

1 HOUSE BILL NO. 114

2 INTRODUCED BY J. O'HARA

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF
6 MONTANA TO INCREASE THE VICTIM'S FUNERAL AND BURIAL BENEFIT AND TO PROVIDE COVERAGE
7 FOR MENTAL HEALTH COUNSELING EXPENSES FOR MINOR CHILDREN PRESENT IN HOMES WHERE
8 DOMESTIC VIOLENCE HAS OCCURRED; AND AMENDING SECTIONS 53-9-103, 53-9-123, AND 53-9-128,
9 MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 53-9-103, MCA, is amended to read:

14 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

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

16 (a) a victim;

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

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

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

22 (a) the offender;

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

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

27 (d) workers' compensation;

28 (e) wage continuation programs of any employer;

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

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

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

7 (i) any other third party.

8 (3) "Criminally injurious conduct" means conduct that:

9 (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C. 2331,
10 committed outside of the United States against a resident of this state;

11 (b) results in bodily injury or death or involves domestic violence in a home where minor children were
12 present; and

13 (c) is punishable by fine, imprisonment, or death or would be so punishable except that the person
14 engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally
15 injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle
16 unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires
17 the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a
18 motor vehicle who is found by the office, by a preponderance of the evidence, to have been operating the motor
19 vehicle while under the influence, as that term is defined in 61-8-401; or

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

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

26 (5) "Office" means the office of victims services established in 2-15-2016.

27 (6) "Victim" means:

28 (a) a person who suffers bodily injury or death as a result of:

29 ~~(a)~~(i) criminally injurious conduct;

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

1 ~~(c)~~(iii) the person's good faith effort to apprehend a person reasonably suspected of engaging in criminally
2 injurious conduct; or

3 (b) a minor child present in a home where domestic violence occurred."
4

5 **Section 2.** Section 53-9-123, MCA, is amended to read:

6 **"53-9-123. Evidence of condition.** (1) The office may require the claimant to supplement the application
7 with any reasonably available medical or counseling reports relating to the injury for which compensation is
8 claimed.

9 (2) If the physical condition of a victim or claimant is material to a claim, the office may order the victim
10 or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a
11 deceased victim. The office shall pay for the examination or autopsy. The order must specify the time, place,
12 manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and must
13 require the person to file with the office a detailed written report of the examination or autopsy. The report must
14 set out physician's findings, including results of all tests made, diagnoses, prognoses, and other conclusions and
15 reports of earlier examinations of the same conditions. On request of the person examined, the office shall furnish
16 the person a copy of the report. If the victim is deceased, the office, on request, shall furnish the claimant a copy
17 of the report.

18 (3) There is no privilege, except privileges arising from the attorney-client relationship, as to
19 communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding
20 under this part in which that condition is an element."
21

22 **Section 3.** Section 53-9-128, MCA, is amended to read:

23 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when
24 the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the
25 time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect
26 of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages
27 received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average
28 weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each
29 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious
30 conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must

1 be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has
2 a reasonable prospect of being regularly employed in the normal labor market.

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

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

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

17 (4) Reasonable funeral and burial expenses of the victim, not exceeding ~~\$3,500~~ \$5,000 ~~\$3,500~~, must
18 be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

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

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

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

30 (b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was

1 employable but not employed at the time of death may in the discretion of the office be awarded, in a gross single
2 amount payable to all dependents, a sum not to exceed \$100 per week, which is payable in the manner and for
3 the period provided by subsection (3)(b) or for a shorter period as determined by the office. The claimant must
4 be awarded benefits as provided in subsection (4).

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

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

11 (b) Subject to the limitations in subsection ~~(9)(e)~~ (9)(d), the parent, brother, or sister of a minor who is
12 a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under
13 Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally
14 injurious conduct.

15 (c) Subject to the limitations in subsection (9)(d), minor children who were present in a home where
16 domestic violence occurred are entitled to reimbursement for mental health treatment received as a result of that
17 criminally injurious conduct.

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

20

- END -