

Legislative Analysis



CRIME VICTIM'S COMPENSATION ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4674 (proposed H-3 substitute)
Sponsor: Rep. Bronna Kahle

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

House Bill 4675 (proposed H-2 substitute)
Sponsor: Rep. Bradley Slagh

Committee: Rules and Competitiveness
Complete to 11-9-21

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 allow compensation for a mental or emotional injury and expand who is eligible to receive a crime victim compensation award and what kinds of costs an award can cover. **House Bill 4675** would expand the time frames for reporting a crime and filing a claim, among other changes described below.

Who is eligible for compensation under current law

The following people are now eligible for a crime victim compensation award under the act:

- 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 he or she 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.

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.

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

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 receive an award.

Out-of-pocket loss means unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for any of 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.

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

The expenses to be compensated must be directly related to the crime. Other compensable expenses include crime scene cleanup, funeral and burial payments, and grief counseling for survivors. 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 dead, 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 be more than \$350 per week. Grief counseling for a homicide victim's spouse, children, parents, siblings, grandparents, and grandchildren cannot be more than \$500. Crime scene cleanup, if the crime scene is located at the residence of the victim or a claimant, cannot be more than \$500.

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. The reimbursement rate is capped at \$80 per

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

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. Amounts received from those sources must be reported and deducted from compensation awards under the act.

House Bill 4674 would amend the act to allow compensation for a mental or emotional injury and 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.

Definition of crime

As used in the act, the term ***crime*** now means an act that is one of the following:

- A crime under state or federal law that causes an injury in this state.
- An act committed in another state that would be a crime under state or federal law if committed in this state and that either causes an injury in this state or causes an injury to a resident of this state in a state that does not have a victim compensation program available to nonresidents.
- An act of international terrorism as defined in federal law that is committed outside the United States and causes an injury to a resident of this state.

Under the bill, ***crime*** would mean an act that is one of the following:

- A crime under state, federal, or tribal law that does either of the following:
 - Causes actual bodily harm, including pregnancy or death.
 - Poses an actual or reasonably perceived threat of injury or death in this state.
- An act committed in another state that would be a crime under state, federal, or tribal law if committed in this state and that does either of the following:
 - Causes actual bodily harm, including pregnancy or death, or poses an actual or reasonably perceived threat of injury or death in this state.
 - Causes actual bodily harm, including pregnancy or death, to a resident of this state or poses an actual or reasonably perceived threat of injury or death to a resident of this state in a state that does not have a victim compensation program available to nonresidents.
- An act of international terrorism as defined in federal law that is committed outside the United States and that does either of the following:
 - Causes actual bodily harm, including pregnancy or death, to a resident of this state.
 - Poses an actual or reasonably perceived threat of injury or death.

Definitions of injury, victim, and intervenor

Currently under the act, ***victim*** means 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 a victim of a crime

and who suffers *personal physical injury*, and ***personal physical injury*** means actual bodily harm and includes pregnancy.

The bill would replace the term *personal physical injury* with ***personal injury***.

Personal injury would mean either of the following:

- Actual bodily harm, including pregnancy and death.
- A psychological, mental, or emotional injury resulting from an actual or reasonably perceived threat of injury or death.

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

Who would be eligible for compensation under the bill

The following people would be eligible for an award under the bill:

- A. An individual who suffered a personal injury as a direct result of a crime (a victim) or who suffered a personal injury when intervening to help (an intervenor).
- B. An individual who is related to a victim or intervenor by blood or affinity to the second degree, including a child born after the death of the victim or intervenor. (Individuals related to the second degree of blood or affinity include a person's spouse, child, parent, sibling, grandparent, grandchild, parent-in-law, and child-in-law.)
- C. An individual who was in a ***dating relationship*** with the victim or intervenor at the time of the crime. (***Dating relationship*** would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. It would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.)
- D. An adult who is physically or mentally incapacitated to whom the victim or intervenor is a guardian or primary caregiver.
- E. A minor to whom the victim or intervenor is a guardian or primary caregiver.
- F. The guardian or primary caregiver of a victim or intervenor who is either a minor or an adult who is physically or mentally incapacitated and principally dependent on another for support.
- G. An individual who, when the victim or intervenor was a minor, was the victim's or intervenor's guardian or primary caregiver.
- H. An individual who voluntarily pays the funeral or burial expenses of a victim who died as a result of a crime or legally assumes that obligation.
- I. An individual who, when the crime occurred, resided in the same dwelling unit as a victim or intervenor. (The commission could require verification or proof of permanent residence, including a lease agreement, pay stub, tax form, license registration, utility bill, document with a mailing address, or notarized statement.)
- J. An individual who, before the crime occurred, resided for at least two years in the same dwelling unit as a victim or intervenor and who is related to the victim or intervenor by blood or affinity. (The commission could require verification or proof of permanent residence, including a lease agreement, pay stub, tax form, license registration, utility bill, document with a mailing address, or notarized statement.)
- K. A person who is principally dependent on another for support and who suffers loss of support because a victim or intervenor died as a result of the crime.

The bill would not change the provisions concerning the ineligibility of claimants who were perpetrators or accomplices or victims who were incarcerated or (although they are not listed above) 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 (including indebtedness for services needed as a result of the personal injury) 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 or at least a five-day loss of earnings to receive an award. 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 related to the crime and reasonably incurred for any of the following:

- Medical care for the victim or intervenor.
- Subject to provisions described below, psychological or grief counseling for an individual eligible for an award as described above.
- Reasonable expenses for temporary or permanent relocation for an individual described in A or I above or (if the victim is deceased) described in B, C, D, E, F, G, I, or J. This award could only be made if the claimant is relocating to protect his or her physical safety or emotional or financial well-being as a result of the crime and is relocating within one year of either the date of the crime or the date the claimant is threatened by a change of circumstance or indicator of danger, unless good cause for a delay is shown. An award under this provision could not exceed \$3,800 per claimant. Eligible relocation expenses would include at least all of the following:
 - The first month of rent, a security deposit, and the costs to start utilities in the new dwelling. The commission could require the claimant to provide a signed rental agreement as evidence.
 - Moving expenses, such as costs to rent a truck, travel, and obtain moving services.
 - Costs for temporary lodging for up to 30 days.
- Replacement services for homemaking tasks, child care, and other services previously performed by an individual described in A, B, C, D, E, F, G, I, or J above that must be temporarily or permanently performed by someone else because of the victim's injury or the claimants attendance at a **victim services organization** to receive services related to the crime.
- Transportation expenses to allow an individual described in A above or (if the victim or intervenor is deceased) described in B, C, D, E, F, G, I, or J to access services from a victim services organization, medical care, or mental health care or to attend the funeral of a victim or intervenor. An award under this provision would be limited to the following aggregate amounts per claimant:
 - \$1,000 for travel 50 miles or less from the claimant's residence.
 - \$5,000 for travel that meets either or both of the following:
 - Travel 50 miles or more from the claimant's residence for a health care provider, mental health professional, or health facility or agency that provides a specific treatment or care that is not available within 50 miles of the claimant's residence.
 - Travel 50 miles or more from the claimant's residence for a funeral for a deceased victim or intervenor.

- For the residence of an individual described in A above or (if the residence is a crime scene) an individual described in B, C, D, E, F, G, I, or J, reasonable costs of up to \$1,000 per residence for installing, increasing, or replacing residential security, including such things as installing a home security device or system or replacing or repairing windows or locks or increasing the number of locks on residential entryways.
- Accessibility or rehabilitative equipment or devices for either of the following:
 - Equipment or devices needed by a victim or intervenor because of an injury caused by the crime, including modifications necessary to make a residence or vehicle accessible.
 - Replacement equipment or devices needed by a victim or intervenor because the victim's or intervenor's equipment or device was damaged in the course of a crime.
- If the crime scene is located at the residence of an individual described in A, B, C, D, E, F, G, I, or J above, or is that individual's vehicle, up to \$5,000 of crime scene cleanup services per crime scene.
- Nonmedical remedial treatment rendered in accordance with a recognized religious method of healing to a victim or intervenor.
- Replacement costs of up to \$250 for clothing or bedding that is held as evidence of a crime and belongs to an individual described in A, B, C, D, E, F, G, I, or J above.
- Subject to provisions described below, funeral expenses.
- ***Other services necessary*** for the victim or intervenor.

Victim services organization would mean an organization or agency that has a documented history of providing services to address issues arising from victimization to victims or to family members or household members of victims.

Other services necessary would mean 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 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.

Unless reduced under the act, an award made for loss of support (actual monetary payments made by a victim or intervenor to or for a person principally dependent on the victim or intervenor) would have to equal the loss sustained and could not exceed \$1,000 per week.

Unless reduced under the act, an award made for loss of earnings would have to equal the loss sustained and could not exceed \$1,000 per week. A claimant could be awarded for loss of earnings for lost wages as a result of the crime, such as under the following circumstances:

- A victim or intervenor, the parent, guardian, or primary caregiver of a victim or intervenor, or (if the victim or intervenor is deceased) an individual described in B, C, D, E, F, G, or I above, for not attending work because of any of the following:
 - He or she is seeking medical attention for or recovery from an injury caused by the crime.
 - He or she is obtaining psychological counseling or obtaining services from a victim services organization.

- He or she is providing care or assistance to a victim or claimant in recovering from injuries caused by the crime or in obtaining psychological counseling or obtaining services from a victim services organization.
- If the victim or intervenor is deceased, wage loss for bereavement of up to \$2,000 for an individual described in B, C, D, E, F, G, or I above, or up to \$1,000 for an individual described in J, for any of the following:
 - To attend the funeral or alternative to a funeral of the deceased victim or intervenor
 - To make arrangements necessitated by the death of the victim or intervenor.
 - For a period of grieving the death of the victim or intervenor.

Unless reduced under the act, an award for funeral expenses would have to be in an amount equal to unreimbursed and unreimbursable expenses or indebtedness incurred for burial expenses, transporting the victim's body, and other costs for the funeral service or alternative service, up to \$8,000 per victim. An award under these provisions would be prohibited from exceeding an additional \$500 for a grave marker for each victim.

An award for psychological or grief counseling would be limited to 35 hourly sessions per individual described above who requires psychological counseling as a result of the crime or grief counseling in connection with the victim's or intervenor's death. The award could include up to 20 family sessions that include an individual who is not criminally responsible for or an accomplice to the crime, and who is related to the victim or intervenor by blood or affinity to the second degree, the guardian or primary caretaker of a minor victim, or an individual described in I above. 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 \$4,000. The bill also would require the commission to provide a procedure for a claimant to request an emergency award under these provisions. In addition, the commission would have to decide whether to grant an emergency award promptly after receiving an application or request for one. If granted, the award also would have to be issued promptly.

Lack of 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 eliminate this provision.

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 would provide that if a claimant receives such a payment from another source for which he or she received an award under the act, he or she must reimburse the commission to the extent that the total amount the claimant received exceeds the actual loss the claimant experienced for that expense.

MCL 18.351 et seq.

House Bill 4675 would amend the act to expand the time frames for reporting a crime and filing a claim, among other changes described below.

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 bill would delete the word *promptly*.

The act further provides 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 reached the age of 19.

The bill would delete these provisions.

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 reaching the age of 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 provide that a claim must be filed no later than *five years after the crime* on which it is based, except as follows:

- A claim based on the crime of criminal sexual conduct in the first, second, or third degree could be filed by a claimant no later than *five years after the crime was reported* in either of the following cases:
 - Police records show that the victim of the crime was less than 18 years old at the time of the crime and the victim reported the crime before reaching the age of 28.
 - Police records show that the victim of the crime was less than 18 years old at the time of the crime, the victim reported the crime after reaching the age of 28, and the claimant shows that there was good cause for the delay in reporting the crime.
- 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 *five years after that discovery*.

Filing a claim

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, if available.

The bill also would add that an application for an award under the act must be made on a form approved by the commission.

Commission determinations

The bill would provide that the commission must promptly make a determination on whether to grant an award for an expense or loss submitted as part of a claim if the commission has received sufficient documentation concerning that particular expense or loss to make that determination. The commission could not require, as a condition of making a determination or award, that a claimant must submit sufficient documentation for all losses and expenses that will be submitted as part of a claim.

Award of compensation

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 prohibit the commission from granting an award of compensation unless investigation of the claim verifies that a crime was committed that directly resulted in *injury* to the victim *or intervenor*.

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 delete the above provision.

The bill would provide that the commission may inquire with the proper law enforcement authorities, including the prosecuting attorney of the county where the crime allegedly took place, in investigating a claim.

Periodic payments for sexual assault examinations

The act currently provides that an award must be paid in a lump sum, except that the commission may provide for periodic payments to compensate for loss of earnings or support in cases involving death or protracted disability.

The bill instead would provide that an award for each covered expense or loss must be paid in a lump sum, except that the commission may provide for periodic payments to compensate for out-of-pocket expenses or loss of earnings or support for payments to health care providers for costs related to a sexual assault medical forensic examination or in cases involving death or protracted disability.

Personal representatives

The act currently provides that a claim may be filed by the person eligible to receive the award or by the parent or guardian of an eligible minor.

Under the bill, a personal representative of the person eligible to receive an award also could file a claim.

MCL 18.351 et seq.

Effectiveness provisions

Each bill would add a new section 16a to the act. Each section 16a provides that the bill adding it would apply to claims submitted on or after the effective date of that bill.

In addition, each bill contains an enacting section that provides that the bill will take effect 450 days after it is enacted. Each enacting section also provides that the bill containing it would apply to claims submitted on or after the effective date of that bill.

Proposed MCL 18.366a and 18.366a[1]

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. The fiscal impact of the bill would depend upon an increase of eligible claimants due to the inclusion of pregnancy and mental and emotional injuries. Current statute includes only personal physical injuries, but the bill adjusts language to include actual bodily harm, pregnancy, and mental and emotional injuries. The bill also would increase the maximum amount of certain awards that can be granted, which would increase state expenditures. 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 claims due to the extension of the length of time that crime victims are able to submit claims. 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 within five years after the original crime report was made. The bill also specifies that a claimant who was under the age of 18 at the time the crime occurred may report the crime before attaining 28 years of age unless the claimant can provide good cause as to why there was a delay in reporting the crime until after attaining the age of 28.

A felon convicted of a crime that resulted in personal injury may be required, as part of the sentence, to reimburse the state for costs paid to the victim, which may lower expenditures to the state.

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. Funding was allocated from the Crime Victim's Rights Fund (\$1.7 million) as well as the Federal VOCA Grant (\$1.6 million).

Legislative Analyst: Rick Yuille
Fiscal Analysts: Sydney Brown

■ 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.