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As of: October 4, 2016 (11:37am)

LCj016

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act generally revising the crime victims compensation act; expanding limitations on when claims must be filed; revising who is entitled to benefits; increasing funeral benefits; adding crime scene cleanup and relocation benefits; revising limitations on benefits paid to certain claimants for mental health treatment; amending sections 53-9-103, 53-9-125, and 53-9-128, MCA; and providing an effective date."

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) a family member or partner described in 53-9-128(10)(a) through (c); or

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

(2) "Collateral source" means a source of benefits, other

Unofficial Draft Copy

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LCj016

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

Unofficial Draft Copy

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LCj016

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) "Family member" has the meaning provided in 45-5-206.

~~(5)~~(6) "Office" means the office of victims services

established in 2-15-2016.

(7) "Partner" has the meaning provided in 45-5-206.

~~(6)~~(8) "Victim" means:

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

(i) criminally injurious conduct;

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

(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."

{*Internal References to 53-9-103: None.*}

Section 2. Section 53-9-125, MCA, is amended to read:

"53-9-125. Limitations on awards. (1) ~~Except as otherwise provided in this section, compensation~~ Compensation may not be awarded unless ~~the~~ a claim is filed with the office within ~~1 year~~ 2 years after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based.

Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is filed with the office within ~~1 year~~ 2 years after the day the criminally injurious conduct was reported to a law enforcement agency or an agency of the state responsible for provision of child welfare services, or within ~~1 year~~ 2 years after the day the victim reaches 18 years

Unofficial Draft Copy

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LCj016

of age, whichever occurs last. The time for filing a claim may be extended by the office for good cause shown.

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

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

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

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

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

(7) Compensation may be denied or reduced if the victim

Unofficial Draft Copy

As of: October 4, 2016 (11:37am)

LCj016

contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection must be in proportion to what the office finds to be the victim's contribution to the infliction of death or injury."

{ *Internal References to 53-9-125:*
44-4-1502x 7/8 }

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

Unofficial Draft Copy

As of: October 4, 2016 (11:37am)

LCj016

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)~~(8).

(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~~ \$7,000, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Benefits paid to a victim may include reasonable and necessary costs of cleaning the crime scene and reasonable and

necessary costs of relocation.

~~(5)~~(6) 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)~~(7) Compensation Except as provided in subsection (5), compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

~~(7)~~(8) (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)~~(9) Except for benefits paid under subsections (3), ~~(5)~~

Unofficial Draft Copy

As of: October 4, 2016 (11:37am)

LCj016

(6), and ~~(7)(b)~~ (8)(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)(10)~~ (a) Subject to the limitations in subsection ~~(9)(d)~~ (10)(d), ~~the spouse, parent, child, brother, or sister~~ a family member or partner of a victim who is killed as a result of criminally injurious conduct or a person who was a witness to the 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)(d)~~ (10)(d), ~~the parent, brother, or sister~~ a family member or partner of a minor who is a victim of criminally injurious conduct involving a sexual offense or a person who was a witness to the criminally injurious conduct 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)~~ (10)(d), ~~minor children~~ a person who ~~were~~ was present in a home where domestic violence occurred ~~are~~ is entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(d) Total payments made under subsections ~~(9)(a)~~ (10)(a) through ~~(9)(c)~~ (10)(c) may not exceed ~~\$2,000~~ \$4,000 or ~~12~~ 24 consecutive months of treatment for each person, whichever occurs

Unofficial Draft Copy

As of: October 4, 2016 (11:37am)

LCj016

first, unless otherwise determined by the office during an informal hearing process allowed under 53-9-122."

{*Internal References to 53-9-128: None.*}

NEW SECTION. **Section 4. {standard} Effective date.** [This act] is effective July 1, 2017.

- END -

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