

Legislative Analysis



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TIME OFF WORK FOR CRIME VICTIMS

House Bill 5900 as introduced
Sponsor: Rep. Paul Condino

House Bill 5901 as introduced
Sponsor: Rep. Marc Corriveau

House Bill 5902 as introduced
Sponsor: Rep. Andy Coulouris
Committee: Judiciary

First Analysis (4-15-08)

BRIEF SUMMARY: The bill would allow a victim of a crime to take up to 12 weeks of accumulated time off work in a year to attend court proceedings relating to the crime and would prohibit an employer from imposing certain sanctions against that employee.

FISCAL IMPACT: There would be no fiscal impact to State or local government unless the governmental unit were the employer and incurred additional costs due to an employee's absence.

THE APPARENT PROBLEM:

Numerous rights and protections are afforded to victims of crimes under provisions of the state constitution and the William Van Regenmorter Crime Victim's Rights Act (CVRA). For instance, victims have the right to attend the trial of the defendant, receive restitution, be notified of upcoming hearings involving the defendant, and submit a victim impact statement during the sentencing phase and parole hearings, among other rights. Currently, under certain circumstances, it is a misdemeanor offense punishable by up to 90 days in jail and/or a fine of not more than \$500 for an employer to discipline or discharge an employee who is the victim of a crime (or threatens to do the same) who missed work in order to attend the trial of the defendant.

Some victims maintain that the CVRA, including the above provision, is insufficient to protect victims who ask for time off work to attend various court proceedings. In particular, relatives of deceased victims report that they have been fired or disciplined for taking time off work to attend court proceedings, threatened to be fired or disciplined, or forced to choose between attending the court proceedings or taking a vacation in that year. They say the current provisions are inadequate because the protections apply to attending the trial, and the penalty for employers who interfere with that right applies only in cases in which the prosecutor subpoenaed or requested the victim to testify at the trial. Yet, it is very important for victims to attend other court proceedings as well, such as the arraignment, pretrial hearings, sentencing hearings, and parole hearings, not just the trial. Further, relatives of murder victims are not necessarily called as witnesses in a murder trial; therefore, an employer would not face criminal penalties for firing the sister of a murder victim for attending the trial of the person accused of killing her brother if she were not a witness scheduled to give testimony.

Those who work with victims believe that attending the various court proceedings is an important part of the healing process, and many prosecutors believe that having the family in the courtroom, even if they are not testifying, strengthens their prosecution. Some feel, therefore, that the CVRA should be further amended to allow victims of crimes to take a reasonable time off work without pay to attend any court proceeding, in addition to the trial, without fear of reprisal from their employers.

THE CONTENT OF THE BILLS:

Each bill would amend the William Van Regenmorter Crime Victim's Rights Act (MCL 780.751 et seq.) to specify that an employee who is a victim of a crime is entitled to up to a total of 12 workweeks of unpaid leave during any 12-month period to attend the trial or other court proceeding of the defendant. The bills would apply to employers having at least 25 employees. With the exception of state civil service employees, the term would include state and municipal workers.

An employee would have to provide the employer with reasonable notice of the date, time, and anticipated duration of the trial or court proceeding and a statement from the prosecuting attorney that the employee is a victim in the case. An employee would subsequently have to provide the employer with a statement from the clerk of the court confirming court attendance by the employee.

An employer could not discharge an employee for requesting such unpaid leave or discourage such a request. An employer who did so would be liable to the employee in a civil action for all damages incurred, including reasonable attorney fees. An employee-victim could also not lose seniority and other rights and benefits determined by seniority for using leave time to attend court proceedings.

Currently, the crime victim's rights act exempts the state from civil actions to recover money damages. The bills would retain this exemption but would clarify that it would not apply to civil actions brought by eligible state employees under the bill package

House Bill 5900 would apply to felonies and crimes with penalties involving imprisonment for more than one year (Article 1 of the act). House Bill 5901 would apply to serious misdemeanors (Article 3 of the act). House Bill 5902 would apply to victims of juvenile offenders (Article 2 of the act). The bills are tie-barred to each other, meaning that a single bill could not take effect unless the other two were also enacted.

The act defines a victim, generally, as an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. The term also includes relatives of deceased victims (spouse, parent, child, sibling, grandparent, etc.)

ARGUMENTS:

For:

The bills would address an apparent lapse in protections for victims of crimes. According to victims, especially the relatives of murder victims, there is still a problem arranging for time off work to attend various court proceedings. Where current law mainly addresses time off work to attend a trial for the purpose of providing testimony, victims cite other proceedings that are important to attend, for instance, pretrial hearings, presentence hearings, parole

hearings, and other proceedings related to appeals. The response of employers to requests to attend these proceedings appears to vary, with some people being fired, veiled threats of dismissal or disciplinary actions being given, being allowed to attend proceedings only to the extent the victim had unused vacation days and used that vacation time to cover the time off work, to denials of the request. Victims and victims advocates agree that attendance at any court proceeding, not just the trial, can be an important part of the healing process and some prosecutors feel that having the family present at trial, even if they don't testify, can strengthen their cases.

Under the bill package, a crime victim (which includes the relatives of a deceased victim) could request time off work to attend any court proceeding, regardless of whether he or she were a witness in the case. The victim would have to give appropriate notice to his or her employer regarding the dates and time needed to be away, provide proof that he or she were a victim in the case, and provide proof that of attendance at the court. The victim could bring a civil action to recover damages against an employer who refused to comply with the bills' provisions.

The legislation would only apply to larger employers—those with at least 25 employees—and so would not disadvantage smaller businesses which could find it difficult to replace the employee while at court. Further, the employer would not have to compensate the employee for the time taken off under the bills' provisions.

For:

Under the bills, a crime victim could choose to take unpaid days off to attend court proceedings, rather than being forced to use available vacation days. Victims cite the need to use vacation days for those times not covered by the bills; for example, when grief makes work difficult or dangerous—either for themselves or others. For instance, a heavy equipment operator, pilot, or surgeon, among others, should not be working on days when grief affects their concentration and ability to perform their jobs safely. Vacation days may also be needed for other tasks, such as settling the affairs of a deceased relative. Plus, being the victim of crime is hard emotionally and physically (even when there are no physical injuries). It is important for crime victims and their families to have some available vacation time to use for rest and refreshment. One woman testified before the committee of the difficulty she faced when the defendant accused of murdering her son filed numerous appeals, dragging the case out over six years. Her employer allowed her to attend the court proceedings throughout those years, but only if she used her vacation time. For those six years, she had to bank her vacation allotment and could not take a vacation in case the days were needed to go to court; only in the final days or weeks of a year, before the vacation time expired, could she use any of that vacation time to actually take a break.

Against:

Having an employee absent for up to one-quarter of a year could still be problematic for many employers. Not all positions can be filled with temporary workers on an "as-need-basis," especially those requiring technical expertise. If an employee/victim combined the unpaid leave time with weeks of vacation time, his or her absence could put a greater burden on the business and on other employees who would have to take up the slack.

Response:

According to committee testimony, most court proceedings would necessitate only occasional absences from work for short periods at a time. For instance, an arraignment or pre-sentence hearing may only require a half-day or one day's absence. Most trials are only one and a half- to two-days in duration. It is the rare trial that lasts more than a week.

Therefore, most victims would not need to take the full amount of time off work allowed under the bills.

Against:

The bills are too burdensome for employers. The term "victim" is too broad; a "crime" could be for almost anything, even minor misdemeanors; the provisions of the bills conflict with the federal Family Medical Leave Act (FMLA), which could lead to confusion for Human Resources personnel to administer; and employers that operate branches in multiple states could, according to the Michigan Chamber of Commerce, face challenges in trying to balance compliance with overlapping leave laws and efficient Human Resources policies. Perhaps if the legislation more closely mirrored provisions of the FMLA, and worked in concert with that law, businesses would not be negatively impacted.

Response:

The definition of "victim" contained in the crime victim's rights act is not overly broad. Generally, it includes only the person who actually suffered harm from the illegal conduct. In the case of minors, it would include the parent or guardian. Only in the case of a victim who died would "victim" be broadened, and then only to include immediate family members such as spouse, parents, siblings, and grandparents. As to the other concerns, the bills' provisions address situations not covered under the FMLA or the CVRA. Further, the FMLA requires the employee to have worked at the business for at least 12 months prior to the request for leave time. Unlike choosing when to begin to try for a child or to adopt a child, the murder of a child and the scheduling of related court proceedings is unplanned and outside the choice or control of the employee. To compare the needs associated with being a victim of a crime with the needs addressed by the FMLA is comparing apples and oranges.

POSITIONS:

Representatives of Parents of Murdered Children, Inc., testified in support of the bills. (4-9-08)

The Eaton County Prosecuting Attorney testified in support of the bills. (4-9-08)

A representative of the 52-1 District Court testified in support of the bills. (4-9-08)

The Michigan Chamber of Commerce opposes the bills. (4-9-08)

The National Federation of Independent Business-Michigan opposes the bills. (4-9-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.