



AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COVERAGE FOR MENTAL HEALTH COUNSELING EXPENSES FOR MINOR CHILDREN PRESENT IN HOMES WHERE DOMESTIC VIOLENCE HAS OCCURRED; AND AMENDING SECTIONS 53-9-103, 53-9-123, AND 53-9-128, MCA.

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

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

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

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

- (a) a victim;
- (b) a dependent of a deceased victim; or
- (c) an authorized person acting on behalf of any of them.

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

- (a) the offender;
- (b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;
- (c) social security, medicare, and medicaid;
- (d) workers' compensation;
- (e) wage continuation programs of any employer;
- (f) proceeds of a contract of insurance payable to the claimant for loss that was sustained because of the criminally injurious conduct;
- (g) a contract, including an insurance contract, providing hospital and other health care services or

benefits for disability. A contract in this state may not provide that benefits under this part are a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

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

(i) any other third party.

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

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

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

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

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

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

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

(6) "Victim" means:

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

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

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

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

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

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

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

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

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

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

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

conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

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

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

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

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

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

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

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

in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

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

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

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

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

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

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

- END -

I hereby certify that the within bill,
HB 0114, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 114
INTRODUCED BY J. O'HARA
BY REQUEST OF THE DEPARTMENT OF JUSTICE

AN ACT AMENDING THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO PROVIDE COVERAGE FOR MENTAL HEALTH COUNSELING EXPENSES FOR MINOR CHILDREN PRESENT IN HOMES WHERE DOMESTIC VIOLENCE HAS OCCURRED; AND AMENDING SECTIONS 53-9-103, 53-9-123, AND 53-9-128, MCA.