

The Criminal Justice System and You

An Informational Guide for Victims of Crime

YOUR RIGHTS AND WHAT YOU CAN EXPECT FROM THE CRIMINAL JUSTICE SYSTEM

Montana law gives crime victims certain rights concerning notification and input into the criminal justice system. Victims of crime are entitled to fair treatment under the law.

Your Right to Information

Victims of major crimes (felonies and other violent crimes such as partner or family member assault) are entitled to receive certain information about the case and about the offender. To make sure you receive proper notification, you need to provide the appropriate criminal justice agency with your name, address, and telephone number, or with the name, address, and telephone number of the person you have designated to receive the information on your behalf. You may not be eligible to receive some information unless you provide a written request to the proper agency. Please notify officials of any change of name, address or telephone number. Addresses and telephone numbers of criminal justice agencies are included in this brochure for your convenience.

Law Enforcement Agencies can provide you with the following information:

- Local victim assistance programs including shelter, medical treatment, counseling, and emergency services available in the community.
- Name, office address, and telephone number of a law enforcement officer assigned to investigate the case.
- Name, office address, and telephone number of the prosecuting attorney.
- Arrest of a suspect.
- How to obtain an Order of Protection.

- Availability of assistance through the Crime Victim Compensation program.

Prosecuting Attorneys can provide you with the following information:

- The crime with which the offender has been charged.
- Information on whether the offender will be released from jail pending trial.
- Date, time, and place of all court proceedings.
- If the offender is found guilty or pleads guilty, the name, address and telephone number of the probation officer who is preparing the pre-sentence report (page 7).
- The sentence imposed by the court.
- Information regarding disposition of the case, including dismissal of the case, release of the defendant pending trial, plea negotiations, or any other arrangement that keeps the case from going to trial. And if the case does not go to trial, the reason why.
- If the offender is convicted or pleads guilty, the prosecutor may disclose the contents of the pre-sentence report to you (read page 7 to find out more about the pre-sentence report).
- The prosecutor at his/her discretion may provide you with additional information concerning the investigation, unless the information needs to be kept confidential to protect the investigation or the integrity of court proceedings. The prosecutor also may authorize a law enforcement officer to provide this information.

Department of Corrections can provide you with the following information:

www.cor.mt.gov

- Estimated date of the offender's release from confinement in the Montana State Prison, if it can reasonably be determined.
- Notice of the offender's release or escape from confinement, a recapture, a transfer to another facility or jail, or the offender's death in prison.
- Notice prior to release of the offender on furlough or to a work-release program, halfway house, or other community-based program or correctional facility.

Board of Pardons can provide you with the following information:

- Time and place of a parole hearing concerning the offender.
- A decision of the Board of Pardons granting or denying parole.
- A decision of the governor to commute the sentence or to grant executive clemency.

Attorney General's Office can provide you with the following information:

- Court proceedings on appeal of the case, including date, time, and place of any hearing.
- Decisions of an appellate court.

Your Right to Fair Treatment

Upon your request, a law enforcement official or prosecuting attorney or victim/witness specialist may also:

- Help you inform your employer that you may have to miss work in order to assist in the prosecution of the case. The law prohibits an employer from disciplining or discharging a victim or a member of the victim's immediate family for participating in criminal proceedings at the prosecutor's request. If you believe your employer has treated you unfairly because of your involvement in court proceedings as a victim of crime, you should contact a private attorney. The prosecuting attorney cannot represent you in dealings with your employer.
- Help you inform creditors that you have suffered serious financial strain as a result of being victimized. If you become involved in a civil suit against a creditor, the prosecuting attorney cannot represent you in that case.

Your Right to Confidentiality

- If you request confidentiality, your address, telephone number, or place of employment -- or those of your family members -- may not be given to anyone except a criminal justice agency unless disclosure is ordered by the court.
- You do not have to answer any questions in court asking for your home address or place of employment, unless the court finds it necessary and orders you to answer.
- If you are the victim of a sex offense (rape, sexual assault, incest, or indecent exposure), your identity may not be disclosed to the public unless necessary to disclose the location of the crime scene or for other law enforcement purposes, or unless disclosure is ordered by the court.

Your Right to be Heard

As a victim of crime, you can give a victim impact statement at the following times:

- You may present a statement in writing before the sentencing hearing or orally under oath at the sentencing hearing (or both) concerning how you have been affected by the crime,

the circumstances surrounding the crime, the manner in which it was perpetrated, and your opinion regarding the appropriate sentence.

- If a request is made to adjust or waive payment of any part of ordered restitution, notice must be given to you of any hearing and you will have an opportunity to make a statement.
- Before ordering the offender's parole, the Board of Pardons must permit you an opportunity to present a statement concerning the effects of the crime on you, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and your opinion regarding whether the prisoner should be paroled. The Board may keep the statement confidential and must consider it along with any other information in determining whether the offender should be paroled. The statement may be made in person, by letter or by videotape.
- You and your family members have the right to be present in the courtroom during any trial or hearing, unless the judge rules otherwise.
- Before disposing of evidence no longer needed by law enforcement or the court, the prosecutor may petition the court for a hearing to determine an appropriate disposition of the evidence. You have the right to be heard regarding the destruction, disposal or further use of the evidence. The court must consider your statements prior to issuing a final order.

Your Right to Receive Restitution

The law requires that the judge order the defendant (the offender) to pay **full** restitution to the victim as a condition of the sentence, so long as the defendant has the ability to contribute something toward restitution sometime during the period of the sentence. Restitution can cover the following costs: your property taken or damaged by the offender; medical expenses; loss of income; expenses reasonably incurred in obtaining ordinary and necessary services that you would have performed had you not been injured by the crime; expenses reasonably incurred in attending court proceedings related to the crime; and reasonable expenses related to funeral and burial or crematory services of a homicide victim.

Keep track of your expenses; keep receipts, bills and canceled checks as proof of medical expenses and repair or replacement costs. In order to receive restitution, the judge will require a list of your expenses. This list will be requested before sentencing.

The Clerk of Court will disburse restitution paid by a defendant to you for any un-reimbursed monetary losses. The judge may order return of any property taken from you and, in appropriate circumstances, may order sale of the defendant's assets to help pay restitution. With your consent, the judge may also order the defendant to perform services for you or for someone who has provided services for you as a result of the offense.

While restitution is appropriate in some cases, there is no guarantee that you will receive payments in a timely manner -- or at all. If the judge finds that the defendant will not have the ability to pay restitution, the judge has the option of ordering the defendant to perform community service.

PLEASE NOTE:

- If the offender was sentenced in District Court, the Montana Department of Corrections Restitution Program will collect and disburse restitution.
- If the offender was sentenced in Justice of City Court, the Clerk of Court will collect and disburse restitution.
- If the offender was sentenced in a U.S. Federal Court, the U.S. District Court will collect and disburse restitution.

VICTIM RESPONSIBILITIES

Your cooperation is essential for the successful prosecution of the offender. Cooperation is also required in order for you to receive Crime Victim Compensation benefits.

- Both the prosecutor and the defense attorney may question you before and during a trial. Answer all questions truthfully.
- Provide all information requested by the prosecuting attorney's office and law enforcement authorities.
- Let the prosecuting attorney's office, probation department, Board of Pardons, Montana State Prison and the Crime Victim Compensation program know your current address and telephone number in writing.
- The criminal justice system often seems to operate slowly. We know that crime victims are anxious to have the case resolved and the matter put behind them. Like you, law enforcement officials want to get the crime solved and see justice served. You may need to be patient. Putting together a criminal case takes time, and it is important that accuracy and truth not be sacrificed for swiftness.

MONTANA CRIMINAL JUSTICE SYSTEM

As a crime victim, you will have numerous contacts with the criminal justice system as your case proceeds. This section outlines what you can expect during the investigation and criminal prosecution of your case.

Law Enforcement

A law enforcement officer may be the first person you encounter concerning the investigation of the crime. After the initial work is done, your case may be turned over to an investigator. Officers will have to ask for a lot of information and may ask you to write a statement. Such information might seem embarrassing or upsetting, particularly in cases of child sexual abuse or sexual assault. However, without it the offender may not be caught or prosecuted. Officers may also need to

secure some of your belongings as evidence. These can be returned to you upon request at the end of your case.

The officer will also help direct you to victim services in your area. Ask them for help in contacting shelter homes, a victim assistance counselor or a victim advocate to be with you during these stressful times. Domestic violence and rape crisis hot lines are also a good way to locate such victim service providers.

The officer may be able to arrest a suspect at the scene of the crime or that person may be arrested later on a warrant issued by a judge. Sometimes no one is arrested, and the case is closed. If someone is arrested the prosecution phase begins. Generally, the suspect is advised of his or her rights, taken to the local jail and booked. At this point, the prosecutor evaluates the case. If you have been the victim of a rape, sexual assault, or incest, you should obtain a medical examination. The cost of the sexual assault examination is paid by the investigating law enforcement agency if the examination is directed by the agency or if the results are used in the investigation, prosecution, or resolution of the offense. If your claim is awarded other costs may be paid by the Crime Victim Compensation program. Either way, you should have a follow-up examination in 6-12 months.

Prosecution

The prosecutor represents the State of Montana and not you individually as a victim. You play an important role as a witness. The prosecutor reviews the case to make sure there is enough evidence to obtain a conviction. A defendant (the offender) is presumed innocent until proven guilty. The prosecutor must be satisfied that there is enough evidence to convince a jury of the defendant's guilt beyond a reasonable doubt. If the prosecutor decides to go forward with the case, charges are filed against the defendant. Several court appearances may be scheduled.

The Initial Appearance

- The defendant appears in court where the judge reads the charge(s), informs the defendant of the maximum sentence possible, the right to legal counsel, and sets bail. You have a right to sit in on this appearance, but your attendance is not required.
- Offenders under the age of 18 are generally handled by the youth court and juvenile probation. In cases involving serious crimes, the juvenile could be prosecuted in district court and would be subject to greater penalties if convicted.

Bail

- A sum of money or security left with the court as an assurance that, if released, the defendant will appear at future court proceedings. Under Montana law, nearly all suspects are entitled to bail because they are considered innocent until proven guilty. As a condition for bail, the judge may require that the defendant avoid all contact with you. Ask about an Order of Protection to assure that the defendant does not have any contact with you. Individuals arrested for Partner or Family Member Assault remain in jail until seen by the judge and bail is determined.

Preliminary Examination

- A hearing at which a judge determines whether sufficient evidence exists to believe the defendant may have committed a crime. You may be asked to testify at this hearing. It is not uncommon for the defendant to waive this hearing. When evidence is presented at a preliminary hearing, the judge can exclude all other witnesses while the defendant or any witness is testifying.

Arraignment

- The defendant must plead guilty or not guilty to the charges. If the defendant pleads not guilty, a trial date is set. If the defendant pleads guilty, the right-to-trial is waived and sentence will be imposed. The prosecutor and defense attorney may recommend a plea agreement. You have the right to talk with the prosecutor about any plea agreement that is being negotiated.

Trial

- Between arraignment and trial, the prosecutors and the defense attorneys will be involved in various hearings and pre-trial motions. Each side must disclose to the other what evidence and witnesses it intends to present at the trial. The prosecutor's office or the defense may ask you to provide statements during this time. All statements given by a witness (including statements by you) must be disclosed by the prosecutor to the defense.
- Trials are typically held before a jury of 12 people. At the option of the prosecutor and the defendant, the trial may be held before a judge without a jury. During the trial you may have to testify in court about the circumstances surrounding the crime. This is your chance to tell your story to the jury. If you are called as a witness in a criminal trial, review the tips listed on page 8.

Pre-sentencing Report and Sentencing

- If the defendant is found guilty, the judge will impose a sentence. In some cases, the judge will ask for a pre-sentence investigation report prepared by a probation officer. The purpose of a pre-sentence report is to inform the judge of the defendant's criminal record and social history, the defendant's characteristics, circumstances, needs, and potential for rehabilitation. It also describes the circumstances of the offense and how the offense has harmed you, your immediate family, and the community. The pre-sentence report will also detail the amount of monetary loss you have sustained as a result of the offense.
- A probation officer prepares the pre-sentence report. It is required by law to be kept confidential, but the prosecutor may disclose the contents to you. The probation officer who is preparing the report may contact you. Make sure the probation officer has your current address and phone number. This is your opportunity to tell the judge how you have been affected by the crime and what your out-of-pocket expenses have been. The judge

will read and consider the pre-sentence report when deciding what sentence to impose. You may also provide a victim impact statement for the judge's consideration.

- The sentence is at the judge's discretion within the range of penalties provided by law. In some cases, the judge might order the defendant to pay restitution to the victim. (See the Restitution section on page 4). Restitution can cover the cost of property, medical costs, etc. Be sure to keep track of these expenses with receipts, bills or canceled checks. Ask the prosecuting attorney about restitution and if it would be possible in your case.
- Once convicted, the defendant has the opportunity to appeal to the Montana Supreme Court. The appeal process typically does not involve you as a victim or witness unless the case must be retried. This whole process can take anywhere from 30 days to a year or more.
- Sooner or later almost all persons convicted of a crime and sent to prison are released. If you wish to be notified of the defendant's release or any escape from custody, contact the Montana Department of Corrections, call the VINE Hotline (see VINE section on page 10), or check the Correction Offender Network at www.cor.mt.gov

Remember there are many options for handling your case. A lot depends on whether the offense is a felony or misdemeanor and whether the offender is an adult or a juvenile. The process described above is typical of a felony crime that goes through the entire court process.

It's important that throughout this process, you:

- Keep in contact with the prosecutor's office and ask questions.
- Use the victim assistance services that are available in your area. See pages 18-22.
- Cooperate in all areas in order to increase the chances of convicting the offender.

TIPS FOR TESTIFYING IN COURT

If you must testify, talk with the prosecutor before your court appearance about what to expect. Listed below are a few pointers:

- Answer all questions truthfully. Just tell the facts.
- Listen carefully to the questions. If you don't understand a question, ask for an explanation.
- Answer only the question asked. Don't try to say everything at once or give information not requested.
- Don't guess. Answer to the best of your knowledge.
- Be prepared, but don't memorize what you have to say.

- If an attorney objects to a question, don't answer it until the judge tells you to do so.
- Try to remain calm. Don't lose your cool.
- Speak clearly and loud enough for the jury to hear.
- If you have given a written statement, or a taped interview that has been transcribed, ask the prosecutor for a copy before trial so you can refresh your memory.
- Spend some time watching a court session to see how the process works.
- Go to the courtroom you will be testifying in beforehand, so it will feel more familiar.

ORDER OF PROTECTION

An order of protection is an order of the court, for protection of a victim, a family member, or a witness to the offense. The order may: require the removal of the offender from your residence; require the transfer of possession of certain property to you (or it may prohibit the offender from concealing or disposing of property); prohibit any threats, harassment, communication or contact with you or family members; or order any other relief considered necessary to provide for the safety and welfare of yourself or other designated family members. There is no cost to file a petition for an order of protection or for the service of an order of protection. To avoid further injury or harm, the court may direct the order of protection remain in effect permanently.

Eligibility Requirements for an Order of Protection.

- You are in reasonable fear of bodily injury by a partner or family member, or if you are a victim of one of the following crimes committed by a partner or family member: assault, aggravated assault, intimidation, partner or family member assault, criminal endangerment, negligent endangerment, unlawful restraint, kidnapping, aggravated kidnapping, or arson. Also, if you are a partner or family member of a victim of deliberate homicide or mitigated deliberate homicide.
- You are a victim of stalking, incest, sexual assault, or sexual intercourse without consent, regardless of your relationship to the offender.
- If you are under the age of 18, the petition may be filed on your behalf by a parent, guardian, or other representative.

You may seek an order of protection if there are no criminal charges filed and if you did not report the abuse to law enforcement. The length of time between the abusive incident and your application does not matter as long as you meet the eligibility requirements listed above.

Procedure to obtain an Order of Protection

You can seek a temporary order of protection by filing a sworn petition in a district, justice, municipal or city court.

These forms can be obtained in the offices of County Attorneys, Crime Victim Advocates and Clerks of Court. They can also be downloaded from the Montana Attorney General's website www.doj.mt.gov.

- If a divorce or custody action is pending in district court, the petition must be filed with that court only, unless the district judge is unavailable, or you left the county where the abuse occurred to avoid further abuse.
- The petition must state that you are in reasonable fear of bodily injury or a victim of one of the offenses listed on page 16, have a relationship to the offender (if required), and you are in danger if the court does not issue a temporary order of protection immediately. If the court agrees with the petition, it will issue a temporary order of protection.
- A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At that hearing, the court will determine whether good cause exists for the temporary order to be continued, amended, or made permanent.
- The offender may request an emergency hearing before the end of the 20-day period by filing an affidavit demonstrating an urgent need for the emergency hearing. The hearing must be set within three working days of filing the affidavit.
- The petition may be filed either in the county where you currently or temporarily live, where the offender resides or where the abuse occurred. There is no minimum residency requirement. The order is effective in any state, the District of Columbia, any U.S. Territory, and may be enforced on Tribal Lands.
- A valid order of protection from another state will be enforced in the same manner as an order of protection issued in Montana.
- The issuing court must send a copy of any order or any extension, modification or termination, with proof of service, to the appropriate law enforcement agency designated in the order. Valid orders of protection are also entered into the National Crime Information Center.
- An order of protection is effective against an offender regardless of age.
- An order issued by a justice, municipal, or city court is immediately reviewable by the district court judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify such an order.

- A temporary or permanent order of protection becomes valid as soon as a judge signs the order. However, until the offender is served with the order they cannot be held in violation.
- You should give a copy of your order to those who have regular contact with you or your children – schools, daycare, workplace, etc. You should also keep a copy in your wallet or purse.

VINE (Victim Information and Notification Everyday)

VINE is a toll-free, 24-hour automated telephone service providing information on Montana adult offenders. VINE was created to give crime victims easier access to important information regarding inmates at the Montana State Prison, Montana Women's Prison, regional prisons, Crossroads Correctional Center and the Treasure State Correctional Training Center.

By calling 1-800-456-3076, you will be able to learn if the offender is still incarcerated, custody information, escape information, sentence review hearing dates, parole hearing dates and scheduled release date information. You can also register your phone number and a Personal Identification Number to receive a telephone alert if the offender has a change in custody status, escapes, or has a change in scheduled hearing dates. VINE also monitors those inmates who are in out-of-state prisons.

VINE is a free service and is totally anonymous to those wishing to be notified. VINE is active 24 hours a day, 365 days a year including holidays. Any change in offender status will prompt the VINE service to call all registered victims regardless of the day or time. For more information, call the Montana Department of Corrections at (406) 444-7461 or 1-888-223-6332. Information can be obtained from the Department of Corrections website, www.cor.mt.gov and then selecting CON (Correctional Offenders Network).

CRIME VICTIM COMPENSATION

The Crime Victim Compensation program (CVC) provides compensation to victims for injuries suffered as a direct result of criminal acts.

While no amount of compensation can erase the physical and emotional trauma experienced by crime victims, the CVC program strives to reduce some of the financial burdens victims may suffer.

Depending on the circumstances, you may be eligible to receive compensation for the following crime-related expenses:

- Medical
- Lost wages
- Mental health counseling
- Loss of support for spouses and dependents of deceased victims
- Funeral and burial expenses

If you would like additional information or need program brochures or applications, please contact:

Crime Victim Compensation Program

Office of Victim Services

PO Box 201410

Helena, MT 59620-1410

(406) 444-3653 or (800) 498-6455

<https://dojmt.gov/victims/crime-victim-compensation/>

Eligibility Requirements

1. You must have suffered personal injury or be a family member of a homicide victim or a family member of a victim of child sexual abuse.

Crimes covered by the CVC program include the following:

- Homicide
- Assault
- Partner or family-member assault (domestic violence)
- Sexual offenses
- Child physical and sexual abuse
- Victims of DUI drivers
- International acts of terrorist

2. The crime must be reported to law enforcement within 72 hours after the crime. If the crime was not reported within the required 72-hour time limit, the reason for the delay must be submitted in writing to the CVC program. If good cause exists for the delay, this requirement may be waived. In cases involving a sexual offense against a minor, a report must be made to law enforcement, Child Protective Services, or juvenile probation within 72 hours of the time an adult is informed of the offense against the minor.
3. You must cooperate with law enforcement and prosecuting attorneys in the investigation and prosecution of the crime.

Cooperation includes, but is not limited to the following:

- Provide law enforcement with a true and accurate report of the crime and consent to any reasonable requests for follow-up interviews,

- When possible, assisting in the identification of the suspect(s) as requested, and
- Participating in deposition and trial testimony as requested.

Cooperation is determined on a case-by-case basis taking into consideration the victim's age, physical condition and psychological state.

4. An application for compensation must be filed within one year of the date of the crime. Compensation involving sexual offenses against minors must be filed within one year after the date the offense was reported to a law enforcement agency, juvenile probation office or Child Protective Services, or within one year after the day the victim reaches 18 years of age. The time for filing a claim may be extended by the program for good cause.

Application Process

If applying for compensation benefits, a claim can only be filed by the following individuals: the victim, the survivor of a homicide victim, or the parent or legal guardian of a victim who is a minor.

These forms may be obtained from any law enforcement agency, hospital, victim assistance program, or by writing the Crime Victim Compensation Program at PO Box 201410, Helena, MT 59620-1410 or calling (406) 444-3653 or 1-800-498-6455.

All applications must be fully completed. Please be sure to read carefully the Information Release and Repayment and Subrogation Agreement on the back of the claim form.

Be sure your application is signed before you send it in!

Secondary Victims

For purposes of the CVC program, a secondary victim is defined as a *family member* of a homicide victim or a *family member* of a child victim of a sexual crime. If the primary victim has been awarded benefits, mental health benefits are available to parents, step-parents, siblings and step-siblings as secondary victims. Step-parents and step-siblings must reside with the victim to be considered eligible for the counseling benefits. Counseling benefits for secondary victims may not exceed \$2,000 per family member.

Claim Denials

Claims may be denied if the application does not meet the above eligibility criteria. Additionally, the claim may be denied under the following circumstances:

- Benefits will not be awarded to a claimant who is the offender or an accomplice of the offender. Also, benefits will not be awarded if the award would unjustly benefit the offender or accomplice.

- Persons in jail, prison or any other public institution that provides for the maintenance of that person are not entitled to compensation benefits.
- Compensation may be reduced or denied if the victim contributed to the death or injury.

Compensation Benefits

Total compensation benefits paid to a victim, or dependents of a victim in cases of the victim's death, may not exceed \$25,000.

The CVC program can provide benefits to eligible victims for the following crime related expenses:

- *Medical care*, including dental, prosthetic devices, hospitalization, doctor fees, physical therapy, eyewear, or chiropractic services related to injuries of the crime.
- *Crime related mental health counseling*. To receive payment from the CVC program, a mental health therapist must be one of the following:
 - Medical doctor
 - Licensed clinical psychologist
 - Licensed social worker
 - Licensed professional counselor
 - A counselor working under the supervision of a licensed therapist

Payment for mental health counseling is limited to 12 consecutive months or \$2,000, whichever is reached first. Extensions requested by the claimant to the CVC program may be granted after review.

- *Wages lost by the victim due to crime related injuries*. No wage loss benefits can be paid for the first week after the crime occurred. However, if wage loss is longer than 1 week, weekly compensation payments may be paid retroactively from the date the wage loss began.
- *Claims involving both medical expenses and wage loss*. You may request wage loss benefits be paid prior to payment of medical expenses. (NOTE: If you request that your wage loss benefits be paid before your medical bills, the program will not be able to pay any amount toward your medical expenses until you return to work and are no longer experiencing a wage loss. Providers may continue to contact you and could resort to other means of collection.)
- *Loss of support for dependents of a deceased victim*. Weekly compensation benefits may be paid to the survivors of a homicide victim. In certain instances, dependents of homicide victims may be eligible to receive lump sum death benefits.
- *Funeral and burial costs* are allowable up to \$3,500.

Benefit Adjustments

If you have insurance, Medicaid, Indian Health Services, or any other form of benefits, your medical/mental health expenses **MUST** be submitted to them before you submit the expenses to the CVC program. Compensation benefits are intended to supplement and not replace other programs or benefits that the victim may be eligible to receive.

The following will reduce compensation benefits:

- Payment received from the person who committed the crime, e.g. restitution;
- Payment received from an insurance program (health or auto), workers' compensation, or unemployment benefits; and
- Payment from other federally funded programs such as Medicaid, Medicare, Indian Health Services, CHIP's, Veteran's Administration, etc.

IF YOU ARE ON MEDICAID, PLEASE NOTE:

Any hospital or medical provider, or mental health counselor who accepts Medicaid patients must accept Medicaid payments as payment in full and cannot bill you or the CVC program for any remaining balances. If you become Medicaid eligible at any time, please notify CVC immediately.

Restitution

Compensation benefits will be reduced by the amount of restitution you have received at the time a claim is processed for payment. If the offender is ordered to pay restitution, but has not yet made payment, the CVC program will pay benefits on your behalf. Please remember, if the program has fully reimbursed you for all your out-of-pocket expenses, any restitution you receive must be paid back to CVC.

Civil Settlements

It is very important that you advise the program of any pending civil action being taken as a result of the crime. The CVC program is entitled to full subrogation (repayment to CVC) against a civil judgment or recovery received by you. If you institute the action, CVC shall pay a proportional share of the attorney's costs and fees if the civil action is successful.

Insurance

All crime related bills must be submitted to your insurance carrier for payment determination prior to submission to the CVC program. CVC benefits can be determined only after insurance benefits have been paid or denied. CVC benefits can be paid for your out-of-pocket expenses, including any required deductible or co-payment.

Public Funds

Medicaid is also a primary payer to the CVC program. If you are on Medicaid at the time of the crime, Medicaid is the primary payer for medical expenses.

Verification Process

The CVC program will begin processing your application the day it is received. Information contained on the application must be verified through law enforcement and other agencies before a decision can be made. The staff will review the law enforcement verification form and investigative report to determine if the application meets the eligibility criteria.

Additional information may be requested from you. It is important that you respond to our requests as soon as possible. Requested information not received by our office can delay a decision and may lead to your application being put on hold or denied until the required information is submitted.

Approval Process

If your application meets eligibility requirements, you will be notified in writing that benefits have been awarded. Notice of the award is also sent to law enforcement, the city or county attorney, and medical providers listed on the claim form.

Denial Process

If your application does not meet the eligibility criteria, you will be notified in writing of the denial of benefits and the reason for the denial. Notice of the denial is also sent to the law enforcement agency handling the case, the city/county attorney, your attorney (if applicable) and medical providers.

Supplemental Benefits

Payment cannot be made for medical expenses for treatment obtained more than 3 years after the *last* date of treatment.

Appeals Process – Request for a Hearing

You have the right to request an informal hearing within 30 days of a written determination regarding your claim. Your request must be in writing to the CVC program stating the reason you would like to appeal the decision. The hearing examiner will notify you of the date, time, and place scheduled for the hearing. You will have an opportunity to provide relevant testimony concerning your claim at the time of the hearing. You have the right to bring an attorney to the hearing. The CVC Director will make the final decision.

CRIME VICTIM COMPENSATION QUESTIONS AND ANSWERS

How long will it take to receive a decision on compensation benefits?

It is the goal of the CVC program to make a decision about your claim within 60 days. Some applications may take longer if CVC is waiting for additional information.

Should I send in copies of medical bills along with the application?

Yes, send copies of the bills with the application. Also submit a copy of the explanation of benefits (EOB) from the insurance company as soon as you receive it.

If I am a victim of domestic violence, can I receive compensation if I'm still living with the offender?

Yes, domestic violence victims who live with the offender may still be eligible to receive compensation if the other eligibility requirements are met. However, if the award would *unjustly benefit* the offender, benefits may be denied.

When can children of homicide victims receive loss of support benefits?

Loss of support benefits can be awarded to children of homicide victims who did not live with the victim if the victim was contributing to the care or support of the children.

What compensation benefits are available for secondary victims?

The parents, step-parents, siblings, step-siblings, and children of primary victims can receive mental health counseling benefits if the primary victim is either a victim of a homicide or a child victim of a sexual offense. Step-parents and step-siblings must reside with the victim at the time of the crime to be eligible.

Can the secondary victim receive benefits if benefits have been denied to the primary victim?

No, in order for a secondary victim to receive compensation benefits, the primary victim must meet the eligibility requirements of the Crime Victim Compensation program.

What is contribution?

Contribution is conduct on your part that may have caused or contributed to the injuries or death. This conduct may include being under the influence of alcohol or other drugs, aggressive behavior, etc. When reviewing information regarding contribution, the CVC program considers whether charges are filed against you or the suspect, comparable or reasonable force, age of the victim and issues of mutual combat.

Does the Program pay for stolen or damaged property?

No, the CVC program cannot pay for stolen property. CVC may pay for such items as eyeglasses, hearing aids, or prosthetic devices damaged or necessary as a result of the physical injury.

Should I wait to file an application until after the offender has been arrested or convicted?

No, you should apply for Crime Victim Compensation as soon as possible after the crime. Compensation is not based upon the arrest or conviction of the offender.

Can I receive compensation if the offender has been ordered to pay restitution?

Yes, you can apply for compensation if restitution has been ordered. If restitution has been ordered and you are an eligible victim, benefits can still be paid. The CVC program will advise the prosecuting attorney that you have been awarded compensation benefits and any expenses not paid by another source (such as insurance) will be paid by CVC. Any restitution payments received by you for the same expenses submitted to CVC will be deducted from the total compensation payment.

If I received compensation, can I sue the offender for the injuries sustained in the crime?

Yes, you may still sue the offender (or any other liable party) for damages caused by the crime. The CVC program is entitled to reimbursement if the civil settlement includes payment for the same expenses previously paid by CVC.

VICTIM SERVICES PROGRAMS

Montana has a wide variety of services available to victims and witnesses of crime. Services are provided by non-profit organizations, law enforcement agencies, prosecution offices, shelter programs, and are available to both primary and secondary victims of crime. The majority of victim assistance programs provide services at no charge. The following is a list of the most common services offered by victim assistance programs.

- **Counseling:** Crisis intervention and follow-up support and guidance for emotional, personal, financial and employment problems resulting from the crime.
- **Criminal Justice Support:** Explanation of the criminal justice system, court support, information regarding the progress and disposition of the criminal case, and assistance obtaining restitution.
- **Emergency Legal Advocacy:** Assistance with filing orders of protection, referrals to low-income legal services for help with dissolutions and/or child custody issues, and explanation of victim's rights and remedies.
- **Shelter/Safe House:** Shelter may include a domestic violence shelter, private residence or a motel for short-term emergency shelter.

- **Crisis Hotline:** 24-hour domestic violence and rape hotlines for crisis counseling, advocacy service for crime-related medical exams, information, and referral.
- **Information and Referral:** Identification of services and support available from the victim assistance program and community agencies.
- **Support Groups:** Facilitated support groups for adults and children that focus on healing from the emotional impact of domestic violence, sexual abuse/assault and other violent crimes.
- **Emergency Financial Assistance:** Assistance in filing for losses covered by public and private insurance including worker's compensation, unemployment, public assistance and Medicare/Medicaid, and financial assistance for public transportation, food, emergency shelter and clothing.
- **Assistance Filing Crime Victim Compensation Claims:** Information about the CVC program, assistance with required forms, help gathering necessary documentation, and assistance with follow-up contact with CVC on behalf of the victim.
- **Personal Advocacy:** Assistance in securing services from other agencies, communicating with employers, creditors, landlords and others on behalf of the victim.