

- SUBJECT:** Crime victims compensation fund revisions
- COMMITTEE:** Criminal Jurisprudence — favorable without amendment
- VOTE:** 7 ayes — Place, Talton, Farrar, Greenberg, Nixon, Pickett, Pitts
0 nays
2 absent — Hudson, Solis
- SENATE VOTE:** On final passage, April 25 — voice vote
- WITNESSES:** No public hearing
- BACKGROUND:** The Crime Victims' Compensation Act, enacted in 1979, establishes guidelines for the reimbursement from the Crime Victims Compensation Fund of certain expenses to victims of violent crimes who are unable to recover them from other sources such as insurance, workers compensation, employee sick leave, Social Security, Medicaid or Medicare. Persons can receive reimbursement for expenses such as medical, counseling, rehabilitation, funeral and child care so that a victim or spouse can work but cannot receive reimbursement for property damage. Monies in the fund come primarily from court costs imposed on criminal offenders. The attorney general administers the fund. Since 1979 the crime victims' compensation fund has made about 50,400 awards to crime victims for about \$177 million. In fiscal 1994 about \$25 million was awarded to about 8,400 victims
- DIGEST:** SB 1049 would replace statutory limits on specific types of benefits in the Crime Victims' Compensation Act with authority for the attorney general to set limits, allow for an additional benefit for catastrophic loss, expand the items for which compensation can be requested and extend eligibility for compensation to family members who do not reside in the same household and to persons living in a household. The bill also would add to the act provisions relating to health care expenses and administrative and civil penalties.

SB 1049 would require that monies in the crime victims' compensation fund that are not expended stay in the fund and not be rolled into general revenue. SB 1049 would take effect September 1, 1995.

Eligibility and qualified expenses. SB 1049 would merge current definitions of claimant and victim and exclude service providers from qualifying as victims or claimants to the definition of victim. The bill would raise from 18 years old to 19 years old the maximum age that claims for child victims can be filed and extend the claim deadline from one year after the child turns 18 years old to one year after the child turns 19 years old.

SB 1049 would include stepparents and stepchildren in the definition of immediate family member, remove a requirement that immediate family members reside in the same household as the victim and allow household members to qualify as claimants.

The bill would name specific Penal Code sections dealing with injury or death involving motor vehicles that would qualify victims or claimants for benefits.

Expenses. SB 1049 would require the attorney general to approve compensation applications if grounds for compensation exist *by a preponderance of the evidence* instead of the current finding that grounds for compensation exist.

SB 1049 would remove current statutory limits on specific types of benefits such as child care expenses and wage loss except for the limit on aggregate awards of \$25,000 payable to a victim and all other claimants sustaining pecuniary loss because of the victim's injury or death. The attorney general would be given authority to limit pecuniary losses by rule.

The bill would give the attorney general authority to award an additional \$25,000 for extraordinary pecuniary losses if a victim's injuries were catastrophic and resulted in a total and permanent disability. This award could be for lost wages and reasonable and necessary costs of making a home or car accessible; obtaining job training and vocational rehabilitation; training in the use of special appliances and receiving home health care.

SB 1049 would add expenses for the care of dependents who may not be a minor to the losses for which compensation can be sought and would add the expenses of legal guardians to those of victims and victims' spouses. The costs for cleaning the crime scene and replacing clothing, bedding or property seized as part of the criminal investigation would be eligible for reimbursement. Mental harm would be added to the definition of personal injury for which compensation can be sought.

SB 1049 would include health care services in the costs that can be compensated out of the fund. Health care services would be compensated according to the medical fee guidelines in the Texas Workers Compensation Act, and health care providers would have to accept the compensation from the attorney general as payment in full unless the attorney general approves a deviation from the guidelines. The attorney general, claimants and victims would not be liable for health care service charges in excess of the fee guidelines. The attorney general would be authorized to review the health care services for which compensation is sought and would be prohibited from compensating a claimant or victim for health care services that the attorney general determined were not medically necessary.

The attorney general would be able to deny payments or reduce awards if at the time of the crime the claimant or victim was breaking a law or rule established under a law.

The attorney general would be given authority to order a refund of an award if newly discovered evidence showed the claimant or victim to be ineligible for the award in addition to the current authority to order a refund if a claim was obtained by fraud.

False claims. The attorney general would be authorized to issue a letter of reprimand against a person who filed a compensation claim that contained a false statement. The attorney general would have to give the person notice of the letter, and the person could challenge the compensation denial and letter following the contested case hearing procedures in the Administrative Procedure Act.

Persons filing compensation applications that contain material statements the person knew were false would be liable for a civil penalty of at least \$2,500 and not more than \$25,000. The penalties would be deposited in the crime victims compensation fund. The attorney general would also be able to recover expenses incurred in prosecuting the suit.

Persons filing compensation applications that contain material statements the person knew were false would be liable for the amount paid on the claim and interest, an administrative penalty not to exceed twice the amount paid from the fund and an administrative penalty of up to \$10,000 for each item or service for which payment was claimed.

The attorney general would be able to issue a report concerning a violation and the recommended penalty. SB 1049 would establish procedures for a person to challenge the penalty, including a contested case hearing and a judicial review of the hearing outcome. The attorney general would be able to file suit for the collection of the penalty. All proceedings would be subject to the Administrative Procedure Act. Penalties would be deposited in the crime victims compensation fund.

Miscellaneous. SB 1049 would make other changes in the Crime Victims' Compensation Act, including:

- replace the attorney general's authority to request information from prosecutors and law enforcement officers to determine qualification for an award with a requirement that law enforcement agencies give the attorney general the information within 14 business days of the request.
- limit the payment of attorney fees for challenges to awards to not more than 25 percent of the total recovery by the claimant or victim; and
- change the deadline for the attorney general's annual report on claims and awards from the fund to no later than the 100th day, instead of the 60th, after the end of the fiscal year.

SUPPORTERS
SAY:

SB 1049 would fine-tune the Crime Victims' Compensation Act, allow for benefits for catastrophic losses and return to the law provisions that were not included when the act was moved to the Code of Criminal Procedure.

SB 1049 would expand the definitions of who is eligible for reimbursement to include persons such as stepparents and family members not living in the same household but who can be affected by violent crime and the resulting expenses. All expenses, no matter who requests reimbursement, must be approved by the attorney general. The bill also updates and merges the current definitions of claimant and victim.

The bill would remove current statutory restrictions on benefits and allow the attorney general to set these limits by rule but would retain the current limit on aggregate awards. This would give the attorney general more flexibility to change the individual limits but would assure public input and oversight because the rules would have to go through the state's administrative rule process. The bill would allow additional payments for catastrophic losses to aid victims who suffer total and permanent disability.

The addition of health care service expenses would replace provisions that were not included in the codification of the act. Compensation would have to follow the fee guidelines in the workers' compensation act, and the attorney general would have authority to review the services and to deny payments for services that were not medically necessary.

SB 1049 would also replace authorization for civil and administrative penalties. The bill would ensure that anyone subject to the penalties would be afforded adequate due process. It is reasonable to limit courts to awarding no more than 25 percent of recoveries as attorney fees in claim denials that have been challenged.

**OPPONENTS
SAY:**

The limits on specific benefits should remain in the statutes to ensure the limits are set at a reasonable level. The definition of household member that would be added by SB 1049 is too broad. Persons receiving benefits should have to have some relationship with the victim in addition to living in the same household. Courts should not be limited to awarding no more than 25 percent of recoveries as attorney fees in claim denials that have been challenged. Allowing an additional award of up to \$25,000 for catastrophic injuries could result in some persons receiving two awards and limiting awards for other victims.