

Legislative Analysis



CRIME VICTIM'S COMPENSATION ACT

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<http://www.house.mi.gov/hfa>

House Bill 4674 as introduced
Sponsor: Rep. Bronna Kahle

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4675 as introduced
Sponsor: Rep. Bradley Slagh

Committee: Rules and Competitiveness
Complete to 10-5-21

SUMMARY:

House Bills 4674 and 4675 would each amend 1976 PA 223, known as the crime victim's compensation act, under which a person who was physically injured as a result of a crime or a survivor of a person who died as a result of a crime can be reimbursed for certain out-of-pocket expenses, such as medical costs, lost earnings, funeral expenses, or psychological counseling, after other sources have been exhausted. The program¹ is administered by the Crime Victim Services Commission in the Department of Health and Human Services (DHHS). **House Bill 4674** would expand who is eligible to receive a crime victim compensation award and what kinds of costs an award can cover. **House Bill 4675** would allow compensation for a mental or emotional injury, expand time frames for filing a claim, and allow a claim to be filed for costs the claimant is trying to recover from another source. Note that sections 1 and 11 of the act would be differently amended by each bill.

Who is eligible for compensation under current law

Under the act, the following people are eligible for a crime victim compensation award:

- A person who was physically injured as the direct result of a crime (a victim) or who was physically injured when intervening to help (an intervenor).
- A surviving spouse, parent, child, sibling, grandparent, or grandchild of a victim who died as a direct result of the crime.
- A surviving person related to the victim by blood or affinity, a guardian, personal representative, or member of the same household as the victim.

A parent, guardian, or personal representative can file on behalf of an injured victim who is a minor or mentally incapacitated. A person cannot be compensated if the person was involved in the crime as a perpetrator or accomplice or if the victim was incarcerated at the time. An award can be reduced or rejected if the victim's misconduct, including provocation or involvement in another crime, contributed to the injury. With some exceptions and waivers, the crime must have been reported to law enforcement within 48 hours, the victim or other claimant must cooperate in the investigation and prosecution, and the claim must be made within one year after the crime occurred. A claim is investigated and determined regardless of whether the alleged criminal was apprehended, prosecuted, convicted, acquitted, or found not guilty of the crime in question.

¹ https://www.michigan.gov/documents/mdch/CVSCBrochureJune2011_358764_7.pdf

Michigan residents whose injuries were caused by an act of terrorism abroad or by a crime committed in another state that does not offer crime victim compensation to nonresidents are eligible to file claims under the act.

In addition, health care providers can apply directly to the Crime Victim Services Commission (instead of billing the victim) for compensation for costs related to a sexual assault medical forensic examination.

What expenses are eligible for compensation under current law

Compensation awards can be made for an *out-of-pocket loss* (including indebtedness) and for loss of earnings or *support* resulting from the injury. With some exceptions and waivers, a claimant must have at least \$200 in out-of-pocket expenses or at least a two-week continuous loss of earnings to file a claim.

Support means actual monetary payments made by a victim or intervenor to or for a person principally dependent on the victim or intervenor.

Out-of-pocket-loss means unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for the following:

- Medical care.
- Psychological counseling.
- Replacement services for homemaking tasks, child care, transportation, and other services previously performed by the victim that must be performed by someone else due to the victim's injury.
- Nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.
- Other services necessary as a result of the injury on which a claim is based, including recognized medical treatment, convalescent aids, supplies, and other equipment needed by the victim because of physical incapacity sustained as a direct result of the crime.

The expenses to be compensated must be directly related to the crime. Other compensable expenses include funeral and burial payments, grief counseling for survivors, and crime scene cleanup. The loss or repair of personal property is not eligible. Relocation costs, living expenses, or the costs of participating in a trial are not eligible. In addition, noneconomic losses in the form of pain, suffering, emotional distress, inconvenience, physical impairment, or other nonpecuniary damages are not eligible.²

The maximum payment per claim is \$25,000.³ If the victim is deceased, all claims regarding that death are considered as a single claim with respect to that maximum.

Currently, an award made for loss of earnings or support cannot exceed \$350 per week. Grief counseling for a homicide victim's spouse, children, parents, siblings, grandparents, and grandchildren cannot exceed \$500. Crime scene cleanup, if the crime scene is located at the residence of the victim or a claimant, also cannot exceed \$500.

² See also the Crime Services Commission rules in the Michigan Administrative Code:
https://www.michigan.gov/documents/mdhhs/General_Rules_-_Crime_Victims_Services_Commission_657953_7.pdf

³ See https://www.michigan.gov/documents/mdch/Eligible_Expenses_12.16.2010_359065_7.pdf

An award for psychological counseling is limited to 35 hourly sessions per victim or intervenor. The award can include up to eight family sessions that include any of the victim's or intervenor's spouse, children, parents, or siblings who are not perpetrators or accomplices to the crime. The reimbursement rate is capped at \$80 per hourly session with a licensed or registered therapist or counselor and \$125 per hourly session with a licensed psychologist or physician.

An award for funeral and burial expenses is limited to \$5,000 per victim and includes the costs of transporting the victim's body. However, it does not include expenses not directly related to the funeral service or disposition of the body, such as flowers, gravestones, catering services, or other personal and family accommodations.

The compensation program is the payer of last resort for these expenses. The claimant must seek reimbursement from all other available third-party sources, such as insurance, restitution, settlements, or donations, and amounts received from these sources must be reported and deducted from compensation awards under the act.

House Bill 4674 would amend the act to expand who is eligible to receive a crime victim compensation award and what kinds of costs an award can cover. The bill also would amend emergency award and financial hardship provisions.

Who would be eligible for compensation under the bill

Under the bill, the following people would be eligible for an award:

- A person who was physically injured as the direct result of a crime (a victim) or who was physically injured when intervening to help (an intervenor).
- A spouse, parent, stepparent, child, stepchild, sibling, stepsibling, grandparent, or grandchild of a victim.
- An individual engaged to be married to a victim.
- An individual with a child in common with a victim.
- An individual for whom a victim stands or stood in loco parentis.
- An individual who was living in the same household as a victim or intervenor at the time of the crime and who is either related to the victim or intervenor by blood or affinity or has an established and emotionally significant relationship with the victim or intervenor.
- An individual who lived in the same household as the victim or intervenor for at least two years and who is related to the victim or intervenor by blood or affinity.
- A guardian or personal representative of a victim.
- A surviving person related by blood or affinity to a victim who died as a direct result of a crime.

The bill would not change other provisions of the act described above, such as the ineligibility of perpetrators or accomplices or incarcerated persons, crime reporting requirements, or the eligibility of health care providers to apply for compensation for costs related to a sexual assault medical forensic examination.

What expenses would be eligible for compensation under the bill

Under the bill, an award could be made for an out-of-pocket loss and loss of earnings or support resulting from the *crime* (rather than, under current law, resulting from the *injury*). With some

exceptions and waivers, a claimant would have to have at least \$200 in out-of-pocket expenses to file a claim. Unless reduced under the act, an award made for out-of-pocket loss would have to be in an amount equal to unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for any of the following:

- Medical care for the victim or intervenor.
- Psychological counseling for an individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died).
- Replacement services for homemaking tasks, child care, and other services previously performed by an individual who is eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) that must be temporarily or permanently performed by someone else because of the victim's injury or the victim's attendance at a court proceeding or victim service related to the crime.
- Nonmedical remedial treatment rendered in accordance with a recognized religious method of healing to an individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died).
- Temporary or permanent relocation for an individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died). This could include the first month of rent and a security deposit.
- Loss of tuition for the victim or intervenor.
- Job training and vocational rehabilitation for the victim or intervenor, made necessary as a result of the injury.
- Transportation expenses to allow an individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) to access victim services, medical care, or mental health care (including psychological counseling) and to attend a court proceeding related to the crime.
- Reasonable costs of installing or increasing residential security at the residence of an individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died), including such things as installing a home security device or system or replacing or increasing the number of locks on residential entryways.
- Accessibility or rehabilitative equipment or devices, including modifications necessary to make a residence or vehicle accessible for a victim or intervenor as a result of the injury.
- Other services necessary as a result of the injury or crime upon which a claim is based.

The maximum payment per claim would be \$45,000. As under current law, all claims regarding the death of a victim would be considered as a single claim with respect to that maximum.

An award made for loss of earnings or support could not exceed \$700 per week. A claimant could be awarded for loss of earnings or support for not attending work as a result of the crime, including under the following circumstances:

- A claimant (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) cannot attend work

because her or she is seeking medical attention for or recovery from an injury caused by the crime or providing care to a victim recovering from injury.

- A claimant (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) cannot attend work because he or she is obtaining services from a victim services provider, agency, or organization or assisting another individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) to do so.
- A claimant (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) cannot attend work because he or she is obtaining psychological counseling or mental health services directly related to the crime or accompanying another individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) in doing so.
- A claimant (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died) cannot attend work because he or she is participating in safety planning and taking other actions, including temporary or permanent relocation, to increase the safety following the crime of an individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died).
- A claimant (not including a victim, a guardian or personal representative of a victim, or a surviving person related by blood or affinity to a victim who died) cannot attend work because he or she is attending the funeral or alternative to a funeral of a victim who died as a result of the crime.
- A claimant (not including a victim, a guardian or personal representative of a victim, or a surviving person related by blood or affinity to a victim who died) cannot attend work because he or she is making arrangements necessitated by the death of a victim who died as a result of the crime.
- For a period of up to 12 weeks, a claimant (not including a victim, a guardian or personal representative of a victim, or a surviving person related by blood or affinity to a victim who died) cannot attend work because he or she is grieving the death of a victim who died as a result of the crime.

An award for funeral expenses would be limited to \$10,000 per victim and would include expenses for burial expenses, flowers, a gravestone, transporting the victim's body, travel costs for family members, and other costs for the funeral service or alternative to funeral service.

Expenses to clean a crime scene would still be limited to \$500 and would apply if the crime scene were located at the residence of a victim or of a spouse, parent, stepparent, child, stepchild, sibling, stepsibling, grandparent, or grandchild of a victim; an individual engaged to be married to a victim; an individual with a child in common with a victim; or an individual for whom a victim stands or stood in loco parentis.

An award for psychological counseling would be limited to 35 hourly sessions per individual eligible for an award (not including a guardian or personal representative of a victim or a surviving person related by blood or affinity to a victim who died). The maximum hourly reimbursement would remain \$80 per hourly session with a licensed or registered therapist or counselor and \$125 per hourly session with a licensed psychologist or physician.

Emergency awards

Currently under the act, if it appears that a claim is likely to result in an award and undue hardship will result to the claimant if immediate payment is not made, the commission can make an emergency award to the claimant while the case is still awaiting a final decision. The emergency award is then deducted from the total award provided, and if the emergency award is larger than the total final award, the difference must be repaid. An emergency award made under these provisions cannot exceed \$500.

The bill would increase the maximum amount of an emergency award to \$5,000. The bill also would require the commission to provide a procedure for a claimant to request an emergency award under these provisions. In addition, no later than two business days after receiving an application or request for an emergency award, the commission would have to decide whether to grant one.

Serious financial hardship

The act currently requires the commission to deny an award if it finds that, in the absence of the award, the claimant will not suffer serious financial hardship from the out-of-pocket expenses and lost earnings or support incurred as a result of the injury. All of the financial resources of the claimant must be considered in making this determination.

The bill would remove this provision.

MCL 18.351 et seq.

House Bill 4675 would amend the act to allow compensation for a mental or emotional injury, expand time frames for filing a claim, and allow a claim to be filed for costs the claimant is trying to recover from another source, among other changes described below.

Definitions of injury, victim, and intervenor

Currently under the act, ***victim*** is defined to mean a person who suffers *a personal physical injury* as a direct result of a crime, ***intervenor*** means a person who goes to the aid of one who has become a victim of a crime and who suffers *personal physical injury*, and ***personal physical injury*** means actual bodily harm and includes pregnancy. The act now provides that an award of compensation cannot be made unless investigation of the claim verifies that a crime was committed that directly resulted in ***personal physical injury*** to, or the death of, the ***victim***.

The bill would change the term *personal physical injury* to ***personal injury***, which would mean a physical, mental, or emotional injury and would include pregnancy and death.

A ***victim*** would be defined to mean a person who suffers *a personal injury* as a direct result of a crime, and ***intervenor*** would mean a person who goes to the aid of one who has become a victim of a crime and who suffers *personal injury*.

The bill would prohibit the commission from granting an award of compensation unless investigation of the claim verifies that a crime was committed that directly resulted in ***personal injury*** to, or the death of, the ***victim***.

Time frame for filing a claim

Currently under the act, a claim must be filed no later than *one year* after the crime on which it is based, except in the following cases:

- If a victim of criminal sexual conduct in the first, second, or third degree was less than 18 years old at the time of the crime and the victim reported the crime before he or she turned 19, a claim based on the crime can be filed no later than *one year* after the crime was reported.
- If a law enforcement agency discovers that injuries were incurred as a result of the crime that were previously determined to be accidental, of unknown origin, or resulting from natural causes, a claim based on the crime can be filed within *one year* after that discovery.

The bill would change the time frame for filing a claim from *one year* to *five years* after the respective events in the above provisions.

Time frame for reporting a crime

The act currently provides that an award cannot be made unless investigation of the claim verifies that the crime was reported promptly to the proper authorities. The act specifies that an award may not be made if police records show that the report was made more than 48 hours after the crime happened. The commission can waive this requirement if it finds the delay was justified for good cause or if the crime was criminal sexual conduct committed against a victim who was less than 18 years old at the time of the crime and was reported before the victim turned 19.

The bill would remove the word “promptly” from the above provisions and instead provide that an award cannot be made unless investigation of the claim verifies that the crime was reported to the proper authorities. The bill also would remove, as unnecessary, the current exceptions to the promptness requirement.

Timing of a claim and requirement of repayment

Awards under the act are for “unreimbursed and unreimbursable expenses,” which means that there is no other source for paying them other than an award or the claimant’s own assets. The commission is thus the payer of last resort of expenses incurred because of a crime injury, and if a claimant receives a payment from another source for the same expenses, the claimant must repay that amount to the commission.

The act now provides that an award must be reduced by amounts that a claimant receives from other sources as a result of the injury (such as restitution or insurance). The bill also would explicitly provide that if a claimant receives such a payment, he or she must repay the commission the amount of the award made for that expense.

In addition, the commission would have to accept a claim for filing regardless of whether the claimant has made a claim to cover the cost from another source or has attempted to cover the cost or a portion of the cost from another source.

Notification to prosecuting attorney

Currently, when a claim is filed, the commission must promptly notify the prosecuting attorney of the county where the crime allegedly took place. If the prosecuting attorney advises the commission within 20 days that a criminal prosecution is pending on the case and asks the

commission to delay its proceedings until the prosecution is finished, the commission must grant the request, although it may still grant an emergency award under the act.

The bill would remove the above provision.

Electronic filing

Under current law, a claim must be filed in the commission's office in person or by mail. The bill would additionally allow a claim to be filed by electronic means authorized by the commission.

MCL 18.351 et seq.

FISCAL IMPACT:

House Bill 4674 would increase state expenditures by an indeterminate amount and would not have a significant fiscal impact on local units of government. Because the bill would expand the eligibility of persons who can receive awards and would increase the maximum amount of certain awards that can be granted, among other changes, the bill would increase state expenditures through additional funding awarded through the program. The amount of increased expenditures would depend upon how many additional financial assistance awards would be granted to eligible persons and what the amount of these awards would be.

In FY 2018-19, the Crime Victims Compensation program awarded \$3,497,000 in direct financial assistance to crime victims from 700 eligible claims. Under the current statute, these awards are a payment of last resort for crime victims that have suffered physical injuries and, among other stipulations, the crime victim must show financial hardship.

Funding for crime victim compensation is allocated from the Crime Victim's Rights Fund established in the Crime Victim's Rights Services Act. The fund can be used for the following three purposes:

- First, for crime victim services.
- Second, amounts in excess of the necessary revenues for services may be used for crime victim compensation.
- Third, any additional excess revenue that has not been used for victim compensation may be provided for the statewide trauma system, but not more than \$3.5 million.

The following table presents a five-year history of the Crime Victim's Rights Fund annual revenues, expenditures, and year-end balances:

CRIME VICTIM'S RIGHTS FUND				
Fiscal Year	Beginning Balance	Revenue to Fund	Expenditures from Fund	End Balance
2016-17	27,327,617	18,535,438	(15,907,065)	29,955,990
2017-18	30,173,353	19,151,318	(17,323,612)	32,001,059
2018-19	31,816,966	17,900,840	(18,065,957)	31,651,849
2019-20	31,668,254	13,399,223	(18,179,274)	26,888,203
2020-21*	26,888,203	22,245,400	(22,245,400)	26,888,203

** Executive Estimate*

House Bill 4675 would increase state expenditures by an indeterminate amount and would not have a significant fiscal impact on local units of government. The fiscal impact of the bill would depend upon an increase of eligible claimants due to the inclusion of mental and emotional injuries and the extension of the length of time that crime victims are able to submit claims. Current statute includes only personal physical injuries, but the bill adjusts language to include physical, mental, and emotional injuries. Current statute specifies that a claim must be filed by a crime victim within one year after the date of the original crime report. The bill would extend that window to no later than five years after the original crime report was made.

In FY 2018-19, 700 claims were filed and accepted by the Crime Victims Services Commission resulting in \$3,497,000 awarded to crime victims.

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