations.

9 (4) If any public record of the division office contains material that is not exempt under subsection  
10 (3), as well as material that is exempt from disclosure, the division office shall separate the exempt and  
11 nonexempt and make the nonexempt material available for examination."

12

13 **Section 8.** Section 53-9-108, MCA, is amended to read:

14 **"53-9-108. Limitation of benefit entitlements to proportionate share of available funds.** Claimants  
15 receiving benefits under this part are not granted an absolute entitlement to benefits. Benefits must be paid  
16 in accordance with the amount of the legislative appropriation. If the division office determines at any time  
17 that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the division  
18 office may make appropriate proportionate reductions in benefits to all claimants. ~~Such~~ The reductions do  
19 not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes  
20 appropriations for ~~such~~ retroactive benefits."

21

22 **Section 9.** Section 53-9-109, MCA, is amended to read:

23 **"53-9-109. Crime victims compensation and assistance account.** (1) There is a crime victims  
24 compensation and assistance account in the state special revenue fund. There must be paid into this  
25 account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all  
26 offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that  
27 are a result of citations or tickets issued by the highway patrol. Except as provided in subsection (2), the  
28 money in the account must be used solely for the purposes of this part and for victims' assistance program  
29 coordination and planning provided by the division office.

30 (2) The fund balance in the account as of March 31 of each year is limited to \$500,000.

1 Whenever the fund balance on March 31 exceeds \$500,000, the amount of the fund balance in excess  
2 of \$500,000 must be deposited in the general fund. (See compiler's comments for contingent termination  
3 of certain text.)"

4

5 **Section 10.** Section 53-9-110, MCA, is amended to read:

6 **"53-9-110. Receipt of federal funds.** The ~~division~~ office may adopt appropriate rules in order to  
7 receive federal funds under federal criminal reparation and compensation acts."

8

9 **Section 11.** Section 53-9-121, MCA, is amended to read:

10 **"53-9-121. Application for compensation.** An applicant for an award of compensation may apply  
11 in writing in a form that conforms substantially to that prescribed by the ~~division~~ office."

12

13 **Section 12.** Section 53-9-122, MCA, is amended to read:

14 **"53-9-122. Informal hearings.** The ~~division~~ office may hold informal hearings in order to make  
15 determinations regarding the compensability of a claim. At ~~such~~ the hearings, the ~~division~~ office may  
16 subpoena witnesses and documents as set forth in 2-4-104. Hearings held under this section are not  
17 considered contested case hearings under the Montana Administrative Procedure Act. However, the  
18 ~~division~~ office shall adopt rules regarding its informal hearing procedures."

19

20 **Section 13.** Section 53-9-123, MCA, is amended to read:

21 **"53-9-123. Evidence of condition.** (1) The ~~division~~ office may require the claimant to supplement  
22 the application with any reasonably available medical reports relating to the injury for which compensation  
23 is claimed.

24 (2) If the physical condition of a victim or claimant is material to a claim, the ~~division~~ office may  
25 order the victim or claimant to submit from time to time to a physical examination by a physician or may  
26 order an autopsy of a deceased victim. The ~~division~~ office shall pay for ~~such~~ the examination or autopsy.  
27 The order ~~shall~~ must specify the time, place, manner, conditions, and scope of the examination or autopsy  
28 and the person by whom it is to be made and ~~shall~~ must require the person to file with the ~~division~~ office  
29 a detailed written report of the examination or autopsy. The report ~~shall~~ must set out ~~his~~ physician's  
30 findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of

1 earlier examinations of the same conditions. On request of the person examined, the ~~division~~ office shall  
 2 furnish ~~him~~ the person a copy of the report. If the victim is deceased, the ~~division~~ office, on request, shall  
 3 furnish the claimant a copy of the report.

4 (3) There is no privilege, except privileges arising from the attorney-client relationship, as to  
 5 communications or records relevant to an issue of the physical condition of the claimant or victim in a  
 6 proceeding under this part in which that condition is an element."  
 7

8 **Section 14.** Section 53-9-124, MCA, is amended to read:

9 **"53-9-124. Enforcement of ~~division's~~ office's orders -- improper assertion of privilege.** If a person  
 10 refuses to comply with an order of the ~~division~~ office or asserts a privilege to withhold or suppress  
 11 evidence relevant to a claim, except privileges arising from the attorney-client relationship, the ~~division~~  
 12 office may make any just order, including denial of the claim."  
 13

14 **Section 15.** Section 53-9-125, MCA, is amended to read:

15 **"53-9-125. Limitations on awards.** (1) Except as otherwise provided in this section, compensation  
 16 may not be awarded unless the claim is filed with the ~~division~~ office within 1 year after the day the  
 17 criminally injurious conduct occurred causing the injury or death upon which the claim is based.  
 18 Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is  
 19 filed with the ~~division~~ office within 1 year after the day the criminally injurious conduct was reported to  
 20 a law enforcement agency or an agency of the state responsible for provision of child welfare services,  
 21 or within 1 year after the day the victim reaches 18 years of age, whichever occurs last. The time for filing  
 22 a claim may be extended by the ~~division~~ office for good cause shown.

23 (2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the  
 24 offender or to any claimant if the award would unjustly benefit the offender or accomplice.

25 (3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury  
 26 or death was reported to a law enforcement officer. The report must be made within 72 hours after its  
 27 occurrence, except in a case involving a sexual offense against a minor or when the ~~division~~ office finds  
 28 there was good cause for the failure to report within that time.

29 (4) In order to be entitled to benefits under this part, a claimant ~~must~~ shall fully cooperate with  
 30 all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the

1 offender causing the criminally injurious conduct. The division office, upon finding that the claimant or  
 2 victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may  
 3 deny or reconsider and reduce an award of compensation.

4 (5) Compensation otherwise payable to a claimant ~~shall~~ must be reduced or denied to the extent  
 5 the compensation benefits payable are or can be recouped from collateral sources.

6 (6) Persons serving a sentence of imprisonment or residing in any other public institution which  
 7 provides for the maintenance of ~~such~~ the person are not entitled to the benefits of this part.

8 (7) Compensation may be denied or reduced if the victim contributed to the infliction of death or  
 9 injury with respect to which the claim is made. Any reduction in benefits under this subsection ~~shall~~ must  
 10 be in proportion to what the division office finds to be the victim's contribution to the infliction of death  
 11 or injury."

12

13 **Section 16.** Section 53-9-126, MCA, is amended to read:

14 **"53-9-126. Tentative award of compensation.** If the division office determines that the claimant  
 15 will suffer financial hardship unless a tentative award is made and it appears likely that a final award will  
 16 be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and  
 17 recoverable from the claimant to the extent that it exceeds the final award."

18

19 **Section 17.** Section 53-9-127, MCA, is amended to read:

20 **"53-9-127. Award of compensation.** (1) The division office shall award compensation benefits  
 21 under this part if satisfied by a preponderance of the evidence that the requirements for compensation  
 22 have been met.

23 (2) An award may be made whether or not any person is prosecuted or convicted. Proof of  
 24 conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was  
 25 committed unless an application for rehearing, an appeal of the conviction, or certiorari is pending or a  
 26 rehearing or new trial has been ordered.

27 (3) The division office may suspend the proceedings pending disposition of a criminal prosecution  
 28 that has been commenced or is imminent and may make a tentative award under 53-9-126."

29

30 **Section 18.** Section 53-9-128, MCA, is amended to read:

1           **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits  
2 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.  
3 During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no  
4 reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount  
5 is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum  
6 of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation  
7 payments must be made at the end of each 2-week period. Weekly compensation payments may not be  
8 paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages  
9 continues for 1 week, weekly compensation payments must be paid from the date the wage loss began.  
10 Weekly compensation payments must continue until the claimant has a reasonable prospect of being  
11 regularly employed in the normal labor market.

12           (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,  
13 reasonable hospital services and medicines, and other treatment approved by the ~~division~~ office for the  
14 injuries suffered due to criminally injurious conduct. Unless expressly requested by the claimant, benefits  
15 may not be paid under this subsection until the claimant has been fully compensated for total wage loss  
16 benefits as provided in subsection (1) or (7).

17           (3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are  
18 entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to  
19 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject  
20 to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly  
21 compensation payments must be made at the end of each 2-week period.

22           (b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and  
23 other dependents unless the ~~division~~ office determines that other payment arrangements should be made.  
24 If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but  
25 must continue to be paid to the other dependents as long as their dependent status continues.

26           (4) Reasonable funeral and burial expenses of the victim, not exceeding \$3,500, must be paid if  
27 all other collateral sources have properly paid expenses but have not covered all expenses.

28           (5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's  
29 death because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000  
30 in the aggregate.

1 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical  
2 impairment, or nonbodily damage.

3 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result  
4 of the injury has no reasonable prospect of being regularly employed in the normal labor market and who  
5 was employable but was not employed at the time of the injury may in the discretion of the ~~division~~ office  
6 be awarded weekly compensation benefits in an amount determined by the ~~division~~ office not to exceed  
7 \$100 per week. Weekly compensation payments must continue until the claimant has a reasonable  
8 prospect of being regularly employed in the normal labor market. The claimant must be awarded benefits  
9 as provided in subsection (2).

10 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who  
11 was employable but not employed at the time of death may in the discretion of the ~~division~~ office be  
12 awarded, in a gross single amount payable to all dependents, a sum not to exceed \$100 per week, which  
13 is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as  
14 determined by the ~~division~~ office. The claimant must be awarded benefits as provided in subsection (4).

15 (8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the  
16 victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may  
17 not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

18 (9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister  
19 of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental  
20 health treatment received as a result of the victim's death.

21 (b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is  
22 a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive  
23 services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as  
24 a result of that criminally injurious conduct.

25 (c) Total payments made under subsections (9)(a) and (9)(b) may not exceed \$2,000 or 12  
26 consecutive months of treatment for each person, whichever occurs first."

27

28 **Section 19.** Section 53-9-130, MCA, is amended to read:

29 **"53-9-130. Reconsideration and review of ~~division's~~ office's decisions.** (1) The ~~division~~ office on  
30 its own motion or on request of the claimant may reconsider a decision making or denying an award or

1 determining its amount. The ~~division~~ office shall reconsider at least annually every award being paid in  
2 installments. An order on reconsideration of an award may not require refund of amounts previously paid  
3 unless the award was obtained by fraud.

4 (2) The right of reconsideration does not affect the finality of a ~~division~~ an office decision for the  
5 purpose of appeal."  
6

7 **Section 20.** Section 53-9-131, MCA, is amended to read:

8 **"53-9-131. Appeals.** After the ~~division~~ office has made final determination concerning any matter  
9 relating to a claim, if the claimant disputes the ~~division's~~ office's determination, ~~he~~ the claimant may  
10 appeal to the district court for the county in which ~~he~~ the claimant resides or Lewis and Clark County for  
11 review. Review on appeal must be in conformity with 2-4-701 through 2-4-704 of the Montana  
12 Administrative Procedure Act. The judge, after a hearing, shall make a final determination concerning the  
13 dispute and issue an appropriate order affirming, reversing, or modifying the ~~division's~~ office's  
14 determination."  
15

16 **Section 21.** Section 53-9-132, MCA, is amended to read:

17 **"53-9-132. Subrogation.** (1) If a claimant seeks compensation under this part and compensation  
18 is awarded, the ~~division~~ office is entitled to full subrogation against a judgment or recovery received by  
19 the claimant against the offender or a collateral source arising from the criminally injurious conduct  
20 committed by the offender for all compensation paid under this part. The ~~division's~~ office's right of  
21 subrogation ~~shall be~~ is a first lien on the judgment or recovery. If the claimant does not institute the action  
22 against the offender or collateral source within 1 year from the date the criminally injurious conduct  
23 occurred, the ~~division~~ office may institute the action in the name of the claimant or the claimant's personal  
24 representative.

25 (2) If the claimant institutes the action, the ~~division~~ office shall pay a proportional share of costs  
26 and ~~attorneys'~~ attorney fees if it recovers under its subrogation interest.

27 (3) If the ~~division~~ office institutes the action in the name of the claimant or the claimant's personal  
28 representative and the recovery is in excess of the amount of compensation paid to the claimant and costs  
29 incurred by the ~~division~~ office in pursuit of the action, the excess ~~shall~~ must be paid to the claimant.

30 (4) If a judgment or recovery includes both damages for bodily injury or death for which the

1 ~~division office~~ has paid compensation under this part and damages for which the ~~division office~~ has not  
 2 paid compensation, then the ~~division's office's~~ subrogation interest ~~shall apply~~ applies only to that  
 3 proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of  
 4 this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to  
 5 return a special verdict indicating separately the amounts of the various items of damages awarded. A  
 6 claimant may not make recoveries against the offender or collateral source in such a way as to avoid and  
 7 preclude the ~~division office~~ from receiving its proper subrogation share as provided in this section. The  
 8 ~~division office~~ shall release its lien provided for in subsection (1) ~~above~~ upon receipt of its subrogation  
 9 share."

10

11 **Section 22.** Section 53-9-133, MCA, is amended to read:

12 **"53-9-133. Effect of award on probation and parole of offender.** (1) When placing any convicted  
 13 person on probation, the court may set as a condition of probation the payment to the state of an amount  
 14 equal to any benefits paid by the ~~division office~~ to a victim or a victim's dependents. The court may set  
 15 a repayment schedule and modify it as circumstances change.

16 (2) Payment of the debt may be made a condition of parole subject to modification based on a  
 17 change in circumstances."

18

19 NEW SECTION. **Section 23. Codification instruction.** [Section 1] is intended to be codified as an  
 20 integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to  
 21 [section 1].

22

23 NEW SECTION. **Section 24. Effective date.** [This act] is effective July 1, 2001.

24

- END -