

1 H BILL NO. 357
 2 INTRODUCED BY *Liziani George Bradley Lynch*
 3 *Dunne Meloy Gillyan Depew Sully*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
 5 STATE-FINANCED PROGRAM OF COMPENSATION TO PERSONS WHO SUFFER
 6 BODILY INJURY AND TO DEPENDENTS OF THOSE WHO ARE KILLED BY
 7 CRIMINALLY INJURIOUS CONDUCT OR IN ATTEMPTS TO PREVENT
 8 CRIMINAL CONDUCT OR APPREHEND CRIMINALS; AND TO APPROPRIATE
 9 MONEY THEREFOR."

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

12 Section 1. Short title. This act may be cited as "The
 13 Crime Victims Compensation Act of Montana".

14 Section 2. Legislative purpose and intent. It is the
 15 intent of the legislature of this state to provide a method
 16 of compensating and assisting those persons within the state
 17 who are innocent victims of criminal acts and who suffer
 18 bodily injury or death. To this end, it is the legislature's
 19 intention to provide compensation for injuries suffered as a
 20 direct result of the criminal acts of other persons.

21 Section 3. Definitions. As used in this act, the
 22 following definitions apply:

23 (1) "Claimant" means any of the following claiming
 24 compensation under this act:

25 (a) a victim;

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

4 (2) "Collateral source" means a source of benefits or
 5 advantages for economic loss otherwise compensable under
 6 this act which the victim or claimant has received or which
 7 is readily available to him from:

8 (a) the offender;

9 (b) the government of the United States or any agency
 10 thereof, a state or any of its political subdivisions, or an
 11 instrumentality of two or more states, unless the law
 12 providing for the benefits or advantages makes them excess
 13 or secondary to benefits under this act;

14 (c) social security, medicare, medicaid, and welfare;

15 (d) workers' compensation;

16 (e) wage continuation programs of any employer;

17 (f) proceeds of a contract of insurance payable to the
 18 victim for loss which he sustained because of the criminally
 19 injurious conduct, except proceeds from a private life
 20 insurance contract if the victim has paid all or a portion
 21 of premiums for the insurance policy; or

22 (g) a contract, including an insurance contract,
 23 providing hospital and other health care services or
 24 benefits for disability. Any such contract in this state may
 25 not provide that benefits under this act shall be a

1 substitute for benefits under the contract or that the
2 contract is a secondary source of benefits and benefits
3 under this act are a primary source.

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

5 (a) occurs or is attempted in this state;

6 (b) results in bodily injury or death; and

7 (c) is punishable by fine, imprisonment, or death or
8 would be so punishable but for the fact that the person
9 engaging in the conduct lacked capacity to commit the crime
10 under the laws of this state. Criminally injurious conduct
11 does not include conduct arising out of the ownership,
12 maintenance, or use of a motor vehicle except when
13 criminally intended to cause bodily injury or death.

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

21 (5) "Division" means the division of workers'
22 compensation provided for in 82A-1004.

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

25 (a) criminally injurious conduct;

1 (b) the good faith effort of any person to prevent
2 criminally injurious conduct; or

3 (c) the good faith effort of any person to apprehend a
4 person reasonably suspected of engaging in criminally
5 injurious conduct.

6 Section 4. Award of compensation. The division shall
7 award compensation benefits under this act if satisfied by a
8 preponderance of the evidence that the requirements for
9 compensation have been met.

10 Section 5. Powers and duties of the division. (1) The
11 division shall:

12 (a) adopt rules to implement this act;

13 (b) prescribe forms for applications for compensation;

14 (c) determine all matter relating to claims for
15 compensation; and

16 (d) publicize widely the availability of compensation
17 and information regarding the filing of claims therefor. The
18 division shall work with law enforcement agencies in order
19 to formulate plans and procedures for the distribution and
20 communication of information to victims concerning their
21 eligibility for benefits under this act.

22 (2) The division may:

23 (a) request and obtain from prosecuting attorneys and
24 law enforcement officers investigations and data to enable
25 the division to determine whether and the extent to which a

1 claimant qualifies for compensation. A statute providing
2 confidentiality for a claimant's or victim's juvenile court
3 records does not apply to proceedings under this act.

4 (b) subpoena witnesses and other prospective evidence,
5 administer oaths or affirmations, conduct hearings, and
6 receive relevant, nonprivileged evidence; and

7 (c) take notice of judicially cognizable facts and
8 general, technical, and scientific facts within its
9 specialized knowledge.

10 Section 6. Application for compensation -- awards --
11 limitations on awards. (1) An applicant for an award of
12 compensation may apply in writing in a form that conforms
13 substantially to that prescribed by the division.

14 (2) Compensation may not be awarded unless the claim
15 is filed with the division within 1 year after the day the
16 criminally injurious conduct occurred causing the injury or
17 death upon which the claim is based. The time for filing a
18 claim may be extended by the division for good cause shown.

19 (3) Compensation may not be awarded to a claimant who
20 is the offender or an accomplice of the offender or to any
21 claimant if the award would unjustly benefit the offender or
22 accomplice. Unless the division determines that the
23 interests of justice otherwise require in a particular case,
24 compensation may not be awarded to the spouse of or a person
25 living in the same household with the offender or his

1 accomplice or to the parent, child, brother, or sister of
2 the offender or his accomplice.

3 (4) Compensation may not be awarded unless the
4 criminally injurious conduct resulting in injury or death
5 was reported to a law enforcement officer within 72 hours
6 after its occurrence or the division finds there was good
7 cause for the failure to report within that time.

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

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

20 (7) Persons serving a sentence of imprisonment or
21 residing in any other public institution which provides for
22 the maintenance of such person are not entitled to the
23 benefits of this act.

24 Section 7. Hearings and informal disposition before
25 the division. The division may hold informal hearings in

1 order to make determinations regarding the compensability of
 2 a claim. At such hearings, the division may subpoena
 3 witnesses and documents as set forth in 82-4220. Hearings
 4 held under this subsection are not considered contested case
 5 hearings under the Montana Administrative Procedure Act.
 6 However, the division shall adopt rules regarding its
 7 informal hearing procedures.

8 Section 8. Evidence of condition. (1) There is no
 9 privilege, except privileges arising from the
 10 attorney-client relationship, as to communications or
 11 records relevant to an issue of the physical, mental, or
 12 emotional condition of the claimant or victim in a
 13 proceeding under this act in which that condition is an
 14 element.

15 (2) If the mental, physical, or emotional condition of
 16 a victim or claimant is material to a claim, the division
 17 may order the victim or claimant to submit from time to time
 18 to a mental or physical examination by a physician or
 19 psychologist, or may order an autopsy of a deceased victim.
 20 The division shall pay for such examination. The order shall
 21 specify the time, place, manner, conditions, and scope of
 22 the examination or autopsy and the person by whom it is to
 23 be made and shall require the person to file with the
 24 division a detailed written report of the examination or
 25 autopsy. The report shall set out his findings, including

1 results of all tests made, diagnoses, prognoses, and other
 2 conclusions and reports of earlier examinations of the same
 3 conditions. On request of the person examined, the division
 4 shall furnish him a copy of the report. If the victim is
 5 deceased, the division, on request, shall furnish the
 6 claimant a copy of the report.

7 (3) The division may require the claimant to
 8 supplement the application with any reasonably available
 9 medical or psychological reports relating to the injury for
 10 which compensation is claimed.

11 Section 9. Enforcement of division's orders. If a
 12 person refuses to comply with an order of the division or
 13 asserts a privilege, except privileges arising from the
 14 attorney-client relationship, to withhold or suppress
 15 evidence relevant to a claim, the division may make any just
 16 order, including denial of the claim.

17 Section 10. Award and payment of compensation. (1) An
 18 award may be made whether or not any person is prosecuted or
 19 convicted. Proof of conviction of a person whose acts give
 20 rise to a claim is conclusive evidence that the crime was
 21 committed unless an application for rehearing, an appeal of
 22 the conviction, or certiorari is pending or a rehearing or
 23 new trial has been ordered.

24 (2) The division may suspend the proceedings pending
 25 disposition of a criminal prosecution that has been

1 commenced or is imminent and may make a tentative award
2 under [section 14].

3 Section 11. Subrogation. (1) If a claimant seeks
4 compensation under this act and compensation is awarded, the
5 division is entitled to full subrogation against a judgment
6 or recovery received by the claimant against the offender
7 for all compensation paid under this act. The division's
8 right of subrogation shall be a first lien on the judgment
9 or recovery. If the claimant does not institute the action
10 against the offender within 1 year from the date the
11 criminally injurious conduct occurred, the division may
12 institute the action in the name of the claimant or the
13 claimant's personal representative.

14 (2) If the claimant institutes the action, the
15 division shall pay a proportional share of costs and
16 attorneys' fees if it recovers under its subrogation
17 interest.

18 (3) If the division institutes the action in the name
19 of the claimant or the claimant's personal representative
20 and the recovery is in excess of the amount of compensation
21 paid to the claimant and costs incurred by the division in
22 pursuit of the action, the excess shall be paid to the
23 claimant.

24 (4) If a judgment or recovery includes both damages
25 for bodily injury or death for which the division has paid

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

15 Section 12. Compensation benefits. (1) A claimant is
16 entitled to weekly compensation benefits when the claimant
17 has a total actual loss of wages due to injury as a result
18 of criminally injurious conduct. During the time the
19 claimant seeks such weekly benefits, the claimant, as a
20 result of such injury, must have no reasonable prospect of
21 being regularly employed in the normal labor market. The
22 weekly benefit amount is $66 \frac{2}{3}\%$ of the wages received at
23 the time of the criminally injurious conduct, subject to a
24 maximum of \$125. Weekly compensation payments shall be made
25 at the end of each 2-week period. No weekly compensation

1 payments may be paid for the first week after the criminally
 2 injurious conduct occurred, but if total actual loss of
 3 wages continues for 1 week, weekly compensation payments
 4 shall be paid from the date the wage loss began. Weekly
 5 compensation payments shall continue until the claimant has
 6 a reasonable prospect of being regularly employed in the
 7 normal labor market.

8 (2) The claimant is entitled to be reimbursed for
 9 reasonable services by a physician or surgeon, reasonable
 10 hospital services and medicines, and such other treatment as
 11 may be approved by the division for the injuries suffered
 12 due to criminally injurious conduct.

13 (3) (a) The dependents of a victim who is killed as a
 14 result of criminally injurious conduct are entitled to
 15 receive, in a gross single amount payable to all dependents,
 16 weekly benefits amounting to 66 2/3% of the wages received
 17 at the time of the criminally injurious conduct causing the
 18 death, subject to a maximum of \$125 per week. Weekly
 19 compensation payments shall be made at the end of each
 20 2-week period.

21 (b) Benefits under subsection (3)(a) of this section
 22 shall be paid to the spouse for the benefit of the spouse
 23 and other dependents, unless the division determines that
 24 other payment arrangements should be made. If a spouse dies
 25 or remarries, benefits under subsection (3)(a) shall cease

1 to be paid to the spouse but shall continue to be paid to
 2 the other dependents so long as their dependent status
 3 continues.

4 (4) Reasonable funeral and burial expenses of the
 5 victim, not exceeding \$1,100, shall be paid if all other
 6 collateral sources have properly paid such expenses but have
 7 not covered all such expenses.

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

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

15 (7) (a) A person who has suffered injury as a result
 16 of criminally injurious conduct and as a result of such
 17 injury has no reasonable prospect of being regularly
 18 employed in the normal labor market, but was not employed at
 19 the time of such injury, may in the discretion of the
 20 division be awarded weekly compensation benefits in an
 21 amount determined by the division not to exceed \$100 per
 22 week. Weekly compensation payments shall continue until the
 23 claimant has a reasonable prospect of being regularly
 24 employed in the normal labor market or for a shorter period
 25 as determined by the division. The claimant shall be awarded

1 benefits as provided in subsection (2) of this section.

2 (b) The dependents of a victim who is killed as a
 3 result of criminally injurious conduct and who was
 4 unemployed at the time of death may in the discretion of the
 5 division be awarded, in a gross single amount payable to all
 6 dependents, a sum not to exceed \$100 per week which shall be
 7 payable in the manner and for the period provided by
 8 subsection (3) (b) of this section or for such shorter period
 9 as determined by the division.

10 (c) Compensation payable to a victim or a victim's
 11 dependents under this subsection may not exceed \$20,000.

12 Section 13. Manner of payment — nonassignability and
 13 exemptions. (1) The division may provide for the payment of
 14 an award in a lump sum or in installments. The part of an
 15 award equal to the amount of weekly compensation accrued to
 16 the date of the award shall be paid in a lump sum. Except as
 17 provided in subsection (2), the part of an award that may
 18 not be paid in a lump sum shall be paid in installments.

19 (2) At the instance of the claimant, the division may
 20 commute weekly compensation benefits to a lump sum but only
 21 upon a finding by the division that:

22 (a) the award in a lump sum will promote the interest
 23 of the claimant; or

24 (b) the amount of all future weekly compensation does
 25 not exceed \$1,000.

1 (3) An award is not subject to execution, attachment,
 2 garnishment, or other process.

3 (4) An assignment or agreement to assign a right to
 4 compensation in the future is unenforceable except:

5 (a) an assignment of a right to compensation for work
 6 loss to secure payment of maintenance or child support; or

7 (b) an assignment of a right to compensation to the
 8 extent that the benefits are for the cost of products,
 9 services, or accommodations necessitated by the injury or
 10 death on which the claim is based and are provided or to be
 11 provided by the assignee.

12 Section 14. Tentative awards. If the division
 13 determines that the claimant will suffer financial hardship
 14 unless a tentative award is made and it appears likely that
 15 a final award will be made, an amount may be paid to the
 16 claimant, to be deducted from the final award or repaid by
 17 and recoverable from the claimant to the extent that it
 18 exceeds the final award.

19 Section 15. Reconsideration and review of division
 20 decisions. (1) The division on its own motion or on request
 21 of the claimant may reconsider a decision making or denying
 22 an award or determining its amount. The division shall
 23 reconsider at least annually every award being paid in
 24 installments. An order on reconsideration of an award may
 25 not require refund of amounts previously paid unless the

1 award was obtained by fraud.

2 (2) The right of reconsideration does not affect the
3 finality of a division decision for the purpose of appeal.

4 Section 16. Rehabilitation. The division shall refer
5 to the department of social and rehabilitation services
6 victims who have been permanently disabled through
7 criminally injurious conduct, who are receiving benefits
8 under this act and who, in the opinion of the division, may
9 be vocationally rehabilitated. The department of social and
10 rehabilitation services shall provide for the vocational
11 rehabilitation of the victims under its rehabilitation
12 programs to the extent funds are available under such
13 programs.

14 Section 17. Appeal. (1) After the division has made
15 final determination concerning any matter relating to a
16 claim, if the claimant disputes the division's
17 determination, he may appeal to the workers' compensation
18 judge for review. The judge, after a hearing, shall make a
19 final determination concerning the dispute and issue an
20 appropriate order affirming or modifying the division's
21 determination.

22 (2) All proceedings and hearings before the workers'
23 compensation judge shall be in accordance with the
24 appropriate provisions of the Montana Administrative
25 Procedure Act. However, the workers' compensation judge is

1 not bound by common law and statutory rules of evidence.

2 (3) Notwithstanding 82-4216, an appeal from a final
3 decision of the workers' compensation judge shall be filed
4 directly with the supreme court of Montana in the manner
5 provided by law for appeals from the district court in civil
6 cases.

7 Section 18. Attorneys' fees. (1) The division may
8 grant attorneys' fees to attorneys for representing
9 claimants before the division. Any attorney's fee granted by
10 the division shall be in addition to compensation awarded
11 the claimant under this act.

12 (2) The division may regulate the amount of the
13 attorney's fee in any claim under this act where an attorney
14 is representing a claimant.

15 (3) In cases under this act that go before the
16 workers' compensation judge, the judge may grant, in
17 addition to compensation benefits granted, attorneys' fees
18 to attorneys for representing claimants before the judge.

19 Section 19. Public records -- right to inspect. The
20 records the division maintains in its possession in the
21 administration of this act are open to public inspection and
22 disclosure in accordance with the provisions of 92-844
23 through 92-847.

24 Section 20. Limitation to benefit entitlements.
25 Claimants receiving benefits under this act are not granted

1 an absolute entitlement to benefits. Benefits must be paid
 2 in accordance with the amount of the legislative
 3 appropriation. If the division determines at any time that
 4 the appropriated funds for a fiscal year will not be an
 5 amount that will fully pay all claims, the division may make
 6 appropriate proportionate reductions in benefits to all
 7 claimants. Such reductions do not entitle claimants to
 8 future retroactive reimbursements in future fiscal years
 9 unless the legislature makes appropriations for such
 10 retroactive benefits.

11 Section 21. Effect on probation and parole. (1) The
 12 court when placing any convicted person on probation may set
 13 as a condition of probation the payment to the state of an
 14 amount equal to any benefits paid by the division to a
 15 victim or a victim's dependents. The court may set a
 16 repayment schedule and modify it as circumstances change.

17 (2) The court may make payment of the debt a condition
 18 of parole subject to modification based on a change in
 19 circumstances.

20 Section 22. Federal funding. The division may adopt
 21 appropriate rules in order to receive federal funds under
 22 federal criminal reparation and compensation acts.

23 Section 23. Penalty. Any claimant who knowingly makes
 24 a false claim or a false statement in connection with any
 25 claim is guilty of a misdemeanor and upon conviction shall,

1 in addition to being punished as provided by law, forfeit
 2 and repay any compensation paid under this act.

3 Section 24. Severability. If a part of this act is
 4 invalid, all valid parts that are severable from the invalid
 5 part remain in effect. If a part of this act is invalid in
 6 one or more of its applications, the part remains in effect
 7 in all valid applications that are severable from the
 8 invalid applications.

9 Section 25. Appropriation. There is appropriated to
 10 the department of labor and industry, division of workers'
 11 compensation, from the general fund the sum of \$390,000 for
 12 the biennium ending June 30, 1979, for the purpose of
 13 administering this act.

14 Section 26. Effective date. (1) Sections 1 through 24
 15 of this act are effective on January 1, 1978, and shall
 16 apply only to injuries resulting from criminally injurious
 17 conduct which occurred on or after January 1, 1978. However,
 18 the division may, after July 1, 1977, employ personnel and
 19 pay for expenses in order to establish the administration of
 20 the act, adopt rules of procedure, and initiate publicity
 21 regarding the benefits under the act.

22 (2) Section 25 of this act is effective July 1, 1977.

-End-

STATE OF MONTANA

REQUEST NO. 179-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 19 77, there is hereby submitted a Fiscal Note for House Bill 357 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to establish a state-financed program of compensation to persons who suffer bodily injury and to dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or apprehend criminals; and to appropriate money therefor.

ASSUMPTIONS:

1. All claims compensated for murder will result in maximum \$25,000 payment being made to dependents.
2. Claims rejected and compensation will follow other states' experience with 35% of the claims filed being rejected and 40% compensated with the remainder held, pending various legal and administrative details or closed for other reasons.
3. Montana will not experience the doubling of second year claims common to other states' program experience.
4. First year start up will reduce the number of claims filed and compensated by 50%.
5. Average per case compensation costs will be \$1,200 in 1978, \$1,500 in 1979, and \$1,650 in 1980.
6. 40% of those cases carried over to the next year will be compensated.
7. 5% of all crime categories will result in claims filed.
8. MBCC data is the most reliable information available.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Additional cost of proposed legislation:			
Personal services	\$ 39,126	\$ 40,045	\$ 79,171
Operating expenses	12,000	12,000	24,000
Capital outlay	8,000	0	8,000
Local assistance, grants, benefits and claims	<u>63,600</u>	<u>214,500</u>	<u>278,100</u>
Total additional costs	<u>\$122,726</u>	<u>\$266,545</u>	<u>\$389,271</u>

LONG-RANGE IMPACT:

It appears that the program, if continued, would tend to escalate in cost in subsequent years.

Richard L. Drury for
 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: 1-26-77

STATE OF MONTANA

REQUEST NO. 179-77
 AMENDED

FISCAL NOTE

Form BD 15

In compliance with a written request received April 4, 1977, there is hereby submitted a Fiscal Note for HB 357 as Amended pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to establish a state-financed program of compensation to persons who suffer bodily injury and to dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or apprehend criminals; and to appropriate money therefor.

The amended version of House Bill 357 shifts the financial burden from the general fund to a specially created crime victims compensation account in the earmarked revenue fund. The revenue for this earmarked account is derived from a portion of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles. Six percent of such fines and bail forfeitures are set aside to compensate eligible crime victims.

ASSUMPTIONS:

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LOCAL IMPACT:

The setting aside of 6% of the traffic fines and bail forfeitures should not have an adverse effect upon local revenue.

Most generally, the special earmarking of traffic fines and bails do not reduce local revenues because the Justices of the Peace have authority to set higher traffic fines and bonds to compensate for state earmarking of such fees. Fines and bail forfeitures that are retained by the county are placed in the general road fund of the county.

Richard J. ...
 BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4-5-77

LONG-RANGE IMPACT:

It appears that the program, if continued, would tend to escalate in cost in subsequent years.

STATE OF MONTANA

REQUEST NO. 179-77

FISCAL NOTE

AMENDED

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Richard A. Brannon
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 5-5-77

1 H BILL NO. 357
 2 INTRODUCED BY Luisi George Bradley Lynch
 3 Dunne Meloy Felton Reynolds Sully

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
 5 STATE-FINANCED PROGRAM OF COMPENSATION TO PERSONS WHO SUFFER
 6 BODILY INJURY AND TO DEPENDENTS OF THOSE WHO ARE KILLED BY
 7 CRIMINALLY INJURIOUS CONDUCT OR IN ATTEMPTS TO PREVENT
 8 CRIMINAL CONDUCT OR APPREHEND CRIMINALS; AND TO APPROPRIATE
 9 MONEY THEREFOR."

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

12 Section 1. Short title. This act may be cited as "The
 13 Crime Victims Compensation Act of Montana".

14 Section 2. Legislative purpose and intent. It is the
 15 intent of the legislature of this state to provide a method
 16 of compensating and assisting those persons within the state
 17 who are innocent victims of criminal acts and who suffer
 18 bodily injury or death. To this end, it is the legislature's
 19 intention to provide compensation for injuries suffered as a
 20 direct result of the criminal acts of other persons.

21 Section 3. Definitions. As used in this act, the
 22 following definitions apply:

23 (1) "Claimant" means any of the following claiming
 24 compensation under this act:

25 (a) a victim;

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

4 (2) "Collateral source" means a source of benefits or
 5 advantages for economic loss otherwise compensable under
 6 this act which the victim or claimant has received or which
 7 is readily available to him from:

- 8 (a) the offender;
- 9 (b) the government of the United States or any agency
- 10 thereof, a state or any of its political subdivisions, or an
- 11 instrumentality of two or more states, unless the law
- 12 providing for the benefits or advantages makes them excess
- 13 or secondary to benefits under this act;
- 14 (c) social security, medicare, medicaid, and welfare;
- 15 (d) workers' compensation;
- 16 (e) wage continuation programs of any employer;
- 17 (f) proceeds of a contract of insurance payable to the
- 18 victim for loss which he sustained because of the criminally
- 19 injurious conduct, except proceeds from a private life
- 20 insurance contract if the victim has paid all or a portion
- 21 of premiums for the insurance policy; or
- 22 (g) a contract, including an insurance contract,
- 23 providing hospital and other health care services or
- 24 benefits for disability. Any such contract in this state may
- 25 not provide that benefits under this act shall be a

1 substitute for benefits under the contract or that the
2 contract is a secondary source of benefits and benefits
3 under this act are a primary source.

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

5 (a) occurs or is attempted in this state;

6 (b) results in bodily injury or death; and

7 (c) is punishable by fine, imprisonment, or death or
8 would be so punishable but for the fact that the person
9 engaging in the conduct lacked capacity to commit the crime
10 under the laws of this state. Criminally injurious conduct
11 does not include conduct arising out of the ownership,
12 maintenance, or use of a motor vehicle except when
13 criminally intended to cause bodily injury or death.

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

21 (5) "Division" means the division of workers'
22 compensation provided for in 82A-1004.

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

25 (a) criminally injurious conduct;

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2 criminally injurious conduct; or

3 (c) the good faith effort of any person to apprehend a
4 person reasonably suspected of engaging in criminally
5 injurious conduct.

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7 award compensation benefits under this act if satisfied by a
8 preponderance of the evidence that the requirements for
9 compensation have been met.

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11 division shall:

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19 to formulate plans and procedures for the distribution and
20 communication of information to victims concerning their
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22 accomplice. Unless the division determines that the
23 interests of justice otherwise require in a particular case,
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1 accomplice or to the parent, child, brother, or sister of
2 the offender or his accomplice.

3 (4) Compensation may not be awarded unless the
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6 after its occurrence or the division finds there was good
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22 the maintenance of such person are not entitled to the
23 benefits of this act.

24 Section 7. Hearings and informal disposition before
25 the division. The division may hold informal hearings in

1 order to make determinations regarding the compensability of
 2 a claim. At such hearings, the division may subpoena
 3 witnesses and documents as set forth in 82-4220. Hearings
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 9 privilege, except privileges arising from the
 10 attorney-client relationship, as to communications or
 11 records relevant to an issue of the physical, mental, or
 12 emotional condition of the claimant or victim in a
 13 proceeding under this act in which that condition is an
 14 element.

15 (2) If the mental, physical, or emotional condition of
 16 a victim or claimant is material to a claim, the division
 17 may order the victim or claimant to submit from time to time
 18 to a mental or physical examination by a physician or
 19 psychologist, or may order an autopsy of a deceased victim.
 20 The division shall pay for such examination. The order shall
 21 specify the time, place, manner, conditions, and scope of
 22 the examination or autopsy and the person by whom it is to
 23 be made and shall require the person to file with the
 24 division a detailed written report of the examination or
 25 autopsy. The report shall set out his findings, including

1 results of all tests made, diagnoses, prognoses, and other
 2 conclusions and reports of earlier examinations of the same
 3 conditions. On request of the person examined, the division
 4 shall furnish him a copy of the report. If the victim is
 5 deceased, the division, on request, shall furnish the
 6 claimant a copy of the report.

7 (3) The division may require the claimant to
 8 supplement the application with any reasonably available
 9 medical or psychological reports relating to the injury for
 10 which compensation is claimed.

11 Section 9. Enforcement of division's orders. If a
 12 person refuses to comply with an order of the division or
 13 asserts a privilege, except privileges arising from the
 14 attorney-client relationship, to withhold or suppress
 15 evidence relevant to a claim, the division may make any just
 16 order, including denial of the claim.

17 Section 10. Award and payment of compensation. (1) An
 18 award may be made whether or not any person is prosecuted or
 19 convicted. Proof of conviction of a person whose acts give
 20 rise to a claim is conclusive evidence that the crime was
 21 committed unless an application for rehearing, an appeal of
 22 the conviction, or certiorari is pending or a rehearing or
 23 new trial has been ordered.

24 (2) The division may suspend the proceedings pending
 25 disposition of a criminal prosecution that has been

1 commenced or is imminent and may make a tentative award
2 under [section 14].

3 Section 11. Subrogation. (1) If a claimant seeks
4 compensation under this act and compensation is awarded, the
5 division is entitled to full subrogation against a judgment
6 or recovery received by the claimant against the offender
7 for all compensation paid under this act. The division's
8 right of subrogation shall be a first lien on the judgment
9 or recovery. If the claimant does not institute the action
10 against the offender within 1 year from the date the
11 criminally injurious conduct occurred, the division may
12 institute the action in the name of the claimant or the
13 claimant's personal representative.

14 (2) If the claimant institutes the action, the
15 division shall pay a proportional share of costs and
16 attorneys' fees if it recovers under its subrogation
17 interest.

18 (3) If the division institutes the action in the name
19 of the claimant or the claimant's personal representative
20 and the recovery is in excess of the amount of compensation
21 paid to the claimant and costs incurred by the division in
22 pursuit of the action, the excess shall be paid to the
23 claimant.

24 (4) If a judgment or recovery includes both damages
25 for bodily injury or death for which the division has paid

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

15 Section 12. Compensation benefits. (1) A claimant is
16 entitled to weekly compensation benefits when the claimant
17 has a total actual loss of wages due to injury as a result
18 of criminally injurious conduct. During the time the
19 claimant seeks such weekly benefits, the claimant, as a
20 result of such injury, must have no reasonable prospect of
21 being regularly employed in the normal labor market. The
22 weekly benefit amount is $66 \frac{2}{3}\%$ of the wages received at
23 the time of the criminally injurious conduct, subject to a
24 maximum of \$125. Weekly compensation payments shall be made
25 at the end of each 2-week period. No weekly compensation

1 payments may be paid for the first week after the criminally
 2 injurious conduct occurred, but if total actual loss of
 3 wages continues for 1 week, weekly compensation payments
 4 shall be paid from the date the wage loss began. Weekly
 5 compensation payments shall continue until the claimant has
 6 a reasonable prospect of being regularly employed in the
 7 normal labor market.

8 (2) The claimant is entitled to be reimbursed for
 9 reasonable services by a physician or surgeon, reasonable
 10 hospital services and medicines, and such other treatment as
 11 may be approved by the division for the injuries suffered
 12 due to criminally injurious conduct.

13 (3) (a) The dependents of a victim who is killed as a
 14 result of criminally injurious conduct are entitled to
 15 receive, in a gross single amount payable to all dependents,
 16 weekly benefits amounting to 66 2/3% of the wages received
 17 at the time of the criminally injurious conduct causing the
 18 death, subject to a maximum of \$125 per week. Weekly
 19 compensation payments shall be made at the end of each
 20 2-week period.

21 (b) Benefits under subsection (3) (a) of this section
 22 shall be paid to the spouse for the benefit of the spouse
 23 and other dependents, unless the division determines that
 24 other payment arrangements should be made. If a spouse dies
 25 or remarries, benefits under subsection (3) (a) shall cease

1 to be paid to the spouse but shall continue to be paid to
 2 the other dependents so long as their dependent status
 3 continues.

4 (4) Reasonable funeral and burial expenses of the
 5 victim, not exceeding \$1,100, shall be paid if all other
 6 collateral sources have properly paid such expenses but have
 7 not covered all such expenses.

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

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

15 (7) (a) A person who has suffered injury as a result
 16 of criminally injurious conduct and as a result of such
 17 injury has no reasonable prospect of being regularly
 18 employed in the normal labor market, but was not employed at
 19 the time of such injury, may in the discretion of the
 20 division be awarded weekly compensation benefits in an
 21 amount determined by the division not to exceed \$100 per
 22 week. Weekly compensation payments shall continue until the
 23 claimant has a reasonable prospect of being regularly
 24 employed in the normal labor market or for a shorter period
 25 as determined by the division. The claimant shall be awarded

1 benefits as provided in subsection (2) of this section.

2 (b) The dependents of a victim who is killed as a
3 result of criminally injurious conduct and who was
4 unemployed at the time of death may in the discretion of the
5 division be awarded, in a gross single amount payable to all
6 dependents, a sum not to exceed \$100 per week which shall be
7 payable in the manner and for the period provided by
8 subsection (3) (b) of this section or for such shorter period
9 as determined by the division.

10 (c) Compensation payable to a victim or a victim's
11 dependents under this subsection may not exceed \$20,000.

12 Section 13. Manner of payment — nonassignability and
13 exemptions. (1) The division may provide for the payment of
14 an award in a lump sum or in installments. The part of an
15 award equal to the amount of weekly compensation accrued to
16 the date of the award shall be paid in a lump sum. Except as
17 provided in subsection (2), the part of an award that may
18 not be paid in a lump sum shall be paid in installments.

19 (2) At the instance of the claimant, the division may
20 commute weekly compensation benefits to a lump sum but only
21 upon a finding by the division that:

22 (a) the award in a lump sum will promote the interest
23 of the claimant; or

24 (b) the amount of all future weekly compensation does
25 not exceed \$1,000.

1 (3) An award is not subject to execution, attachment,
2 garnishment, or other process.

3 (4) An assignment or agreement to assign a right to
4 compensation in the future is unenforceable except:

5 (a) an assignment of a right to compensation for work
6 loss to secure payment of maintenance or child support; or

7 (b) an assignment of a right to compensation to the
8 extent that the benefits are for the cost of products,
9 services, or accommodations necessitated by the injury or
10 death on which the claim is based and are provided or to be
11 provided by the assignee.

12 Section 14. Tentative awards. If the division
13 determines that the claimant will suffer financial hardship
14 unless a tentative award is made and it appears likely that
15 a final award will be made, an amount may be paid to the
16 claimant, to be deducted from the final award or repaid by
17 and recoverable from the claimant to the extent that it
18 exceeds the final award.

19 Section 15. Reconsideration and review of division
20 decisions. (1) The division on its own motion or on request
21 of the claimant may reconsider a decision making or denying
22 an award or determining its amount. The division shall
23 reconsider at least annually every award being paid in
24 installments. An order on reconsideration of an award may
25 not require refund of amounts previously paid unless the

1 award was obtained by fraud.

2 (2) The right of reconsideration does not affect the
3 finality of a division decision for the purpose of appeal.

4 Section 16. Rehabilitation. The division shall refer
5 to the department of social and rehabilitation services
6 victims who have been permanently disabled through
7 criminally injurious conduct, who are receiving benefits
8 under this act and who, in the opinion of the division, may
9 be vocationally rehabilitated. The department of social and
10 rehabilitation services shall provide for the vocational
11 rehabilitation of the victims under its rehabilitation
12 programs to the extent funds are available under such
13 programs.

14 Section 17. Appeal. (1) After the division has made
15 final determination concerning any matter relating to a
16 claim, if the claimant disputes the division's
17 determination, he may appeal to the workers' compensation
18 judge for review. The judge, after a hearing, shall make a
19 final determination concerning the dispute and issue an
20 appropriate order affirming or modifying the division's
21 determination.

22 (2) All proceedings and hearings before the workers'
23 compensation judge shall be in accordance with the
24 appropriate provisions of the Montana Administrative
25 Procedure Act. However, the workers' compensation judge is

1 not bound by common law and statutory rules of evidence.

2 (3) Notwithstanding 82-4216, an appeal from a final
3 decision of the workers' compensation judge shall be filed
4 directly with the supreme court of Montana in the manner
5 provided by law for appeals from the district court in civil
6 cases.

7 Section 18. Attorneys' fees. (1) The division may
8 grant attorneys' fees to attorneys for representing
9 claimants before the division. Any attorney's fee granted by
10 the division shall be in addition to compensation awarded
11 the claimant under this act.

12 (2) The division may regulate the amount of the
13 attorney's fee in any claim under this act where an attorney
14 is representing a claimant.

15 (3) In cases under this act that go before the
16 workers' compensation judge, the judge may grant, in
17 addition to compensation benefits granted, attorneys' fees
18 to attorneys for representing claimants before the judge.

19 Section 19. Public records -- right to inspect. The
20 records the division maintains in its possession in the
21 administration of this act are open to public inspection and
22 disclosure in accordance with the provisions of 92-844
23 through 92-847.

24 Section 20. Limitation to benefit entitlements.
25 Claimants receiving benefits under this act are not granted

1 an absolute entitlement to benefits. Benefits must be paid
 2 in accordance with the amount of the legislative
 3 appropriation. If the division determines at any time that
 4 the appropriated funds for a fiscal year will not be an
 5 amount that will fully pay all claims, the division may make
 6 appropriate proportionate reductions in benefits to all
 7 claimants. Such reductions do not entitle claimants to
 8 future retroactive reimbursements in future fiscal years
 9 unless the legislature makes appropriations for such
 10 retroactive benefits.

11 Section 21. Effect on probation and parole. (1) The
 12 court when placing any convicted person on probation may set
 13 as a condition of probation the payment to the state of an
 14 amount equal to any benefits paid by the division to a
 15 victim or a victim's dependents. The court may set a
 16 repayment schedule and modify it as circumstances change.

17 (2) The court may make payment of the debt a condition
 18 of parole subject to modification based on a change in
 19 circumstances.

20 Section 22. Federal funding. The division may adopt
 21 appropriate rules in order to receive federal funds under
 22 federal criminal reparation and compensation acts.

23 Section 23. Penalty. Any claimant who knowingly makes
 24 a false claim or a false statement in connection with any
 25 claim is guilty of a misdemeanor and upon conviction shall,

1 in addition to being punished as provided by law, forfeit
 2 and repay any compensation paid under this act.

3 Section 24. Severability. If a part of this act is
 4 invalid, all valid parts that are severable from the invalid
 5 part remain in effect. If a part of this act is invalid in
 6 one or more of its applications, the part remains in effect
 7 in all valid applications that are severable from the
 8 invalid applications.

9 Section 25. Appropriation. There is appropriated to
 10 the department of labor and industry, division of workers'
 11 compensation, from the general fund the sum of \$390,000 for
 12 the biennium ending June 30, 1979, for the purpose of
 13 administering this act.

14 Section 26. Effective date. (1) Sections 1 through 24
 15 of this act are effective on January 1, 1978, and shall
 16 apply only to injuries resulting from criminally injurious
 17 conduct which occurred on or after January 1, 1978. However,
 18 the division may, after July 1, 1977, employ personnel and
 19 pay for expenses in order to establish the administration of
 20 the act, adopt rules of procedure, and initiate publicity
 21 regarding the benefits under the act.

22 (2) Section 25 of this act is effective July 1, 1977.

-End-

Approved by Comm. on
Appropriation

HOUSE BILL NO. 357

INTRODUCED BY WUILICI, FABREGA, BRADLEY,
DRISCOLL, MELOY, GILLIGAN, AAGESUN, SCULLY, LYNCH

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SECOND READING
Second Printing

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 19 to a mental or physical examination by a physician or
 20 psychologist, or may order an autopsy of a deceased victim.
 21 The division shall pay for such examination. The order shall
 22 specify the time, place, manner, conditions, and scope of
 23 the examination or autopsy and the person by whom it is to
 24 be made and shall require the person to file with the
 25 division a detailed written report of the examination or

1 autopsy. The report shall set out his findings, including
 2 results of all tests made, diagnoses, prognoses, and other
 3 conclusions and reports of earlier examinations of the same
 4 conditions. On request of the person examined, the division
 5 shall furnish him a copy of the report. If the victim is
 6 deceased, the division, on request, shall furnish the
 7 claimant a copy of the report.

8 (3) The division may require the claimant to
 9 supplement the application with any reasonably available
 10 medical or psychological reports relating to the injury for
 11 which compensation is claimed.

12 Section 9. Enforcement of division's orders. If a
 13 person refuses to comply with an order of the division or
 14 asserts a privilege, except privileges arising from the
 15 attorney-client relationship, to withhold or suppress
 16 evidence relevant to a claim, the division may make any just
 17 order, including denial of the claim.

18 Section 10. Award and payment of compensation. (1) An
 19 award may be made whether or not any person is prosecuted or
 20 convicted. Proof of conviction of a person whose acts give
 21 rise to a claim is conclusive evidence that the crime was
 22 committed unless an application for rehearing, an appeal of
 23 the conviction, or certiorari is pending or a rehearing or
 24 new trial has been ordered.

25 (2) The division may suspend the proceedings pending

1 disposition of a criminal prosecution that has been
2 commenced or is imminent and may make a tentative award
3 under [section 14].

4 Section 11. Subrogation. (1) If a claimant seeks
5 compensation under this act and compensation is awarded, the
6 division is entitled to full subrogation against a judgment
7 or recovery received by the claimant against the offender
8 for all compensation paid under this act. The division's
9 right of subrogation shall be a first lien on the judgment
10 or recovery. If the claimant does not institute the action
11 against the offender within 1 year from the date the
12 criminally injurious conduct occurred, the division may
13 institute the action in the name of the claimant or the
14 claimant's personal representative.

15 (2) If the claimant institutes the action, the
16 division shall pay a proportional share of costs and
17 attorneys' fees if it recovers under its subrogation
18 interest.

19 (3) If the division institutes the action in the name
20 of the claimant or the claimant's personal representative
21 and the recovery is in excess of the amount of compensation
22 paid to the claimant and costs incurred by the division in
23 pursuit of the action, the excess shall be paid to the
24 claimant.

25 (4) If a judgment or recovery includes both damages

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

16 Section 12. Compensation benefits. (1) A claimant is
17 entitled to weekly compensation benefits when the claimant
18 has a total actual loss of wages due to injury as a result
19 of criminally injurious conduct. During the time the
20 claimant seeks such weekly benefits, the claimant, as a
21 result of such injury, must have no reasonable prospect of
22 being regularly employed in the normal labor market. The
23 weekly benefit amount is ~~60~~ 2/3% of the wages received at
24 the time of the criminally injurious conduct, subject to a
25 maximum of \$125. weekly compensation payments shall be made

1 at the end of each 2-week period. No weekly compensation
 2 payments may be paid for the first week after the criminally
 3 injurious conduct occurred, but if total actual loss of
 4 wages continues for 1 week, weekly compensation payments
 5 shall be paid from the date the wage loss began. Weekly
 6 compensation payments shall continue until the claimant has
 7 a reasonable prospect of being regularly employed in the
 8 normal labor market.

9 (2) The claimant is entitled to be reimbursed for
 10 reasonable services by a physician or surgeon, reasonable
 11 hospital services and medicines, and such other treatment as
 12 may be approved by the division for the injuries suffered
 13 due to criminally injurious conduct.

14 (3) (a) The dependents of a victim who is killed as a
 15 result of criminally injurious conduct are entitled to
 16 receive, in a gross single amount payable to all dependents,
 17 weekly benefits amounting to 66 2/3% of the wages received
 18 at the time of the criminally injurious conduct causing the
 19 death, subject to a maximum of \$125 per week. Weekly
 20 compensation payments shall be made at the end of each
 21 2-week period.

22 (b) Benefits under subsection (3)(a) of this section
 23 shall be paid to the spouse for the benefit of the spouse
 24 and other dependents, unless the division determines that
 25 other payment arrangements should be made. If a spouse dies

1 or remarries, benefits under subsection (3)(a) shall cease
 2 to be paid to the spouse but shall continue to be paid to
 3 the other dependents so long as their dependent status
 4 continues.

5 (4) Reasonable funeral and burial expenses of the
 6 victim, not exceeding \$1,100, shall be paid if all other
 7 collateral sources have properly paid such expenses but have
 8 not covered all such expenses.

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

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

16 (7) (a) A person who has suffered injury as a result
 17 of criminally injurious conduct and as a result of such
 18 injury has no reasonable prospect of being regularly
 19 employed in the normal labor market, but was not employed at
 20 the time of such injury, may in the discretion of the
 21 division be awarded weekly compensation benefits in an
 22 amount determined by the division not to exceed \$100 per
 23 week. Weekly compensation payments shall continue until the
 24 claimant has a reasonable prospect of being regularly
 25 employed in the normal labor market or for a shorter period

1 as determined by the division. The claimant shall be awarded
2 benefits as provided in subsection (2) of this section.

3 (b) The dependents of a victim who is killed as a
4 result of criminally injurious conduct and who was
5 unemployed at the time of death may in the discretion of the
6 division be awarded, in a gross single amount payable to all
7 dependents, a sum not to exceed \$100 per week which shall be
8 payable in the manner and for the period provided by
9 subsection (3)(b) of this section or for such shorter period
10 as determined by the division.

11 (c) Compensation payable to a victim or a victim's
12 dependents under this subsection may not exceed \$20,000.

13 Section 13. Manner of payment -- nonassignability and
14 exemptions. (1) The division may provide for the payment of
15 an award in a lump sum or in installments. The part of an
16 award equal to the amount of weekly compensation accrued to
17 the date of the award shall be paid in a lump sum. Except as
18 provided in subsection (2), the part of an award that may
19 not be paid in a lump sum shall be paid in installments.

20 (2) At the instance of the claimant, the division may
21 commute weekly compensation benefits to a lump sum but only
22 upon a finding by the division that:

23 (a) the award in a lump sum will promote the interest
24 of the claimant; or

25 (b) the amount of all future weekly compensation does

1 not exceed \$1,000.

2 (3) An award is not subject to execution, attachment,
3 garnishment, or other process.

4 (4) An assignment or agreement to assign a right to
5 compensation in the future is unenforceable except:

6 (a) an assignment of a right to compensation for work
7 loss to secure payment of maintenance or child support; or

8 (b) an assignment of a right to compensation to the
9 extent that the benefits are for the cost of products,
10 services, or accommodations necessitated by the injury or
11 death on which the claim is based and are provided or to be
12 provided by the assignee.

13 Section 14. Tentative awards. If the division
14 determines that the claimant will suffer financial hardship
15 unless a tentative award is made and it appears likely that
16 a final award will be made, an amount may be paid to the
17 claimant, to be deducted from the final award or repaid by
18 and recoverable from the claimant to the extent that it
19 exceeds the final award.

20 Section 15. Reconsideration and review of division
21 decisions. (1) The division on its own motion or on request
22 of the claimant may reconsider a decision making or denying
23 an award or determining its amount. The division shall
24 reconsider at least annually every award being paid in
25 installments. An order on reconsideration of an award may

1 not require refund of amounts previously paid unless the
2 award was obtained by fraud.

3 (2) The right of reconsideration does not affect the
4 finality of a division decision for the purpose of appeal.

5 Section 16. Rehabilitation. The division shall refer
6 to the department of social and rehabilitation services
7 victims who have been permanently disabled through
8 criminally injurious conduct, who are receiving benefits
9 under this act and who, in the opinion of the division, may
10 be vocationally rehabilitated. The department of social and
11 rehabilitation services shall provide for the vocational
12 rehabilitation of the victims under its rehabilitation
13 programs to the extent funds are available under such
14 programs.

15 Section 17. Appeal. (1) After the division has made
16 final determination concerning any matter relating to a
17 claim, if the claimant disputes the division's
18 determination, he may appeal to the workers' compensation
19 judge for review. The judge, after a hearing, shall make a
20 final determination concerning the dispute and issue an
21 appropriate order affirming or modifying the division's
22 determination.

23 (2) All proceedings and hearings before the workers'
24 compensation judge shall be in accordance with the
25 appropriate provisions of the Montana Administrative

1 Procedure Act. However, the workers' compensation judge is
2 not bound by common law and statutory rules of evidence.

3 (3) Notwithstanding 82-4216, an appeal from a final
4 decision of the workers' compensation judge shall be filed
5 directly with the supreme court of Montana in the manner
6 provided by law for appeals from the district court in civil
7 cases.

8 Section 18. Attorneys' fees. (1) The division may
9 grant attorneys' fees to attorneys for representing
10 claimants before the division. Any attorney's fee granted by
11 the division shall be in addition to compensation awarded
12 the claimant under this act.

13 (2) The division may regulate the amount of the
14 attorney's fee in any claim under this act where an attorney
15 is representing a claimant.

16 (3) In cases under this act that go before the
17 workers' compensation judge, the judge may grant, in
18 addition to compensation benefits granted, attorneys' fees
19 to attorneys for representing claimants before the judge.

20 Section 19. Public records -- right to inspect. The
21 records the division maintains in its possession in the
22 administration of this act are open to public inspection and
23 disclosure in accordance with the provisions of 92-844
24 through 92-847.

25 Section 20. Limitation to benefit entitlements.

1 Claimants receiving benefits under this act are not granted
 2 an absolute entitlement to benefits. Benefits must be paid
 3 in accordance with the amount of the legislative
 4 appropriation. If the division determines at any time that
 5 the appropriated funds for a fiscal year will not be an
 6 amount that will fully pay all claims, the division may make
 7 appropriate proportionate reductions in benefits to all
 8 claimants. Such reductions do not entitle claimants to
 9 future retroactive reimbursements in future fiscal years
 10 unless the legislature makes appropriations for such
 11 retroactive benefits.

12 Section 21. Effect on probation and parole. (1) The
 13 court when placing any convicted person on probation may set
 14 as a condition of probation the payment to the state of an
 15 amount equal to any benefits paid by the division to a
 16 victim or a victim's dependents. The court may set a
 17 repayment schedule and modify it as circumstances change.

18 (2) The court may make payment of the debt a condition
 19 of parole subject to modification based on a change in
 20 circumstances.

21 Section 22. Federal funding. The division may adopt
 22 appropriate rules in order to receive federal funds under
 23 federal criminal reparation and compensation acts.

24 Section 23. Penalty. Any claimant who knowingly makes
 25 a false claim or a false statement in connection with any

1 claim is guilty of a misdemeanor and upon conviction shall,
 2 in addition to being punished as provided by law, forfeit
 3 and repay any compensation paid under this act.

4 Section 24. Severability. If a part of this act is
 5 invalid, all valid parts that are severable from the invalid
 6 part remain in effect. If a part of this act is invalid in
 7 one or more of its applications, the part remains in effect
 8 in all valid applications that are severable from the
 9 invalid applications.

10 ~~SECTION 25. CRIME VICTIMS COMPENSATION ACCOUNT~~
 11 ~~ESTABLISHED. THERE IS CREATED A CRIME VICTIMS COMPENSATION~~
 12 ~~ACCOUNT IN THE EARMARKED REVENUE FUND. THERE SHALL BE PAID~~
 13 ~~INTO THIS ACCOUNT 6% OF THE FINES ASSESSED AND BAILS~~
 14 ~~FORFEITED ON ALL OFFENSES INVOLVING A VIOLATION OF A STATE~~
 15 ~~STATUTE OR A CITY ORDINANCE RELATING TO THE OPERATION OR USE~~
 16 ~~OF MOTOR VEHICLES, EXCEPT OFFENSES RELATING TO PARKING OF~~
 17 ~~VEHICLES.~~

18 Section 26. Appropriation. There is appropriated to
 19 the department of labor and industry, division of workers'
 20 compensation, from the ~~general~~ fund ~~CRIME VICTIMS~~
 21 ~~COMPENSATION EARMARKED REVENUE ACCOUNT~~ the sum of \$390,000
 22 for the biennium ending June 30, 1979, for the purpose of
 23 administering this act.

24 Section 27. Effective date. (1) Sections 1 through 24
 25 of this act are effective on January 1, 1978, and shall

1 apply only to injuries resulting from criminally injurious
2 conduct which occurred on or after January 1, 1978. However,
3 the division may, after July 1, 1977, employ personnel and
4 pay for expenses in order to establish the administration of
5 the act, adopt rules of procedure, and initiate publicity
6 regarding the benefits under the act.

7 (2) Section ~~25~~ 26 of this act is effective July 1,
8 1977.

-End-

1 ^H BILL NO. 357
 2 INTRODUCED BY Quilici ~~George~~ ^{Bradley Lynch}
 3 ~~Quilici~~ ^{Dunne} ~~George~~ ^{Meloy} ~~George~~ ^{Gilman} ~~George~~ ^{Reynolds} ~~George~~ ^{Sully}

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
 5 STATE-FINANCED PROGRAM OF COMPENSATION TO PERSONS WHO SUFFER
 6 BODILY INJURY AND TO DEPENDENTS OF THOSE WHO ARE KILLED BY
 7 CRIMINALLY INJURIOUS CONDUCT OR IN ATTEMPTS TO PREVENT
 8 CRIMINAL CONDUCT OR APPREHEND CRIMINALS; AND TO APPROPRIATE
 9 MONEY THEREFOR."

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

12 Section 1. Short title. This act may be cited as "The
 13 Crime Victims Compensation Act of Montana".

14 Section 2. Legislative purpose and intent. It is the
 15 intent of the legislature of this state to provide a method
 16 of compensating and assisting those persons within the state
 17 who are innocent victims of criminal acts and who suffer
 18 bodily injury or death. To this end, it is the legislature's
 19 intention to provide compensation for injuries suffered as a
 20 direct result of the criminal acts of other persons.

21 Section 3. Definitions. As used in this act, the
 22 following definitions apply:

- 23 (1) "Claimant" means any of the following claiming
 24 compensation under this act:
 25 (a) a victim;

There are no changes in HB 357, & will not be re-run.

Please refer to white copy for complete text. THIRD READING

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

4 (2) "Collateral source" means a source of benefits or
 5 advantages for economic loss otherwise compensable under
 6 this act which the victim or claimant has received or which
 7 is readily available to him from:

- 8 (a) the offender;
 9 (b) the government of the United States or any agency
 10 thereof, a state or any of its political subdivisions, or an
 11 instrumentality of two or more states, unless the law
 12 providing for the benefits or advantages makes them excess
 13 or secondary to benefits under this act;
 14 (c) social security, medicare, medicaid, and welfare;
 15 (d) workers' compensation;
 16 (e) wage continuation programs of any employer;
 17 (f) proceeds of a contract of insurance payable to the
 18 victim for loss which he sustained because of the criminally
 19 injurious conduct, except proceeds from a private life
 20 insurance contract if the victim has paid all or a portion
 21 of premiums for the insurance policy; or
 22 (g) a contract, including an insurance contract,
 23 providing hospital and other health care services or
 24 benefits for disability. Any such contract in this state may
 25 not provide that benefits under this act shall be a

HB 357

1 substitute for benefits under the contract or that the
2 contract is a secondary source of benefits and benefits
3 under this act are a primary source.

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

5 (a) occurs or is attempted in this state;

6 (b) results in bodily injury or death; and

7 (c) is punishable by fine, imprisonment, or death or
8 would be so punishable but for the fact that the person
9 engaging in the conduct lacked capacity to commit the crime
10 under the laws of this state. Criminally injurious conduct
11 does not include conduct arising out of the ownership,
12 maintenance, or use of a motor vehicle except when
13 criminally intended to cause bodily injury or death.

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

21 (5) "Division" means the division of workers'
22 compensation provided for in 82A-1004.

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

25 (a) criminally injurious conduct;

1 (b) the good faith effort of any person to prevent
2 criminally injurious conduct; or

3 (c) the good faith effort of any person to apprehend a
4 person reasonably suspected of engaging in criminally
5 injurious conduct.

6 Section 4. Award of compensation. The division shall
7 award compensation benefits under this act if satisfied by a
8 preponderance of the evidence that the requirements for
9 compensation have been met.

10 Section 5. Powers and duties of the division. (1) The
11 division shall:

12 (a) adopt rules to implement this act;

13 (b) prescribe forms for applications for compensation;

14 (c) determine all matter relating to claims for
15 compensation; and

16 (d) publicize widely the availability of compensation
17 and information regarding the filing of claims therefor. The
18 division shall work with law enforcement agencies in order
19 to formulate plans and procedures for the distribution and
20 communication of information to victims concerning their
21 eligibility for benefits under this act.

22 (2) The division may:

23 (a) request and obtain from prosecuting attorneys and
24 law enforcement officers investigations and data to enable
25 the division to determine whether and the extent to which a

HOUSE BILL NO. 357

INTRODUCED BY QUILICI, FABREGA, BRADLEY,
DRISCOLL, MELOY, GILLIGAN, AAGESUN, SCULLY, LYNCH

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A STATE-FINANCED PROGRAM OF COMPENSATION TO PERSONS WHO SUFFER BODILY INJURY AND TO DEPENDENTS OF THOSE WHO ARE KILLED BY CRIMINALLY INJURIOUS CONDUCT OR IN ATTEMPTS TO PREVENT CRIMINAL CONDUCT OR APPREHEND CRIMINALS; AND TO APPROPRIATE MONEY THEREFOR."

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

Section 1. Short title. This act may be cited as "The Crime Victims Compensation Act of Montana".

Section 2. Legislative purpose and intent. It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.

Section 3. Definitions. As used in this act, the following definitions apply:

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

(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 or advantages for economic loss otherwise compensable under this act which the victim or claimant has received or which is readily available to him 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 act;
- (c) social security, medicare, medicaid, and welfare;
- (d) workers' compensation;
- (e) wage continuation programs of any employer;
- (f) proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct, except proceeds from a private life insurance contract if the victim has paid all or a portion of premiums for the insurance policy; or
- (g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may

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1 not provide that benefits under this act shall be a
 2 substitute for benefits under the contract or that the
 3 contract is a secondary source of benefits and benefits
 4 under this act are a primary source.

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

- 6 (a) occurs or is attempted in this state;
- 7 (b) results in bodily injury or death; and
- 8 (c) is punishable by fine, imprisonment, or death or
 9 would be so punishable but for the fact that the person
 10 engaging in the conduct lacked capacity to commit the crime
 11 under the laws of this state. Criminally injurious conduct
 12 does not include conduct arising out of the ownership,
 13 maintenance, or use of a motor vehicle except when
 14 criminally intended to cause bodily injury or death.

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

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 23 compensation provided for in 82A-1004.

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 25 or death as a result of:

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 5 person reasonably suspected of engaging in criminally
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 9 preponderance of the evidence that the requirements for
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 12 division shall:

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- 14 (b) prescribe forms for applications for compensation;
- 15 (c) determine all matter relating to claims for
 16 compensation; and
- 17 (d) publicize widely the availability of compensation
 18 and information regarding the filing of claims therefor. The
 19 division shall work with law enforcement agencies in order
 20 to formulate plans and procedures for the distribution and
 21 communication of information to victims concerning their
 22 eligibility for benefits under this act.

23 (2) The division may:

- 24 (a) request and obtain from prosecuting attorneys and
 25 law enforcement officers investigations and data to enable

1 the division to determine whether and the extent to which a
 2 claimant qualifies for compensation. A statute providing
 3 confidentiality for a claimant's or victim's juvenile court
 4 records does not apply to proceedings under this act.

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

8 (c) take notice of judicially cognizable facts and
 9 general, technical, and scientific facts within its
 10 specialized knowledge.

11 Section 6. Application for compensation -- awards --
 12 limitations on awards. (1) An applicant for an award of
 13 compensation may apply in writing in a form that conforms
 14 substantially to that prescribed by the division.

15 (2) Compensation may not be awarded unless the claim
 16 is filed with the division within 1 year after the day the
 17 criminally injurious conduct occurred causing the injury or
 18 death upon which the claim is based. The time for filing a
 19 claim may be extended by the division for good cause shown.

20 (3) Compensation may not be awarded to a claimant who
 21 is the offender or an accomplice of the offender or to any
 22 claimant if the award would unjustly benefit the offender or
 23 accomplice. Unless the division determines that the
 24 interests of justice otherwise require in a particular case,
 25 compensation may not be awarded to the spouse of or a person

1 living in the same household with the offender or his
 2 accomplice or to the parent, child, brother, or sister of
 3 the offender or his accomplice.

4 (4) Compensation may not be awarded unless the
 5 criminally injurious conduct resulting in injury or death
 6 was reported to a law enforcement officer within 72 hours
 7 after its occurrence or the division finds there was good
 8 cause for the failure to report within that time.

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

18 (6) Compensation otherwise payable to a claimant shall
 19 be reduced or denied to the extent the compensation benefits
 20 payable are or can be recouped from collateral sources.

21 (7) Persons serving a sentence of imprisonment or
 22 residing in any other public institution which provides for
 23 the maintenance of such person are not entitled to the
 24 benefits of this act.

25 Section 7. Hearings and informal disposition before

1 the division. The division may hold informal hearings in
 2 order to make determinations regarding the compensability of
 3 a claim. At such hearings, the division may subpoena
 4 witnesses and documents as set forth in 82-4220. Hearings
 5 held under this subsection are not considered contested case
 6 hearings under the Montana Administrative Procedure Act.
 7 However, the division shall adopt rules regarding its
 8 informal hearing procedures.

9 Section 8. Evidence of condition. (1) There is no
 10 privilege, except privileges arising from the
 11 attorney-client relationship, as to communications or
 12 records relevant to an issue of the physical, mental, or
 13 emotional condition of the claimant or victim in a
 14 proceeding under this act in which that condition is an
 15 element.

16 (2) If the mental, physical, or emotional condition of
 17 a victim or claimant is material to a claim, the division
 18 may order the victim or claimant to submit from time to time
 19 to a mental or physical examination by a physician or
 20 psychologist, or may order an autopsy of a deceased victim.
 21 The division shall pay for such examination. The order shall
 22 specify the time, place, manner, conditions, and scope of
 23 the examination or autopsy and the person by whom it is to
 24 be made and shall require the person to file with the
 25 division a detailed written report of the examination or

1 autopsy. The report shall set out his findings, including
 2 results of all tests made, diagnoses, prognoses, and other
 3 conclusions and reports of earlier examinations of the same
 4 conditions. On request of the person examined, the division
 5 shall furnish him a copy of the report. If the victim is
 6 deceased, the division, on request, shall furnish the
 7 claimant a copy of the report.

8 (3) The division may require the claimant to
 9 supplement the application with any reasonably available
 10 medical or psychological reports relating to the injury for
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 13 person refuses to comply with an order of the division or
 14 asserts a privilege, except privileges arising from the
 15 attorney-client relationship, to withhold or suppress
 16 evidence relevant to a claim, the division may make any just
 17 order, including denial of the claim.

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

25 (2) The division may suspend the proceedings pending

1 disposition of a criminal prosecution that has been
2 commenced or is imminent and may make a tentative award
3 under [section 14].

4 Section 11. Subrogation. (1) If a claimant seeks
5 compensation under this act and compensation is awarded, the
6 division is entitled to full subrogation against a judgment
7 or recovery received by the claimant against the offender
8 for all compensation paid under this act. The division's
9 right of subrogation shall be a first lien on the judgment
10 or recovery. If the claimant does not institute the action
11 against the offender within 1 year from the date the
12 criminally injurious conduct occurred, the division may
13 institute the action in the name of the claimant or the
14 claimant's personal representative.

15 (2) If the claimant institutes the action, the
16 division shall pay a proportional share of costs and
17 attorneys' fees if it recovers under its subrogation
18 interest.

19 (3) If the division institutes the action in the name
20 of the claimant or the claimant's personal representative
21 and the recovery is in excess of the amount of compensation
22 paid to the claimant and costs incurred by the division in
23 pursuit of the action, the excess shall be paid to the
24 claimant.

25 (4) If a judgment or recovery includes both damages

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

16 Section 12. Compensation benefits. (1) A claimant is
17 entitled to weekly compensation benefits when the claimant
18 has a total actual loss of wages due to injury as a result
19 of criminally injurious conduct. During the time the
20 claimant seeks such weekly benefits, the claimant, as a
21 result of such injury, must have no reasonable prospect of
22 being regularly employed in the normal labor market. The
23 weekly benefit amount is $66 \frac{2}{3}\%$ of the wages received at
24 the time of the criminally injurious conduct, subject to a
25 maximum of \$125. Weekly compensation payments shall be made

1 at the end of each 2-week period. No weekly compensation
 2 payments may be paid for the first week after the criminally
 3 injurious conduct occurred, but if total actual loss of
 4 wages continues for 1 week, weekly compensation payments
 5 shall be paid from the date the wage loss began. Weekly
 6 compensation payments shall continue until the claimant has
 7 a reasonable prospect of being regularly employed in the
 8 normal labor market.

9 (2) The claimant is entitled to be reimbursed for
 10 reasonable services by a physician or surgeon, reasonable
 11 hospital services and medicines, and such other treatment as
 12 may be approved by the division for the injuries suffered
 13 due to criminally injurious conduct.

14 (3) (a) The dependents of a victim who is killed as a
 15 result of criminally injurious conduct are entitled to
 16 receive, in a gross single amount payable to all dependents,
 17 weekly benefits amounting to 66 2/3% of the wages received
 18 at the time of the criminally injurious conduct causing the
 19 death, subject to a maximum of \$125 per week. Weekly
 20 compensation payments shall be made at the end of each
 21 2-week period.

22 (b) Benefits under subsection (3)(a) of this section
 23 shall be paid to the spouse for the benefit of the spouse
 24 and other dependents, unless the division determines that
 25 other payment arrangements should be made. If a spouse dies

1 or remarries, benefits under subsection (3)(a) shall cease
 2 to be paid to the spouse but shall continue to be paid to
 3 the other dependents so long as their dependent status
 4 continues.

5 (4) Reasonable funeral and burial expenses of the
 6 victim, not exceeding \$1,100, shall be paid if all other
 7 collateral sources have properly paid such expenses but have
 8 not covered all such expenses.

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

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

16 (7) (a) A person who has suffered injury as a result
 17 of criminally injurious conduct and as a result of such
 18 injury has no reasonable prospect of being regularly
 19 employed in the normal labor market, but was not employed at
 20 the time of such injury, may in the discretion of the
 21 division be awarded weekly compensation benefits in an
 22 amount determined by the division not to exceed \$100 per
 23 week. Weekly compensation payments shall continue until the
 24 claimant has a reasonable prospect of being regularly
 25 employed in the normal labor market or for a shorter period

1 as determined by the division. The claimant shall be awarded
 2 benefits as provided in subsection (2) of this section.

3 (b) The dependents of a victim who is killed as a
 4 result of criminally injurious conduct and who was
 5 unemployed at the time of death may in the discretion of the
 6 division be awarded, in a gross single amount payable to all
 7 dependents, a sum not to exceed \$100 per week which shall be
 8 payable in the manner and for the period provided by
 9 subsection (3)(b) of this section or for such shorter period
 10 as determined by the division.

11 (c) Compensation payable to a victim or a victim's
 12 dependents under this subsection may not exceed \$20,000.

13 Section 13. Manner of payment -- nonassignability and
 14 exemptions. (1) The division may provide for the payment of
 15 an award in a lump sum or in installments. The part of an
 16 award equal to the amount of weekly compensation accrued to
 17 the date of the award shall be paid in a lump sum. Except as
 18 provided in subsection (2), the part of an award that may
 19 not be paid in a lump sum shall be paid in installments.

20 (2) At the instance of the claimant, the division may
 21 commute weekly compensation benefits to a lump sum but only
 22 upon a finding by the division that:

23 (a) the award in a lump sum will promote the interest
 24 of the claimant; or

25 (b) the amount of all future weekly compensation does

1 not exceed \$1,000.

2 (3) An award is not subject to execution, attachment,
 3 garnishment, or other process.

4 (4) An assignment or agreement to assign a right to
 5 compensation in the future is unenforceable except:

6 (a) an assignment of a right to compensation for work
 7 loss to secure payment of maintenance or child support; or

8 (b) an assignment of a right to compensation to the
 9 extent that the benefits are for the cost of products,
 10 services, or accommodations necessitated by the injury or
 11 death on which the claim is based and are provided or to be
 12 provided by the assignee.

13 Section 14. Tentative awards. If the division
 14 determines that the claimant will suffer financial hardship
 15 unless a tentative award is made and it appears likely that
 16 a final award will be made, an amount may be paid to the
 17 claimant, to be deducted from the final award or repaid by
 18 and recoverable from the claimant to the extent that it
 19 exceeds the final award.

20 Section 15. Reconsideration and review of division
 21 decisions. (1) The division on its own motion or on request
 22 of the claimant may reconsider a decision making or denying
 23 an award or determining its amount. The division shall
 24 reconsider at least annually every award being paid in
 25 installments. An order on reconsideration of an award may

1 not require refund of amounts previously paid unless the
2 award was obtained by fraud.

3 (2) The right of reconsideration does not affect the
4 finality of a division decision for the purpose of appeal.

5 Section 16. Rehabilitation. The division shall refer
6 to the department of social and rehabilitation services
7 victims who have been permanently disabled through
8 criminally injurious conduct, who are receiving benefits
9 under this act and who, in the opinion of the division, may
10 be vocationally rehabilitated. The department of social and
11 rehabilitation services shall provide for the vocational
12 rehabilitation of the victims under its rehabilitation
13 programs to the extent funds are available under such
14 programs.

15 Section 17. Appeal. (1) After the division has made
16 final determination concerning any matter relating to a
17 claim, if the claimant disputes the division's
18 determination, he may appeal to the workers' compensation
19 judge for review. The judge, after a hearing, shall make a
20 final determination concerning the dispute and issue an
21 appropriate order affirming or modifying the division's
22 determination.

23 (2) All proceedings and hearings before the workers'
24 compensation judge shall be in accordance with the
25 appropriate provisions of the Montana Administrative

1 Procedure Act. However, the workers' compensation judge is
2 not bound by common law and statutory rules of evidence.

3 (3) Notwithstanding 82-4216, an appeal from a final
4 decision of the workers' compensation judge shall be filed
5 directly with the supreme court of Montana in the manner
6 provided by law for appeals from the district court in civil
7 cases.

8 Section 18. Attorneys' fees. (1) The division may
9 grant attorneys' fees to attorneys for representing
10 claimants before the division. Any attorney's fee granted by
11 the division shall be in addition to compensation awarded
12 the claimant under this act.

13 (2) The division may regulate the amount of the
14 attorney's fee in any claim under this act where an attorney
15 is representing a claimant.

16 (3) In cases under this act that go before the
17 workers' compensation judge, the judge may grant, in
18 addition to compensation benefits granted, attorneys' fees
19 to attorneys for representing claimants before the judge.

20 Section 19. Public records -- right to inspect. The
21 records the division maintains in its possession in the
22 administration of this act are open to public inspection and
23 disclosure in accordance with the provisions of 92-844
24 through 92-847.

25 Section 20. Limitation to benefit entitlements.

1 Claimants receiving benefits under this act are not granted
 2 an absolute entitlement to benefits. Benefits must be paid
 3 in accordance with the amount of the legislative
 4 appropriation. If the division determines at any time that
 5 the appropriated funds for a fiscal year will not be an
 6 amount that will fully pay all claims, the division may make
 7 appropriate proportionate reductions in benefits to all
 8 claimants. Such reductions do not entitle claimants to
 9 future retroactive reimbursements in future fiscal years
 10 unless the legislature makes appropriations for such
 11 retroactive benefits.

12 Section 21. Effect on probation and parole. (1) The
 13 court when placing any convicted person on probation may set
 14 as a condition of probation the payment to the state of an
 15 amount equal to any benefits paid by the division to a
 16 victim or a victim's dependents. The court may set a
 17 repayment schedule and modify it as circumstances change.

18 (2) The court may make payment of the debt a condition
 19 of parole subject to modification based on a change in
 20 circumstances.

21 Section 22. Federal funding. The division may adopt
 22 appropriate rules in order to receive federal funds under
 23 federal criminal reparation and compensation acts.

24 Section 23. Penalty. Any claimant who knowingly makes
 25 a false claim or a false statement in connection with any

1 claim is guilty of a misdemeanor and upon conviction shall,
 2 in addition to being punished as provided by law, forfeit
 3 and repay any compensation paid under this act.

4 Section 24. Severability. If a part of this act is
 5 invalid, all valid parts that are severable from the invalid
 6 part remain in effect. If a part of this act is invalid in
 7 one or more of its applications, the part remains in effect
 8 in all valid applications that are severable from the
 9 invalid applications.

10 SECTION 25. CRIME VICTIMS COMPENSATION ACCOUNT
 11 ESTABLISHED. THERE IS CREATED A CRIME VICTIMS COMPENSATION
 12 ACCOUNT IN THE FARMARKED REVENUE FUND. THERE SHALL BE PAID
 13 INTO THIS ACCOUNT 6% OF THE FINES ASSESSED AND BAILS
 14 FORFEITED ON ALL OFFENSES INVOLVING A VIOLATION OF A STATE
 15 STATUTE OR A CITY ORDINANCE RELATING TO THE OPERATION OR USE
 16 OF MOTOR VEHICLES, EXCEPT OFFENSES RELATING TO PARKING OF
 17 VEHICLES.

18 Section 26. Appropriation. There is appropriated to
 19 the department of labor and industry, division of workers'
 20 compensation, from the general fund CRIME VICTIMS
 21 COMPENSATION FARMARKED REVENUE ACCOUNT the sum of \$390,000
 22 for the biennium ending June 30, 1979, for the purpose of
 23 administering this act.

24 Section 27. Effective date. (1) Sections 1 through 24
 25 of this act are effective on January 1, 1978, and shall

1 apply only to injuries resulting from criminally injurious
2 conduct which occurred on or after January 1, 1978. However,
3 the division may, after July 1, 1977, employ personnel and
4 pay for expenses in order to establish the administration of
5 the act, adopt rules of procedure, and initiate publicity
6 regarding the benefits under the act.

7 (2) Section 25 26 of this act is effective July 1,
8 1977.

-End-

April 18, 1977

STANDING COMMITTEE REPORT
Senate Committee on Judiciary

That House Bill No. 357 be amended as follows:

1. Amend page 2, section 3, lines 20 through 22.

Following: "conduct"

Strike: lines 20 through 22 in their entirety

Insert: "; or"

2. Amend page 3, section 3, lines 13 and 14.

Following: "vehicle"

Strike: lines 13 and 14 in their entirety

Insert: "."

3. Amend page 4, section 3, line 2.

Following: "(b)"

Strike: "the"

Insert: "his"

Following: "effort"

Strike: "of any person"

4. Amend page 4, section 3, line 4.

Following: "(c)"

Strike: "the"

Insert: "his"

Following: "effort"

Strike: "of any person"

5. Amend page 4, section 5, line 14.

Following: ";

Insert: "and"

6. Amend page 4, section 5, lines 16 through 22.

Following: "compensation" on line 16

Strike: lines 16 through 22 in their entirety

Insert: "."

7. Amend page 7, section 8, lines 12 and 13.

Following: "physical"

Strike: ", mental, or emotional"

8. Amend page 7, section 8, line 16.

Following: "the"

Strike: "mental,"

Following: "physical"

Strike: ", or emotional"

9. Amend page 7, section 8, lines 19 and 20.

Following: "to a"

Strike: "mental or"

Following: ~~XR~~ "physician"

Strike: "or psychologist,"

April 18, 1977

Page 2

H.B. 357

10. Amend page 7, section 8, line 21.
Following: "examination"
Insert: "or autopsy"
11. Amend page 8, section 8, line 10.
Following: "medical"
Strike: "or psychological"
12. Amend page 12, section 12, line 9.
Following: "victim"
Insert: ", "
13. Amend page 12, section 12, line 10.
Following: "death"
Insert: ", "
14. Amend page 12, section 12, line 19.
Following: "market,"
Insert: "who was employable"
15. Amend page 13, section 12, line 5.
Following: line 4
Strike: "unemployed"
Insert: "employable but not employed"
16. Amend page 13, section 12, line 10.
Following: "division."
Insert: The claimant shall be awarded benefits as provided in subsection (4) of this section."
17. Amend page 13, section 12, line 12.
Following: "\$20,000"
Insert: ", and the limitations of subsection (6) apply to compensation under this subsection (7)"
18. Amend page 13, section 13, lines 14 through line 1 on page 14.
Following: "(1)"
Strike: subsections (1) and (2) in their entirety
Insert: "Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks."
Renumber: all subsequent subsections
19. Amend page 16, section 18, line 14.
Following: "act"
Strike: "where"
Insert: "when"

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Page 3

H.B. 357

20. Amend page 17, section 21, line 18.

Following: "(2)"

Strike: "The court may make payment"

Insert: "Payment"

Following: "debt"

Insert: "may be made"

21. Amend page 17, section 23, line 24.

Following: "Any"

Strike: "claimant"

Insert: "person"

22. Amend page 17, section 23, line 25.

Following: "statement"

Insert: "or uses any other fraudulent device"

23. Amend page 18, section 23, line 1.

Following: "of"

Strike: "a misdemeanor"

Insert: "theft as provided in 94-6-302"

24. Amend page 18, section 23, line 2.

Following: "by"

Strike: "law"

Insert: "that section"

April 18, 1977

SENATE
COMMITTEE OF THE WHOLE

That House Bill No. 357 be amended as follows:

1. Amend page 16, section 18, line 20.

Following: line 19

Insert: "(4) In no claim or case may attorney fees in excess of
5% of the amount paid to a claimant, or on his behalf, be
paid directly or indirectly to a claimant's attorney."

1 HOUSE BILL NO. 357
 2 INTRODUCED BY QUILICI, FABREGA, BRADLEY,
 3 DRISCOLL, MELOY, GILLIGAN, AAGESON, SCULLY, LYNCH
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
 6 STATE-FINANCED PROGRAM OF COMPENSATION TO PERSONS WHO SUFFER
 7 BODILY INJURY AND TO DEPENDENTS OF THOSE WHO ARE KILLED BY
 8 CRIMINALLY INJURIOUS CONDUCT OR IN ATTEMPTS TO PREVENT
 9 CRIMINAL CONDUCT OR APPREHEND CRIMINALS; AND TO APPROPRIATE
 10 MONEY THEREFOR."
 11

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

13 Section 1. Short title. This act may be cited as "The
 14 Crime Victims Compensation Act of Montana".

15 Section 2. Legislative purpose and intent. It is the
 16 intent of the legislature of this state to provide a method
 17 of compensating and assisting those persons within the state
 18 who are innocent victims of criminal acts and who suffer
 19 bodily injury or death. To this end, it is the legislature's
 20 intention to provide compensation for injuries suffered as a
 21 direct result of the criminal acts of other persons.

22 Section 3. Definitions. As used in this act, the
 23 following definitions apply:

24 (1) "Claimant" means any of the following claiming
 25 compensation under this act:

- 1 (a) a victim;
- 2 (b) a dependent of a deceased victim; or
- 3 (c) an authorized person acting on behalf of any of
 4 them.
- 5 (2) "Collateral source" means a source of benefits or
 6 advantages for economic loss otherwise compensable under
 7 this act which the victim or claimant has received or which
 8 is readily available to him from:
 - 9 (a) the offender;
 - 10 (b) the government of the United States or any agency
 11 thereof, a state or any of its political subdivisions, or an
 12 instrumentality of two or more states, unless the law
 13 providing for the benefits or advantages makes them excess
 14 or secondary to benefits under this act;
 - 15 (c) social security, medicare, medicaid, and welfare;
 - 16 (d) workers' compensation;
 - 17 (e) wage continuation programs of any employer;
 - 18 (f) proceeds of a contract of insurance payable to the
 19 victim for loss which he sustained because of the criminally
 20 injurious conduct, ~~except proceeds from a private life~~
 21 ~~insurance contract if the victim has paid all or a portion~~
 22 ~~of premiums for the insurance policy; or~~ OR
 - 23 (g) a contract, including an insurance contract,
 24 providing hospital and other health care services or
 25 benefits for disability. Any such contract in this state may

1 not provide that benefits under this act shall be a
 2 substitute for benefits under the contract or that the
 3 contract is a secondary source of benefits and benefits
 4 under this act are a primary source.

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

6 (a) occurs or is attempted in this state;

7 (b) results in bodily injury or death; and

8 (c) is punishable by fine, imprisonment, or death or
 9 would be so punishable but for the fact that the person
 10 engaging in the conduct lacked capacity to commit the crime
 11 under the laws of this state. Criminally injurious conduct
 12 does not include conduct arising out of the ownership,
 13 maintenance, or use of a motor vehicle ~~except--when~~
 14 ~~criminally intended to cause bodily injury or death.~~

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

22 (5) "Division" means the division of workers'
 23 compensation provided for in 82A-1004.

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

1 (a) criminally injurious conduct;

2 (b) the HIS good faith effort of ~~any person~~ to prevent
 3 criminally injurious conduct; or

4 (c) the HIS good faith effort of ~~any person~~ to
 5 apprehend a person reasonably suspected of engaging in
 6 criminally injurious conduct.

7 Section 4. Award of compensation. The division shall
 8 award compensation benefits under this act if satisfied by a
 9 preponderance of the evidence that the requirements for
 10 compensation have been met.

11 Section 5. Powers and duties of the division. (1) The
 12 division shall:

13 (a) adopt rules to implement this act;

14 (b) prescribe forms for applications for compensation;

15 ~~AND~~

16 (c) determine all matter relating to claims for
 17 compensation ~~and~~

18 ~~(d) publicize widely the availability of compensation~~
 19 ~~and information regarding the filing of claims therefor. The~~
 20 ~~division shall work with law enforcement agencies in order~~
 21 ~~to formulate plans and procedures for the distribution and~~
 22 ~~communication of information to victims concerning their~~
 23 ~~eligibility for benefits under this act.~~

24 (2) The division may:

25 (a) request and obtain from prosecuting attorneys and

1 law enforcement officers investigations and data to enable
 2 the division to determine whether and the extent to which a
 3 claimant qualifies for compensation. A statute providing
 4 confidentiality for a claimant's or victim's juvenile court
 5 records does not apply to proceedings under this act.

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

9 (c) take notice of judicially cognizable facts and
 10 general, technical, and scientific facts within its
 11 specialized knowledge.

12 Section 6. Application for compensation -- awards --
 13 limitations on awards. (1) An applicant for an award of
 14 compensation may apply in writing in a form that conforms
 15 substantially to that prescribed by the division.

16 (2) Compensation may not be awarded unless the claim
 17 is filed with the division within 1 year after the day the
 18 criminally injurious conduct occurred causing the injury or
 19 death upon which the claim is based. The time for filing a
 20 claim may be extended by the division for good cause shown.

21 (3) Compensation may not be awarded to a claimant who
 22 is the offender or an accomplice of the offender or to any
 23 claimant if the award would unjustly benefit the offender or
 24 accomplice. Unless the division determines that the
 25 interests of justice otherwise require in a particular case,

1 compensation may not be awarded to the spouse of or a person
 2 living in the same household with the offender or his
 3 accomplice or to the parent, child, brother, or sister of
 4 the offender or his accomplice.

5 (4) Compensation may not be awarded unless the
 6 criminally injurious conduct resulting in injury or death
 7 was reported to a law enforcement officer within 72 hours
 8 after its occurrence or the division finds there was good
 9 cause for the failure to report within that time.

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

19 (6) Compensation otherwise payable to a claimant shall
 20 be reduced or denied to the extent the compensation benefits
 21 payable are or can be recouped from collateral sources.

22 (7) Persons serving a sentence of imprisonment or
 23 residing in any other public institution which provides for
 24 the maintenance of such person are not entitled to the
 25 benefits of this act.

1 Section 7. Hearings and informal disposition before
 2 the division. The division may hold informal hearings in
 3 order to make determinations regarding the compensability of
 4 a claim. At such hearings, the division may subpoena
 5 witnesses and documents as set forth in 82-4220. Hearings
 6 held under this subsection are not considered contested case
 7 hearings under the Montana Administrative Procedure Act.
 8 However, the division shall adopt rules regarding its
 9 informal hearing procedures.

10 Section 8. Evidence of condition. (1) There is no
 11 privilege, except privileges arising from the
 12 attorney-client relationship, as to communications or
 13 records relevant to an issue of the physical, ~~mental~~, or
 14 ~~emotional~~ condition of the claimant or victim in a
 15 proceeding under this act in which that condition is an
 16 element.

17 (2) If the ~~mental~~, physical, or ~~emotional~~ condition of
 18 a victim or claimant is material to a claim, the division
 19 may order the victim or claimant to submit from time to time
 20 to a ~~mental~~ or physical examination by a physician or
 21 ~~psychologist~~ or may order an autopsy of a deceased victim.
 22 The division shall pay for such examination OR AUTOPSY. The
 23 order shall specify the time, place, manner, conditions, and
 24 scope of the examination or autopsy and the person by whom
 25 it is to be made and shall require the person to file with

1 the division a detailed written report of the examination or
 2 autopsy. The report shall set out his findings, including
 3 results of all tests made, diagnoses, prognoses, and other
 4 conclusions and reports of earlier examinations of the same
 5 conditions. On request of the person examined, the division
 6 shall furnish him a copy of the report. If the victim is
 7 deceased, the division, on request, shall furnish the
 8 claimant a copy of the report.

9 (3) The division may require the claimant to
 10 supplement the application with any reasonably available
 11 medical or ~~psychological~~ reports relating to the injury for
 12 which compensation is claimed.

13 Section 9. Enforcement of division's orders. If a
 14 person refuses to comply with an order of the division or
 15 asserts a privilege, except privileges arising from the
 16 attorney-client relationship, to withhold or suppress
 17 evidence relevant to a claim, the division may make any just
 18 order, including denial of the claim.

19 Section 10. Award and payment of compensation. (1) An
 20 award may be made whether or not any person is prosecuted or
 21 convicted. Proof of conviction of a person whose acts give
 22 rise to a claim is conclusive evidence that the crime was
 23 committed unless an application for rehearing, an appeal of
 24 the conviction, or certiorari is pending or a rehearing or
 25 new trial has been ordered.

1 (2) The division may suspend the proceedings pending
 2 disposition of a criminal prosecution that has been
 3 commenced or is imminent and may make a tentative award
 4 under [section 14].

5 Section 11. Subrogation. (1) If a claimant seeks
 6 compensation under this act and compensation is awarded, the
 7 division is entitled to full subrogation against a judgment
 8 or recovery received by the claimant against the offender
 9 for all compensation paid under this act. The division's
 10 right of subrogation shall be a first lien on the judgment
 11 or recovery. If the claimant does not institute the action
 12 against the offender within 1 year from the date the
 13 criminally injurious conduct occurred, the division may
 14 institute the action in the name of the claimant or the
 15 claimant's personal representative.

16 (2) If the claimant institutes the action, the
 17 division shall pay a proportional share of costs and
 18 attorneys' fees if it recovers under its subrogation
 19 interest.

20 (3) If the division institutes the action in the name
 21 of the claimant or the claimant's personal representative
 22 and the recovery is in excess of the amount of compensation
 23 paid to the claimant and costs incurred by the division in
 24 pursuit of the action, the excess shall be paid to the
 25 claimant.

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

17 Section 12. Compensation benefits. (1) A claimant is
 18 entitled to weekly compensation benefits when the claimant
 19 has a total actual loss of wages due to injury as a result
 20 of criminally injurious conduct. During the time the
 21 claimant seeks such weekly benefits, the claimant, as a
 22 result of such injury, must have no reasonable prospect of
 23 being regularly employed in the normal labor market. The
 24 weekly benefit amount is 66 2/3% of the wages received at
 25 the time of the criminally injurious conduct, subject to a

1 maximum of \$125. Weekly compensation payments shall be made
 2 at the end of each 2-week period. No weekly compensation
 3 payments may be paid for the first week after the criminally
 4 injurious conduct occurred, but if total actual loss of
 5 wages continues for 1 week, weekly compensation payments
 6 shall be paid from the date the wage loss began. Weekly
 7 compensation payments shall continue until the claimant has
 8 a reasonable prospect of being regularly employed in the
 9 normal labor market.

10 (2) The claimant is entitled to be reimbursed for
 11 reasonable services by a physician or surgeon, reasonable
 12 hospital services and medicines, and such other treatment as
 13 may be approved by the division for the injuries suffered
 14 due to criminally injurious conduct.

15 (3) (a) The dependents of a victim who is killed as a
 16 result of criminally injurious conduct are entitled to
 17 receive, in a gross single amount payable to all dependents,
 18 weekly benefits amounting to 66 2/3% of the wages received
 19 at the time of the criminally injurious conduct causing the
 20 death, subject to a maximum of \$125 per week. Weekly
 21 compensation payments shall be made at the end of each
 22 2-week period.

23 (b) Benefits under subsection (3)(a) of this section
 24 shall be paid to the spouse for the benefit of the spouse
 25 and other dependents, unless the division determines that

1 other payment arrangements should be made. If a spouse dies
 2 or remarries, benefits under subsection (3)(a) shall cease
 3 to be paid to the spouse but shall continue to be paid to
 4 the other dependents so long as their dependent status
 5 continues.

6 (4) Reasonable funeral and burial expenses of the
 7 victim, not exceeding \$1,100, shall be paid if all other
 8 collateral sources have properly paid such expenses but have
 9 not covered all such expenses.

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

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

17 (7) (a) A person who has suffered injury as a result
 18 of criminally injurious conduct and as a result of such
 19 injury has no reasonable prospect of being regularly
 20 employed in the normal labor market, WHO WAS EMPLOYABLE but
 21 was not employed at the time of such injury, may in the
 22 discretion of the division be awarded weekly compensation
 23 benefits in an amount determined by the division not to
 24 exceed \$100 per week. Weekly compensation payments shall
 25 continue until the claimant has a reasonable prospect of

1 being regularly employed in the normal labor market or for a
2 shorter period as determined by the division. The claimant
3 shall be awarded benefits as provided in subsection (2) of
4 this section.

5 (b) The dependents of a victim who is killed as a
6 result of criminally injurious conduct and who was
7 unemployed EMPLOYABLE BUT NOT EMPLOYED at the time of death
8 may in the discretion of the division be awarded, in a gross
9 single amount payable to all dependents, a sum not to exceed
10 \$100 per week which shall be payable in the manner and for
11 the period provided by subsection (3)(b) of this section or
12 for such shorter period as determined by the division. THE
13 CLAIMANT SHALL BE AWARDED BENEFITS AS PROVIDED IN SUBSECTION
14 (4) OF THIS SECTION.

15 (c) Compensation payable to a victim or a victim's
16 dependents under this subsection may not exceed \$20,000. AND
17 THE LIMITATIONS OF SUBSECTION (6) APPLY TO COMPENSATION
18 UNDER THIS SUBSECTION (7).

19 Section 13. Manner of payment -- nonassignability and
20 exemptions. ~~(1) The division may provide for the payment of~~
21 ~~an award in a lump sum or in installments. The part of an~~
22 ~~award equal to the amount of weekly compensation accrued to~~
23 ~~the date of the award shall be paid in a lump sum. Except as~~
24 ~~provided in subsection (2), the part of an award that may~~
25 ~~not be paid in a lump sum shall be paid in installments.~~

1 ~~(2) At the instance of the claimant, the division may~~
2 ~~commute weekly compensation benefits to a lump sum but only~~
3 ~~upon a finding by the division that:~~

4 ~~(a) the award in a lump sum will promote the interest~~
5 ~~of the claimant; or~~

6 ~~(b) the amount of all future weekly compensation does~~
7 ~~not exceed \$1,000. AMOUNTS PAYABLE AS WEEKLY COMPENSATION~~
8 ~~MAY NOT BE COMMUTED TO A LUMP SUM AND MAY NOT BE PAID LESS~~
9 ~~FREQUENTLY THAN EVERY 2 WEEKS.~~

10 ~~(3)(2) An award is not subject to execution,~~
11 ~~attachment, garnishment, or other process.~~

12 ~~(4)(3) An assignment or agreement to assign a right to~~
13 ~~compensation in the future is unenforceable except:~~

14 (a) an assignment of a right to compensation for work
15 loss to secure payment of maintenance or child support; or

16 (b) an assignment of a right to compensation to the
17 extent that the benefits are for the cost of products,
18 services, or accommodations necessitated by the injury or
19 death on which the claim is based and are provided or to be
20 provided by the assignee.

21 Section 14. Tentative awards. If the division
22 determines that the claimant will suffer financial hardship
23 unless a tentative award is made and it appears likely that
24 a final award will be made, an amount may be paid to the
25 claimant, to be deducted from the final award or repaid by

1 and recoverable from the claimant to the extent that it
2 exceeds the final award.

3 Section 15. Reconsideration and review of division
4 decisions. (1) The division on its own motion or on request
5 of the claimant may reconsider a decision making or denying
6 an award or determining its amount. The division shall
7 reconsider at least annually every award being paid in
8 installments. An order on reconsideration of an award may
9 not require refund of amounts previously paid unless the
10 award was obtained by fraud.

11 (2) The right of reconsideration does not affect the
12 finality of a division decision for the purpose of appeal.

13 Section 16. Rehabilitation. The division shall refer
14 to the department of social and rehabilitation services
15 victims who have been permanently disabled through
16 criminally injurious conduct, who are receiving benefits
17 under this act and who, in the opinion of the division, may
18 be vocationally rehabilitated. The department of social and
19 rehabilitation services shall provide for the vocational
20 rehabilitation of the victims under its rehabilitation
21 programs to the extent funds are available under such
22 programs.

23 Section 17. Appeal. (1) After the division has made
24 final determination concerning any matter relating to a
25 claim, if the claimant disputes the division's

1 determination, he may appeal to the workers' compensation
2 judge for review. The judge, after a hearing, shall make a
3 final determination concerning the dispute and issue an
4 appropriate order affirming or modifying the division's
5 determination.

6 (2) All proceedings and hearings before the workers'
7 compensation judge shall be in accordance with the
8 appropriate provisions of the Montana Administrative
9 Procedure Act. However, the workers' compensation judge is
10 not bound by common law and statutory rules of evidence.

11 (3) Notwithstanding 32-4216, an appeal from a final
12 decision of the workers' compensation judge shall be filed
13 directly with the supreme court of Montana in the manner
14 provided by law for appeals from the district court in civil
15 cases.

16 Section 18. Attorneys' fees. (1) The division may
17 grant attorneys' fees to attorneys for representing
18 claimants before the division. Any attorney's fee granted by
19 the division shall be in addition to compensation awarded
20 the claimant under this act.

21 (2) The division may regulate the amount of the
22 attorney's fee in any claim under this act where ~~where~~ WHEN an
23 attorney is representing a claimant.

24 (3) In cases under this act that go before the
25 workers' compensation judge, the judge may grant, in

1 addition to compensation benefits granted, attorneys' fees
 2 to attorneys for representing claimants before the judge.

3 ~~(4) IN NO CLAIM OR CASE MAY ATTORNEY FEES IN EXCESS OF~~
 4 ~~5% OF THE AMOUNT PAID TO A CLAIMANT, OR ON HIS BEHALF, BE~~
 5 ~~PAID DIRECTLY OR INDIRECTLY TO A CLAIMANT'S ATTORNEY.~~

6 Section 19. Public records — right to inspect. The
 7 records the division maintains in its possession in the
 8 administration of this act are open to public inspection and
 9 disclosure in accordance with the provisions of 92-844
 10 through 92-847.

11 Section 20. Limitation to benefit entitlements.
 12 Claimants receiving benefits under this act are not granted
 13 an absolute entitlement to benefits. Benefits must be paid
 14 in accordance with the amount of the legislative
 15 appropriation. If the division determines at any time that
 16 the appropriated funds for a fiscal year will not be an
 17 amount that will fully pay all claims, the division may make
 18 appropriate proportionate reductions in benefits to all
 19 claimants. Such reductions do not entitle claimants to
 20 future retroactive reimbursements in future fiscal years
 21 unless the legislature makes appropriations for such
 22 retroactive benefits.

23 Section 21. Effect on probation and parole. (1) The
 24 court when placing any convicted person on probation may set
 25 as a condition of probation the payment to the state of an

1 amount equal to any benefits paid by the division to a
 2 victim or a victim's dependents. The court may set a
 3 repayment schedule and modify it as circumstances change.

4 ~~(2) The court may make payment~~ PAYMENT of the debt MAY
 5 ~~BE MADE~~ a condition of parole subject to modification based
 6 on a change in circumstances.

7 Section 22. Federal funding. The division may adopt
 8 appropriate rules in order to receive federal funds under
 9 federal criminal reparation and compensation acts.

10 Section 23. Penalty. Any ~~claimant~~ PERSON who knowingly
 11 makes a false claim or a false statement ~~OR USES ANY OTHER~~
 12 ~~FRAUDULENT DEVICE~~ in connection with any claim is guilty of
 13 a ~~misdemeanor~~ THEFT AS PROVIDED IN 94-6-302 and upon
 14 conviction shall, in addition to being punished as provided
 15 by ~~that section~~ THAT SECTION, forfeit and repay any compensation paid
 16 under this act.

17 Section 24. Severability. If a part of this act is
 18 invalid, all valid parts that are severable from the invalid
 19 part remain in effect. If a part of this act is invalid in
 20 one or more of its applications, the part remains in effect
 21 in all valid applications that are severable from the
 22 invalid applications.

23 ~~SECTION 25. CRIME VICTIMS COMPENSATION ACCOUNT~~
 24 ~~ESTABLISHED. THERE IS CREATED A CRIME VICTIMS COMPENSATION~~
 25 ~~ACCOUNT IN THE FARMARKED REVENUE FUND. THERE SHALL BE PAID~~

1 INTO THIS ACCOUNT 6% OF THE FINES ASSESSED AND BAILS
2 FORFEITED ON ALL OFFENSES INVOLVING A VIOLATION OF A STATE
3 STATUTE OR A CITY ORDINANCE RELATING TO THE OPERATION OR USE
4 OF MOTOR VEHICLES, EXCEPT OFFENSES RELATING TO PARKING OF
5 VEHICLES.

6 Section 26. Appropriation. There is appropriated to
7 the department of labor and industry, division of workers'
8 compensation, from the ~~general~~ fund CRIME VICTIMS
9 COMPENSATION EARMARKED REVENUE ACCOUNT the sum of \$390,000
10 for the biennium ending June 30, 1979, for the purpose of
11 administering this act.

12 Section 27. Effective date. (1) Sections 1 through 24
13 of this act are effective on January 1, 1978, and shall
14 apply only to injuries resulting from criminally injurious
15 conduct which occurred on or after January 1, 1978. However,
16 the division may, after July 1, 1977, employ personnel and
17 pay for expenses in order to establish the administration of
18 the act, adopt rules of procedure, and initiate publicity
19 regarding the benefits under the act.

20 (2) Section ~~25~~ 26 of this act is effective July 1,
21 1977.

-End-