

HOUSE BILL NO. 641

INTRODUCED BY J. READ

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CRIMINAL PROCEDURE; PROVIDING
5 FOR COMPENSATION FOR VICTIMS OF INJURIOUS CRIMINAL PROCEDURE; CREATING A DEFENSE FOR
6 NONVIOLENTLY RESISTING FALSE ARREST; CREATING A DEFENSE FOR NONVIOLENTLY
7 OBSTRUCTING A PEACE OFFICER WHO IS ACTING ILLEGALLY; REVISING OFFICIAL MISCONDUCT TO
8 INCLUDE A NEW OFFENSE FOR WHICH FINES MAY BE ASSESSED; REQUIRING REPORTING TO THE
9 OFFICE OF VICTIMS SERVICES; PROVIDING FOR RELEASE ON CERTAIN IRREGULAR WARRANTS;
10 REVISING REQUIREMENTS FOR ARREST WARRANTS; GRANTING RULEMAKING AUTHORITY; REVISING
11 ARREST PROCEDURE; REVISING DUTIES OF THE ATTORNEY GENERAL; STATING THE LEGISLATURE'S
12 INTENT TO COMPENSATE VICTIMS OF INJURIOUS CRIMINAL PROCEDURE; DEFINING "FALSE ARREST",
13 "FALSE IMPRISONMENT", AND "INJURIOUS CRIMINAL PROCEDURE"; REQUIRING REPORTS TO THE
14 LEGISLATURE; AND REVISING COMPENSATION LAW; AND AMENDING SECTIONS 45-7-301, 45-7-302,
15 45-7-401, 46-6-204, 46-6-212, 46-6-214, 46-6-216, 46-24-101, 46-24-103, 53-9-102, 53-9-103, 53-9-104,
16 53-9-113, 53-9-125, AND 53-9-128, MCA."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
20 **NEW SECTION. Section 1. Compensation benefits for victims of injurious criminal procedure.**

21 (1) Compensation must be given to any victim of injurious criminal procedure who is falsely arrested or falsely
22 imprisoned.

23 (2) (a) For a victim of a false arrest lasting 2 days or less, the compensation must be four times the price
24 of bail that was demanded of the victim.

25 (b) For a victim of false arrest lasting longer than 2 days, the compensation must be 400% of the
26 person's daily wage for every day of false arrest. A victim of false arrest lasting longer than 2 days may not be
27 paid less than the state average wage.

28 (3) (a) For a victim of false imprisonment lasting 1 month or more, the compensation must be a lump sum
29 payment of \$4,000 for each month of false imprisonment, adjusted for inflation from [the effective date of this act].

30 (b) For a victim of false imprisonment who is terminated from employment as a result of the

1 imprisonment, the compensation must be a lump sum payment equal to the person's annual income prior to the
2 termination.

3
4 **Section 2.** Section 45-7-301, MCA, is amended to read:

5 **"45-7-301. Resisting arrest.** (1) A person commits the offense of resisting arrest if the person knowingly
6 prevents or attempts to prevent a peace officer from effecting an arrest by:

7 (a) using or threatening to use physical force or violence against the peace officer or another; or

8 (b) using any other means that creates a risk of causing physical injury to the peace officer or another.

9 (2) (a) † Except as provided in subsection (2)(b), it is no defense to a prosecution under this section that
10 the arrest was unlawful, if the peace officer was acting under color of the officer's official authority.

11 (b) It is a defense to a prosecution under this section that the arrest was unlawful or mistaken, if the
12 person arrested nonviolently and passively resisted arrest by refusing to comply with a peace officer.

13 (3) A person convicted of the offense of resisting arrest shall be fined not to exceed \$500 or be
14 imprisoned in the county jail for any term not to exceed 6 months, or both."

15
16 **Section 3.** Section 45-7-302, MCA, is amended to read:

17 **"45-7-302. Obstructing peace officer or other public servant.** (1) A person commits the offense of
18 obstructing a peace officer or public servant if the person knowingly obstructs, impairs, or hinders the
19 enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function,
20 including service of process.

21 (2) (a) † Except as provided in subsection (2)(b), it is no defense to a prosecution under this section that
22 the peace officer was acting in an illegal manner, provided that the peace officer was acting under the peace
23 officer's official authority.

24 (b) It is a defense to a prosecution under this section that the peace officer was acting in an illegal
25 manner, provided that the person charged acted nonviolently and passively.

26 (3) A person convicted of the offense of obstructing a peace officer or other public servant, including a
27 person serving process, shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to
28 exceed 6 months, or both."

29
30 **Section 4.** Section 45-7-401, MCA, is amended to read:



1 **"45-7-401. Official misconduct.** (1) A public servant commits the offense of official misconduct when
 2 in an official capacity the public servant commits any of the following acts:

3 (a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of
 4 competent jurisdiction;

5 (b) knowingly performs an act in an official capacity that the public servant knows is forbidden by law;

6 (c) with the purpose to obtain a personal advantage or an advantage for another, performs an act in
 7 excess of the public servant's lawful authority;

8 (d) solicits or knowingly accepts for the performance of any act a fee or reward that the public servant
 9 knows is not authorized by law; ~~or~~

10 (e) knowingly conducts a meeting of a public agency in violation of 2-3-203; or

11 (f) knowingly or negligently issues a warrant that is mistaken in fact and causes a false arrest.

12 (2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or
 13 be imprisoned in the county jail for a term not to exceed 6 months, or both.

14 (3) The district court has exclusive jurisdiction in prosecutions under this section. Any action for official
 15 misconduct must be commenced by an information filed after leave to file has been granted by the district court
 16 or after a grand jury indictment has been found.

17 (4) A public servant who has been charged as provided in subsection (3) may be suspended from office
 18 without pay pending final judgment. Upon final judgment of conviction, the public servant shall permanently forfeit
 19 the public servant's office. Upon acquittal, the public servant must be reinstated in office and must receive all
 20 backpay.

21 (5) This section does not affect any power conferred by law to impeach or remove any public servant
 22 or any proceeding authorized by law to carry into effect an impeachment or removal.

23 (6) A public servant alleged to have committed official misconduct or convicted of official misconduct
 24 pursuant to subsection (1)(f) shall report the allegation or conviction to the office of victims services.

25 (7) As used in this section, "public servant" includes any person employed by the state or by a local
 26 government."

27

28 **Section 5.** Section 46-6-204, MCA, is amended to read:

29 **"46-6-204. Minor irregularities Irregularities in warrant.** (1) ~~No~~ A warrant of arrest ~~shall~~ may not be
 30 dismissed ~~nor shall any~~ and a person in custody for an offense may not be discharged from ~~such~~ custody

1 because of technical irregularities not affecting the substantial rights of the accused.

2 (2) (a) A person in custody as a result of mistaken identity due to irregularities in the warrant must be:

3 (i) released immediately upon discovery of the mistaken identity;

4 (ii) given a written and public apology explaining the basis for the mistake and stating the basis for the
5 person's compensation; and

6 (iii) given written notice that the person may report the arrest and release to the office of victims services.

7 (b) The irregularities in the warrant and the release of the person falsely arrested must be immediately
8 reported to the office of victims services by a public official responsible for the person's release and may also be
9 reported by the person falsely arrested.

10 (c) The written and public apology must be released to the local media."

11

12 **Section 6.** Section 46-6-212, MCA, is amended to read:

13 **"46-6-212. Failure to appear following summons or notice to appear.** (1) (a) If, after the issuance
14 of a summons or notice to appear, the judge becomes satisfied that the person has not appeared or will not
15 appear as commanded, the judge may at once issue an arrest warrant.

16 (b) The judge shall determine that the information on the warrant accurately identifies the person to be
17 arrested. Any mistake made in the issuance of the warrant is subject to a claim before the office of victims
18 services and a claim of misconduct.

19 (2) If after being summoned the corporation does not appear, a plea of not guilty must be entered in
20 accordance with 46-12-204 and the matter must proceed to trial and judgment without further process."

21

22 **Section 7.** Section 46-6-214, MCA, is amended to read:

23 **"46-6-214. Form and content of arrest warrant.** (1) An arrest warrant must:

24 (a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a
25 municipal ordinance is charged;

26 (b) set forth the nature of the offense;

27 (c) command that the person against whom the complaint was made be arrested and brought before
28 the nearest or most accessible court for an initial appearance;

29 (d) ~~specify the name of the person to be arrested or, if that person's name is unknown, designate the~~
30 ~~person by any name or description by which the person can be identified with reasonable certainty; if the name~~

1 of the person to be arrested is known, specify the name of the person and:

2 (i) if the person has a Montana driver's license, include the person's driver's license number and
3 photograph; or

4 (ii) if the person does not have a Montana driver's license, include a photograph of the person or a
5 composite drawing of the person if a photograph is not available but the person's appearance is known;

6 (e) if the name of the person to be arrested is unknown:

7 (i) designate the person by any name or description by which the person can be identified with
8 reasonable certainty; and

9 (ii) include a photograph of the person or a composite drawing of the person if a photograph is not
10 available but the person's appearance is known;

11 ~~(e)~~(f) state the date when issued and the municipality or county where issued; and

12 ~~(f)~~(g) be signed by the judge of the court with the title of office noted.

13 (2) An arrest warrant that does not conform to the criteria in subsection (1) is irregular.

14 (3) (a) An arrest warrant expires 1 year after issuance.

15 (b) A valid or expired warrant may be renewed by reissuance at any time after diligently attempting to
16 update information on the warrant.

17 ~~(2)~~ The (4) An arrest warrant may specify the amount of bail.

18 (5) The department of justice shall adopt rules necessary to implement this section."

19

20 **Section 8.** Section 46-6-216, MCA, is amended to read:

21 **"46-6-216. Manner of arrest with warrant.** (1) When making an arrest pursuant to a warrant, a peace
22 officer shall inform the person to be arrested of the officer's authority, the intention to arrest that person, the cause
23 of the arrest, and the fact that a warrant has been issued for that person's arrest, except:

24 (a) when the person flees or forcibly resists before the peace officer has an opportunity to inform the
25 person; or

26 (b) when the giving of the information will imperil the arrest.

27 (2) (a) The peace officer need not have possession of the warrant at the time of the arrest, but after the
28 arrest, the warrant must be shown to the person arrested as soon as practicable ~~if the person requests.~~

29 (b) If the person arrested identifies irregularities or defects on the warrant and can demonstrate that the
30 person is not the individual specified by the warrant, the person must be immediately released and may not be

1 questioned further.

2 (3) If the person to be arrested or the person arrested claims mistaken identity, the peace officer shall
 3 make an official note of the claim at the first opportunity and then immediately report the claim to the peace
 4 officer's commanding officer."

5

6 **Section 9.** Section 46-24-101, MCA, is amended to read:

7 **"46-24-101. Purpose.** The legislature declares that the purposes of this chapter are to:

8 (1) protect the role of crime victims and witnesses in the criminal justice process;

9 (2) ~~assure~~ ensure that victims and witnesses of crime receive fair and proper treatment from law
 10 enforcement agencies and prosecutors; ~~and~~

11 (3) provide a standard of conduct governing the treatment of victims and witnesses in criminal cases;:

12 and

13 (4) provide for the fair and proper treatment of victims of injurious criminal procedure."

14

15 **Section 10.** Section 46-24-103, MCA, is amended to read:

16 **"46-24-103. Duty of attorney general.** (1) The attorney general shall ensure that victims and witnesses
 17 of crime receive fair and proper treatment in the criminal justice system. The attorney general shall prepare a
 18 written notice of the rights and services available to victims of crime under this chapter. The notice must be
 19 distributed to local law enforcement agencies in the state. In addition, the attorney general shall ensure that
 20 victims and witnesses are provided important services and assistance as required under this chapter.

21 (2) The attorney general shall ensure that a victim of injurious criminal procedure as defined in 53-9-103
 22 is given fair and proper treatment concerning any remedy for false arrest or false imprisonment.

23 (3) The attorney general, through the office of victims services, shall keep a record of any acts done in
 24 the criminal justice system that led to false arrests or false imprisonments, including the issuance of warrants with
 25 irregularities."

26

27 **Section 11.** Section 53-9-102, MCA, is amended to read:

28 **"53-9-102. Legislative purpose and intent.** It is the intent of the legislature to provide a method of
 29 compensating ~~these~~ persons within the state who are innocent victims of criminal acts and injurious criminal
 30 procedure, including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of

1 the United States against a resident of this state, and who suffer bodily injury or death, ~~and those~~ innocent
 2 citizens of this state who are injured or killed in a state that does not have a crime victims compensation program
 3 that covers out-of-state residents injured or killed in that state, and victims of false arrest, false imprisonment, or
 4 wrongful conviction in this state. To this end, it is the legislature's intention to provide compensation for injuries
 5 suffered as a direct result of the criminal acts of other persons or injurious criminal procedure and to coordinate
 6 victims assistance programs."

7

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

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

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

11 (a) a victim;

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

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

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

17 (a) the offender;

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

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

22 (d) workers' compensation;

23 (e) wage continuation programs of any employer;

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

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

30 (h) a crime victims compensation program operated by the state in which the victim was injured or killed

1 that compensates residents of this state injured or killed in that state; or

2 (i) any other third party.

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

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

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

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

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

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

21 (5) "False arrest" means the arrest of an innocent person.

22 (6) "False imprisonment" means the imprisonment of an innocent person.

23 (7) "Injurious criminal procedure" means criminal procedure, including but not limited to investigation,
24 arrest, pretrial procedure, trial, posttrial procedure, and confinement, that is defective, illegal, irregular, or
25 unconstitutional in any way and results in the arrest or conviction of an innocent person.

26 ~~(5)~~(8) "Office" means the office of victims services established in 2-15-2016.

27 ~~(6)~~(9) "Victim" means:

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

29 (i) criminally injurious conduct;

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

1 (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; or
 4 (c) a person who is falsely arrested, falsely imprisoned, or wrongfully convicted as a result of injurious
 5 criminal procedure."
 6

7 **Section 13.** Section 53-9-104, MCA, is amended to read:

8 **"53-9-104. (Temporary) Powers and duties of office.** (1) The office shall:

9 (a) adopt rules to implement this part;

10 (b) prescribe forms for applications for compensation;

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

12 (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime
 13 for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based
 14 directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying
 15 crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the
 16 crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund
 17 for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a
 18 period of time that the office may determine is reasonably necessary to perfect the claims of the victims or
 19 dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for
 20 in 2-15-1029, for costs associated with providing assigned counsel for the charged person. Each victim and
 21 dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever
 22 is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any
 23 public defender or any attorney assigned for the charged person must be paid to the crime victims compensation
 24 and assistance program in the department of justice for deposit in the account provided for in 53-9-113; and

25 (e) compile information and statistics, including statements by victims of injurious criminal procedure,
 26 on injurious criminal procedure and deliver a report biennially to the attorney general and to the house judiciary
 27 committee and senate judiciary committee in accordance with 5-11-210.

28 (2) The office may:

29 (a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data
 30 to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute

1 providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

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

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

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

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

13 (f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec.
14 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

15 **53-9-104. (Effective July 1, 2021) Powers and duties of office.** (1) The office shall:

16 (a) adopt rules to implement this part;

17 (b) prescribe forms for applications for compensation;

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

19 (d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime
20 for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based
21 directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying
22 crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the
23 crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund
24 for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a
25 period of time that the office may determine is reasonably necessary to perfect the claims of the victims or
26 dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for
27 in 2-15-1029, for costs associated with providing assigned counsel for the charged person. Each victim and
28 dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or \$5,000, whichever
29 is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any
30 public defender or any attorney assigned for the charged person must be deposited in the state general fund;

1 and

2 (e) compile information and statistics, including statements by victims of injurious criminal procedure,
 3 on injurious criminal procedure and deliver a report biennially to the attorney general and to the house judiciary
 4 committee and senate judiciary committee in accordance to 5-11-210.

5 (2) The office may:

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

9 (b) request and obtain from a health care provider medical reports that are relevant to the physical
 10 condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that
 11 is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant
 12 a release of the records or information. No civil or criminal liability arises from the release of information requested
 13 under this subsection (2)(b).

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

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

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

20 (f) establish a victims assistance coordinating and planning program."
 21

22 **Section 14.** Section 53-9-113, MCA, is amended to read:

23 **"53-9-113. (Temporary) Crime victims compensation account.** There is an account in the state
 24 special revenue fund for compensation to crime victims and injurious criminal procedure victims compensation.

25 The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice for the
 26 purposes provided in this part. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)"
 27

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

29 **"53-9-125. Limitations on awards.** (1) Except as otherwise provided in this section, compensation may
 30 not be awarded unless the claim is filed with the office within 1 year after the day the criminally injurious conduct

1 occurred causing the injury or death upon which the claim is based. Compensation in cases involving sexual
2 offenses against minors may not be awarded unless the claim is filed with the office within 1 year after the day
3 the criminally injurious conduct was reported to a law enforcement agency or an agency of the state responsible
4 for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of age, whichever
5 occurs last. The time for filing a claim may be extended by the office for good cause shown.

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

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

12 (4) In order to be entitled to benefits under this part, a claimant shall fully cooperate with all law
13 enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing
14 the criminally injurious conduct. The office, upon finding that the claimant or victim has not fully cooperated with
15 appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award
16 of compensation.

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

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

21 (7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury
22 with respect to which the claim is made. Any reduction in benefits under this subsection must be in proportion
23 to what the office finds to be the victim's contribution to the infliction of death or injury.

24 (8) A victim of injurious criminal procedure may submit a compensation claim for up to 1 year after
25 release for a false arrest and for up to 10 years after release for a false imprisonment."

26

27 **Section 16.** Section 53-9-128, MCA, is amended to read:

28 **"53-9-128. Compensation benefits for victims of criminal acts.** (1) The following compensation
29 benefits are available to claimants who are victims of criminal acts or dependants of victims of criminal acts:

30 (+)(a) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss

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

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

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

20 ~~(b)(ii)~~ Benefits under subsection ~~(3)(a)~~ (1)(c)(i) must be paid to the spouse for the benefit of the spouse
 21 and other dependents unless the office determines that other payment arrangements should be made. If a spouse
 22 dies or remarries, benefits under subsection ~~(3)(a)~~ (1)(c)(i) must cease to be paid to the spouse but must continue
 23 to be paid to the other dependents as long as their dependent status continues.

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

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

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

1 ~~(7)(a)(d)~~ (i) A person who has suffered injury as a result of criminally injurious conduct and as a result
 2 of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was
 3 employable but was not employed at the time of the injury may in the discretion of the office be awarded weekly
 4 compensation benefits in an amount determined by the office not to exceed \$100 per week. Weekly
 5 compensation payments must continue until the claimant has a reasonable prospect of being regularly employed
 6 in the normal labor market. The claimant must be awarded benefits as provided in subsection ~~(2)~~ (1)(b).

7 ~~(b)(ii)~~ The dependents of a victim who is killed as a result of criminally injurious conduct and who was
 8 employable but not employed at the time of death may in the discretion of the office be awarded, in a gross single
 9 amount payable to all dependents, a sum not to exceed \$100 per week, which is payable in the manner and for
 10 the period provided by subsection ~~(3)(b)~~ (1)(c)(ii) or for a shorter period as determined by the office. The claimant
 11 must be awarded benefits as provided in subsection ~~(4)~~ (1)(c)(iii).

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

15 ~~(9)(a)(e)~~ (i) Subject to the limitations in subsection ~~(9)(d)~~ (1)(e)(iv), the spouse, parent, child, brother,
 16 or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental
 17 health treatment received as a result of the victim's death.

18 ~~(b)(ii)~~ Subject to the limitations in subsection ~~(9)(d)~~ (1)(e)(iv), the parent, brother, or sister of a minor who
 19 is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services
 20 under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that
 21 criminally injurious conduct.

22 ~~(e)(iii)~~ Subject to the limitations in subsection ~~(9)(d)~~ (1)(e)(iv), minor children who were present in a home
 23 where domestic violence occurred are entitled to reimbursement for mental health treatment received as a result
 24 of that criminally injurious conduct.

25 ~~(d)(iv)~~ Total payments made under ~~subsections (9)(a) through (9)(c)~~ this subsection (1)(e) may not
 26 exceed \$2,000 or 12 consecutive months of treatment for each person, whichever occurs first.

27 (2) Except for benefits paid under subsections (1)(c)(i), (1)(c)(ii), (1)(d)(ii), and (3) or other benefits paid
 28 when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may
 29 not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

30 (3) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death

1 because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the
2 aggregate.

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

5
6 **NEW SECTION. Section 17. Codification instruction.** [Section 1] is intended to be codified as an
7 integral part of Title 53, chapter 9, part 1, and the provisions of Title 53, chapter 9, part 1, apply to [section 1].

8 - END -