

## 1 HOUSE BILL NO. 596

2 INTRODUCED BY J. READ

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

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

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

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

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

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

28 (3) (a) For a victim of false imprisonment lasting 1 month or more, the compensation must be a lump

1 sum payment of \$4,000 for each month of false imprisonment, adjusted for inflation from [the effective date of  
2 this act].

3 (b) For a victim of false imprisonment who is terminated from employment as a result of the  
4 imprisonment, the compensation must be a lump sum payment equal to the person's annual income prior to the  
5 termination.

6

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

8 **"45-7-301. Resisting arrest.** (1) A person commits the offense of resisting arrest if the person  
9 knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

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

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

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

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

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

19

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

21 **"45-7-302. Obstructing peace officer or other public servant -- affirmative defense -- definitional**  
22 **nonobstruction.** (1) A person commits the offense of obstructing a peace officer or public servant if the person  
23 knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or  
24 the performance of a governmental function, including service of process.

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

28 (b) It is a defense to prosecution under this section if a person arrested asserts to the arresting officer,

1 the county attorney, and in court that the arresting officer acted without legal authority or the facts did not  
 2 warrant the charges against the person arrested. A court shall look in the light most favorable to the person  
 3 asserting this defense concerning the facts and the legal arguments.

4 (3) (a) Asserting that a peace officer is in violation of the officer's oath to the constitutions of the  
 5 United States and Montana is not obstruction of a peace officer.

6 (b) Challenging peaceably an officer's particularized suspicion for a stop is not obstruction of a peace  
 7 officer.

8 ~~(3)(4)~~ A person convicted of the offense of obstructing a peace officer or other public servant,  
 9 including a person serving process, shall be fined not to exceed \$500 or be imprisoned in the county jail for a  
 10 term not to exceed 6 months, or both."  
 11

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

13 **"45-7-401. Official misconduct.** (1) A public servant commits the offense of official misconduct when  
 14 in an official capacity the public servant commits any of the following acts:

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

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

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

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

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

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

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

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

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

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

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

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

11

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

13 **"46-6-204. ~~Minor irregularities~~Irregularities in warrant.** (1) ~~No~~A warrant of arrest shall may not be  
 14 dismissed ~~nor shall any and a~~ person in custody for an offense may not be discharged from ~~such~~ custody  
 15 because of technical irregularities not affecting the substantial rights of the accused.

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

17 (i) released immediately on discovery of the mistaken identity;

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

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

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

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

26

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

28 **"46-6-212. Failure to appear following summons or notice to appear.** (1) (a) If, after the issuance

1 of a summons or notice to appear, the judge becomes satisfied that the person has not appeared or will not  
2 appear as commanded, the judge may at once issue an arrest warrant.

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

6 (2) If after being summoned the corporation does not appear, a plea of not guilty must be entered in  
7 accordance with 46-12-204 and the matter must proceed to trial and judgment without further process."  
8

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

10 **"46-6-214. Form and content of arrest warrant.** (1) An arrest warrant must:

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

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

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

16 ~~(d) specify the name of the person to be arrested or, if that person's name is unknown, designate the~~  
17 ~~person by any name or description by which the person can be identified with reasonable certainty;~~if the name  
18 of the person to be arrested is known, specify the name of the person and:

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

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

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

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

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

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

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

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

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

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

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

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

8

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

10           **"46-6-216. Manner of arrest with warrant.** (1) When making an arrest pursuant to a warrant, a  
11 peace officer shall inform the person to be arrested of the officer's authority, the intention to arrest that person,  
12 the cause of the arrest, and the fact that a warrant has been issued for that person's arrest, except:

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

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

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

18           (b) If the person arrested identifies irregularities or defects on the warrant and can demonstrate that  
19 the person is not the individual specified by the warrant, the person must be immediately released and may not  
20 be questioned further.

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

24

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

26           **"46-24-101. Purpose.** The legislature declares that the purposes of this chapter are to:

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

28           (2) ~~assure~~ensure that victims and witnesses of crime receive fair and proper treatment from law

1 enforcement agencies and prosecutors; ~~and~~

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

3 and

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

5

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

7 **"46-24-103. Duty of attorney general.** (1) The attorney general shall ensure that victims and

8 witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general shall

9 prepare a written notice of the rights and services available to victims of crime under this chapter. The notice

10 must be distributed to local law enforcement agencies in the state. In addition, the attorney general shall ensure

11 that victims and witnesses are provided important services and assistance as required under this chapter.

12 (2) The attorney general shall ensure that a victim of injurious criminal procedure as defined in 53-9-

13 103 is given fair and proper treatment concerning any remedy for false arrest or false imprisonment.

14 (3) The attorney general, through the office of victims services, shall keep a record of any acts done

15 in the criminal justice system that led to false arrests or false imprisonments, including the issuance of warrants

16 with irregularities."

17

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

19 **"53-9-102. Legislative purpose and intent.** It is the intent of the legislature to provide a method of

20 compensating ~~these~~ persons within the state who are innocent victims of criminal acts and injurious criminal

21 procedure, including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of

22 the 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, and victims of false arrest, false

25 imprisonment, or wrongful conviction in this state. To this end, it is the legislature's intention to provide

26 compensation for injuries suffered as a direct result of the criminal acts of other persons or injurious criminal

27 procedure and to coordinate victims assistance programs."

28

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

2           **"53-9-103. Definitions.** As used in this part, the following definitions apply:

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

4           (a) a victim;

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

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

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

10           (a) the offender;

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

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

15           (d) workers' compensation;

16           (e) wage continuation programs of any employer;

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

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

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

25           (i) any other third party.

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

27           (a) occurs or is attempted in this state or an act of international terrorism, as defined in 18 U.S.C.

28 2331, committed outside of the United States against a resident of this state;



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

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

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

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

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

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

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

21 ~~(5)(8)~~ "Office" means the office of victims services established in 2-15-2016.

22 ~~(6)(9)~~ "Victim" means:

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

24 (i) criminally injurious conduct;

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

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

28 (b) a minor child present in a home where domestic violence occurred; or

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

3

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

5           **"53-9-104. (Temporary) Powers and duties of office.** (1) The office shall:

6           (a) adopt rules to implement this part;

7           (b) prescribe forms for applications for compensation;

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

9           (d) require any person contracting directly or indirectly with an individual convicted of a qualifying

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

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

26           (2) The office may:

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

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

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

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

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

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

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

16 **53-9-104. (Effective July 1, 2021) Powers and duties of office.** (1) The office shall:

17 (a) adopt rules to implement this part;

18 (b) prescribe forms for applications for compensation;

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

20 (d) require any person contracting directly or indirectly with an individual convicted of a qualifying  
21 crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is  
22 based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a  
23 qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or  
24 preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract  
25 into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased  
26 victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the  
27 claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state  
28 public defender, provided for in 2-15-1029, for costs associated with providing assigned counsel for the charged

1 person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all  
 2 kinds or \$5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased  
 3 victims, and the state for any public defender or any attorney assigned for the charged person must be  
 4 deposited in the state general fund.

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

8 (2) The office may:

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

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

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

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

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

24 (f) establish a victims assistance coordinating and planning program."  
 25

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

27 **"53-9-113. (Temporary) Crime victims compensation account.** There is an account in the state  
 28 special revenue fund for compensation to crime victims compensation and injurious criminal procedure victims.

1 The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of justice for  
2 the purposes provided in this part. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L.  
3 2015.)"

4

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

6 **"53-9-125. Limitations on awards.** (1) Except as otherwise provided in this section, compensation  
7 may not be awarded unless the claim is filed with the office within 1 year after the day the criminally injurious  
8 conduct occurred causing the injury or death upon which the claim is based. Compensation in cases involving  
9 sexual offenses against minors may not be awarded unless the claim is filed with the office within 1 year after  
10 the day the criminally injurious conduct was reported to a law enforcement agency or an agency of the state  
11 responsible for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of  
12 age, whichever occurs last. The time for filing a claim may be extended by the office for good cause shown.

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

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

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

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

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

28 (7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury

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

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

5

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

7 **"53-9-128. Compensation benefits for victims of criminal acts.** (1) The following compensation  
8 benefits are available to claimants who are victims of criminal acts or dependants of victims of criminal acts:

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

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

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

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

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

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

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

12           ~~(7)~~ ~~(a)(d)~~ (i) A person who has suffered injury as a result of criminally injurious conduct and as a  
 13 result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who  
 14 was employable but was not employed at the time of the injury may in the discretion of the office be awarded  
 15 weekly compensation benefits in an amount determined by the office not to exceed \$100 per week. Weekly  
 16 compensation payments must continue until the claimant has a reasonable prospect of being regularly  
 17 employed in the normal labor market. The claimant must be awarded benefits as provided in subsection  
 18 ~~(2)(1)(b)~~.

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

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

27           ~~(9)~~ ~~(a)(e)~~ (i) Subject to the limitations in subsection ~~(9)(d)~~ (1)(e)(iv), the spouse, parent, child,  
 28 brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement

1 for mental health treatment received as a result of the victim's death.

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

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

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

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

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

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

19  
20 **NEW SECTION. Section 17. Codification instruction.** [Section 1] is intended to be codified as an  
21 integral part of Title 53, chapter 9, part 1, and the provisions of Title 53, chapter 9, part 1, apply to [section 1].

22 - END -