

1 SENATE BILL NO. 54

2 INTRODUCED BY SHEA

3 BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL AND THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME
6 VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A
7 PETITION FOR AN ORDER OF PROTECTION; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE
8 TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID
9 BENEFITS TO THE VICTIM; SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF
10 PAYMENTS MADE BY AN OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES
11 TO PAY FOR INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES;
12 AUTHORIZING VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION
13 RIGHTS OF THE CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM
14 FROM ANY THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING
15 SECTIONS 40-15-204, 46-15-411, 46-18-251, 53-9-102, 53-9-103, AND 53-9-128, MCA; AND
16 PROVIDING AN EFFECTIVE DATE."

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

19
20 **Section 1.** Section 40-15-204, MCA, is amended to read:

21 **"40-15-204. Written orders of protection.** (1) The court may ~~determine~~, on the basis of the
22 respondent's history of violence, the severity of the offense at issue, and the evidence presented at the
23 hearing, determine that, to avoid further injury or harm, the petitioner needs permanent protection. The
24 court may order that the order of protection remain in effect permanently.

25 (2) In a dissolution proceeding, the district court may, upon request, issue either an order of
26 protection for an appropriate period of time or a permanent order of protection.

27 (3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

28 (4) An order of protection may include restraining the respondent from any other named family
29 member who is a minor. If this restriction is included, the respondent must be restrained from having
30 contact with the minor for an appropriate time period as directed by the court or permanently if the court

1 finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

2 (5) An order of protection issued under this section may continue for an appropriate time period
3 as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be
4 terminated upon the petitioner's request that the order be dismissed.

5 (6) An order of protection must include a section that indicates whether there are any other civil
6 or criminal actions pending involving the parties, a brief description of the action, and the court in which
7 the action is filed.

8 (7) An amendment to a temporary order of protection or to an order of protection is effective only
9 after it has been served in writing on the opposing party.

10 (8) There is no cost to file a petition for an order of protection or for service of an order of
11 protection.

12 (9) Any temporary order of protection or order of protection must conspicuously bear the following:
13 "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties
14 of up to \$10,000 in fines and up to a 5-year jail sentence.

15 This order is issued by the court, and the respondent is forbidden to do any act listed in the order,
16 even if invited by the petitioner or another person. This order may be amended only by further order of this
17 court or another court that assumes jurisdiction over this matter."

18
19 **Section 2.** Section 46-15-411, MCA, is amended to read:

20 "**46-15-411. Payment for medical evidence.** (1) The local law enforcement agency within whose
21 jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall
22 pay for the medical examination of a victim of the alleged sexual intercourse without consent offense when
23 the examination is directed by ~~such~~ the agency and or when evidence obtained by the examination is used
24 for the investigation, ~~or~~ prosecution, or resolution of an offense.

25 (2) This section does not require a law enforcement agency to pay any costs of treatment for
26 injuries resulting from the alleged offense."

27
28 **Section 3.** Section 46-18-251, MCA, is amended to read:

29 "**46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is
30 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same

1 criminal proceeding, money collected from the offender must be allocated as provided in this section.

2 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
3 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
4 of all money collected from the defendant must be applied to payment of restitution and the balance must
5 be applied to other payments in the following order:

6 (a) payment of charges imposed pursuant to 46-18-236;

7 (b) payment of supervisory fees imposed pursuant to 46-23-1031;

8 ~~(b)~~(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

9 ~~(c)~~(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

10 ~~(d)~~(e) any other payments ordered by the court.

11 (3) If the victim receives benefits under Title 53, chapter 9, restitution payments must be
12 distributed to the division of crime control of the department of justice in accordance with 53-9-132. In
13 order to receive restitution payments, the division shall submit to the clerk of court or agency designated
14 by the court proof of compensation benefits paid to the victim. Once the victim has been fully
15 compensated for the amount of restitution ordered by the court, either from the crime victims compensation
16 and assistance account or by direct restitution payments, remaining restitution payments must be paid to
17 the division to reimburse benefits previously paid to the victim.

18 ~~(3)~~(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
19 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
20 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
21 have been paid, any additional money collected must be applied toward payment of the restitution."
22

23 **Section 4.** Section 53-9-102, MCA, is amended to read:

24 **"53-9-102. Legislative purpose and intent.** It is the intent of the legislature ~~of this state~~ to provide
25 a method of compensating those persons within the state who are innocent victims of criminal acts,
26 including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the
27 United States against a resident of this state, and who suffer bodily injury or death and those innocent
28 citizens of this state who are injured or killed in a state that does not have a crime victims compensation
29 program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's
30 intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons

1 and to coordinate victims' assistance programs."

2

3 **Section 5.** Section 53-9-103, MCA, is amended to read:

4 **"53-9-103. Definitions.** As used in this part, the following definitions apply:

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

6 (a) a victim;

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

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

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

12 (a) the offender;

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

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

17 (d) workers' compensation;

18 (e) wage continuation programs of any employer;

19 (f) proceeds of a contract of insurance payable to the claimant for loss ~~which~~ that was sustained
20 because of the criminally injurious conduct;

21 (g) a contract, including an insurance contract, providing hospital and other health care services
22 or benefits for disability. ~~Any such~~ A contract in this state may not provide that benefits under this part
23 ~~shall be~~ are a substitute for benefits under the contract or that the contract is a secondary source of
24 benefits and benefits under this part are a primary source.

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

27 (i) any other third party.

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

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

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

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

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

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

15 (5) "Division" means the division of crime control of the department of justice.

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

17 (a) criminally injurious conduct;

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

19 (c) ~~his~~ the person's good faith effort to apprehend a person reasonably suspected of engaging in
 20 criminally injurious conduct."

21
 22 **Section 6.** Section 53-9-128, MCA, is amended to read:

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

1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly
2 compensation payments must continue until the claimant has a reasonable prospect of being regularly
3 employed in the normal labor market or until payments are made for 26 weeks, whichever occurs first.

4 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
5 reasonable hospital services and medicines, and other treatment approved by the division for the injuries
6 suffered due to criminally injurious conduct.

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

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

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

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

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

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

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

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

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

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

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

19
20 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 1997.

21 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0054 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws pertaining to crime victims and victims compensation; prohibiting the imposition of charges for filing a petition for an order of protection; clarifying that restitution payments will be made to the crime victims compensation and assistance account if the account has paid benefits to the victim; specifying probation supervisory fees in the allocation of payments made by an offender; clarifying the obligation of law enforcement agencies to pay for investigative medical examinations of the victims of certain sexual offenses; authorizing victims' death benefits to be paid by lump sum; extending the subrogation rights of the crime victims compensation program to recoveries received by the victim from any third party; limiting victims' wage loss benefits to 26 weeks.

ASSUMPTIONS:


1. Eliminating costs to victims to file a petition for an order of protection should not result in increased costs or reduced revenues for local government. Currently most courts allow for this fee to be waived if requested by the victim.
2. Forensic medical examinations of victims of alleged sexual offenses for the purpose of obtaining evidence are normally the responsibility of the law enforcement agency investigating the crime.
3. Clarifying the disbursement of restitution payments and extending subrogation rights to recoveries from third parties should increase the amount recovered by the crime victims program and deposited to the general fund. There are many variables making it difficult to estimate how much collections would increase, but a modest increase is anticipated.
4. Placing a cap on the number of weeks a victim could receive wage loss benefits is a precautionary measure and will not necessarily result in reduced benefits or costs.
5. Allowing benefits for dependents of a victim who is killed to be commuted to a lump sum payment would increase the initial outlay but not the overall costs.
6. Acts of terrorism committed against Montana residents in a foreign country is a possibility, but the Board of Crime Control (BCC) has not received such a claim to date. Information available to BCC is insufficient to estimate costs.
7. The BCC could perform these duties within the existing budget. For Crime Victims Compensation, no additional funds would be necessary.
8. There is no fiscal impact on the Department of Justice.


FISCAL IMPACT:

There is no fiscal impact to the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

No significant impact anticipated.


DAVE LEWIS, BUDGET DIRECTOR DATE 1-7-97
Office of Budget and Program Planning


DEBBIE SHEA, PRIMARY SPONSOR DATE 1-8-97

Fiscal Note for SB0054, as introduced

SB 54

APPROVED BY COM
ON JUDICIARY

1 SENATE BILL NO. 54

2 INTRODUCED BY SHEA

3 BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL AND THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME
6 VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A
7 PETITION FOR AN ORDER OF PROTECTION; PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF
8 AND AN OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION, DISPOSAL, OR USE OF
9 EVIDENCE; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS
10 COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM;
11 SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF PAYMENTS MADE BY AN
12 OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES TO PAY FOR
13 INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES; AUTHORIZING
14 VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION RIGHTS OF THE
15 CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM FROM ANY
16 THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING SECTIONS
17 40-15-204, 46-5-307, 46-5-308, 46-15-411, 46-18-251, 46-24-206, 53-9-102, 53-9-103, AND 53-9-128,
18 MCA; AND PROVIDING AN EFFECTIVE DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 **Section 1.** Section 40-15-204, MCA, is amended to read:

23 **"40-15-204. Written orders of protection.** (1) The court may ~~determine~~, on the basis of the
24 respondent's history of violence, the severity of the offense at issue, and the evidence presented at the
25 hearing, determining that, to avoid further injury or harm, the petitioner needs permanent protection. The
26 court may order that the order of protection remain in effect permanently.

27 (2) In a dissolution proceeding, the district court may, upon request, issue either an order of
28 protection for an appropriate period of time or a permanent order of protection.

29 (3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

30 (4) An order of protection may include restraining the respondent from any other named family

1 member who is a minor. If this restriction is included, the respondent must be restrained from having
2 contact with the minor for an appropriate time period as directed by the court or permanently if the court
3 finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

4 (5) An order of protection issued under this section may continue for an appropriate time period
5 as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be
6 terminated upon the petitioner's request that the order be dismissed.

7 (6) An order of protection must include a section that indicates whether there are any other civil
8 or criminal actions pending involving the parties, a brief description of the action, and the court in which
9 the action is filed.

10 (7) An amendment to a temporary order of protection or to an order of protection is effective only
11 after it has been served in writing on the opposing party.

12 (8) There is no cost to file a petition for an order of protection or for service of an order of
13 protection.

14 (9) Any temporary order of protection or order of protection must conspicuously bear the following:
15 "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties
16 of up to \$10,000 in fines and up to a 5-year jail sentence.

17 This order is issued by the court, and the respondent is forbidden to do any act listed in the order,
18 even if invited by the petitioner or another person. This order may be amended only by further order of this
19 court or another court that assumes jurisdiction over this matter."

20

21 **SECTION 2. SECTION 46-5-307, MCA, IS AMENDED TO READ:**

22 **"46-5-307. Petition for destruction, disposal, or use of evidence.** (1) The prosecutor may file a
23 petition with the court alleging that there exist certain items held as evidence either by the law enforcement
24 agency or the court and that the items no longer have any evidentiary value. The petition must include:

25 (a) the name and title of the petitioner;

26 (b) the items of evidence sought to be destroyed, disposed of, or used, including a specific
27 description of each that may be attached to the petition by separate inventory;

28 (c) when the items were seized;

29 (d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309
30 means any property that is unlawful to produce or possess;

1 (e) whether the items relate to a filed case and, if so, the court and cause number of the case and
2 its procedural status;

3 (f) whether, in those instances in which the items are not contraband, an effort has been made to
4 return the items to the apparent owner and the results of ~~such~~ the effort;

5 (g) an allegation to the effect that any criminal prosecutions involving the items of evidence have
6 been completed and no appeals are pending or that no criminal charges have been filed or are presently
7 contemplated; and

8 (h) the petitioner's intentions relative to disposition of the items.

9 (2) If the petition requests the destruction or use of contraband, it must describe how destruction
10 is to be accomplished or how the contraband has training or law enforcement value and its contemplated
11 use by a law enforcement agency.

12 (3) The county attorney shall provide a victim of the offense with a copy of the petition and shall
13 advise the court whether the victim wishes to be heard on the petition."

14

15 **SECTION 3. SECTION 46-5-308, MCA, IS AMENDED TO READ:**

16 **"46-5-308. Order.** (1) The court may enter an order providing for the destruction or disposition
17 of the evidence. If a victim of the offense wishes to be heard on the petition, the court shall schedule a
18 hearing on the petition and shall allow the victim to be heard in open court. The court shall consider the
19 victim's statements prior to issuing an order under this section. A proposed order must be presented by
20 the petitioner to the court and may include:

21 (a) authorization to destroy all contraband listed in the petition, the method of destruction, and the
22 time within which ~~such~~ the destruction must be accomplished;

23 (b) if certain contraband is requested by the petitioner for training or law enforcement purposes,
24 authorization to use the items and a description of each;

25 (c) if the petition requests training or law enforcement use of noncontraband items, authorization
26 to retain the items by the law enforcement agency and a description of the items;

27 (d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is
28 pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

29 (e) if the petition requests, authorization to sell noncontraband property at public sale or auction
30 and to deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

1 (f) authorization to destroy all items not otherwise provided for.

2 (2) The order must specify the time period in which destruction or sale must occur. Within 10 days
3 following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold
4 and the date and method of disposition."

5

6 **Section 4.** Section 46-15-411, MCA, is amended to read:

7 **"46-15-411. Payment for medical evidence.** (1) The local law enforcement agency within whose
8 jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall
9 pay for the medical examination of a victim of the alleged sexual intercourse without consent offense when
10 the examination is directed by ~~such~~ the agency ~~and or~~ when evidence obtained by the examination is used
11 for the investigation, ~~or~~ prosecution, or resolution of an offense.

12 (2) This section does not require a law enforcement agency to pay any costs of treatment for
13 injuries resulting from the alleged offense."

14

15 **Section 5.** Section 46-18-251, MCA, is amended to read:

16 **"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is
17 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same
18 criminal proceeding, money collected from the offender must be allocated as provided in this section.

19 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
20 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
21 of all money collected from the defendant must be applied to payment of restitution and the balance must
22 be applied to other payments in the following order:

23 (a) payment of charges imposed pursuant to 46-18-236;

24 (b) payment of supervisory fees imposed pursuant to 46-23-1031;

25 ~~(b)~~(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

26 ~~(c)~~(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

27 ~~(d)~~(e) any other payments ordered by the court.

28 (3) If the victim receives benefits under Title 53, chapter 9, restitution payments must be
29 distributed to the division of crime control of the department of justice in accordance with 53-9-132. In
30 order to receive restitution payments, the division shall submit to the clerk of court or agency designated

1 by the court proof of compensation benefits paid to the victim. Once the victim has been fully
 2 compensated for the amount of restitution ordered by the court, either from the crime victims compensation
 3 and assistance account or by direct restitution payments, remaining restitution payments must be paid to
 4 the division to reimburse benefits previously paid to the victim.

5 ~~(3)~~(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has
 6 been paid, any additional money collected must be applied to payment of those fines, costs, charges, or
 7 other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments
 8 have been paid, any additional money collected must be applied toward payment of the restitution."

9

10 **SECTION 6. SECTION 46-24-206, MCA, IS AMENDED TO READ:**

11 **"46-24-206. Property return -- right to be heard on disposition of evidence. (1) A law enforcement**
 12 **agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary**
 13 **purposes, unless there is a compelling law enforcement reason for retaining such the property.**

14 **(2) Before the destruction, disposal, or use of evidence that is not the victim's property, the court**
 15 **shall, as provided in 46-5-308, give the victim an opportunity to be heard as to the appropriate disposition**
 16 **of the evidence."**

17

18 **Section 7. Section 53-9-102, MCA, is amended to read:**

19 **"53-9-102. Legislative purpose and intent. It is the intent of the legislature of this state to provide**
 20 **a method of compensating those persons within the state who are innocent victims of criminal acts,**
 21 **including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the**
 22 **United States against a resident of this state, and who suffer bodily injury or death and those innocent**
 23 **citizens of this state who are injured or killed in a state that does not have a crime victims compensation**
 24 **program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's**
 25 **intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons**
 26 **and to coordinate victims' assistance programs."**

27

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

29 **"53-9-103. Definitions. As used in this part, the following definitions apply:**

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

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

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

- 7 (a) the offender;
 8 (b) the government of the United States or any agency thereof, a state or any of its political
 9 subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or
 10 advantages makes them excess or secondary to benefits under this part;
 11 (c) social security, medicare, and medicaid;
 12 (d) workers' compensation;
 13 (e) wage continuation programs of any employer;
 14 (f) proceeds of a contract of insurance payable to the claimant for loss ~~which that~~ was sustained
 15 because of the criminally injurious conduct;
 16 (g) a contract, including an insurance contract, providing hospital and other health care services
 17 or benefits for disability. ~~Any such~~ A contract in this state may not provide that benefits under this part
 18 ~~shall be~~ are a substitute for benefits under the contract or that the contract is a secondary source of
 19 benefits and benefits under this part are a primary source.
 20 (h) a crime victims compensation program operated by the state in which the victim was injured
 21 or killed that compensates residents of this state injured or killed in that state; or
 22 (i) any other third party.

23 (3) "Criminally injurious conduct" means conduct that:
 24 (a) occurs or is attempted in this state OR AN ACT OF INTERNATIONAL TERRORISM, AS DEFINED
 25 IN 18 U.S.C. 2331, COMMITTED OUTSIDE OF THE UNITED STATES AGAINST A RESIDENT OF THIS
 26 STATE;

- 27 (b) results in bodily injury or death; and
 28 (c) is punishable by fine, imprisonment, or death or would be so punishable ~~but for the fact~~ except
 29 that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state;
 30 however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance,

1 or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense
 2 defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or
 3 death was inflicted by the driver of a motor vehicle who is found by the division, by a preponderance of
 4 the evidence, to have been operating the motor vehicle while under the influence, as that term is defined
 5 in 61-8-401; or

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

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

12 (5) "Division" means the division of crime control of the department of justice.

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

14 (a) criminally injurious conduct;

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

16 (c) ~~his~~ the person's good faith effort to apprehend a person reasonably suspected of engaging in
 17 criminally injurious conduct."

18

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

20 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits
 21 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
 22 During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no
 23 reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount
 24 is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of
 25 one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments
 26 must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the
 27 first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1
 28 week, weekly compensation payments must be paid from the date the wage loss began. Weekly
 29 compensation payments must continue until the claimant has a reasonable prospect of being regularly
 30 employed in the normal labor market ~~or until payments are made for 26 weeks, whichever occurs first.~~

1 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
2 reasonable hospital services and medicines, and other treatment approved by the division for the injuries
3 suffered due to criminally injurious conduct. UNLESS EXPRESSLY REQUESTED BY THE CLAIMANT,
4 BENEFITS MAY NOT BE PAID UNDER THIS SUBSECTION UNTIL THE CLAIMANT HAS BEEN FULLY
5 COMPENSATED FOR TOTAL ACTUAL WAGE LOSS AS PROVIDED IN SUBSECTION (1) OR (7).

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

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

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

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

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

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

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

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

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

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

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

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

18
19 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 1997.

20 -END-

1 SENATE BILL NO. 54

2 INTRODUCED BY SHEA

3 BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL AND THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME
6 VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A
7 PETITION FOR AN ORDER OF PROTECTION; PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF
8 AND AN OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION, DISPOSAL, OR USE OF
9 EVIDENCE; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS
10 COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM;
11 SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF PAYMENTS MADE BY AN
12 OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES TO PAY FOR
13 INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES; AUTHORIZING
14 VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION RIGHTS OF THE
15 CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM FROM ANY
16 THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING SECTIONS
17 40-15-204, ~~46-5-307~~, ~~46-5-308~~, 46-15-411, 46-18-251, ~~46-24-206~~, 53-9-102, 53-9-103, AND 53-9-128,
18 MCA; AND PROVIDING AN EFFECTIVE DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 SENATE BILL NO. 54

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9 EVIDENCE; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS

10 COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM;

11 PROVIDING FOR REIMBURSEMENT OF OTHER GOVERNMENT AGENCIES AND OF INSURERS WHO HAVE

12 COMPENSATED THE VICTIM; SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF

13 PAYMENTS MADE BY AN OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES

14 TO PAY FOR INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES;

15 AUTHORIZING VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION

16 RIGHTS OF THE CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM

17 FROM ANY THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING

18 SECTIONS 40-15-204, 46-5-307, 46-5-308, 46-15-411, 46-18-251, 46-24-206, 53-9-102, 53-9-103, AND

19 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

20

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

22

23 **Section 1.** Section 40-15-204, MCA, is amended to read:

24 **"40-15-204. Written orders of protection.** (1) The court may ~~determine~~, on the basis of the

25 respondent's history of violence, the severity of the offense at issue, and the evidence presented at the

26 hearing, determine that, to avoid further injury or harm, the petitioner needs permanent protection. The

27 court may order that the order of protection remain in effect permanently.

28 (2) In a dissolution proceeding, the district court may, upon request, issue either an order of

29 protection for an appropriate period of time or a permanent order of protection.

30 (3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

1 (4) An order of protection may include restraining the respondent from any other named family
2 member who is a minor. If this restriction is included, the respondent must be restrained from having
3 contact with the minor for an appropriate time period as directed by the court or permanently if the court
4 finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

5 (5) An order of protection issued under this section may continue for an appropriate time period
6 as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be
7 terminated upon the petitioner's request that the order be dismissed.

8 (6) An order of protection must include a section that indicates whether there are any other civil
9 or criminal actions pending involving the parties, a brief description of the action, and the court in which
10 the action is filed.

11 (7) An amendment to a temporary order of protection or to an order of protection is effective only
12 after it has been served in writing on the opposing party.

13 (8) There is no cost to file a petition for an order of protection or for service of an order of
14 protection.

15 (9) Any temporary order of protection or order of protection must conspicuously bear the following:

16 "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties
17 of up to \$10,000 in fines and up to a 5-year jail sentence.

18 This order is issued by the court, and the respondent is forbidden to do any act listed in the order,
19 even if invited by the petitioner or another person. This order may be amended only by further order of this
20 court or another court that assumes jurisdiction over this matter.""

21

22 **SECTION 2. SECTION 46-5-307, MCA, IS AMENDED TO READ:**

23 "**46-5-307. Petition for destruction, disposal, or use of evidence.** (1) The prosecutor may file a
24 petition with the court alleging that there exist certain items held as evidence either by the law enforcement
25 agency or the court and that the items no longer have any evidentiary value. The petition must include:

26 (a) the name and title of the petitioner;

27 (b) the items of evidence sought to be destroyed, disposed of, or used, including a specific
28 description of each that may be attached to the petition by separate inventory;

29 (c) when the items were seized;

30 (d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309

1 means any property that is unlawful to produce or possess;

2 (e) whether the items relate to a filed case and, if so, the court and cause number of the case and
3 its procedural status;

4 (f) whether, in those instances in which the items are not contraband, an effort has been made to
5 return the items to the apparent owner and the results of ~~such~~ the effort;

6 (g) an allegation to the effect that any criminal prosecutions involving the items of evidence have
7 been completed and no appeals are pending or that no criminal charges have been filed or are presently
8 contemplated; and

9 (h) the petitioner's intentions relative to disposition of the items.

10 (2) If the petition requests the destruction or use of contraband, it must describe how destruction
11 is to be accomplished or how the contraband has training or law enforcement value and its contemplated
12 use by a law enforcement agency.

13 (3) The county attorney shall provide a victim of the offense with a copy of the petition and shall
14 advise the court whether the victim wishes to be heard on the petition."

15

16 **SECTION 3. SECTION 46-5-308, MCA, IS AMENDED TO READ:**

17 **"46-5-308. Order.** (1) The court may enter an order providing for the destruction or disposition
18 of the evidence. If a victim of the offense wishes to be heard on the petition, the court shall schedule a
19 hearing on the petition and shall allow the victim to be heard in open court. The court shall consider the
20 victim's statements prior to issuing an order under this section. A proposed order must be presented by
21 the petitioner to the court and may include:

22 (a) authorization to destroy all contraband listed in the petition, the method of destruction, and the
23 time within which ~~such~~ the destruction must be accomplished;

24 (b) if certain contraband is requested by the petitioner for training or law enforcement purposes,
25 authorization to use the items and a description of each;

26 (c) if the petition requests training or law enforcement use of noncontraband items, authorization
27 to retain the items by the law enforcement agency and a description of the items;

28 (d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is
29 pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

30 (e) if the petition requests, authorization to sell noncontraband property at public sale or auction

1 and to deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

2 (f) authorization to destroy all items not otherwise provided for.

3 (2) The order must specify the time period in which destruction or sale must occur. Within 10 days
4 following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold
5 and the date and method of disposition."
6

7 **Section 4.** Section 46-15-411, MCA, is amended to read:

8 "**46-15-411. Payment for medical evidence.** (1) The local law enforcement agency within whose
9 jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall
10 pay for the medical examination of a victim of the alleged sexual intercourse without consent offense when
11 the examination is directed by ~~such~~ the agency ~~and or~~ when evidence obtained by the examination is used
12 for the investigation, ~~or~~ prosecution, or resolution of an offense.

13 (2) This section does not require a law enforcement agency to pay any costs of treatment for
14 injuries resulting from the alleged offense."
15

16 **Section 5.** Section 46-18-251, MCA, is amended to read:

17 "**46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is
18 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same
19 criminal proceeding, money collected from the offender must be allocated as provided in this section.

20 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
21 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
22 of all money collected from the defendant must be applied to payment of restitution and the balance must
23 be applied to other payments in the following order:

24 (a) payment of charges imposed pursuant to 46-18-236;

25 (b) payment of supervisory fees imposed pursuant to 46-23-1031;

26 ~~(b)~~(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

27 ~~(c)~~(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

28 ~~(d)~~(e) any other payments ordered by the court.

29 ~~(3) If the victim receives benefits under Title 53, chapter 9, restitution payments must be~~
30 ~~distributed to the division of crime control of the department of justice in accordance with 53-9-132. In~~

~~order to receive restitution payments, the division shall submit to the clerk of court or agency designated by the court proof of compensation benefits paid to the victim. Once the victim has been fully compensated for the amount of restitution ordered by the court, either from the crime victims compensation and assistance account or by direct restitution payments, remaining restitution payments must be paid to the division to reimburse benefits previously paid to the victim.~~

(3) THE MONEY APPLIED UNDER SUBSECTION (2) TO THE PAYMENT OF RESTITUTION MUST BE PAID IN THE FOLLOWING ORDER:

(A) TO THE VICTIM UNTIL THE VICTIM'S UNREIMBURSED PECUNIARY LOSS IS SATISFIED;

(B) TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT PROVIDED FOR IN 53-9-109 UNTIL THE ACCOUNT IS FULLY REIMBURSED FOR COMPENSATION TO THE VICTIM;

(C) TO ANY OTHER GOVERNMENT AGENCY THAT HAS COMPENSATED THE VICTIM FOR THE VICTIM'S PECUNIARY LOSS;

(D) TO ANY INSURANCE COMPANY THAT HAS COMPENSATED THE VICTIM FOR THE VICTIM'S PECUNIARY LOSS.

~~(3)(4)~~ If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

SECTION 6. SECTION 46-24-206, MCA, IS AMENDED TO READ:

"46-24-206. Property return -- right to be heard on disposition of evidence. (1) A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining ~~such~~ the property.

(2) Before the destruction, disposal, or use of evidence that is not the victim's property, the court shall, as provided in 46-5-308, give the victim an opportunity to be heard as to the appropriate disposition of the evidence."

Section 7. Section 53-9-102, MCA, is amended to read:

"53-9-102. Legislative purpose and intent. It is the intent of the legislature ~~of this state~~ to provide a method of compensating those persons within the state who are innocent victims of criminal acts,

1 including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the
 2 United States against a resident of this state, and who suffer bodily injury or death and those innocent
 3 citizens of this state who are injured or killed in a state that does not have a crime victims compensation
 4 program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's
 5 intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons
 6 and to coordinate victims' assistance programs."

7
 8 **Section 8.** Section 53-9-103, MCA, is amended to read:

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

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

11 (a) a victim;

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

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

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

17 (a) the offender;

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

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

22 (d) workers' compensation;

23 (e) wage continuation programs of any employer;

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

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

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

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

2 (i) any other third party.

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

4 (a) occurs or is attempted in this state OR AN ACT OF INTERNATIONAL TERRORISM, AS DEFINED
5 IN 18 U.S.C. 2331, COMMITTED OUTSIDE OF THE UNITED STATES AGAINST A RESIDENT OF THIS
6 STATE;

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

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

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

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

22 (5) "Division" means the division of crime control of the department of justice.

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

24 (a) criminally injurious conduct;

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

26 (c) ~~his~~ the person's good faith effort to apprehend a person reasonably suspected of engaging in
27 criminally injurious conduct."

28

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

30 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits

1 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
2 During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no
3 reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount
4 is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of
5 one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments
6 must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the
7 first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1
8 week, weekly compensation payments must be paid from the date the wage loss began. Weekly
9 compensation payments must continue until the claimant has a reasonable prospect of being regularly
10 employed in the normal labor market ~~or until payments are made for 26 weeks, whichever occurs first.~~

11 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
12 reasonable hospital services and medicines, and other treatment approved by the division for the injuries
13 suffered due to criminally injurious conduct. UNLESS EXPRESSLY REQUESTED BY THE CLAIMANT,
14 BENEFITS MAY NOT BE PAID UNDER THIS SUBSECTION UNTIL THE CLAIMANT HAS BEEN FULLY
15 COMPENSATED FOR TOTAL ACTUAL WAGE LOSS AS PROVIDED IN SUBSECTION (1) OR (7).

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

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

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

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

30 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical

1 impairment, or nonbodily damage.

2 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
3 of the injury has no reasonable prospect of being regularly employed in the normal labor market and who
4 was employable but was not employed at the time of the injury may in the discretion of the division be
5 awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per
6 week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being
7 regularly employed in the normal labor market ~~or for a shorter period as determined by the division until~~
8 ~~payments are made for 26 weeks, whichever occurs first.~~ The claimant must be awarded benefits as
9 provided in subsection (2).

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

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

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

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

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

28

29 **NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 1997.

30

-END-

1 SENATE BILL NO. 54

2 INTRODUCED BY SHEA

3 BY REQUEST OF THE MONTANA BOARD OF CRIME CONTROL AND THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME
 6 VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A
 7 PETITION FOR AN ORDER OF PROTECTION; PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF
 8 AND AN OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION, DISPOSAL, OR USE OF
 9 EVIDENCE; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS
 10 COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM;
 11 PROVIDING FOR REIMBURSEMENT OF OTHER GOVERNMENT AGENCIES AND OF INSURERS WHO HAVE
 12 COMPENSATED THE VICTIM; SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF
 13 PAYMENTS MADE BY AN OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES
 14 TO PAY FOR INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES;
 15 AUTHORIZING VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION
 16 RIGHTS OF THE CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM
 17 FROM ANY THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING
 18 SECTIONS 40-15-204, 46-5-307, 46-5-308, 46-15-411, 46-18-251, 46-24-206, 53-9-102, 53-9-103, AND
 19 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

20

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

22

23 **Section 1.** Section 40-15-204, MCA, is amended to read:

24 **"40-15-204. Written orders of protection.** (1) The court may ~~determine~~, on the basis of the
 25 respondent's history of violence, the severity of the offense at issue, and the evidence presented at the
 26 hearing, determine that, to avoid further injury or harm, the petitioner needs permanent protection. The
 27 court may order that the order of protection remain in effect permanently.

28 (2) In a dissolution proceeding, the district court may, upon request, issue either an order of
 29 protection for an appropriate period of time or a permanent order of protection.

30 (3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

1 (4) An order of protection may include restraining the respondent from any other named family
2 member who is a minor. If this restriction is included, the respondent must be restrained from having
3 contact with the minor for an appropriate time period as directed by the court or permanently if the court
4 finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

5 (5) An order of protection issued under this section may continue for an appropriate time period
6 as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be
7 terminated upon the petitioner's request that the order be dismissed.

8 (6) An order of protection must include a section that indicates whether there are any other civil
9 or criminal actions pending involving the parties, a brief description of the action, and the court in which
10 the action is filed.

11 (7) An amendment to a temporary order of protection or to an order of protection is effective only
12 after it has been served in writing on the opposing party.

13 (8) There is no cost to file a petition for an order of protection or for service of an order of
14 protection.

15 (9) Any temporary order of protection or order of protection must conspicuously bear the following:
16 "Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties
17 of up to \$10,000 in fines and up to a 5-year jail sentence.

18 This order is issued by the court, and the respondent is forbidden to do any act listed in the order,
19 even if invited by the petitioner or another person. This order may be amended only by further order of this
20 court or another court that assumes jurisdiction over this matter."

21

22 **SECTION 2. SECTION 46-5-307, MCA, IS AMENDED TO READ:**

23 **"46-5-307. Petition for destruction, disposal, or use of evidence.** (1) The prosecutor may file a
24 petition with the court alleging that there exist certain items held as evidence either by the law enforcement
25 agency or the court and that the items no longer have any evidentiary value. The petition must include:

26 (a) the name and title of the petitioner;

27 (b) the items of evidence sought to be destroyed, disposed of, or used, including a specific
28 description of each that may be attached to the petition by separate inventory;

29 (c) when the items were seized;

30 (d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309

1 means any property that is unlawful to produce or possess;

2 (e) whether the items relate to a filed case and, if so, the court and cause number of the case and
3 its procedural status;

4 (f) whether, in those instances in which the items are not contraband, an effort has been made to
5 return the items to the apparent owner and the results of ~~such~~ the effort;

6 (g) an allegation to the effect that any criminal prosecutions involving the items of evidence have
7 been completed and no appeals are pending or that no criminal charges have been filed or are presently
8 contemplated; and

9 (h) the petitioner's intentions relative to disposition of the items.

10 (2) If the petition requests the destruction or use of contraband, it must describe how destruction
11 is to be accomplished or how the contraband has training or law enforcement value and its contemplated
12 use by a law enforcement agency.

13 (3) The county attorney shall provide a victim of the offense with a copy of the petition and shall
14 advise the court whether the victim wishes to be heard on the petition."

15

16 **SECTION 3. SECTION 46-5-308, MCA, IS AMENDED TO READ:**

17 **"46-5-308. Order.** (1) The court may enter an order providing for the destruction or disposition
18 of the evidence. If a victim of the offense wishes to be heard on the petition, the court shall schedule a
19 hearing on the petition and shall allow the victim to be heard in open court. The court shall consider the
20 victim's statements prior to issuing an order under this section. A proposed order must be presented by
21 the petitioner to the court and may include:

22 (a) authorization to destroy all contraband listed in the petition, the method of destruction, and the
23 time within which ~~such~~ the destruction must be accomplished;

24 (b) if certain contraband is requested by the petitioner for training or law enforcement purposes,
25 authorization to use the items and a description of each;

26 (c) if the petition requests training or law enforcement use of noncontraband items, authorization
27 to retain the items by the law enforcement agency and a description of the items;

28 (d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is
29 pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

30 (e) if the petition requests, authorization to sell noncontraband property at public sale or auction

1 and to deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

2 (f) authorization to destroy all items not otherwise provided for.

3 (2) The order must specify the time period in which destruction or sale must occur. Within 10 days
4 following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold
5 and the date and method of disposition."

6

7 **Section 4.** Section 46-15-411, MCA, is amended to read:

8 **"46-15-411. Payment for medical evidence.** (1) The local law enforcement agency within whose
9 jurisdiction an alleged incident of sexual intercourse without consent, sexual assault, or incest occurs shall
10 pay for the medical examination of a victim of the alleged sexual intercourse without consent offense when
11 the examination is directed by ~~such~~ the agency ~~and or~~ when evidence obtained by the examination is used
12 for the investigation, ~~or~~ prosecution, or resolution of an offense.

13 (2) This section does not require a law enforcement agency to pay any costs of treatment for
14 injuries resulting from the alleged offense."

15

16 **Section 5.** Section 46-18-251, MCA, is amended to read:

17 **"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is
18 subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same
19 criminal proceeding, money collected from the offender must be allocated as provided in this section.

20 (2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution
21 and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50%
22 of all money collected from the defendant must be applied to payment of restitution and the balance must
23 be applied to other payments in the following order:

24 (a) payment of charges imposed pursuant to 46-18-236;

25 (b) payment of supervisory fees imposed pursuant to 46-23-1031;

26 ~~(b)(c)~~ payment of costs imposed pursuant to 46-18-232 or 46-18-233;

27 ~~(c)(d)~~ payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

28 ~~(d)(e)~~ any other payments ordered by the court.

29 ~~(3) If the victim receives benefits under Title 53, chapter 9, restitution payments must be~~
30 ~~distributed to the division of crime control of the department of justice in accordance with 53-9-132. In~~

~~order to receive restitution payments, the division shall submit to the clerk of court or agency designated by the court proof of compensation benefits paid to the victim. Once the victim has been fully compensated for the amount of restitution ordered by the court, either from the crime victims compensation and assistance account or by direct restitution payments, remaining restitution payments must be paid to the division to reimburse benefits previously paid to the victim.~~

(3) THE MONEY APPLIED UNDER SUBSECTION (2) TO THE PAYMENT OF RESTITUTION MUST BE PAID IN THE FOLLOWING ORDER:

(A) TO THE VICTIM UNTIL THE VICTIM'S UNREIMBURSED PECUNIARY LOSS IS SATISFIED;

(B) TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT PROVIDED FOR IN 53-9-109 UNTIL THE ACCOUNT IS FULLY REIMBURSED FOR COMPENSATION TO THE VICTIM;

(C) TO ANY OTHER GOVERNMENT AGENCY THAT HAS COMPENSATED THE VICTIM FOR THE VICTIM'S PECUNIARY LOSS;

(D) TO ANY INSURANCE COMPANY THAT HAS COMPENSATED THE VICTIM FOR THE VICTIM'S PECUNIARY LOSS.

~~(3)(4)~~ If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

SECTION 6. SECTION 46-24-206, MCA, IS AMENDED TO READ:

"46-24-206. Property return -- right to be heard on disposition of evidence. (1) A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining ~~such~~ the property.

(2) Before the destruction, disposal, or use of evidence that is not the victim's property, the court shall, as provided in 46-5-308, give the victim an opportunity to be heard as to the appropriate disposition of the evidence."

Section 7. Section 53-9-102, MCA, is amended to read:

"53-9-102. Legislative purpose and intent. It is the intent of the legislature ~~of this state~~ to provide a method of compensating those persons within the state who are innocent victims of criminal acts,

1 including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the
 2 United States against a resident of this state, and who suffer bodily injury or death and those innocent
 3 citizens of this state who are injured or killed in a state that does not have a crime victims compensation
 4 program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's
 5 intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons
 6 and to coordinate victims' assistance programs."

7
 8 **Section 8.** Section 53-9-103, MCA, is amended to read:

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

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

11 (a) a victim;

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

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

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

17 (a) the offender;

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

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

22 (d) workers' compensation;

23 (e) wage continuation programs of any employer;

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

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

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

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

2 (i) any other third party.

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

4 (a) occurs or is attempted in this state OR AN ACT OF INTERNATIONAL TERRORISM, AS DEFINED
 5 IN 18 U.S.C. 2331, COMMITTED OUTSIDE OF THE UNITED STATES AGAINST A RESIDENT OF THIS
 6 STATE;

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

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

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

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

22 (5) "Division" means the division of crime control of the department of justice.

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

24 (a) criminally injurious conduct;

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

26 (c) ~~his~~ the person's good faith effort to apprehend a person reasonably suspected of engaging in
 27 criminally injurious conduct."

28

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

30 **"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits

1 when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct.
2 During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no
3 reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount
4 is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of
5 one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments
6 must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the
7 first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1
8 week, weekly compensation payments must be paid from the date the wage loss began. Weekly
9 compensation payments must continue until the claimant has a reasonable prospect of being regularly
10 employed in the normal labor market ~~or until payments are made for 26 weeks, whichever occurs first.~~

11 (2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon,
12 reasonable hospital services and medicines, and other treatment approved by the division for the injuries
13 suffered due to criminally injurious conduct. UNLESS EXPRESSLY REQUESTED BY THE CLAIMANT,
14 BENEFITS MAY NOT BE PAID UNDER THIS SUBSECTION UNTIL THE CLAIMANT HAS BEEN FULLY
15 COMPENSATED FOR TOTAL ACTUAL WAGE LOSS BENEFITS AS PROVIDED IN SUBSECTION (1) OR (7).

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

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

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

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

30 (6) Compensation benefits are not payable for pain and suffering, inconvenience, physical

1 impairment, or nonbodily damage.

2 (7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result
3 of the injury has no reasonable prospect of being regularly employed in the normal labor market and who
4 was employable but was not employed at the time of the injury may in the discretion of the division be
5 awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per
6 week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being
7 regularly employed in the normal labor market ~~or for a shorter period as determined by the division until~~
8 ~~payments are made for 26 weeks, whichever occurs first.~~ The claimant must be awarded benefits as
9 provided in subsection (2).

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

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

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

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

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

28

29 **NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 1997.

30

-END-